



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):

Specialized Services Recovery Peer Service

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

Date of Submission for CSI Review: 5/22/2024

Public Comment Period End Date: 4/26/2024

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 3 rules (FYR? No)

Rescinded/___ rules (FYR?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.

5160-43-04 entitled “Specialized recovery services program covered services and provider requirements.” This rule describes the covered services for an individual enrolled in specialized recovery services. Amendments include the removal of allowable and not allowable peer activities as well as peer provider requirements.

5160-43-05 entitled “Specialized recovery services program provider conditions of participation.” This rule states the responsibilities and requirements providers must meet in order to participate in the specialized recovery services program. Amendments include updated CFR references in the rule.

5160-43-09 entitled “Specialized recovery services program criminal records checks for providers. This rule provides the process and requirements for criminal background checks for home and community-based services including peer recovery support providers and provides definitions pertaining to language throughout this rule. Amendments include the removal of peer recovery support providers as they will no longer be an SRSP service since being added as a state plan service to prevent/eliminate duplication.

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.**

5160-43-04 Authorized by 5164.02

5160-43-04 Amplified by 5164.02, 5164.03

5160-43-05 Authorized by 5164.02

5160-43-05 Amplified by 5164.02, 5164.03

5160-43-09 Authorized by 5164.02

5160-43-09 Amplified by 5164.02, 5164.03

- 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)?**

Rule 5160-43-04 requires certification of providers of specific services which supports the provision of appropriate, quality services that are medically necessary.

Rule 5160-43-05 requires providers participating in the specialized recovery services program to render services in a person-centered manner and be attentive to the individual's needs.

Rule 5160-43-09 requires criminal record checks for providers participating in the specialized recovery services program. This rule helps protect the safety of Medicaid individuals receiving services through this program.

Removal of references to the peer support service, via rule amendment, in two rules is necessary as peer support service will no longer be a component of the specialized recovery services program. This is because peer support service will become, through enactment of a new rule, a general Medicaid covered service that will be available to a larger number of individuals in need of the service.

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

Success will be achieved if providers are appropriately screened for a criminal history and that Medicaid individuals participating in the program receive quality services that are medically necessary and meet their needs.

- 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.

A public comment period was held for the rules during the period April 20, 2024 to April 26, 2024. The only comment received was from the Ohio Council of Behavioral Health & Family Services Providers (Ohio Council).

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

The Ohio council supports the rule revisions and stated that the changes would support wider access to this critical recovery service (peer support). As no suggestions were made for revisions, and the comment was positive, no changes were made in the rules.

- 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?**

The rules were 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 and support staff) are in place to implement and apply the requirements and regulations which are currently in place.

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 Medicaid behavioral health provider that currently renders specialized recovery services or wishes to in the future.

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.

5160-34-04:

Recovery managers have to be a registered nurse unless specific options apply. The cost of obtaining a registered nurse degree varies among the different schools that offer the program.

Recovery managers have to hold an active Medicaid provider agreement or be employed by an entity that has an active agreement. There is no financial cost for an individual to apply for or hold a Medicaid provider agreement.

Provider agencies that wish to render supported employment as part of the Specialized Recovery Services program are required to be certified by the Ohio Department of Mental Health and Addiction Services. Rule 5122-28-08 states the fee requirements, a minimum fee is \$1000.

There may be a time cost for providers to prepare and submit certain information which is required to be reported.

5160-43-05:

Specialized recovery service providers have to hold an active Medicaid provider agreement. There is no financial cost for an individual to apply for or hold a Medicaid provider agreement.

Failure to meet the requirements in the rule could result in a provider having their Medicaid provider agreement terminated. Loss of the agreement could result in the inability of the provider to render services to Medicaid covered individuals.

There may be a time cost for providers to prepare and submit certain information which is required to be reported.

5160-43-09:

A provider agency must pay to the Bureau of Criminal Identification and Investigation the required fee for an applicant to undergo a criminal record check when required. The fee typically runs between \$35 and \$40. In some instances the provider agency may wish to have a FBI check performed which could cost an additional \$35 to \$40.

There may be a time cost for providers to prepare and submit certain information which is required to be reported.

None of the adverse impacts stated are new with this rule filing. All impacts have been in effect 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 requirements in these rules assist in the provision of quality services to individuals participating in the specialized recovery services program and promote safe interactions between provider and individual.

The regulatory intent of these amended rules is justified by the benefit to Medicaid recipients in allowing more individuals to receive peer support due to expanded Medicaid coverage of the service through enactment of a new service rule (not included in this submission) and removal of the service from these rules.

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 providers wishing to render peer supporter services. 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?

These rules do 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 support. ODM's Bureau of Provider Services also renders technical assistance to providers through its provider hotline, (800) 686-1516.