

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: DAS OPCRP (Office of Procurement for the Community Rehabilitation Program)

Regulation/Package Title: Community Rehabilitation Program Administrative Rule Updates

Rule Number(s): 123:5-3-02; 123:5-3-03; 123:5-3-04; 123:5-3-05; 123:5-3-07; 123:5-3-09; 123:5-3-11;

Date: 3/17/14

Rule Type:

- ☐ New
☐ Amended

- ☒ 5-Year Review
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

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123:5-3-02 ~ This rule contains the requirements and specific steps for any community rehabilitation program seeking certification. It also contains the length of certification, renewal procedures, notification and penalties for non-compliance.

Specific amendments include the following: Citation to the Ohio Revised Code has been corrected un subsection (A). Removed “demonstrate that a community rehabilitation program applying” and “meets the criteria set forth in division (A) of section 125.60 of the Revised Code” and “information” from the opening paragraph in subsection (B). Language needs to be added to impede “for-profit” organizations from attempting to become “non-profits” purely to fit the CRP description: This is an amendment to add an additional requirement to (B) of this rule. The additions are: “(2) A copy of its mission statement and by-laws which document its purpose as providing employment and training opportunities for people with disabilities, and”; and, the current (2) through (6) items were renumbered to become (2) through (7), with the addition of the new number (2) added; the statement “It also must verify that:” has been added to the end of the current (6); it is proposed to remove the statement “This exemption does not apply or modify the requirement of division (C) (6)”, and “(a) of that section regarding compliance with the annual quote of direct labor provided by persons with work limiting disabilities.” from (B), (6), (c); subsection (C) has been deleted in its entirety with the exception of “Upon receipt, review and approval of the application and other required documentation, the administrator shall certify a community rehabilitation program as a qualified nonprofit agency”; the statement “A certification may be issued for a period of three years.” is added to (C); a new (D) is added stating “A community rehabilitation program may renew its certification by submitting a renewal application up to ninety days prior to expiration of its current certification on a form and in a manner prescribed by the office. Failure to apply for recertification in a timely manner may result in the denial of recertification and the community rehabilitation program must submit a new application.”; “of certification or recertification,” is added to (E); The newly proposed (F) adds the language “The administrator may suspend or revoke a current certification, or deny renewal of a community rehabilitation program’s” and removes “A qualified nonprofit agency’s certification” and adds “as a qualified nonprofit agency,” and removes “which was issued pursuant to this section, may be suspended or revoked by the administrator”; “123:5-3-05” is altered to “04” in (F) (3); (F)(4) is added to state “The administrator determines that suspension, revocation or denial is in the best interest of the state. Such reasons include, but are not limited to, findings of business fraud and business debarment by the federal government, or debarment by Ohio or any other state”; (F)(5) is added to state “The community rehabilitation program fails to satisfactorily respond to or cure all complaints to vendor filed by a government ordering office; or”; (F)(6) is added to state “The community rehabilitation program intentionally misrepresented material facts in the application or recertification process.”; (G) is renamed (E); Current (F) “A qualified nonprofit agency seeking renewal or a certification may make application up to ninety days prior to expiration of the three year certification period on a form and in manner prescribed by the office.” is deleted; (G) is renamed (H) due to this amendment

123:5-3-03 ~ This rule contains the requirements for certification of agents. The rule lists the areas of expertise required, the length of certification, notification, and penalties.

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The specific amendments to this rule are as follows: In section (B) remove the phrase “for a period of three years” and change “provide” to “provided”; In section (B) (2) (c) (3) remove the words “sections 1702.01 and 1702.58” and insert the phrase “Chapter 1702” in its place; In section (C) remove “Upon receipt, review, and approval of the information required, the administrator shall certify an entity as an agent and that the entity has demonstrated to the satisfaction of the administrator that the certification criteria have been fulfilled”, and insert “Certifications may be issued for a period of three years. An entity may renew its certification by submitting a renewal application up to ninety days prior to expiration of its current certification on a form and in a manner prescribed by the office. Failure to apply for recertification in a timely manner may result in the denial of recertification and the entity must submit a new application.” in its place.; In section (D) remove “if a”, and replace it with “of the”, and add “or recertification,” in the same sentence.; In section (E) remove “Upon” and replace with “Once”, and change “certification” to “certified”.; In section (F) add “The administrator may suspend or revoke a certification or deny recertification of an” and remove “which was issued pursuant to this section may be suspended or revoked by the administrator”.; In section (F), insert “(4) The agency fails to promptly pay the qualifying nonprofit agency its portion of the contract revenue within ten days of receipt of the revenue from the government ordering office.”; Insert (F)(5), “the administrator determines that suspension, revocation or denial is in the best interest of the state. Such reasons include, but are not limited to, findings of business fraud and business debarment by the federal government, or department by Ohio or any other state.”; Insert (F)(6), “The agency fails to satisfactorily respond to or cure all complaints to vendor filed by a government ordering office; or”; Insert (F)(7), “The agency intentionally misrepresented material facts in the application or recertification process.”; In section (G) remove “Suspension or revocation of certification as an agent pursuant to sections 125.60 to 125.6012 of the Revised Code may cause the immediate cancellation of all contracts or agreements to purchase products or services from the entity in which they are named as the contractor of record”, and replace with “The administrator may recommend to the Director of Administrative Services the immediate termination of any or all contracts or agreements to purchase products or services from the agent if the certification of the agent is suspended, revoked or denied renewal.”; Remove “(H) An agent may apply for a renewal of certification up to ninety days prior to the expiration of the three year certification on a form provided by and in a manner prescribed by the office.” in its entirety

123:5-3-04~ This rule contains the provisions on quarterly report requirements (when they are required and what they must contain). There are no changes to this rule.

123:5-3-05 ~ This rule contains requirements for the government ordering office, certified agents, and nonprofit agencies on the submittals of annual reports. The rule specifies information that must be submitted on forms provided by the administrator of the office. The rule also contains penalties for failing to comply with the reporting requirements. The only amendment in this rule is contained in section (B) (1) which removes “that”, and insert “with which”.

123:5-3-07 ~ This rule contains the provisions on when and how a government ordering office may apply for a waiver to procure a product or a category of products or services. This is being filed as a new rule because we have made changes to 50% of the existing rule.

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The amendments update and clarify the procedure for agencies to request a waiver from using CRP vendors: Add a new section “(A) A government ordering office may apply for a waiver from the requirement to procure a particular product or service or a category of products or services on a form provided, and in the manner prescribed by the office.”; In the proposed section (B) remove “pursuant to the requirements set forth in section 125.60 to 125.6012 of the Revised Code.” In the next sentence in that section, capitalize the word “IF”, remove the word “ office” and insert the word “administrator”.; In section (B) (2) remove “The office determines that”, and replace it with “There is”; In section (B) (3) remove “office possesses specific information indicating that the”, and remove “was” and insert “is or has been”, remove “the” and insert “a”, and insert “and has reported its dissatisfaction to the office or the office possesses specific information indicating such dissatisfaction”; In section (B) (4) remove “office determines that the”; In proposed section (C) remove “A government ordering office interested in obtaining a waiver from the requirement to procure products or services pursuant to the requirements set forth in section 125.60 to 125.6012 of the revised Code, shall request or allow their duly appointed designee to request such a release from the office of procurement from community rehabilitation programs on a form provided, and in manner prescribed by the office”, replace it with “The administrator may deny the request for waiver. If denied, the government ordering office may submit its request to the Director of Administrative Services. The Director’s determination shall be final.”

123:5-3-9 ~ This rule provides the requirements for updating an item to the procurement list. The only amendment to the rule is in (A) changing “not add” to “adding.”

123:5-3-11 ~ This rule gives the administrator the authority to audit contracts between a qualified nonprofit agency and a government ordering office. Penalties for failing to permit the audit or provide records are included. There are no changes to this rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code 125.602, 125.603, 125.607, and 125.6012

3. 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? No
If yes, please briefly explain the source and substance of the federal requirement.

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

N/A

5. 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)? To provide guidance, consistency, and accountability for Community Rehabilitation Programs. As Ohioans with disabilities have the highest

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rate of unemployment of any minority group, the program also provides jobs and training opportunities for them.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The Agency will observe improved results in each OAC change through the process of vendor management and contract development.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** On December 15, all changes were posted on the DAS Procurement Services web-site and emails were issued (to all certified CRP's and all Agency Procurement Officers) stating the changes were being made, asking them to go to the web-site and review and that they had 2 weeks to provide their feedback.
- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** There was only one comment received and it was informing us that in one current OAC, the agency names mentioned in that OAC had not been changed since they had assumed new names.
- 9. 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?** N/A
- 10. 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?** The program has been running successfully for years and there has not been a need for alternative regulations.
- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**
Not necessary due to the nature of these changes.
- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** All were checked – no other regulations govern community rehabilitation programs in the area of procurement.
- 13. 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.** Through the normal course of conducting CRP business, DAS will check to make sure these changes are being adhered to. The employees who work on CRP business were also fully involved in the rule revision process to ensure consistency and fairness when applied.

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Adverse Impact to Business

14. 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;**
 - i. Certified community rehabilitation programs (“CRP’s”) in the state of Ohio which includes certified agents.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
 - i. Certification may be suspended, revoked, or denied renewal if the CRP does not remain compliant with quotas, work hours, contract terms, reports, payment of revenues, and time frames.
 - ii. Certification may be suspended or revoked for failure to permit an audit by the department.
 - iii. Waivers releasing a government ordering office from purchasing requirements may be denied.
 - iv. DAS will not consider adding a product or service to the procurement list for government ordering office if products/service descriptions, information and cost are not provided.
 - v. Time to complete applications for certification, quarterly and annual reports.
- c. Quantify the expected adverse impact from the regulation.**
 - i. The Department of Administrative Services would no longer do contracts for the organization (or not add select products or services) which would mean they would lose certain business opportunities (sales, marketing, accounting, planning, administrative, etc.) with qualified nonprofit agencies. (Due to the varying contract types, amounts, and the fact that this situation has never happened, qualifying it in dollars is not possible)
 - ii. The estimated range of time it should take to complete an application to become certified, or to renew certification is 45 minutes to one hour. The document will need to be notarized before submitting. Creating quarterly reports should take no more than one hour to pull information from bookkeeping files each quarter. The annual report may take from one to two hours annually since information may need to be pulled from two or more different internal files.

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.

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

The penalties above are necessary to maintain overall compliance of the CRP's with the scope and requirements of the program. Certification, renewals and reporting requirements are justified to insure against fraud and confirm compliance.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. None required

17. 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? N/A

18. What resources are available to assist small businesses with compliance of the regulation? Current staff of the OPCRP (Office of Procurement for the Community Rehabilitation Program).