

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Health

Regulation/Package Title: 3701-8 Help Me Grow

Rule Number(s): 3701-8-01 and 3701-8-10

Date: March 12, 2013

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

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The proposed amendments to 3701-8-01(S) and (HHH) will expand and explain the category of Early Intervention Services available to participants in Help Me Grow; additionally the amendments expand and explain the category of qualified personnel available to provide Early Intervention services. The proposed amendments will bring the definitions into alignment with the definitions provided in the Code of Federal Regulations for Early Intervention Services and Qualified Personnel. (See 34 CFR 303.13 and 34 CFR 303.31)

The proposed amendment to 3701-8-10(F)(3) seeks to include and explain that the due process hearing shall be conducted in accordance with 34 CFR 303.440 to 34 CFR 303.448 to make clear that the state is adopting the administrative exhaustion requirements.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 3701.61

3. 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?

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

The amendments to 3701-8-01 will bring the definitions in paragraphs (S) and (HHH) into conformity with the Code of Federal Regulations on the same topics as recently required by the United States Department of Education, Office of Special Education Programs.

The amendment to 3701-8-10 makes clearer the state's intent to adopt in total the exhaustion requirements set forth in the Code of Federal Regulations.

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

The proposed amendments do not exceed federal government regulations rather they will bring ODH rules into conformity with the Code of Federal Regulations as required by the United States Department of Education, Office of Special Education Programs.

5. **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 proposed amendments in 3701-8-01 further define and explain early intervention services and thus provide an opportunity for increased services to HMG participants in the state of Ohio.

The proposed amendment to 3701-8-10(F)(3) seeks to clarify the information already in the rule.

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

The proposed amendments are small additions to the HMG rule package and will be evaluated in the same way that ODH measures its federal compliance and performance-based outcomes in the program as a whole.

Development of the Regulation

7. **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.

ODH was recently informed by the United States Department of Education, Office of Special Education Programs that its rules—which became effective on September 3, 2012—must be amended to include a broader definition of early intervention services and qualified personnel. These broader definitions will bring ODH's rules into line with the definitions in the Code of Federal Regulations. ODH was also instructed to make the changes to the rule and incorporate all of the language of the CFR prior to filing its application for IDEA Part C funds which is due on May 10, 2013. Because of the short time line and specific requirements from the United States Department of Education, ODH has not had the opportunity to follow its typical rule making process to engage its stakeholders on developing the language of the rule. However,

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ODH notified stakeholders, including County Family and Children First Councils and Early Intervention Services Managers of the proposed amendments in an email sent on March 11, 2013. Furthermore, the proposed rules will be posted on ODH's for public review and comment. ODH looks forward to input and comments from its stakeholders during the comment period.

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

The proposed amendments to 3701-8-01 are required by the United States Department of Education, Office of Special Education. Specifically ODH was directed to include the amendments as part of the rules in order to be in compliance with federal law requirements. ODH looks forward to input and comments from stakeholders during the comment period

9. 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?

The language of the proposed amendments was taken directly from the Code of Federal Regulations as was directed by the United States Department of Education.

10. 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?

The proposed amendments fulfill ODH's requirements under the Individuals with Disabilities Education Act.

11. 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.*

ODH originally did not include the proposed amendments in their rule package but was recently instructed by the United States Department of Education, Office of Special Education to add what is now amended 3701-8-01 (S) and (HHH) to the rules.

The amendment to 3701-8-10(F)(3) adopts the language of 34 CFR 303.448 and clarifies the due process procedures.

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

The amendments do not duplicate existing Ohio regulations because it is specific to Help Me Grow.

13. 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.

Once the amendments are final, ODH will alert the HMG services providers to the additions in the rules and will, as needed, conduct training and provide technical assistance to any service provider who requests it.

Adverse Impact to Business

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

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- 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.

The amendments do not appear to have an impact on business nor is there a cost to comply with the amendments.

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

There is not an impact on the business community from these amendments. However, the amendments were required to be made for Ohio to apply for and receive IDEA Part C grant funds from the federal government.

Regulatory Flexibility

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

The money to administer and serve families in Help Me Grow is distributed through grants, subsidy agreements or contracts which are voluntary. There are no requirements in these amendments which prohibit small businesses from conducting their business without the money distributed by ODH.

Under the federal IDEA, Part C law and regulations, the state of Ohio must enforce minimum requirements and provide assurance of written policies which uphold the laws and allow the state to monitor and sanction local service providers when non-compliant.

17. 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 proposed amendments do not impose fines or civil penalties.

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

ODH staff is available to provide the needed technical assistance and direction to the service providers in regard to the proposed amendments.