



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: Caleb White, Business Advocate

DATE: February 15, 2024

RE: CSI Review – Gender Transition Care (OAC 5122-16-19 and 5122-14-12.1)

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of two new rules proposed by the Ohio Department of Mental Health and Addiction Services (MHAS). This rule package was submitted to the CSI Office on February 7, 2024, and the public comment period was held open through February 14, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 7, 2024.

The rules in this package establish the standards that must be met for a provider to deliver gender transition care to minors. Ohio Administrative Code (OAC) 5122-14-12.1 establishes standards for community behavioral health services providers, and 5122-26-19 establishes these standards for private psychiatric hospitals that are licensed by MHAS. These rules prohibit community behavioral health services providers and private psychiatric hospitals from providing minor patients with pharmacological treatment such as prescribing drugs or hormones for the purpose of assisting the patient with gender transition or medical services for a minor patient that initiate puberty blocking except under specified standards. These standards include requiring community behavioral health service providers and private psychiatric hospitals to either employ or have available for referral a mental health professional and board-certified endocrinologist, that the minor has received a comprehensive mental health evaluation and counseling services over a period of at least six-months,

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that community behavioral health services providers create a comprehensive plan of service, and that private psychiatric hospitals have their own written, comprehensive, multidisciplinary care plan. Comprehensive plans of service and comprehensive multidisciplinary care plans under this rule must include the specific services to be provided by a mental health professional and board-certified endocrinologist, the informed consent of the minor and their parent or legal guardian, information about which treatments can and cannot be partially or fully reversed, as well as a detailed plan of action for patients seeking to detransition. These rules further require providers to annually demonstrate compliance with the outlined standards and specify certain exceptions.

During early stakeholder outreach, MHAS posted the proposed rules on its website and sent a notification on January 5, 2024, to all stakeholders that have signed up to receive notification from MHAS regarding rule making. MHAS received feedback from a range of individuals and organizations during early stakeholder outreach, and approximately 600 comments during the CSI public comment period. In response to these comments, MHAS implemented several changes, including limiting the scope of the rules to apply only to gender transition care for minors. In response to comments about the limited availability of certain medical specialties, MHAS responded by expanding and modifying the options for professionals included in the required multi-disciplinary care team. Lastly, some commenters were confused about the review of care plans by a medical ethicist. To alleviate confusion and after receiving assurances from healthcare leaders that institutions already appropriately engage medical ethics professionals in this type of care, MHAS removed this requirement from the rule.

The business community impacted by the rules includes community behavioral services providers and private psychiatric hospitals. The adverse impact created by the rules consists of adhering to the requirement for a provider or psychiatric hospital to employ (or have available for a referral) both a mental health professional that has experience treating minors and a board-certified endocrinologist. MHAS also states that there may be administrative costs associated with demonstrating compliance with the standards outlined in the rules as well as salary and benefit expenses for providers or psychiatric hospitals that choose to employ a mental health professional or endocrinologist. MHAS states that the adverse impacts created by the rules are necessary to protect the health and safety of Ohioans, particularly children.

Recommendations

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

Conclusion

The CSI Office concludes that MHAS should proceed in filing the proposed rules with the Joint

Committee on Agency Rule Review.