



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Howard Henry, Ohio Department of Mental Health and Addiction Services

**FROM:** Ethan Wittkorn, Regulatory Policy Advocate

**DATE:** August 27, 2020

**RE:** **CSI Review – Permanent Rules Related to Telehealth and COVID-19 (OAC 5122-21-03, 5122-29-10, 5122-29-29, 5122-29-31, 5122-30-27, 5122-40-07, 5122-40-09, and 5122-40-12)**

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On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

#### Analysis

This Ohio Department of Mental Health and Addiction Services (Department) rule package consists of eight amended rules. It was submitted to the CSI Office on August 7, 2020, and the public comment period was open through August 21, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 7, 2020.

The rules in this package were initially adopted as emergency rules to expand the use of telehealth and responsiveness of behavioral health providers during the COVID-19 pandemic. The Department proposes to adopt the rules as permanent and plans to re-evaluate them at the end of the COVID-19 pandemic.

The rules address reviews done remotely, removing face-to-face requirements to allow for greater flexibility in telehealth delivery, allowing for fidelity score requirements to be lowered in extraordinary circumstances, disallowing non-voluntary discharges during the state of emergency,

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allowing for delays when PPE is not available, and extending disaster supplies of medication.

During the period of early stakeholder outreach, the Department communicated with stakeholders via email regarding the development of the rules, including fourteen opioid treatment program service providers who helped shape the rule changes. During the CSI public comment period, the Department received three comments expressing concerns over the proposed increase in on-site methadone supplies and suggestions to exclude class one residential facilities from non-voluntary discharge prohibitions during the pandemic. As a result of the comments, the Department updated the rules to limit the narrowing of non-voluntary discharge to just class two and three facilities, as well as removing OAC 5122-40-12 that required an increase in on-site methadone supplies, from consideration in this package.

Impacted communities include Ohio's certified service providers, residential facilities, and licensed opioid treatment providers. Adverse impacts identified by the Department include the potential that some facilities may not be able to conduct non-voluntary discharges during the pandemic. The Department notes that financial impacts related to this change will be minimal since all residential fees should still be paid. Additional adverse impacts include administrative costs associated with maintaining a disaster plan, meeting service requirements for opioid treatment programs, records maintenance, requirements to provide telehealth services, meeting certification standards, and required pre-admission screenings. The Department states that the rules will ease the ability of providers and facilities to provide services during the pandemic and other emergencies.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.