



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### 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):**

**MRSS and Q RTP Program Updates**

**Rule Number(s):** 5122-24-01, 5122-26-06, 5122-29-09.1 5122-29-14, 5122-29-30, 5122-30-31, and 5122-30-32

**Date of Submission for CSI Review:** 11/12/2021

**Public Comment Period End Date:** 12/6/2021

**Rule Type/Number of Rules:**

New/  X  rules

No Change/   rules (FYR?  )

Amended/  X  rules (FYR?  Y )

Rescinded/   rules (FYR?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

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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.

5122-29-14 sets forth the requirements of the Mobile Response and Stabilization Service (MRSS). This is a service designed to provide immediate response to young people who experiencing emotional symptoms, behaviors, or traumatic circumstances that have compromised or impacted their ability to function within their family, living situation, school, or community.

5122-29-28 sets forth the requirements for the Intensive Home Based Treatment (IHBT) service. IHBT is a behavioral health service for children and adolescents, that is intended to prevent out-of-home placement or assisting with the transition of children

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and adolescents back to a home setting. 5122-29-30 is also being modified to add the IHBT service to paragraph (C).

5122-24-01 is the definition rule for all certified behavioral health providers and the services definitions in OAC Chapters 5122-25 through 5122-29. The rule amendment is being done to update the definition of person with serious emotional disturbance.

5122-29-09.1 and 5122-30-32 are rules that define Qualified Residential Treatment Programs (Q RTP), in SUD Residential and licensed residential facilities respectively. The rules are being updated to stay aligned with Q RTP programs in other care settings. The rules have had after care support and services definitions added, along with clarification on trauma competency requirements for staff.

5122-30-31 is being updated to be consistent with Q RTP programs, limiting the lookback period for substantiated findings of abuse or neglect.

5122-26-06 is being updated to better align employee background check requirements for outpatient child and adolescent serving providers with the MHAS residential facility background check rules in place of referencing Ohio JFS background check rules.

5122-29-30 is being updated to include MRSS.

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 5119.34, ORC 2151.86, ORC 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.

It is not a federal requirement, but a direction where over thirty states have implemented youth, family and adult peer support and Ohio is executing its MRSS peer support process the same.

The federal Family First Prevention Services Act (FFPSA), enacted as part of P.L. 115-123, with limited exception, requires that in order for a state to receive Title IV-E reimbursement for a child or adolescent placed in a group home/residential setting for more than two weeks, the setting must be a Qualified Residential Treatment Program (Q RTP). The Q RTP must have a trauma-informed treatment model designed to address the clinical needs of children, have licensed or registered nursing and clinical staff available 24/7, facilitate family participating in the child/adolescent's treatment (if in the best interest of the child/adolescent), facilitates family outreach, provides family-

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centered discharge planning and six months of family-based aftercare supports, and is licensed and nationally accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission (TJC), or the Council on Accreditation (COA).

The Social Security Act contains a requirement to conduct a fingerprint based criminal records check on adults working in a residential facility for youth in order to receive Title IV-E funds.

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

Rules does not exceed federal government, there is encouragement from the Substance Abuse and Mental Health Services Administration and the Centers for Medicare and Medicaid Services for state to address crisis for youth and their families through Mobile Response and Stabilization Services.

QRTP and residential facility background check rules are applicable to all entities required by the ORC to obtain a license as a Class I residential facility, not only those which accept IV-E placements. QRTP requirements are designed to improve the quality of residential programs, and OhioMHAS did not want to set a different standard of treatment based upon payor source.

While the federal QRTP regulations do require discharge planning, they do not specifically require discharge planning to begin the day after placement. Requiring discharge planning to begin immediately is intended to shorten the length of time that a youth is placed in out-of-home care, and also aligns with at least one of the accrediting body standards.

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 rules are required for IHBT and MRSS, to be available in the state of Ohio. The QRTP rule and residential facility criminal background check rules are required in order for Ohio to continue to participate in the federal Title IV-E program. In addition, the residential facility background check rule, which extends beyond Title-IV placement, meets Ohio revised code requirements for OhioMHAS to have rules on conducting background investigations. The outpatient services background check rule is a health and safety requirement intended to benefit children and adolescents receiving services by specifying individuals with certain convictions are not eligible for employment unless certain conditions have been met.

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

The Department monitors the number of providers of this service and the demand for the service.

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.

Included stakeholders includes Alcohol, Drug Addiction, and Mental Health Services Boards, Provider Agencies, and families. Several stakeholders meeting were held on April 22, 2021; May 17, 2021; May 27, 2021 and June 1, 2021

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

Stakeholders provided input via a letter to the state the state responded and incorporated stakeholder's feedback in the draft rule.

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?

Consultation data from states that have implemented MRSS, i.e Connecticut, New Jersey, Milwaukee, and technical assistance from the University of Maryland on data related to other states as well as a scientific report from SAMHSA ([https://store.samhsa.gov/sites/default/files/SAMHSA\\_Digital\\_Download/PEP20-08-01-001%20PDF.pdf](https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP20-08-01-001%20PDF.pdf) ; [https://www.nasmhpd.org/sites/default/files/SAMSHA%20Publication%20on%20Effectiveness%20%26%20Cost-Effectiveness%20of%20C%20and%20Funding%20Strategies%20for%20C%20Crisis%20Services%206-5-14\\_8.pdf](https://www.nasmhpd.org/sites/default/files/SAMSHA%20Publication%20on%20Effectiveness%20%26%20Cost-Effectiveness%20of%20C%20and%20Funding%20Strategies%20for%20C%20Crisis%20Services%206-5-14_8.pdf)

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?

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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.

Rule is performance based.

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

OhioMHAS is the regulator of Mental Health and Addiction services by statute.

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 has been active in discussing the proposed changes with stakeholders, and will continue that communication throughout the rule amendment process.

#### **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  
This rule will apply to any provider of mental health and addiction services that wishes to provide this type of service.
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and  
Providers must meet the requirements of the rule.
- 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.

It is estimated an increase in the workforce as the State is assessing and investing in the current and projected workforce landscape to identify strategies to reduce the gaps in supply and demand for behavioral health.

While there is a cost for a provider to conduct a fingerprint based criminal background check, this is a rule modification and not a new regulation, therefore it is not expected to increase the cost.

For the QRTP trauma-informed care training requirement, the training certificate referenced in the revised rule is available free of charge.

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**Impact will be an increase in work force to implement MRSS that will result in cost**

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

**The provision of this service must be done in a proper fashion in order to protect the health and safety of clients.**

**Regulatory Flexibility**

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

**Not applicable.**

**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 offers technical assistance to those entities that need it when adjusting to changes in the service requirements.**

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

**The Department has and will continue to make itself available to providers.**