Ohio | Common Sense Initiative

Mike DeWine, Governor
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# Business Impact Analysis

**Agency, Board, or Commission Name: Ohio Department of Mental Health and Addiction Services**

**Rule Contact Name and Contact Information:**

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**Regulation/Package Title (a general description of the rules' substantive content):**

**QRTP Rules**

**Rule Number(s): 5122-29-09.1, 5122-30-31, and 5122-30-32**

**Date of Submission for CSI Review: 6/24/2020**

**Public Comment Period End Date: 7/8/2020**

**Rule Type/Number of Rules:**

**New/_2__ rules** **No Change/____ rules (FYR? ___)**

**Amended/__1__ rules (FYR? _X__)** **Rescinded/____ rules (FYR? ___)**

**The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.**

## Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   **Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

   **The rule(s):**

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

## Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   ***Please include the key provisions of the regulation as well as any proposed amendments.***

   **The three rules in this package are being adopted/amended in response to the federal Family First Prevention Services Act and its requirement to implement standards for Qualified Residential Treatment Program (QRTP) in order to continue receiving Title IV-E funding, and in response to current federal Title IV-E funding requirements under the Social Security Act (42 USC 671) and recent amendments to the ORC for background checks.**

   **Rules 5122-29-09.1 and 5122-30-32 implement the QRTP standards for child serving SUD residential programs and MHAS licensed residential facilities, respectively. Rule 5122-30-31 is the current background check rule for licensed residential facilities and is being amended to meet the current federal Title IV-E funding requirements and the ORC and to adjust for lessons learned since the rule was initially adopted .**

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

**ORC 2151.86, 5119.34 and 5119.36**

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   ***If yes, please briefly explain the source and substance of the federal requirement.***

   **Yes, the rules are being adopted to implement the Family First Prevention Services Act which requires the implementation of QRTP standards in part by October 1, 2021, and the provisions in the Social Security Act for Title IV-E funding.**

5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   **Rule 5122-30-31 does exceed the requirements of the QRTP and Social Security Act standards by applying some new requirements to all providers, and not just child serving facilities. The changes are being made to close gaps in the coverage of the background checks, for example all background checks conducted through Ohio BCI shall now request a check of the FBI records which is required by the ORC under 2151.86 for residential facilities serving children. The check of the FBI system did not occur if the individual had not lived in Ohio for the previous five years, resulting in disqualifying offenses not being reported.**

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   **The intent of the background check rule changes is to protect the safety of the residents of the both the SUD residential and licensed residential programs. The new rules authored under Family First Prevention Services Act are intended in part to assure the provision of trauma-informed services, to reduce the unnecessary use of congregate care, and to assure appropriate community services and supports when a child is discharged from a QRTP.**

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   **The Department will survey providers for compliance with the QRTP and background check requirements. Documentation of proper services and checks will show the anticipated outcomes.**

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
   ***If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.***
   **No.**

## Development of the Regulation

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
***If applicable, please include the date and medium by which the stakeholders were initially contacted.***

**While the general content of the QRTP rules was mandated by Federal statute, there was some flexibility in how the requirements were implemented on a state level. JFS hosted a number of committees to discuss the QRTP rules, which MHAS participated in and developed its rules in concert with.**

**For the QRTP rules, there were several subcommittees working on various QRTP implementation requirements, including (but not limited to):**

1. **QRTP**
2. **Accreditation**
3. **Treatment Model**
4. **Licensing and Contracting**
5. **Agency Readiness**
6. **Level of Care**

**While the main subcommittees that fed into the QRTP rules were QRTP, Accreditation, and Treatment model, QRTP requirements were discussed in all of them. These six subcommittees consisted of representatives from (not all were represented on each subcommittee):**

- **Provider agencies/residential facilities**
- **Adults with lived experience and foster caregivers**
- **State agencies (JFS, MHAS, DODD, DYS, ODM)**
- **Stakeholder and trade organizations (Ohio Children's Alliance, PCSAO, Casey Family Programs)**
- **County Children's Services Agencies**
- **County Court**

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

**There was particular concern from stakeholders about the change in the background check rule to require checks to be completed prior to hire, eliminating the current sixty day grace period. While this is a statutory requirement, it is also a requirement for many other job types and is not a significant barrier to employment. However, it is an item that should be monitored.**

11. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

    **Not applicable, rules are drafted per Federal and state requirements.**

12. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    **None, the rules are following the requirements of the Family First Prevention Services Act, Social Security Act and ORC.**

13. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    **No, the rules are following the requirements of the Family First Prevention Services Act, Social Security Act and ORC.**

14. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    **The rules are explicitly limited to facilities certified or licensed by OhioMHAS, similar rules regarding QRTPs are being implemented by other agencies for facilities regulated under their authority.**

15. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

    **The Department will publish the rules through its rule filer email list, on its website, and through direct communication channels to certified and licensed facilities that will be impacted.**

## Adverse Impact to Business

16. **Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
    a. **Identify the scope of the impacted business community; and**
       **The changes will impact all child serving SUD residential providers, and all OhioMHAS licensed residential facilities.**
    b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
       **For rule 5122-30-31, providers and facility operators will have to assure that employees are complaint with the new requirements, including the SACWSIS**

**checks for child serving agencies. However these entities currently must check for compliance and this will not be a dramatic increase in staff time.**

c. **Quantify the expected adverse impact from the regulation.**
***The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.***

**For rule 5122-30-31, the changes will result in an increase of fees for individuals obtaining BCI checks. The current Ohio BCI check is $22, and the additional FBI check is typically $24. Although that fee may vary based upon the provider of the background check service. All other additional checks required by the rule have no additional cost to either the individual or the provider.**

17. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

**The rule changes are in compliance with the Family First Prevention Services Act, Social Security Act, and/or the ORC which is intended to improve the quality of service provided to children at residential facility (congregate care) settings and to provide support post-discharge with the goal of a child being successful in the community.**

## Regulatory Flexibility

18. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

**Alternative means of compliance would not be appropriate in this context.**

19. **How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

**The Department does not typically implement punitive action for minor violations, instead it works with provides and licensees to correct problems.**

20. **What resources are available to assist small businesses with compliance of the regulation?**

**The Department will publish and make available training as the effective date of the changed rules draws near.**