



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information: Lisa Musielewicz, Staff Counsel,
Lisa.Musielewicz@mha.ohio.gov, (614) 995-1958

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

MRSS rule update

Rule Number(s): O.A.C. 5122-29-14

Date of Submission for CSI Review: December 13, 2024 ; updated January 6, 2025

Public Comment Period End Date: December 20, 2024

Rule Type/Number of Rules:

New/ 1 rule (UPDATED 1/6/2025 - this is now a rescind/new filing pursuant to LSC Rules Unit policy)

No Change/ rules (FYR?)

Rescinded/ 1 rules (FYR?)

Amended/ rules (FYR? X)

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

Under R.C. 5119.36, a person or government entity that desires to provide one or more certifiable services of the Ohio Department of Mental Health and Addiction Services (OhioMHAS) must be certified by OhioMHAS to provide the service(s). Mobile response and stabilization service (MRSS) is one of those certifiable services. Under R.C. 5119.36(L), the OhioMHAS Director has adopted rules to specify the standards a person or government entity must meet to be certified to provide the various certifiable services. The rule specifying the standards for MRSS are codified in O.A.C. 5122-29-14.

MRSS is a structured intervention and support service provided by an MRSS team that is designed to promptly address a crisis situation with a young person who is experiencing emotional or behavioral symptoms, traumatic circumstances, or any distressing situation as identified by the young person, the young person's family, or another person responsible for the welfare of the young person that has compromised or impacted the young person's ability to function within their family, living situation, school, or community.

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.**

Authorizes: 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 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)?**

As specified above under question #1, the OhioMHAS Director must adopt rules pursuant to R.C. 5119.36(L) to specify the standards a person or government entity must meet to be certified to provide the various OhioMHAS certifiable services. The rule specifying the standards for MRSS are codified in this rule, O.A.C. 5122-29-14.

Moreover, the State of Ohio has a compelling government interest to protect the health and safety of its citizens, especially young people. OhioMHAS is adopting these rules, in accordance with statute, as a public protection measure to ensure that community behavioral health services providers provide the MRSS service consistent with nationally recognized applicable standards.

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

OhioMHAS periodically conducts surveys of those community behavioral health services providers seeking to obtain or maintain OhioMHAS certification. During those surveys, OhioMHAS assesses compliance with all of its services rules, including this rule.

- 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.

The rules were posted for initial public comment on OhioMHAS's Draft Rules web site from October 3 – 18, 2024. Additionally, OhioMHAS sent a GovDelivery bulletin to its rules news subscribers about the posting.

UPDATED: The rules were posted for the CSI Office public comment period on OhioMHAS's Draft Rules web site from December 13 – December 20, 2024. OhioMHAS sent a GovDelivery bulletin to its rules news subscribers about the posting.

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

Various stakeholders submitted comments via the OhioMHAS Rules Mailbox. Comments primarily were focused on:

- Clearly defining certain phrases and parties and using that language consistently throughout the rule
- Adding more clarity around the use of telehealth
- Clarifying the MRSS team member and supervision requirements
- Updating language around the fidelity process
- Clarification related to the initial mobile response and the use of paraprofessionals
- The requirements of parental consent in crisis responses

These comments were considered and revisions were made that addressed the concerns noted, with updates being made to the definitions and in the areas of telehealth, MRSS team composition, the fidelity process, the initial mobile response, and parental consent.

UPDATED (references to paragraphs are to the renumbered/relettered paragraphs in the updated draft):

In response to suggestions made by stakeholders during the CSI Office public comment period, OhioMHAS, in summary, modified and added some definitions; removed paragraph (C) since it was redundant of content in paragraph (B) (that MRSS is for young persons); clarified when the six weeks starts for purposes of the content in paragraph (D); clarified the language in paragraph (L)(2)(a) regarding when a call for mobile response is made after the MRSS provider's operational hours; clarified that after-hours telephonic crisis de-escalation support must be provided by a community behavioral health services provider that is certified as an MRSS provider or for behavioral health hotline service as described in O.A.C. 5122-29-08; clarified that the service must be provided 24/7 *not later than* three years after the rule's effective date; for purposes of paragraph (K)(3), acknowledges there are limited

circumstances where a telehealth modality may be used; references MRSS “phases” in certain places instead of MRSS “activities”; the word, “wraparound,” was causing confusion so it was removed from paragraph (L)(1)(c); also in paragraph (L)(1)(c), the word, “stabilized,” was removed and replaced with “crisis situation has been de-escalated”; in paragraph (L)(2)(d)(ii), added a reference to the safety plan being developed with the family; in paragraph (L), there were references to natural supports added; and in paragraph (M), changes were made to the consent provision to make it consistent with R.C. 5122.04 and case law on emergency situations.

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?

Data related to national best practices was referenced when updating this rule. MRSS best practices are established through evidence informed research and field-tested standards. These standards are designed to achieve measurable outcomes, such as reduction of out of home placements, involvement with law enforcement/juvenile justice, and school suspensions. This data supports the rule updates proposed in that the regulations noted in the MRSS rule remain consistent with national best practices and with helping OhioMHAS to continue to grow the program and obtain the outcomes cited above.

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.

OhioMHAS did not consider alternative regulations. OhioMHAS is required by R.C. 5119.36(L) to adopt rules in accordance with R.C. Chapter 119 to establish certification standards for certifiable services and supports that are consistent with nationally recognized applicable standards and facilitate participation in federal programs.

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

OhioMHAS has been designated by the General Assembly to be the regulator of community behavioral health services providers. Therefore, no other agency would have such a regulation in Ohio.

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.

OhioMHAS's Office of Community & Family Resiliency and Office of Licensure & Certification will provide technical assistance to providers as the revised rule is implemented. Rules are applied consistently during the Office of Licensure & Certification's surveys

conducted prior to initial certification, renewal of certification, and at other times OhioMHAS is authorized to conduct surveys.

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**
- 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.

The impacted business community includes community behavioral health services providers (community addiction services providers and community mental health services providers as defined in R.C. 5119.01).

If the provider is an initial applicant that is not nationally-accredited, the current fee for obtaining MRSS certification would be the sum of all of the following:

--\$1000 (a base fee for all community behavioral health services providers)
--\$100 for the MRSS service (see O.A.C. 5122-25-08(C)(1)) plus
--\$1000 to be certified, as required under the existing rule, for the following services: general services, SUD case management services, peer recovery services, community psychiatric supportive treatment, and therapeutic behavioral services and psychosocial rehabilitation (see O.A.C. 5122-25-08(C)(1)).

Under R.C. 5119.99(B), whoever represents themselves to be certified to provide MRSS, when not certified at the time the representation is made, is guilty of a felony of the fifth degree.

There may be administrative costs related to undergoing annual fidelity reviews and participation in ongoing MRSS quality improvement activities. Fidelity reviews are already required under the existing rule.

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*).

Not applicable.

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

OhioMHAS proposes to adopt this revised rule under the authority of R.C. 5119.36(L) as a public protection measure. The State of Ohio has a compelling government interest to protect the health and safety of its citizens, especially young people to whom the MRSS service is provided.

Regulatory Flexibility

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

No, rules regarding health and safety, such as this rule, should be applied consistently to all community behavioral health services providers.

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 each provider to resolve issues that do not impact health and safety, as well as first-time offenses where wrongful intent is not present. Regarding the latter, OhioMHAS treats these instances as an opportunity to educate providers about best practices.

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

OhioMHAS's Office of Community and Family Resiliency and Office of Licensure and Certification are available to work with all community behavioral health services providers to ensure compliance with the rule. The Office of Licensure and Certification regularly provides technical assistance and educates providers regarding best practices.