



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Lisa Musielewicz, Ohio Department of Mental Health and Addiction Services

FROM: Jacob Ritzenthaler, Business Advocate

DATE: January 12, 2024

RE: CSI Review – Private Psychiatric Hospitals (OAC 5122-14-01 through 5122-14-14)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) 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 ORC 107.54.

Analysis

This rule package consists of thirteen amended rules proposed by the Ohio Department of Mental Health and Addiction Services (OMHAS) as part of the statutorily required five-year review requirement. This rule package was submitted to the CSI Office on November 28, 2023, and the public comment period was held open through December 29, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 28, 2023.

Ohio Administrative Code (OAC) Chapter 5122-14 establishes requirements for the licensing of private psychiatric hospitals. OAC 5122-14-01 lists definitions used throughout the chapter and is amended to introduce or remove definitions, as well as updating or providing references for existing definitions. OAC 5122-14-02 concerns the accreditation of psychiatric hospitals and is amended to remove the Healthcare Facilities Accreditation Program as an accrediting program and replace it with the Accreditation Commission for Health Care. OAC 5122-14-03 sets forth the procedure for licensing psychiatric hospitals, including the information to be included on the application, the process for license renewal, on-site surveys, and corrective actions. The rule is amended to state that facilities must only demonstrate proof of psychiatric bed registration through the Ohio Department of Health until September 30, 2024. Amendments have also been made to include requirements for

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OMHAS issuing notifications via the Licensure and Certification Tracking System and allow OMHAS access to the facilities' records. OAC 5122-14-04 lists the classifications for licenses, including probationary, interim, and full licenses, and is amended to remove unnecessary regulatory restrictions and make updates to accrediting agencies. OAC 5122-14-05 concerns the termination of a license and is amended to remove unnecessary regulatory restrictions. OAC 5122-14-06 and 5122-14-07 set forth requirements for waivers, variances, and the display of a license. These rules include amendments that remove unnecessary regulatory restrictions. OAC 5122-14-08 establishes the fee schedule for licenses, which are calculated based on the number of beds in the facility. The rule is amended to remove regulatory restrictions.

OAC 5122-14-10 sets forth requirements for patient safety, including standards for inspections, facility safety and cleanliness, staff composition and training, and incident reporting. The rule is amended to update requirements concerning physical or mechanical restraint to prohibit the use of prone restraints and to provide guidance concerning the use of restraint during transportation of an individual to seclusion. The rule is also amended to update language and remove unnecessary regulatory restrictions. OAC 5122-14-11 establishes patients' rights within a psychiatric hospital, such as receiving human services, retaining personal property, formulating advance directives, maintaining personal privacy, and private conversation. The rule also requires that providers maintain a patient rights specialist and include patients and families in decisions. The rule is amended to update language and remove unnecessary regulatory restrictions. OAC 5122-14-12 sets forth requirements for services offered by psychiatric hospitals and plans for patient discharge. The rule includes amendments that update requirements related to substance abuse diagnostic and treatment service providers and remove unnecessary regulatory restrictions. OAC 5122-14-13 concerns medical records, documentation, and the confidentiality of patients, and is amended to update the rule language and remove unnecessary regulatory restrictions. OAC 5122-14-14 sets forth requirements for reporting to OMHAS incidents that threaten an individual's health or safety and is amended to require documentation via the Web Enabled Incident Reporting System.

During early stakeholder outreach, OMHAS sent the proposed rules to industry stakeholders for feedback. In response to stakeholder comments received during that time, OMHAS amended the rules to update the name of an accrediting organization, retain the definition of a transitional hold, and remove a proposed requirement that would prohibit a hospital with a probational license from admitting patients during the probationary period. OMHAS did not make changes in response to comments that suggested removing prohibitions against transitional holds, stating that the changes are being made to protect patients from potential injury by preventing any type of downward restraint. OMHAS also did not make changes based on suggestions to allow physician assistants and nurse practitioners to provide additional services to patients, stating that only a licensed psychiatrist has the knowledge, education, and skills necessary to oversee a hospital psychiatric unit.

During the CSI public comment period, OMHAS received comments which prompted amendments that align the “transitional hold” definition with other existing definitions, include an effective date of July 1, 2024 for requirements that would exclude hospital medical unit or emergency department care from being used as psychiatric nursing experience, and amend incident reporting requirements regarding staff injury during a seclusion or restraint event to be a report generated every six months instead of after each incident. OMHAS did not make changes in response to comments that opposed prohibiting the use of transitional holds that involve prone restraint, stating that the change has been made to align with industry best practices that reduce the risk of seriously injuring a patient.

The business community impacted by the rules includes all private psychiatric hospitals that admit patients with mental illness. OMHAS notes that this applies to standalone facilities and units within general hospitals. The adverse impacts created by the rules include the cost of license fees and compliance with requirements for facility construction and safety. License fees are paid annually and are calculated according to bed capacity, ranging from \$750 for facilities with twenty-five or fewer beds to \$2,250 for facilities with over one hundred beds. The rules require nursing facilities to comply with inspections by OMHAS, a certified building inspector, and certified fire authority. Facilities are required to maintain a patient rights specialist to assure compliance and must report incidents to OMHAS. OMHAS states that the adverse impacts created by the rules are necessary to ensure that psychiatric hospitals maintain consistent standards of care. Furthermore, OMHAS states that amendments that prohibit prone restraint provide increased safety for patients within the care of hospitals.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that OMHAS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.