



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Ohio Department of Mental Health and Addiction Services

**Rule Contact Name and Contact Information:**

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

Prevention Service

**Rule Number(s):** O.A.C. 5122-29-20

**Date of Submission for CSI Review:** February 2, 2022

**Public Comment Period End Date:** February 21, 2022

**Rule Type/Number of Rules:**

New/ 1 rule

No Change/      rules (FYR?     )

Amended/      rules (FYR?     )

Rescinded/ 1 rules (FYR? yes)

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.*

OhioMHAS proposes to rescind current, and adopt new, rule O.A.C. 5122-29-20, Prevention Service. OhioMHAS is taking the “rescind/adopt new” approach because it is proposing to amend more than 50% of the current rule.

For purposes of background, community mental health services providers and community addiction services providers providing prevention services funded in whole or in part by state or federal funds generally must be certified by OhioMHAS. Some agencies that do not receive these public funds also voluntarily choose to be certified by OhioMHAS.

The new proposed rule reflects an effort to reorganize the rule to (1) reflect current best practices and needs of the prevention field and (2) more clearly indicate the requirements that must be met for certification. The new rule is reorganized as follows:

Paragraph (A) – Definitions

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Paragraph (B) - Explanation that prevention services involve a continuum of coordinated efforts combining the use of (1) evidence-based strategies, (2) mental health promotion, and (3) early intervention.

Paragraphs (C) and (D) explain the concepts of mental health promotion and early intervention.

Paragraph (E) - General prohibition on a community mental health services provider or community addiction services provider receiving state, federal, or ADAMHS board funds for prevention services unless the services are certified by OhioMHAS.

Paragraph (F) – Exceptions to the general prohibition in paragraph (E).

Paragraph (G) – A description of the certification process.

Paragraph (H) – Requirements for certification.

Paragraph (I) – Recordkeeping expectations.

- 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 R.C. 5119.36.

Amplifies R.C. 5119.36.

- 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 and no.

- 5. If the regulation 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)?**

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R.C. 5119.36 requires OhioMHAS to establish certification standards and procedures, as well as fees, for service providers who are under its regulatory authority. The standards in this rule are designed to ensure a high quality of care and protect the health and safety of those receiving services that are paid for, in whole or in part, with federal or funds.

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

OhioMHAS's Office of Licensure & Certification employs surveyors who conduct periodic surveys to determine compliance with the standards. If it is determined that a provider is failing to meet the standards, OhioMHAS may take disciplinary action. Staff in the Office of Prevention Services (OPS) within OhioMHAS also regularly meet with the certified prevention providers who receive public funds to assess progress and identify challenges.

**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.*

All of the stakeholders in the table, below, were invited to participate in Microsoft Teams meetings that occurred on 4/15, 6/24, and 12/10/2021. In addition, staff from OhioMHAS's Prevention and Licensure & Certification Offices were invited to participate in a Microsoft Teams meeting that occurred on 11/23/2021.

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

Stakeholder meetings were held via Microsoft Teams on 4/15, 6/24, and 12/10/2021. In addition, OhioMHAS Prevention staff met with OhioMHAS Licensure & Certification staff separately on 11/23/2021 to obtain that unit's feedback.

At the initial meeting on 4/15, stakeholders were invited to share their experiences with the current rule over the past five years and offer input on needed changes and updates to the rule. Notes from that meeting are attached. At the second meeting, stakeholders offered comments on the first draft that OhioMHAS Prevention and Legal staff members prepared after considering input from the first meeting. Notes from that meeting are attached. The second draft presented at the third meeting was a culmination of input from the second meeting and input OhioMHAS Prevention staff members received from stakeholders over the summer. Stakeholders shared that they were generally pleased with second draft sent to them before the 12/10 meeting. From that final meeting on 12/10, OhioMHAS prepared the third draft that is presented with this BIA.

**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?**

Prevention certification is the culmination of over a decade of perseverance towards fulfilling the vision to advance the field of prevention and further the credibility of a professional mental health and addiction prevention system in Ohio. The rule definitions are being updated to align with current research and practice. The rule also includes language to improve understanding and application of the requirement to use evidence-based practices that are grounded in research and associated with the evidence-based strategies as identified for prevention services by the Center for Substance Abuse Prevention in the Substance Abuse and Mental Health Services Administration (a division of the U.S. Department of Health and Human Services). This update also clarifies the qualifications needed for prevention provider roles to support quality services. They also mirror other OhioMHAS certification rules for purposes of consistency.

**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?**

The rule reflects a consensus between OhioMHAS Prevention and Legal staff members and

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the various stakeholders.

- 13. 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. To protect the health and safety of Ohioans and ensure quality of care, the rule enumerates specific requirements a provider must fulfill to attain certification.

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

The Prevention Rule applies only to community mental health services providers and community addiction services providers who are required to be certified by OhioMHAS. OhioMHAS staff members worked to ensure that references to individuals regulated by the Chemical Dependency Professionals Board and the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board in the new rule do not conflict with the boards' rules.

- 15. 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.**

OhioMHAS Office of Prevention staff members have regular contact with certified providers. Many, for example, receive grant funds from OhioMHAS or ADAMHS boards and there are meetings associated with the receipt of those grant funds. Once the rules become effective, Prevention staff members will collaborate with Office of Licensure & Certification staff to develop training around the new rule and continue to provide technical assistance as needed. The Office of Prevention will also collaborate with prevention providers to ensure there are learning opportunities created for the field related to the rule update.

### **Adverse Impact to Business**

- 16. 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;**

All community mental health services providers and community addiction services  
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providers that desire to provide prevention services paid for with federal and state funds must attain certification. As mentioned before, some providers that do not seek public funds also voluntarily choose to attain certification.

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

The updates in this rule do not impact or change the requirement for prevention providers to be certified in order to receive state and federal funding.

The certification fee for prevention services, for a three-year renewal cycle, is currently \$200; that fee has not changed since 2019 and will be due for a five-year review in 2024. At present, there are 245 certified prevention providers.

**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.*

This rule has been in effect since 2006 when it was adopted by the then Ohio Department of Alcohol and Drug Addiction Services (ODADAS). It was updated in 2014 when ODADAS and the Department of Mental Health consolidated to form OhioMHAS. This new rule is just one more update. As stated previously, the update reflects an effort to reorganize the rule to (1) reflect current best practices and needs of the prevention field and (2) more clearly indicate the requirements that must be met for certification. Over the years, the application and approval process has been made more efficient through the use of electronic processes and technical assistance. For those reasons, OhioMHAS anticipates that the vast number of providers would not experience an increase in the cost to comply with the new rule.

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

OhioMHAS is required to certify community mental health services providers and community addiction services providers to ensure quality of care and the health and safety of individuals receiving care from providers receiving public funds.

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### **Regulatory Flexibility**

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

No, the rule is intended to protect the health and safety of the clients. The size of the provider business is generally not a consideration in that area.

**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?**

OhioMHAS works with providers to ensure that violations rise to a level of jeopardizing health and safety before initiating disciplinary action.

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

OhioMHAS's Offices of Licensure and Certification and Prevention Services are available to assist providers affected by this rule.