

**MEMORANDUM**

TO: Howard Henry, Staff Counsel
Ohio Department of Mental Health and Addiction Services

FROM: Todd Colquitt, Business Advocate

DATE: November 22, 2016

RE: **CSI Review – Licensing of Psychiatric Hospitals and Units, O.A.C. 5122-14**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (O.R.C.) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in O.R.C. 107.54.

Analysis

This Ohio Department of Mental Health and Addiction Services ("Department") rule package consists of twelve rules proposed for amendment. These rules govern the licensing of psychiatric hospitals and units and are being reviewed by the Department under the five-year rule review requirement. Many of the proposed changes are non-substantive and involve typographical formatting and updates to references. The more substantive proposed changes include the following:

- O.A.C. 5122-14-01 amends the definition of "chemical restraint."
- O.A.C. 5122-14-05 adds to the reasons for which a license may be terminated to include the submittal of false or misleading information and previous citations demonstrating a pattern of serious noncompliance. It also now states that once administrative proceedings are underway to deny or revoke a license, the correction of the deficiencies underlying the proceedings does not automatically suspend those proceedings.
- O.A.C. 5122-14-10 includes a new prohibition against the use of a seclusion or restraint technique that would re-traumatize the patient.
- O.A.C. 5122-14-11 updates patient privacy rights to include no closed circuit video

monitoring in bedrooms and bathrooms.

- O.A.C. 5122-14-13 adds language authorizing physician's assistants, certified nurse practitioners, and clinical nurse specialists to conduct the required medical history and physical examination of the patient in accordance with the respective scopes of practices of those professions.

In response to early stakeholder outreach, the Department received feedback questioning the amended definition of chemical restraint, the inclusion of the name of a specific patients' rights organization, and whether licensure renewal could be extended to two or three years from the current annual requirement. The Department cited the desire to have a definition of chemical restraint consistent with that used by the Ohio Department of Health, and noted that the annual licensure renewal timeframe is mandated in statute.

Two comments were received from the public during the formal public comment period. One suggested that the word "resident" in the definition of chemical restraint be changed to "patient" for purposes of consistent usage throughout the chapter. The other commenter suggested the name of the patients' rights organization be modified to that used in the underlying statute; that the grievance procedure and the contact information for the patient rights specialist be posted in an area available to patients; and that patient rights information be provided to the patient at admission. The Department agreed to make three of the four suggested changes, but declined to make it a requirement that psychiatric hospitals provide patient rights information during the admission process. From a practical standpoint, the Department states that patients experiencing mental health difficulties are often not able to receive this type of information at admission as they may be cognitively disorganized or otherwise impaired. After having direct conversation with the Department, the commenting party agreed that the existing requirement that the patient be informed of their rights within twenty-four hours in conjunction with the amended rule requiring that a written copy be made available upon request was adequate.

The purpose of a CSI recommendation memo is not to catalogue in detail each rule in all its subparts, but rather to weigh the rule package on the whole in whether stakeholders were included and their input considered, whether the appropriate balance has been struck, and whether the agency has adequately articulated the necessity for the adverse business impact. After reviewing the proposed rules, BIA, and public comments, the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Mental Health and Addiction Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office