CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Specialized Recovery Services Program

Rule Number(s): 5160-43-04, 5160-43-05, 5160-43-06, 5160-43-07, 5160-43-09

Rules 5160-43-01, 5160-43-02, 5160-43-03 and 5160-43-08 are included for reference only.

Date: April 15, 2016

Rule Type:

- X 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- ☐ Rescinded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.

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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.

   As a result of the new single disability determination process, individuals with income above the new Medicaid needs standard will no longer be able to spend down for Medicaid eligibility. These Ohioans will have access to basic health care services through Medicare or private insurance. Unlike Medicaid, however, neither Medicare nor private insurance pay for the range of service coordination and community support activities needed by adults living with severe and persistent mental illness (SPMI).

   To ensure continued access to these vital services, Ohio Medicaid has submitted a state plan amendment authorized under Section 1915(i) of the Social Security Act. Section 1915(i) provides states an opportunity to offer services and supports to prevent an individual's need for institutional care, and provides a mechanism to provide state plan home and community-based services (HCBS) to individuals with mental health and/or substance use disorders. It is an important tool for Ohio to enhance its efforts to serve individuals with SPMI in the most integrated setting and to meet our obligations under the Americans with Disabilities Act and the Olmstead decision. We have named this set of services the Specialized Recovery Services Program (SRSP).

   The SRSP will provide Medicaid eligibility and HCBS to adults with a diagnosis of SPMI who meet the financial, clinical, needs and risk eligibility criteria specified in the State Plan Amendment and in the rules set forth in Chapter 5160-43 of the Ohio Administrative Code (OAC).

   The proposed new OAC rule 5160-43-04 specifies the services an individual may receive while enrolled in the program, what the services include, and the requirements for providers of those services. The three services available to individuals enrolled in the SRSP are peer recovery support, individualized placement and support – supported employment (IPS-SE) and recovery management. Requirements of providers of these services include, but are not limited to, provider certification, Medicaid provider status and compliance with all rules set forth in this chapter. This rule sets forth the expectation that SRSP providers deliver services that are supported by an identified need or recovery goal in a manner that respects the individual and that providers document the services provided.

   The proposed new OAC rule 5160-43-05 establishes the conditions of participation a provider of SRSP HCBS must meet in order to furnish services. The nature of HCBS is that these services occur in the community or in the individual's home. These services are not typically provided in a physician office or agency setting. For this program, conditions of participation requirements are intended to ensure the individual's health and welfare while enrolled in the program. This rule requires a provider to maintain a professional relationship and prohibits them from engaging in any activity that may take advantage of the individual or cause harm.

   The proposed new OAC rule 5160-43-06 establishes the incident management system that applies to ODM, its designees, SRSP service providers and individuals enrolled in the program. This system

includes responsibilities for reporting, responding to, investigating and remediating incidents involving individuals enrolled in the SRSP. In alignment with other ODM-administered HCBS programs, there is an expectation that providers are responsible for ensuring the health and welfare of the program participants they serve.

The proposed new OAC rule 5160-43-07 sets forth the provider compliance expectations; including monitoring, oversight, structural reviews and investigations. ODM is responsible for the ongoing monitoring and oversight of all ODM-administered HCBS service providers and contractors in order to assure their compliance with program requirements. Structural reviews are conducted in person and use an ODM-approved review tool. Among other things, the review includes an evaluation of the provider's compliance with ODM rules and a unit of service verification to assure that all SRSP services are authorized, delivered and reimbursed in accordance with the individual's approved person-centered care plan. This rule sets forth guidelines for monitoring/oversight reviews to be conducted by ODM, requirements with which providers and contractors must comply as part of the process and ODM sanctioning/enforcement authority.

The proposed new OAC rule 5160-43-09 implements the criminal records check requirements for all providers of HCBS to individuals enrolled on SRSP prior to employment in that position and every five years thereafter if continuing to provide HCBS. Providers of these services must have a criminal records check in compliance with this rule in order to bill ODM and receive payment for these services. The criminal records check requirements include a review of various free databases for disqualifying information, criminal records check from the Bureau of Criminal Investigation and Identification (BCII), and an additional Federal Bureau of Investigation (FBI) criminal records check is required if the applicant or employee cannot prove continued residency in Ohio for the previous five years. The appendix to this rule sets forth the list of disqualifying offenses that may prohibit an individual from working in a position that involves providing HCBS and the exclusionary period for the offenses. Additionally, this rule sets forth a recheck requirement of every five years. The required BCII fee may be passed on to the applicant or employee.

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

ORC Section 5164.02

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.

Yes, this proposed regulation is being adopted in conjunction with the 1915(i) Medicaid State Plan Amendment (SPA) which will allow Ohio to participate in a federal program. Under Section 1915(i) of the Social Security Act, States can offer a variety of services under a State Plan Home and Community-Based Services (HCBS) benefit. The SPA must be approved by the Centers for

Medicare & Medicaid Services (CMS) in order to receive federal funding. In order for CMS to approve a 1915(i) SPA, a state must make certain assurances concerning the operation of the program. These assurances are specified within the 1915(i) SPA. The proposed rules will allow ODM to implement the Specialized Recovery Services Program while safeguarding the health and welfare of individuals participating in the program and ensuring provider compliance to prevent fraud and waste.

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

   These rules are consistent with the federal requirements found at 42 U.S.C. 1396n, 42 C.F.R. 441.730 and the 1915i SPA. They define specific processes for meeting service specifications, provider requirements, incident reporting, investigation and remediation, provider background checks, and provider/contractor monitoring and oversight as required by CMS.

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)?**

   The public purpose of this OAC Chapter is to provide necessary and beneficial Medicaid eligibility and home and community-based services (HCBS) to individuals diagnosed with severe and persistent mental illness. The rules requiring this BIA establish HCBS provider requirements to ensure the health and welfare of individuals enrolled in the program. Through these rules we are providing important services to a vulnerable population while protecting these individuals and ODM from potential problems. These rules are consistent with other Medicaid-administered HCBS program provider requirements and expectations.

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

   Successful outcomes are measured through a finding of compliance with these standards as determined by provider monitoring and oversight. Also, ODM will be able to measure the success of this regulation by conducting a cost benefit analysis for the duration of the state plan amendment to show how the use of peer recovery support and IPS-SE services reduce the cost of behavioral health care while increasing positive outcomes for individuals.

Development of the Regulation

7. **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.

Stakeholder Group 1 includes:

- Public Children Services Association of Ohio (PCSAO)
- Ohio Association of Health Plans
- National Alliance on Mental Illness (NAMI) Ohio
- Ohio Psychological Association
- Ohio Community Corrections Association
- Co-Chair, Addiction Clinical Roundtable
- The Ohio Council of Behavioral Health & Family Service Providers
- The Ohio Association of County Behavioral Health Authorities (OACBHA)
- Case Western Reserve University - Center for Evidence Based Practices
- Beech Brook, CEO
- Alcohol, Drug and Mental Health Board (ADAMH)
- Mental Health & Addiction Advocacy Coalition (MHAC)
- Ohio Citizen Advocates for Addiction Recovery
- Ohio Association of Health Plans (OAHP) – Paramount
- OAHP - CareSource
- Ohio Empowerment Coalition, Inc.
- United Healthcare
- Ohio Department of Job and Family Services
- Zeph Center
- Ohio Alliance of Recovery Providers (OARP) - Quest Recovery and Prevention Services
- Aetna
- Buckeye Health Plan
- BASIC
- Ohio Association of Child Caring Agencies (OACCA)
- United Methodist Children's Home (OACCA)
- Common Ground Family Services
- Youth Advocate Services
- Ohio Department of Mental Health and Addiction Services

Stakeholder Group 2 includes:

- Ohio Department of Aging
- Ohio Department of Developmental Disabilities
- Ohio Department of Health

- Ohio Hospital Association
- Providers, ODM-Administered Home and Community-Based Services
- Providers, ODM Managed Care Plans
- Ohio Council of Behavioral Health & Family Services Providers
- Statewide Provider Oversight Contractor, Public Consulting Group Inc. (PCG)
- Directors, County Departments of Job and Family Services
- Directors, Area Agencies on Aging
- Superintendents, County Boards of Developmental Disabilities
- Directors, Centers for Independent Living
- Academy of Senior Health Sciences, Inc.
- Ohio Health Care Association
- Linking Employment, Abilities & Potential (LEAP)
- Ohio Long Term Care Ombudsmen
- Chairperson, Ohio Olmstead Task Force
- President/CEO, Ohio Council for Home Care and Hospice
- President/CEO, Midwest Care Alliance
- Disability Rights Ohio
- Ohio Provider Resource Association
- Leading Age Ohio
- Midwest Care Alliance
- Catholic Social Services of Miami Valley
- Transitional Living Centers, Inc.

On December 16th, draft OAC rules 5160-43-01 to 5160-43-08 were presented to the stakeholders listed in Group 1 during a monthly stakeholder meeting. There was a brief discussion related to the content of the rules and they were given until close of business Monday, January 4th to provide feedback. On January 13th, rule 5160-43-09 was presented to the stakeholders listed in Group 1 and feedback was requested by close of business on January 20th.

On December 21st, draft OAC rules 5160-43-01 to 5160-43-08 were emailed to the stakeholders listed in Group 2 and they were also asked to provide feedback by January 4, 2016.

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

As a result of sharing the draft rules with the stakeholders listed above, we received thoughtful feedback and made the changes noted below:

At the request of the Services for Independent Living, Inc., the following change was made:

- 5160-43-05 - Language was added to reinforce the need for person-centered service delivery and to be more direct regarding changes to an individual's caregiver status and its impact on service delivery. Additional language was submitted and will be considered for future drafts of this rule and other home and community-based services (HCBS) waiver rule drafts.

At the request of Linking Employment, Abilities and Potential (LEAP), the following changes were made:

- 5160-43-04 - A grammatical change that does not impact the intent of the rule.
- 5160-43-05 - An exception was added to allow HCBS providers to bring their service animal when providing services to an individual. Also, the term "significant" was added to describe the individual's physical, mental and/or emotional status changes that could impact a provider's ability to render services.

At the request of the Ohio Council of Behavioral Health and Family Services Providers (the Ohio Council) changes were made to several rules. Changes include:

- 5160-43-04 – The requested language was added in paragraph (D)(2)(c)(vii) to include the OhioMHAS certified community behavioral health center. In (D)(2)(c)(viii) The requirement for monthly contact has been removed from the rule and the frequency of visits will be specified in the contract with the Recovery Management Agency.
- 5160-43-05 – Language was removed from paragraph (B)(13)(a) requiring the individual's dated signature on the service validation.
- 5160-43-06 – (G)(4)(b)(ii) was removed because the ADAMH Boards do not have oversight authority. The language in (G)(4)(b)(iii) was modified to include other Ohio or federal licensure/certification boards who provide oversight activities.
- 5160-43-09 – Language was added in paragraph (A) to clarify that this rule applies to providers of HCBS who are billing Medicaid for payment for the services rendered. Language was also added in paragraph (D)(9)(d) to allow for redacted BCII provider records including removing social security number, address, and telephone number.

At the request of stakeholders, changes were made to rules in this chapter not subject to this BIA. Many of these changes directly impact the provider's ability to conduct business in a more efficient manner. Changes include removing the definition of a "representative payee" from rule 5160-43-01 and adding language in rule 5160-43-03 to allow for redacted background check records of providers to be available to program enrollees. We have included the confidentiality requirements included in 42 CFR Part 2 in the authorization to exchange information for development of the person-centered care plan between the care team and service providers. Also, extensive changes were made to the individual eligibility criteria in rule 5160-43-02 where many diagnoses were added to the eligibility criteria and the risk factors related to hospitalization/ incarceration were modified to be more inclusive, thus allowing providers to deliver these services to more individuals. In OAC rule 5160-43-08, a reference to OAC rule 5160-27-05 was added to accommodate providers searching for rates for the additional specialized recovery services.

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?**

   No scientific data was used to develop the rules or the measurable outcomes of the rules.

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?**

    ODM and OhioMHAS staff discussed alternative regulations related to this population of individuals, however, it was determined that the submission of a 1915(i) Medicaid State Plan Amendment (SPA) would be the best course of action for Ohioans. Alternatively, these individuals who will be eligible for the Specialized Recovery Services Program (SRSP), would have no longer been eligible for Ohio Medicaid and would have received health care through Medicare and/or private insurance most likely received through the federal health care exchange. These alternatives generally do not incorporate the level and type of services being offered to individuals through the SRSP. In order to gain CMS approval of the 1915(i) SPA, the language had to meet the 1915(i) federal and state guidelines under which such programs are permitted to operate.

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.***

    No, a performance-based regulation is not deemed appropriate for this program and would not meet federal requirements.

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

    ODM worked closely with OhioMHAS in the development of the Specialized Recovery Services Program (SRSP). This OAC chapter is being set forth to implement Ohio's Medicaid State Plan Amendment under Section 1915(i) of the Social Security Act. This is the first program of this type in Ohio.

    There are similar service providers within the behavioral health community and within the ODM-administered home and community-based services (HCBS) waivers; these rules were developed with that in mind. Throughout the process of developing SRSP, a listing of impacted rules across agencies was kept and updated regularly. In this OAC chapter, the rules refer to other ODM and OhioMHAS rules related to these providers/services. By doing this, we minimize duplication and benefit from current OAC rules.

Regarding rule 5160-43-06, the incident requirements documented in this rule are distinguished from those required for purposes of behavioral health agency certification in 5122-26-13. The Centers for Medicare and Medicaid Services (CMS) requires oversight of incidents for the protection of individuals enrolled in HCBS programs, including mitigation and prevention of further incidents to the individual. Incident investigation and prevention planning are linked directly to the individual's person-centered care plan to assure health and welfare for the individual enrolled in the program. Although a single incident may be reported for both purposes, the requirements achieve separate goals.

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.

The stakeholder community has been involved throughout the development of the Specialized Recovery Services Program (SRSP). We anticipate there will be multiple opportunities for OhioMHAS-certified providers of peer recovery support and/or individualized placement and support - supported employment to participate in outreach and education activities.

ODM and OhioMHAS have formed an inter-agency communications team that will undertake provider outreach and education activities related to SRSP. Communications are being developed by the group to provide guidance to providers during program implementation. The group has also developed a Behavioral Health Redesign website **http://bh.medicaid.ohio.gov/** that will continue to provide program specifics post implementation.

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;

Participation in the SRSP as a provider of peer recovery support and/or individualized placement - support supported employment is voluntary and at the provider's discretion. The community impacted includes providers of behavioral health services choosing to provide these home and community-based services (HCBS), ODM-contracted case management agencies providing recovery management services, and ODM-contracted Public Consulting Group (PCG) the provider monitoring/oversight contractor.

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

5160-43-04 Requires providers of individualized placement and support – supported employment (IPS-SE) and peer recovery support to be certified by OhioMHAS in accordance with ORC Section 5119.36 and to maintain a record for each individual served in a manner that protects the confidentiality of the record. This rule requires recovery managers to have training specific to their work with this population. Recovery managers are also required to maintain a record for each individual served in a manner that protects confidentiality.

5160-43-05 Requires providers to maintain a Medicaid provider agreement. When the provider agreement is established, and annually thereafter, the provider including all employees who provide HCBS to individuals enrolled in the Specialized Recovery Services Program (SRSP) must acknowledge in writing they have reviewed rule 5160-43-06 regarding incident management procedures. Providers of peer recovery support and IPS-SE are required to attend any training mandated by ODM or its designee(s). Records related to service delivery must be retained for six years or until any initiated audit is completed, whichever is longer. A provider must submit written notification to the individual and ODM when they will no longer provide services to the individual.

5160-43-06 Requires each SRSP provider to report incidents involving the individuals served in the program. The rule outlines the types of incidents that must be reported upon, the timeframes for reporting and the method of reporting for each provider.

5160-43-07 Sets forth the monitoring, oversight, structural reviews and investigations of providers by ODM or its designee (currently PCG). Compliance with program requirements for providers who choose to participate may include administrative costs associated with incident reporting, investigation, remediation, ongoing quality assurance monitoring, oversight and any resulting corrective action and/or sanctioning that may be required. When a provider/contractor adheres to the SRSP requirements, there should be little or no cost of compliance with monitoring and oversight. It is when an incident is reported that the provider will be subject to sanctions that could result in their inability to participate in the program. Additionally, SRSP providers must submit to state-required provider monitoring and oversight as a condition of participation in the program. This could result in an adverse impact depending on the time it takes to gather information for and participate in such reviews. Upon completion of the review, ODM may propose suspension of the provider's Medicaid provider agreement, or terminate the provider's contract pursuant to its terms.

5160-43-09 Requires Bureau of Criminal Investigation and Identification (BCII) and/or Federal Bureau of Investigation (FBI) records checks including associated fees and administrative time necessary to conduct a database check and to request the criminal records check. These checks are required at the time of employment and every five years thereafter.

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.

5160-43-04

- The cost of certification through OhioMHAS is based upon the budget of the agency that is applying for certification. The fee schedule showing the correlation between the agency's budget and the certification cost is located in OhioMHAS OAC rule 5122-25-08. A provider already certified by OhioMHAS, requesting to add an additional service(s) pays a fee based only upon their budget for the new service(s), not their entire budget. When the agency has appropriate accreditation from The Joint Commission, CARF, or COA there is no certification fee owed to OhioMHAS.
- Record retention is a requirement of all Medicaid providers and is not specific to the Specialized Recovery Services Program (SRSP). The cost of maintaining a record of services provided to the individual can vary depending on the size of the provider agency, the amount of services provided and the method of retention. When asked this question, an agency provider shared that they do not track the cost of this expense; however it is included in their overall administrative costs. The estimated overhead cost per person served varied by agency but ranged from 15% to 20% which includes unrelated items such as supervision, record keeping, internet service, etc. Another agency estimated that their cost is $373 a month or $4,481 annually. Administrative costs are incorporated into the Medicaid payment rate resulting in at least partial reimbursement for these costs.
- The training required of the recovery manager is in line with the current training requirements. The recovery management service is provided by ODM-contracted case management agencies and the training of the case management agency staff is a requirement within the scope of work and specifications of deliverables of the current contract. The estimated timeframes to complete the various trainings is between thirty and ninety minutes. Based on the Bureau of Labor Statistics data, the average salary of a recovery manager is between $21.88/hour for a social worker and $32.04/hour for a registered nurse (RN). Based on this information, the expected cost for a social worker to complete a training can be between $10.94 and $32.82 per training. The expected cost for an RN to complete the training can be between $16.02 and $48.84 per training. The training requirements set forth in this rule are consistent with professional standards, and are imposed for program integrity purposes.

- The cost associated with obtaining a Medicaid provider agreement is currently $554 and is required by Federal law as outlined in 42 CFR 445.460. This fee may be paid to Ohio Medicaid, their designated agency or to Medicare. It is paid at initial application and then at revalidation every five years. It is expected that providers who choose to provide the home and community-based services (HCBS) under the SRSP will hold current Medicaid provider agreements and therefore there will be no additional cost to these providers.

- As a requirement of the SRSP, all providers, including any employee providing HCBS services to an individual enrolled in the program, must sign an acknowledgement that they have reviewed rule 5160-43-06 regarding incident management procedures. It should take no longer than fifteen minutes to read and acknowledge the rule.

- To lessen any training costs to Peer Recovery Services and IPS-SE providers, ODM provides free training webinars for providers about incident management requirements which take approximately thirty-five minutes to complete online. ODM and/or its designees will continue to develop web-based training to satisfy training needs. Also, training hours/costs were included in the assumptions used to determine the Medicaid payment rate resulting in at least partial reimbursement for these costs.

- Regarding the requirement for a provider to maintain records, as stated above, record retention is a requirement of all Medicaid providers and is not specific to the SRSP. The cost of maintaining a record of services provided to the individual can vary depending on the size of the provider agency, the amount of services provided and the method of retention. When asked this question previously, a similar agency provider shared that they do not track the cost of this expense; however it is included in their overall administrative costs. The estimated overhead cost per person served varied by agency but ranged from 15% to 20% which includes unrelated items such as supervision, record keeping, internet service etc. Another agency estimated that their cost is $373 a month or $4,481 annually. Administrative costs are incorporated into the Medicaid payment rate resulting in at least partial reimbursement for these costs.

- The requirement for a provider to notify a program participant and ODM thirty days prior to terminating services is necessary to ensure the individual's health, safety and quality of care. This rule also outlines instances where notification may be waived on a case by case basis under certain circumstances. When previously asked about this requirement, one agency provider responded that there are no costs associated with this requirement, just the time spent on paperwork. Another agency provider estimated that it takes approximately fifteen minutes to complete the paperwork and another five to ten minutes to submit the paperwork/file electronically. Administrative costs are incorporated into the Medicaid payment rate resulting in at least partial reimbursement for these costs.

5160-43-06

- Incident reporting is essential for Medicaid HCBS programs to ensure the health and welfare of individuals enrolled in the program. It is difficult for ODM to estimate the cost of compliance with incident reporting because the time to submit an incident report may vary depending on the severity of the incident. Incident report completion times vary depending on the nature of the incident and the amount of documentation needed. The incident reporting system is a web-based system supported by ODM, minimizing technology costs to the provider. By mitigating incidents, a provider will have fewer costs associated with incident reporting.

5160-43-07

- Provider monitoring is a requirement for all Medicaid programs and is consistent for all Medicaid provider types including SRSP providers. It is difficult for ODM to estimate the cost of compliance with provider monitoring efforts as costs will vary depending on the circumstances and the service providers' respective business models. Oversight practices may include gathering and submitting documentation related to services provided upon request. Administrative costs are incorporated into the Medicaid payment rate resulting in at least partial reimbursement for these costs.
- ODM has a contract with PCG to perform this monitoring on the Agency's behalf for current HCBS programs. ODM will be amending that contract to add funding for monitoring of SRSP providers. Based on the current contract, as a part of this service, PCG will collect and make copies of documentation resulting in no cost, or minimal cost to the provider.

5160-43-09

- Administrative time to conduct the database check and to make a BCII request is estimated at a cost of $8.00 per review. (An employee averaging $24/hour performing a 20 minute database review per applicant.)
- Fees for the BCII criminal records check for all applicants considered for employment may vary depending on the location or agency providing the service, but on average cost approximately $22.00.
- The fee for criminal records check from the FBI for each applicant considered for employment, who has not resided in Ohio for five years is currently $24.00 which may vary depending on the location or agency providing the service. BCII accepts and processes FBI background checks.
- The rule allows for the fees associated with criminal records checks to be passed to the applicant/ employee resulting in no impact to the agency.

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

Provider participation in this program is optional and at the provider's discretion. However, because this is a new program offered by the state of Ohio, service providers will have the opportunity to expand their current array of services to include these new services. Compliance with provider certification, licensure and incident reporting criteria is consistent with the Medicaid program, providers who choose to participate may incur administrative costs associated the compliance with these requirements. These requirements are necessary to comply with federal law to ensure health and safety and to ensure program integrity.

With regard to rule 5160-43-09, background checks are required in order to ensure the health and welfare of individuals enrolled in the program. Sections 109.572 and 5164.34 of the Ohio Revised Code allow ODM to require background checks of any Medicaid provider. These specific providers may provide HCBS in the individual's home and therefore we have more reason to require this extra step to maintain safety. The rule also allows for agencies who employ the providers of HCBS to pass all or part of the incurred cost of the background check to the applicant or employee subject to the check.

Regulatory Flexibility

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

Not applicable for this program.

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?

Not applicable for this program.

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

The Ohio Department of Medicaid, Bureau of Provider Services renders technical assistance to providers through its hotline, (800) 686-1516.