



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):

Peer Services

Rule Number(s): 5122-29-15 and 5122-29-15.1

Date of Submission for CSI Review: September 2, 2021

Public Comment Period End Date: September 17, 2021

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 1 rules (FYR? Y)

Rescinded/ 1 rules (FYR?)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.

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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.

Rule 5122-29-15 is being updated to current terminology and definitions of the service. The Department has observed how the service is utilized since its inception and is updating terminology to be better consistent with the needs of providers and clients.

Rule 5122-29-15.1 is being rewritten entirely and will be filed as a rescind and new rule under the fifty percent rule. The rule is being restructured to provide three different classifications of peer supporter, depending on the individual being certified and the service they wish to provide. The process for certification, including renewal and denial/revocation, has been rewritten to be clearer and more specific.

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 5119.36

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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.

The rules are necessary in order for peer support services to be an Ohio Medicaid reimbursable service.

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

Not applicable.

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)?

Peer support services need to be defined, and individuals providing them professionally certified in order for this to be a service that Ohio Medicaid will pay.

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

The Department has monitored the implementation of these rules over the past four years, and is adapting them in response to feedback and lessons learned.

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.

The Youth stakeholder meeting was held in person on August 10, 2021 to review the rule. The Family stakeholder meeting was held virtually on August 11 to review the rule.

The youth and family affinity groups worked on recommendations for the development of certification manuals that helped to inform the rule.

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The Youth Affinity groups were held virtually on 1/20, 2/9, 2/23, 2/28, 3/21, 4/6 (2 mtgs.), 4/11, 4/20, 4/21, 4/26, 4/27 & 4/28/21.

The Family Affinity groups were held virtually on 1/21, 2/3, 2/17, 3/3, 3/17, 3/31, 4/14, 4/28 & 5/12/21.

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

For rule 5122-29-15.1:

- The youth groups expressed that GED or equivalency from another country should stay.
 - The Department altered the language in the rule to state: “a general educational development certification, or similar secondary education from outside of the United States”
- The youth groups expressed that the title of Certified Peer Recovery Supporter should be changed to Certified Adult Peer Recovery Supporter.
 - The Department decided that the current name will stay as is, as adding the word “Adult” would be redundant.
- The youth groups expressed that in the Supervision section, a clinician should have to be a clinician for the same amount of time as the peers do.
 - The Department decided we will not be altering this part of the rule. Each supervisor has to complete the same training requirements – 16 hours of e-based and 4 hours of supervision training.
- The youth groups expressed that in the References section, there should just be “two letters of reference” and should not have to be from a non-family member. The references should also be about the person and not necessarily about their lived experience.
 - The Department decided that references will no longer be required as part of the certification process.
- The youth groups expressed that the Continuing Education requirement should include coaching calls that are quarterly – four total calls that are designated by the state.
 - We decided to include two hours of mandated continuing education training on the Principles of Coaching as applied to the delivery of peer services.
- The family groups expressed that there was no mention of proof of training completion of the 40 hours training.
 - The Department updated Section F.1.B of the rule and ensured that this was included.
- The family groups expressed that in the References section, references could be from a family member but should be about the lived experience.
 - The Department decided that references will no longer be required as part of the certification process.

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- The family groups expressed that there is no specific continuing education requirement for supervisors .
 - The Department decided not to alter the rules as Supervision is an employer responsibility, and OhioMHAS only provides eligibility requirements.
- The family groups expressed that the rule should include “teaching **and coaching** skills...”
 - The Department altered the rule to state: “Teaching and coaching skills to effectively navigate systems to effectively and efficiently utilize services “
- The family groups expressed that there should be added something regarding cultural humility/cultural competent care.
 - The Department altered the rule to state: “Providing services in a culturally inclusive and competent manner which includes not practicing, condoning, facilitating, or collaborating in any form of discrimination on the basis of ethnicity, race, gender, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical disability.”

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?

The Department has reviewed academic material and usage of this service in other states.

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?

Not applicable.

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.*

Not applicable.

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

The Department is the sole entity that certifies behavioral health services in the state, and the professional certification is a responsibility that the Department has taken on with approval of other agencies.

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.

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The Department has already been in communication with providers and certified peer supporters, and will continue education efforts regarding the changes and transition to new rule.

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
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and
- 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.

Any provider of certified peer services, and any individual who wishes to be a peer supporter for a certified provider are impacted by these rules.

The Department expects the impact to be in employee time as the new service rule is adjusted to.

The impact should be minimal, as the service rule change is an adjust to better provision of the service and the professional certification adds new classifications.

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

The rules must be in place for providers to be reimbursed by Ohio Medicaid.

Regulatory Flexibility

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

The rules would have similar application across all sizes of businesses

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 has seen violations in these rules primarily with the professional certification. The individuals in those situations are worked with to resolve any issues without resort to administrative action, although that is not always possible.

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

The Department has staff dedicated to assisting with individuals who obtaining certification.