Hearing Summary Report

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Hearing Date: 12/4/2024 Today's Date: 12/6/2024

Agency: Ohio Department of Mental Health and Addiction Services

Rule Number(s): 5122-40-01, 5122-40-05, 5122-40-06, 5122-40-07, 5122-40-08, 5122-40-09, 5122-40-10, 5122-40-11, and 5122-40-15

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Holly Broce, Pinnacle Treatment Centers, along with legal counsel Kevin O'Donnell Stanek, Barnes & Thornburg, LLP
2. Daniel Bloch, MD, Allwell Behavioral Health Services
3. Dustin Mets, CompDrug
4. Holly Gross, Benesch, Friedlander, Coplan & Aronoff LLP, on behalf of Community Medical Services
5. Geoff Collver, The Ohio Council of Behavioral Health Providers and the Ohio Association for the Treatment of Opioid Dependence (OATOD)
6. R. Corey Waller, MD, and John Inman, BrightView Health
7. Jonas Thom, Ohio Institute for SUD Excellence
8. Mike Gersz, Maryhaven
9. Theresa Sibert, Canton Comprehensive Treatment Center
10. Jeffrey Bill, MD, Sunrise Treatment Center
11. Mary Ann Deter, MedMark Treatment Centers Lebanon
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Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Pinnacle Treatment Centers (PTC) was the first party to present testimony at the hearing. The majority of PTC's comments pertained to paragraphs (H)(3) – (H)(5) of rule 5122-40-09, Non-medication services. These paragraphs concern the availability of counseling sessions for opioid treatment program (OTP) patients, including how counseling sessions are to be offered and made available to patients, exceptions to frequency of counselor to patient contact, and interruptions to medication availability. PTC stated that (H)(5), which specifies that medication is not to be interrupted or made dependent upon completion of counseling as outlined in (H)(3), "functionally eliminates" the requirements in (H)(3), thereby allowing OTPs to engage in "dose and go" conduct. PTC asked that:
--(H)(3) be amended to require at least quarterly progress reviews of the treatment plan and that counseling duration and frequency be established with input from the interdisciplinary team (not just the primary counselor);
--(H)(4) be amended to clarify that a patient's choice is not in an of itself justification for an exception to the counseling frequency requirements in paragraph (H)(3); and
--(H)(5) be amended to add language clarifying that the paragraph does not eliminate or reduce the requirement of an OTP to create an individualized counseling plan for each patient.

PTC stated that it was generally supportive of the changes to paragraphs (H)(1) and (H)(2) of 5122-40-09, and recognized that these provisions make changes to staffing requirements and how to assign counselors which will assist OTPs that face workforce challenges. PTC did not comment on any other rules in the package.

All other parties who attended the hearing or submitted written comments indicated support for the entire rule package. They noted that the proposed changes would align Ohio's operational standards for OTPs with recently-updated standards promulgated by the U.S. Substance Abuse and Mental Health Services Administrative (SAMHSA) that had not been modified since 2001, as well as American Society of Addiction Medicine (ASAM) Criteria, 4th Edition. They also pointed out that many changes have occurred for OTPs since the last federal update 23 years ago—the patient populations served, the co-occurring health challenges, the lethality of the drug supply, and community expectations on how OTPs serve patients. Through the federal updates, they said, SAMHSA promoted practitioner autonomy, removed discriminatory or outdated language, created a patient-centered perspective, and reduced barriers to receiving care. They commended OhioMHAS for proposing the Ohio rule changes to correspond to the federal changes.

Regarding the availability of counseling sessions addressed in paragraph (H), many commenters stated during the hearing that they opposed PTC's recommended changes. They noted that the updated federal standards (1) require that OTPs provide adequate substance use disorder counseling to each patient as clinically necessary and mutually agreed-upon and (2) specifically state that patient refusal of counseling is not to preclude patients from receiving medication for opioid use disorder. They said by incorporating these standards into its own rules, Ohio is a leader in allowing the patient and provider to determine the best course of treatment, as opposed to a "one-size-fits all" model, and promotes patient dignity and autonomy during treatment—something they said has traditionally been allowed in every other medical discipline other than addiction treatment.

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Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

OhioMHAS declines to make any of the changes requested by Pinnacle Treatment Centers. Regarding (H)(3), adding language requiring quarterly progress reviews would make rule 5122-40-09 more restrictive than what is required by federal regulations. OhioMHAS believes the review of treatment plans should be determined based on the needs of each individual patient in conjunction with existing requirements of OTP accreditation organizations. Regarding (H)(4), OhioMHAS believes the proposed rule promotes a treatment environment that offers the flexibility to create plans of care centered on each individual patient's aims and health. The patient's ultimate choice in their treatment decisions remains paramount in the updated federal regulations and proposed Ohio rules. OhioMHAS notes that patient preference and needs are central to the treatment plan under SAMHSA's "shared decision making" guidelines (see https://www.samhsa.gov/medications-substance-use-disorders/statutes-regulations-guidelines/42-cfr-part-8/expanding-access-patients). Regarding (H)(5), the language that PTC requests pertaining to the requirement for an OTP to create an individualized counseling plan for each patient is unnecessary as federal regulations and the rule already require that counseling be offered based on clinically-justified need. The intent of (H)(5), as proposed by OhioMHAS, is specific to a patient's completion of counseling and in no way relates to other medically-required assessments described in rule 5122-40-06.