



## Common Sense Initiative

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

**Carrie Kuruc**, 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):**

**IHBT Updates**

**Rule Number(s):** 5122-29-28 and 5122-29-30

**Date of Submission for CSI Review:** 10/29/21

**Public Comment Period End Date:** 11/22/21

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/\_\_\_X\_\_\_ rules (FYR? \_Y\_)

Rescinded/\_\_\_ rules (FYR?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.*

5122-29-28 sets forth the requirements for the Intensive Home Based Treatment (IHBT) service. IHBT is a behavioral health service for children and adolescents, that is intended to prevent out-of-home placement or assisting with the transition of children and adolescents back to a home setting. 5122-29-30 is also being modified to add the IHBT service to paragraph (C).

5122-29-30 is being updated to include IHBT in the listed services.

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.

ORC 5119.34

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?

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*If yes, please briefly explain the source and substance of the federal requirement.*

No, this regulation does not implement a federal requirement.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

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)?

The rule is being amended to modernize the IHBT service and staffing models.

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

The Department monitors the number of providers of this service and the demand for the service.

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.*

Open OhioRISE IHBT workgroup meetings via Teams occurred on February 19, 2021, and March 18, 2021, including the OhioRISE Rules overview on April 22, 2021. More information regarding the open meetings and OhioRISE can be found at:  
<https://managedcare.medicaid.ohio.gov/wps/portal/gov/manc/managed-care/ohiorise/ohiorise>

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

Changes for the rule were developed during the OhioRISE meetings with stakeholders, dates listed above.

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**Stakeholders proposed Rule Changes to allow team flexibility such as:**

- **Proposing three types of teams under IHBT to allow for other non-licensed professionals**
  - Evidence Based Practice (MST/FFT) Team
  - Licensed Team
  - Hybrid Team
- **Recognize the difference between evidence-based practices and other forms of IHBT in order to accommodate flexibility in workforce, increase access to IHBT, and align with requirements under FFPSA**
- **Can now be provided via telehealth rule.**

**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?**

**Standards for IHBT were developed through IHBT Ohio, <https://ihbtohoio.org/>**

**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?**

**Not applicable.**

**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.*

**Rule is performance based.**

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

**OhioMHAS is the regulator of Mental Health and Addiction services by statute.**

**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.**

**The Department has been active in discussing the proposed changes with stakeholders and will continue that communication throughout the rule amendment process.**

### **Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

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- a. Identify the scope of the impacted business community; and  
This rule will apply to any provider of mental health and addiction services that wishes to provide this type of service.
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and  
Providers must meet the requirements of the rule.
- 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.*

Most of the changes are intended to increase flexibility in service delivery and as a result should only minimally impact providers.

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

The provision of this service must be done in a proper fashion in order to protect the health and safety of clients.

#### **Regulatory Flexibility**

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

Not applicable.

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?

The Department offers technical assistance to those entities that need it when adjusting to changes in the service requirements.

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

The Department has and will continue to make itself available to providers.