MEMORANDUM

TO: Howard Henry, Ohio Department of Mental Health and Addiction Services

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: April 14, 2017

RE: **CSI Review – Service Definitions (OAC 3793:2-1-08, 3793:2-1-11, 3793:2-1-12, 5122-27-01, 5122-27-04, 5122-29-01 to 5122-29-10, 5122-29-13, 5122-29-14, 5122-29-16, 5122-29-18, 5122-29-19, 5122-29-21 to 5122-29-25, 5122-29-27 to 5122-29-31, 5122-29-33, 5122-29-36, 5122-29-37)**

On behalf of Lt. Governor Mary Taylor, 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 Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 36 rules—five new, 14 amended,[1] and 17 rescinded—being proposed by the Ohio Department of Mental Health and Addiction Services (OhioMHAS) for review under its statutorily-required five-year review. The rule package was originally submitted to the CSI Office on August 1, 2016, with the public comment period closing on August 19, 2016. Due to the nature of public comments submitted and subsequent revisions made to the rules, the Department provided impacted stakeholders with another opportunity to review and comment on the drafted rules. A second comment period was opened on February 1, 2017, with the public comment period closing on February 24, 2017. A revised BIA was submitted to the CSI Office on April 3, 2017. The proposed rules are being considered as part of a Behavioral Health Redesign initiative coordinated with the Ohio Department of Medicaid (ODM), as well as an effort to consolidate rules following the merger of the Ohio Department of Mental Health and the Ohio Department of Alcohol and Drug Addiction Services.

The proposed rules combine and update certified services defined in Ohio Administrative Code

[1] OAC 5122-29-01, -10, -16, -28, -29, and -30 are being amended by more than 50 percent. The Legislative Service Commission requires that the rules be rescinded and replaced with new rules with the same numbers.

(OAC) Chapters 5122-29 (Requirements and Procedures for Mental Health Services Provided by Agencies) and 3793:2-1 (Alcohol and Drug Addiction Programs). All service definitions are being consolidated into Chapter 5122-29 to eliminate, as much as possible, any distinction between mental health and alcohol and drug addiction services. All alcohol and drug addiction services are currently housed under one rule, but they are being broken out into individual service rules in Chapter 5122-29. Overall, services have been updated to conform to current standards and to transition to a simpler framework for providing care to individuals with mental and behavioral health needs.

The rules impact any provider who is required to be certified to provide services by ORC 5119.36, which certifies community mental health services or addiction services providers. Providers are impacted by the rules to the extent that they provide each service addressed in the rule package. Potential adverse impacts of the rules include constraints on how employees perform services; documentation and record-keeping requirements; a requirement to provide evidence that staff development plans are being followed; and a requirement to ensure that all staff are adequately trained. In addition, the Intensive Home-Based Treatment (IHBT) rule prohibits mixed caseloads for direct care staff, and requires that providers of this service obtain at least one fidelity review of the provider's entire IHBT service every 12 months by an external individual or organization. Finally, failure to comply with the rules could result in disciplinary action if the Department deems that malicious intent is apparent. The Department indicated in the BIA that these adverse impacts are justified because the rules, by combining services formerly provided separately by two departments, allow for more flexible administration. For example, despite the stated adverse impact to providers of IHBT services, this rule ensures that direct care staff are dedicated to their respective clients, children and adolescents with serious emotional disturbances, and allows for the enrollment of more IHBT clients. Furthermore, a more efficient regulatory scheme, accomplished by in-person service delivery through the modernization of service definitions, will over time save providers money and improve the health and safety of those they serve.

Between March and May 2016, the Department sought comment on the drafted rules from stakeholder roundtable groups, made up of service providers who have direct knowledge of these services and an interest in how they are regulated, and also held in-person meetings. Participants included an addictions roundtable, a mental health roundtable, and a prevention roundtable. From these distributions, the Department received valuable input that proved crucial to the development of the rule package. Stakeholder recommendations, for example, led to the combination of three formerly separate services, resulting in increased efficiency. In addition, both the videoconferencing and eligible provider rules are the result of direct stakeholder requests for a simplified approach.

During the first CSI public comment period, seven comments were submitted. After preparing detailed responses to each comment, the Department made revisions to several rules. To provide stakeholders ample opportunity to review the newly revised rules and provide recommendations, it then established a second CSI public comment period, during which five comments were submitted. The Department subsequently provided the CSI Office with responses to each of these comments, detailing revisions it had made to the rules to implement stakeholder recommendations, as well as its rationale for not implementing others. While the Department made revisions to several rules, some

key revisions include reverting to original language allowing providers to fulfill documentation requirements through either written narratives or standard checklists, rather than eliminating the option of using checklists, as was proposed in the first draft of the amended rules; removing an unnecessary rule regarding methadone administration, in light of changes to the methadone licensing program that are currently pending; and more closely aligning, when appropriate, behavioral health language between OhioMHAS and ODM.

After reviewing the Department's response to comments, the CSI Office recommended further revisions to eight rules, all of which the Department implemented. Many of these suggested revisions were technical in nature and aimed at ensuring consistency, readability, and accurate referencing. In addition, the CSI Office requested more thorough rationale regarding two specific scenarios about which it had lingering concerns. The Department responded with detailed explanations supporting its position to leave the two rules as-is. Regarding the first scenario, the Department clarified that it does not require that mental health day treatment services be limited to a "group" service because it wants to allow for occasional individual interactions. While the service is typically delivered in a group setting, and ODM only reimburses for group treatment, OhioMHAS maintains that individual needs often require a one-on-one service for a short time. Allowing both individual and group services provides flexibility to providers to move between the two settings. The difference between the OhioMHAS and ODM rules is a result of ODM, as a specific paying source, having more stringent requirements than OhioMHAS, which is agnostic to payer. Regarding the second scenario, the Department confirmed that in its rule regulating interactive videoconferencing, a requirement for providers to own or have access to a physical location in Ohio where individuals can opt to receive services can be satisfied by contracting or having a memorandum of understanding with another provider in the state, if the videoconferencing provider does not have a location of its own in Ohio.

The CSI Office considers all concerns to have been satisfactorily addressed and determines the purpose of the rules to be justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Mental Health and Addiction Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Emily Kaylor, Lt. Governor's Office