CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Mental Health and Addiction Services________

Regulation/Package Title: Service Definitions________________________________

Rule Number(s): 5122-29-01, 5122-29-06, 5122-29-07, 5122-29-08, 5122-29-09, 5122-29-16, 5122-29-~~17~~18, 5122-29-19, 5122-29-22, 5122-29-27, 5122-29-28, 5122-29-29, 5122-29-30, and 5122-29-31 Amended to add 5122-29-03, 5122-29-10, 5122-29-13, 5122-27-01, and 5122-27-04.

Rescinding – 3793:2-1-08, 3793:2-1-11, 3793:2-1-12, 5122-29-13, 5122-29-14, 5122-29-18, 5122-29-21, 5122-29-23, 5122-29-24, and 5122-29-25. Amended to add 5122-29-02, 5122-29-03, 5122-29-04, 5122-29-05, 5122-29-33, 5122-29-36, and 5122-29-37.

Date: August 1, 2016, Amended January 31, 2017, April 3, 2017

<u>Rule Type</u>:

X New	**X 5-Year Review**
X Amended	**X Rescinded**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.

Amended to add – This rule package was originally submitted for review on August 1, 2016. During the time the rules were under review the Department worked with stakeholders and the Ohio Department of Medicaid (ODM) as part of the Ohio Medicaid Behavioral Health Benefit Redesign project. As a result of that work, the rules under review have been revised. The revisions include some previous reviewed and approved for filing rules. The changes to what was originally submitted are listed here.

5122-27-01 and 04 – These rules have been added to the package through discussions with ODM. References to ODM and funding sources are being removed in 5122-27-01, and an exemption of urinalysis from documentation requirements in 5122-27-04 is being removed. These changes will allow for ODM to reference MHAS documentation rules in Chapter 5122-27 and use those rules exclusively, rather than create a second set of documentation regulations. These changes are minor but should save considerable administrative burden for stakeholders.

5122-29-03 – CSI has previously reviewed rules 5122-29-03, 5122-29-04, and 5122-29-05; which covered the assessment, counseling and therapy, and medical services. These services have been combined into one rule now called general services, and which allows any credentialed professional to be certified by the Department and perform these services within their professional scope of practice. The Department will not conduct certification of the performance of the clinical service, but will maintain regulation over such items as location integrity, client rights, and documentation of services. Existing 5122-29-03, 5122-29-04, and 5122-29-05, the existing service definition rules for the these component services will be rescinded.

5122-29-06 As originally submitted, this rule included a spectrum of service covering partial hospitalization, intensive outpatient, and day treatment. As part of the ODM redesign, and the creation of the general services certification, this rule needed to be redesigned. This rule now covers only mental health day treatment, and is essentially the existing mental health partial hospitalization rule. The renaming is necessary to be consistent with the other states. The other content was removed as it is now no longer needed given the ability of credentialed professionals to practice under the general services certification.

5122-29-09 – This rule now combines what was originally submitted at 5122-29-09 and 5122-29-32. This is a comprehensive substance use disorder residential and inpatient

service. This was developed through discussions with stakeholders about simplifying the services and modernizing the approach. The rule follows the national ASAM standards in this field.

5122-29-10 – The new rule 5122-29-10 will replace existing 5122-29-10 and 3793:2-1-08(L) and (W). This rule is a combined MH and AOD rule. The rule has been shortened to focus on the essential elements of crisis intervention.

5122-29-13 – This rule is new to this package. Case management was part of 3793:2-1-08 and was scheduled to be combined into the now former coordination and support service. As the ODM benefit redesign project continued, it was decided that this material needed to continue on its own. This rule is the existing case management language moved to a MHAS rule number, and out of the 3793:2-1-08 rule.

5122-29-16 – At the request of stakeholders the name of this service was changed to "peer run organizations."

5122-29-18 – This rule was numbered 5122-29-17 and called "coordination and support service" when the rule package was submitted. However, during work with stakeholders and ODM on redesign, it was decided to keep the CPST service is it is. As a result, CPST remains unchanged and will retain the rule number 5122-29-17. The coordination and support service is changed to 5122-29-18, and is retitled to matchup with the ODM billing rule that it works with. Some updating of the activities in the rule was done in conjunction with stakeholder feedback.

5122-29-28 – This rule has been updated since the package was originally submitted. The changes are due to the redesign project and help to keep the MHAS and ODM rules on IHBT from being contradictory. Stakeholders will see a focus on clinical standards in the MHAS rule, while ODM retains the focus on fiscal matters.

5122-29-29 – The MHAS ACT rule has been further refined to put a focus on fidelity models.

The overall analysis of these rules is not changed significantly. The Department has received stakeholder's comments since the rule package was posted and has incorporated, some but not all recommendations. Some recommendations have been made moot by redesign driven changes. The Department expects the new general services to provide a savings in time and money for providers. It is intended to address the concern that credentialed providers already have oversight for their clinical actions, while maintaining the Department's statutory duty to protect client health and safety.

As part of the merger of the Ohio Department of Mental Health (ODMH) and the Ohio Department Alcohol and Drug Addiction Services (ODADAS), the Department of

Mental Health and Addiction Services (MHAS) is combining and updating the definitions of services provided by certified service providers. As part of this process MHAS has focused on updating content to be consistent with current practice and wherever practical remove the distinctions between mental health (MH) and alcohol and other drug services (AOD)/substance use disorder (SUD).

The former service definitions for ODMH service rules can be found in OAC Chapter 5122-29. Within this chapter each individual rule typically defined a standalone service and the rule had no dependencies within the rest of 5122-29. The former ODADAS service definitions were in one rule, 3793:2-1-08. MHAS is working to have all services defined in 3793:2-1-08 combined with corresponding services in 5122-29 or adopted as new standalone rules within 5122-29. The Department will not proceed with filing these rules with LSC until all of the rules in 3793:2-1-08 have been accounted for in this fashion.

However, MHAS will be putting these rules out for public comment and review by CSIO in several packages, to allow for an easier review of individual services.

In this package there are the following rules:

5122-29-01 (Replacing 5122-29-01 and 02) – Revises and updates the purposes and applicability statements for this chapter.

5122-29-06 (Replacing 5122-29-06 and 3793:2-1-08(Q)) – This rule will provide an integrated standard for partial hospitalization, intensive outpatient, and day treatment services for behavioral health and in the case of day treatment, mental health patients. The rule sets standards for hours of treatment and what is to be provided under these service modes.

5122-29-07 - The forensic evaluation service is being updated with current statutory references.

5122-29-08 – The behavioral health hotline service rule is being updates to be current standards of practice.

5122-29-09 – (Replacing 3793:2-1-08(Y) and (Z)) – This rule is a consolidated and updated detoxification service. The rule has standards for both acute and sub-acute detoxification services.

5122-29-16 – This is an updated consumer operated service that primarily updates the department name and updates mental health usage to behavioral health.

5122-29-17 (Replacing 5122-29-17, 5122-29-33, and 3793:2-1-08(M)) – This rule integrates the existing Community psychiatric supportive treatment (CPST), Health Homes, and case management services.

5122-29-19 – (Replaces 5122-29-19 and 3793:2-1-08(E)) This rule has been updated to allow for behavioral health consultation services, and to not conflict with prevention services.

5122-29-22 – This is an updated rule that changes "agency" to "provider" and adds the telecommunication relay service definition to the rule.

5122-29-26 – This is the former methadone administration service from OAC 3793:2-1-08(T).

5122-29-27 – This rule is being updated to be an integrated behavioral health service that allows for the use of services not otherwise included in this Chapter.

5122-29-28 – The intensive home based treatment service is updated with changes from mental health to behavioral health, and the switch from CPST to coordination and support.

5122-29-29 – The assertive community treatment (ACT) rule has been rewritten to rely on the use of fidelity models and reviews for adherence to those models. ACT teams provide other services within Chapter 5122-29 and adhere to their chosen fidelity model for the provision of those services.

5122-29-30 (Replaces 5122-29-30 and 3793:2-1-08(BB) to (YY)) This rule replaces the existing methods for specifying eligible providers of services. Precise specifications in grid or list formats have been removed, and providers are given the authority to provide services within the scope of their practice as licensed or certified by appropriate bodies. Their remains a designation for those individuals who have experience or training outside of the licensed or certified professionals, and the Qualified Behavioral Health Specialist will be available for those individuals.

5122-29-31 – (Replaces portions of other 5122-29 rules and 3793:2-1-11 and 3793:2-1-12) This rule is an integrated and updated rule covering the provision of services through videoconferencing. The rule specifies which services may be provided through videoconferencing and the safety and security procedures to be followed.

5122-29-32 – (Replaces 3793:2-1-08(Y) and (Z)) This rule is an updated substance use disorder residential program. It provides the treatment standards, as well as health and safety standards for residents.

To be rescinded

As part of the consolidation and review process, some services were found to be redundant or unused. To that end the following are being rescinded:

To be Rescinded	
Treatment services.	3793:2-1-08
Alcohol and drug treatment services provided by interactive videoconferencing.	3793:2-1-11
Alcohol and drug treatment services provided by interactive videoconferencing for clients that are deaf or hearing impaired.	3793:2-1-12
Applicability	5122-29-02
Behavioral health counseling and therapy service.	5122-29-03
Mental health assessment service.	5122-29-04
Pharmacologic management service.	5122-29-05
Adult educational service.	5122-29-13
Social and recreational service.	5122-29-14
Inpatient psychiatric service.	5122-29-18
Mental health education service.	5122-29-21
Adjunctive therapy service.	5122-29-23
Occupational therapy service.	5122-29-24

School psychology service. Health home service for persons with serious and persistent mental illness.	5122-29-25 5122-29-33

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

   R.C. 5119.36

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.

   No.

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

   NA

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)?**

   R.C. 5119.36 states that MHAS shall establish certification standards that improve the quality of service or the health and safety of persons receiving services. The Department has kept the goal of improving service delivery through modernizing the service definitions foremost in the writing process.

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

   MHAS has data collection systems that measure patient outcomes and will be monitoring for improvement through that data.

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.

The rules in this package were shared with the Department's stakeholder roundtables via email in March of 2016, and held meetings with the roundtables in May of 2016. The roundtables are service providers who have direct knowledge of these services and an interest in how they are rewritten. The roundtables are:

Addictions roundtable

Mental health roundtable

Prevention roundtable

The Department also met with the Ohio Association of Child Caring Agencies in May of 2016 and presented the rules in this package. The rules have also been shared with the Ohio Council of Behavioral Health & Family Services Providers, in its role as a member of the stakeholder roundtables.

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

   Stakeholder input was crucial for the development in this rule package. 5122-29-06 is the combination of three former separate services, and is this result of discussions held with stakeholders who were able to provide insight in who to make the overall service more efficient. Both the videoconferencing and eligible provider rules are the result of direct stakeholder requests for a simplified approach.

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 Department has used it clinical resources to develop the rule language.

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?**

    These rules are a complete rewrite and consolidation of existing programs; they represent alternatives that still meet statutory requirements to protect health and safety of individuals.

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.***

In general, these rules represent a move away from process rules and work towards a performance or outcome based rule. Although there will always be a need for certain process requirements in these types of rules, the intent is to define what a service is and let providers work within their scope of practice.

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

    These rules apply only to MHAS certified providers, and only within the context of certified services.

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.**

    The Department will conduct an education and awareness initiative amongst certified providers. After adoption of the rules the Department will work with providers through regularly scheduled certification surveys to ensure consistent compliance.

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.

    These rules will impact any provider who is required to be certified to provide services by R.C. 5119.36. The impact of certification is found primarily in being compliant with overall provider certification standards found in OAC 5122-25 to 5122-28. Each provider will be impacted by these rules to whatever degree they provide the individual services in this package.

    Services formerly provided as separate mental health or AoD services are being combined where possible and should allow for more flexible administration.

Services have been updated to conform to current standards and be an easier framework from which to provide care to individuals. While there may be some adjustment that will have some administrative cost when providers switch service definitions, the long-term impact is expected to be a more efficient regulatory scheme that will save money and help individuals.

The primary type of adverse impact from service definition rules, and related rules, is from the constraints on how employees perform services and the documentation on both the performance of services and the employee's qualifications to provide services. These are not unexpected impacts, as they reflect the goals how of insuring that services are provided in a safe and effective manner, and defining what is to be provided and documenting the provision of those services.

Within individual service rules there are items that adversely impact a provider by either requiring them to perform certain actions or limiting them from doing certain things. The residential and inpatient substance use disorder service, 5122-29-09, has requirements around food, sleep, and activities in the facility that require providers to act in a certain way. These requirements exist because of past experience and the knowledge within the field that these items need to be defined, or clients do not get them during treatment.

Similarly, the IHBT rule, 5122-29-28, does not permit mixed caseloads for direct care staff. This prevents a provider from utilizing staff on other programs. However, it is also necessary to preserve the availability required for these staff and is a cost of this service.

These restrictions place a definite but hard to quantify impact on providers. Staff are unavailable for other duties because they must be dedicated to IHBT, but this can be ameliorated by more IHBT clients. The meals and sleep requirements of the residential and inpatient substance use disorder service can be planned for and accounted in the provider's operational plans.

The Department is also working with the Ohio Department of Medicaid to reduce the amount of documentation related regulations. BH Redesign efforts have redirected documentation requirements to OhioMHAS' 5122-27-01 rules wherever possible. Other changes have been made to allow professionals to work within their scope of practice and not have qualifications specified as much by the Department. Changes such as the general services rule, 5122-29-03, and the redesigned eligible provider rule, 5122-29-30, should allow for more flexibility and efficiency.

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

In discussions at stakeholder roundtables, this is the most balanced method the Department could adopt.

Services formerly provided as separate mental health or AoD services are being combined where possible and should allow for more flexible administration. Services have been updated to conform to current standards and be an easier framework from which to provide care to individuals. While there may be some adjustment that will have some administrative cost when providers switch service definitions, the long-term impact is expected to be a more efficient regulatory scheme that will save money and help individuals.

Regulatory Flexibility

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

No, exemptions based on business are not appropriate for service definitions.

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?

As a matter of routine, the Department prefers to work with providers and assist them with fixing issues rather pursuing enforcement actions. The Department would only pursue enforcement actions for those paperwork or first-time violations where malicious intent was apparent.

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

The Department will provide assistance during the transition to the new service definitions through its Bureau of Licensure and Certification.