



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

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

FROM: Joseph Baker, Business Advocate

DATE: March 14, 2022

RE: **CSI Review – Opioid Treatment Program Update (OAC 5122-40-01, 5122-40-06, and 5122-40-09.)**

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 three amended rules submitted as part of the statutory five-year rule review process. It was submitted to the CSI Office on November 8, 2021, and the public comment period was open through December 1, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on November 8, 2021.

Ohio Administrative Code (OAC) 5122-40-01 specifies definitions related to licensed opioid treatment program requirements. The rule has been amended to streamline language and adopt a new definition for telemedicine. OAC 5122-40-03 outlines the Department's authority to issue licenses to operate an opioid treatment program, the non-transferability of such licenses, the program's responsibility to provide records and documents to the Department, other responsibilities of program providers, and the Department's authority to terminate a license. The rule has been amended to permit the Department to provide a one-year license to programs when the Department has concerns about compliance issues or active investigations by other public entities and to state that the decision to provide a one-year license is not subject to Chapter 119 review.

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OAC 5122-40-06 specifies administration requirements for the use of medication, such as the individuals who may administer or dispense medications, requirements that the treatment program establish written requirements for certain take-home medications, and related requirements. The rule is amended to update terms, streamline language, and allow patients to receive medications at certain certified community mental health services or addiction services providers from an opioid treatment program. OAC 5122-40-09 requires opioid treatment programs to provide various medical, counseling, educational, employment and other non-medical services and to document that such services are available to patients. The rule is amended to update telehealth responsibilities for opioid treatment programs that provide remote non-medical services.

During the early stakeholder outreach period, the proposed rules were reviewed by ADAMH (alcohol drug and mental health) Boards opioid treatment programs, and other behavioral health organizations. No comments were provided during the rule's early development. During the CSI public comment period, comments were received from the Ohio Association for the Treatment of Opioid Dependence (OATOD), Pax Treatment Centers, Community Medical Services (CMS) and New Season of Ohio. OATOD shared concerns about the Department's definition of telemedicine, suggesting that it may conflict with other terms used elsewhere in rule. OATOD, CMS, and New Season of Ohio also suggested that a new requirement that two employees capable of administering medication be on site during dosing hours would be burdensome and costly to providers. In response to the comment, the Department revised the definition of telemedicine and removed the new requirement from the proposed rules. Pax Treatment Centers provided various terminology suggestions, as well as suggestions to include a requirement that written procedures for opioid dispensing incorporate a statement that dispensing such drugs is permitted only when safe and beneficial for the patient. The Department adopted the suggestion regarding opioid treatment programs' written procedures but did not adopt various recommended terminology changes due to concerns that doing so would conflict with related federal language.

The business community impacted by the rules includes opioid treatment program providers in Ohio. The adverse impact to business consists of the costs and employer time necessary to comply with licensing and other administrative or programmatic requirements in the rules, maintain records and provide documentation to the Department as required, as well as potential licensure termination, denial or revocation in certain circumstances. The Department states that the adverse impact is justified to promote the health and safety of opioid treatment program patients.

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.