

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Rehabilitation and Correction

Regulation/Package Title: #162661 "DPCS 119.03 NO CHANGE"; 162662 "DPCS 119.03 Change"

Rule Number(s) 5120:1-3-01, 02, 03, 04, 06, 07, 18

Date: 12/22/15

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☐ Rescinded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.

Pursuant to Section 2967.14 of the Revised Code, the Ohio Department of Rehabilitation and Correction and the Division of Parole and Community Services are responsible for licensing and setting licensing standards for halfway houses and other community residential centers.

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ODRC is required by this same statute to promulgate administrative rules that serve as licensing and auditing standards and is required to annually inspect each licensed halfway house, licensed reentry center, and licensed community residential center to determine if it is in compliance with the licensure standards. Additionally, House Bill 86 of the 129th General Assembly directed ODRC to adopt admission criteria to halfway houses to encourage the use of these facilities for those criminal offenders that research shows will most benefit from those facilities.

The “Licensed Facilities” administrative rules subject to review under the State of Ohio’s 5-year rule review process set forth the rules and procedures governing: contracting and payment reimbursement for offenders placed in halfway houses; licensing requirements for a halfway house or community residential center as a licensed facility; the inspection and evaluation process of halfway houses and community residential centers; licensing standards, independent housing licensing standards; and the application process for construction projects.

ODRC is proposing relatively minor amendments to the following administrative rules: 5120:1-3-01, 5120:1-3-02, 5120:1-3-03, 5120:1-3-07, and 5120:1-3-10. ODRC is making sweeping changes to 5120:1-3-06 – “Halfway House Licensing Standards”. The changes are being made to reflect current auditing standards. The current auditing standards were developed after years of consultation with stakeholders. The following is a timeline that shows the development of changes to the auditing standards:

Timeline of Development of Current Audit/Coaching Process

2002: Initial University of Cincinnati (UC) study released on halfway houses and community-based correctional facilities (CBCFs) – included characteristics of programs successful at reducing recidivism.

2004: Committee formed to develop audit standards emphasizing programming rather than operational issues. The committee consisted of representatives from the Bureau of Community Sanctions (BCS), CBCFs, halfway houses, Prison and Jail Diversion programs and worked over a year to develop standards.

2005: UC study released on CCA Prison and Jail Diversion programs—including similar characteristics of programs successful at reducing recidivism.

2006: Standards reviewed and updated with input of audited programs and auditors.

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2010: 2nd study of halfway houses and CBCFs released. BCS charged with developing an audit process that better predicted agency performance in future studies.

2010-2011: Committee formed to review audit standards. The committee consisted of representatives from BCS, CBCFs, halfway houses, Prison and Jail Diversion programs and worked over a year to enhance standards:

- 2006 standards were found to be valid, with some tweaking.
- Committee determined that standards should be graded on a scale rather than compliant/non-compliant.
- Committee decided that Jail Diversion programs should be given the option of being Recidivism Reduction (RR) or Incarceration Reduction (IR)
 - RR programs are subject to the same programming standards as Prison Diversion programs since the program's stated purpose is to change offender behavior.
 - IR programs are subject to a much reduced audit based on compliance with a small number of operational standards as the programs sole purpose is to reduce the number of jail beds used.

2011-2012: Enhanced standards implemented, BCS auditors regionalized. Initial year of auditing was a baseline year, as recommended by the Bureau of Research, to determine current status of all programs and establish scales of compliance.

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

R.C. 2967.14.

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? If yes, please briefly explain the source and substance of the federal requirement.

No.

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

N/A.

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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)?

ORC 2967.14 mandates that ODRC set licensing standards for these facilities. It also mandates that ODRC inspect/audit licensed facilities and set admission criteria. When it comes to the public's safety, and the living conditions of offenders placed at a licensed facility by a court or ODRC, the General Assembly appropriately believed that active oversight was necessary.

R.C. 2967.14's directive to ODRC that it adopt admission criteria rules can be directly traced to the findings and recommendations of the Council of State Governments, a national nonprofit agency that conducted an extensive study of Ohio's criminal justice system between 2008 and 2010. The Council of State Governments conducted that study of Ohio's criminal justice system at the request of Ohio's policymakers, who requested that the Council provide them with recommended legislative reforms that will reduce Ohio's corrections spending and prison population while simultaneously ensuring public safety.

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

ODRC measures compliance with licensing standards through a yearly inspection and auditing process. ODRC measures compliance with admission standards simply by comparing actual admissions to the facilities and programs against the criteria. Whether a funded entity is performing at an acceptable level is assessed using specific expectations set forth in individual funding agreements that ODRC enters into with funded entities. ODRC individually tailors performance expectations for each funded entity, taking into consideration community resources and needs. More specifically, ODRC collects quarterly admission forms which each program completes. The forms indicate the offenders who were accepted into the program and the applicable eligibility for each. ODRC complies and tracks this information to ensure each facility is complying the Revised Code's requirements.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The rules were initially developed through the Ohio Justice Alliance for Community Corrections (OJACC) collaborative, which is an alliance of community corrections stakeholders. OJACC's membership includes representatives of CorJus Inc., the Ohio Community Corrections Association (OCCA), independent community-based correctional facilities, the Ohio Chief Probation Officers Association (OCPOA), and the Ohio Association of Pre-trial Services Association (OAPSA).

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The criminal justice community, and more specifically, the community corrections community, is a close knit community that stays in near constant contact with ODRC. ODRC periodically meets with all of the relevant stakeholders and receives constant feedback regarding how to better serve the community corrections community. Below is a list of the periodic meetings that ODRC has with its community corrections partners:

- Ohio Community Correction Association (OCCA-HWH Providers) Meeting- **Quarterly**
- CBCF Executive Directors' Meeting- **Quarterly**
- Community Correction Act (CCA) Directors' Meeting- **Quarterly**
- Community Residential Center Provider Meeting-**Quarterly**
- Community Corrections Collaborative Meeting-**Quarterly**
- Permanent Supportive Housing Meeting-**Tri-Annual (3 times a year)**

As stated in the response to Question 1 above, ODRC has worked collaboratively with its community corrections partners over the years on all matters concerning these administrative rules.

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

Extensive input from the Ohio Judicial Conference and other members of the judiciary have been received over the years when promulgating and amending these rules. As can be seen from the responses to Questions 1 & 7 above, our community corrections stakeholders have played an active and critical role in the development of these rules and any amendments that have been made to these rules over the years.

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?

Scientific/academic studies conducted by the University of Cincinnati have played an important role in the development of these rules. For example, a 2010 study conducted by the University of Cincinnati demonstrated that community control sanctions that are intensive in character such as halfway houses, community-based correctional facilities, and intensive supervision probation actually increase recidivism rates among low-level, low risk criminal offenders who are sentenced to them. This research supports the mandate that ODRC establish specific admission criteria.

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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?

Alternatives were not an option because Ohio law mandates that ODRC establish these rules.

11. 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.

The licensing and auditing standards created by the rules are performance based. Additionally, R.C. 2967.14 specifically mandates that ODRC adopt rules that tie the level of state subsidy provided for certain community sanctions to consideration of three different types of offender characteristics: felony level, an offender's risk of reoffending, and an offender's history of compliance with the conditions of probation. ODRC could not fulfill its mandate without adopting community sanction admission criteria that are based on some combination of those three factors. In other words, the "outcome" is that certain community sanctions funded by the state be used, principally, for offenders who satisfy the criteria established by the Department by rule. The outcome and the regulations are, thus, inseparable.

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

N/A.

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.

ODRC includes the admission criteria and licensing/auditing standards in grant agreements with funded entities. Individual agreements will specify acceptable deviation levels and potential funding reductions in the event of noncompliance.

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;

Thirteen halfway houses; 6 independent housing agencies.

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

Licensure is required. Auditing on licensing standards is done annually. A potential reduction in state funding when the funded entity experiences four consecutive quarters of noncompliance with the admission standards.

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.

As an initial matter, the department of rehabilitation and correction funds licensed facilities by providing a per diem for each prisoner transferred to it from ODRC. The licensed facility is not adversely impacted in any way by participating in the program; licensed facilities choose to participate and obtain licensure. If funded entities that are affected by these rules fully comply with the admission standards, they will experience no reductions in state funding. Additionally, one hundred percent compliance with audit standards is not required. If there are deficiencies, ODRC works with the licensed facility to achieve compliance.

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

Implicit in the rulemaking mandate it issued to ODRC is the General Assembly’s determination that any adverse impact on funded entities is justified by its intention to make more effective use of the moneys that the state expends on community corrections subsidies. Moreover, the General Assembly has clearly articulated the intent that funded facilities be subject to rigorous licensing and auditing standards. In promulgating these rules and amending these rules to expand the types of offenses that will not count toward the deviation cap, the Department is putting into effect the legislative intent underlying R.C. 2967.14 and heeding the advice and input of the judiciary and relevant stakeholders, rather than pursuing its own regulatory intent.

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Regulatory Flexibility

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

The rules provide for acceptable levels of noncompliance and expand upon the category of acceptable noncompliance, provide exceptions for certain classes of offender, and provide for four consecutive quarters of noncompliance before any potential funding reduction occurs.

16. 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?

To the extent that R.C. 119.14 would apply in relation to a funded entity's failure to adhere to the community correction admission criteria or licensing standards, ODRC will adhere to the statutory requirements thereunder, if applicable.

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

The Department of Rehabilitation and Correction's Bureau of Community Sanctions is dedicated to working with state-funded community corrections entities. Accordingly, the following resources are available:

The Department's mailing address:

770 West Broad Street Columbus, Ohio 43222

The Bureau of Community Sanctions' phone number: 614-752-1188

The Bureau of Community Sanctions' website: <http://www.drc.state.oh.us/web/BCS.htm>