



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Medicaid

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

Behavioral Health FYRR

Rule Number(s): 5160-27-01

Date of Submission for CSI Review: 9/20/2023

Public Comment Period End Date: 9/27/2023

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ rules (FYR?)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.

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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.

5160-27-01 entitled “Eligible provider of community behavioral health services.” This rule states the requirements that are to be met by a behavioral health provider participating in the Ohio Medicaid program. Different practitioner types are stated along with specific eligibility requirements. Practitioners that can serve as a supervisor are also stated. This rule is being filed as new as more than fifty percent of the current rule is being amended.

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.**

Authorized by 5162.02, 5164.02

Amplified by 5162.03, 5164.02, 5162.371, 5119.391

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.

No.

5. **If the regulation implements a federal requirement, but 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)?**

This new rule, which is proposed to replace the rescinded one, is necessary to support Medicaid program integrity by setting minimum requirements for behavioral health providers to participate in the Medicaid program. Implementing the requirements stated in this rule also supports the provision of quality services to recipients thus ensuring recipient safety and care.

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

This new rule, which is proposed to replace the rescinded one, will be determined successful as only providers that meet the requirements are permitted to participate in the Medicaid program. The success of this new rule is also demonstrated by safe and qualified providers treating Medicaid recipients.

- 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 following stakeholders were sent the rule by email on 4/11/2023 for their review and comment:

The Ohio Department of Mental Health and Addiction Services

The Ohio Council

Ohio Association of County Behavioral Health Authorities

Ohio Children's Alliance

A public comment period was held for the rule during 6/2/2023 – 6/8/2023.

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

Two comments were received concerning this rule which were similar in nature. The comments requested that the terms “student trainees” and “residents” be added to the rule so they might be recognized as eligible providers. A meeting was held with one entity making

the comment to discuss the issue which resulted in a consensus that no revision was required in the 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?

No scientific data was used to develop this Medicaid policy.

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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

No other alternative regulations were considered. ODM considers administrative rules the most appropriate method to codify these rules.

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

This rule was thoroughly reviewed by ODM legal and legislative staff, and other policy areas to ensure it does not duplicate an existing Ohio regulation.

14. 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 processes (Medicaid IT system, provider enrollment staff) are in place to implement and apply the requirements and regulations which are currently in place. No new requirements are being implemented by this rule.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The impacted business community includes any organization that applies to become an Ohio Medicaid behavioral health provider or currently holds an Ohio Medicaid provider agreement as a behavioral health provider.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

An organization that wishes to become a Medicaid behavioral health provider must be certified by the Ohio Department of Mental Health and Addiction Services. The financial cost is based on the number of services for which the provider needs certification. In some cases, there would be no certification fee applied. The certification fee methodology is stated in rule 5122-25-08. This certification requirement is not a new requirement on providers but has been in place for several years.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**
No.

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

The regulatory intent of this new rule is justified by the benefit to Medicaid recipients in protecting their safety and by protecting the integrity of the Medicaid program.

Regulatory Flexibility

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

There are no alternate means of compliance because this regulation applies to all behavioral health provider organization enrolled or wishing to enroll as a Medicaid provider. No exception can be made based on the organization size.

- 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?**

This new rule does not impose a fine or penalty for first-time paperwork violations.

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

The Ohio Department of Medicaid website, www.medicaid.ohio.gov, has several resources available for providers related to provider enrollment. ODM's Bureau of Provider Services also renders technical assistance to providers through its provider hotline, (800) 686-1516.