



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Mental Health and Addiction Services (OhioMHAS)

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Regulation/Package Title (a general description of the rules' substantive content):

Certification definitions and procedures

Rule Number(s): O.A.C. 5122-24-01; O.A.C. 5122-25-01, -02, -03, -04, -05, -06, -07, -08, -10, -11, and -12; O.A.C. 5122-26-01, -02, -03, -04, -06, -08, -08.1, -09, -11, -12, -13, -14, -15, -17, -18, -20, -21, -22; O.A.C. 5122-27-01, -02, -03, -04, -05, -06, -07; O.A.C. 5122-28-01, -02, -03, -04, -05; rescinded only: 5122-29-30 and 5122-29-31

Date of Submission for CSI Review: October 1, 2024

Public Comment Period End Date: November 1, 2024

Rule Type/Number of Rules:

New/ 29 rules

Amended/ 10 rules (FYR? Yes)

No Change/ 2 rules (FYR? Yes)

Rescinded/ 26 rules (FYR? Yes)
[updated on 10/11/2024 to include 5122-29-30 and -31, which had inadvertently been excluded in the prior BIA]

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

OhioMHAS is conducting a five-year review of rules in O.A.C. ch. 5122-24 and 5122-25, as well as associated rules in ch. 5122-26 through 5122-28 since rules within these chapters cross-reference each other in several places. Updated 10/11/2024: OhioMHAS inadvertently excluded 5122-29-30 and -31 from the original BIA. These two rules must be rescinded because their content is being moved to other rule numbers as noted in the table, below. The content of those two rules should not be in O.A.C. ch. 5122-29 as that chapter is devoted to OhioMHAS's certifiable community behavioral health services.

Many of the changes OhioMHAS is proposing to these rules result from changes to statutes made by the budget bill for the 2024-2025 biennium, H.B. 33 of the 135th General Assembly. As explained in the H.B. 33 final analysis (beginning on p. 458), the act eliminated deemed status—an option to have a provider's certifiable services and supports accredited by a national accrediting organization in lieu of having OhioMHAS determine whether its standards for certification have been satisfied. Instead, the act generally requires a provider to hold national accreditation *as part of* qualifying for OhioMHAS certification. These changes to statutes required OhioMHAS to undertake a significant re-write of the rules in O.A.C. ch. 5122-25 in particular.

In summary:

Rule Number	Title	Amended, No Change, New, or Rescind/New	Summary
5122-24-01	Certification definitions	Amended	<p>Adds a definition for “community behavioral health services provider,” defined to mean a “community addiction services provider” or “community mental health services provider” as defined in Ohio Revised Code (R.C.) 5119.01.</p> <p>Makes grammatical corrections as well as stylistic changes to reflect drafting standards in the <i>Rule Drafting Manual</i>.</p>
5122-25-01	Applicability	Rescind/New	<p>Rescinds the current version and replaces it with a provision that specifies that O.A.C. ch. 5122-25 applies to community behavioral health services providers (see above), individuals who are not covered by an exemption in R.C. 5119.35(B) and who provide one or more of OhioMHAS’s certifiable services or supports, and federally qualified health centers (FQHCs) and FQHC look-alikes when the FQHCs or FQHC look-alikes provide certain listed certifiable services and supports as part of the FQHC or FQHC look-alike designation as “out of scope.” Also specifies when the rules do not apply to FQHCs and FQHC look-alikes.</p> <p><u>Please note:</u> the “rescind/replace” technique was employed throughout this chapter per the <i>Rule Drafting Manual</i>, which specifies that any time an agency amends more than 50% of a rule, the agency must rescind the existing rule and enact a new rule in its place.</p>
5122-25-02	Certification procedure – initial application	Rescind/New	<p>Rescinds current version pertaining to deemed status.</p> <p>Due to the H.B 33’s enactment of a requirement that providers generally hold national accreditation <i>as part of</i> qualifying for certification by OhioMHAS (in place of the prior law option to have a provider’s certifiable services and supports nationally accredited in lieu of OhioMHAS determining whether its certification standards had been satisfied (“deemed status”)), implements new certification procedures based on the type of application being submitted. New 5122-25-02 applies to an applicant seeking initial certification.</p>
5122-25-03	Certification procedure – update application	Rescind/New	<p>Rescinds current version pertaining to non-deemed status.</p> <p>Due to the H.B 33’s enactment of a requirement that providers generally hold national accreditation <i>as part of</i> qualifying for certification by OhioMHAS (in place</p>

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			of the prior law option to have a provider's certifiable services and supports nationally accredited in lieu of OhioMHAS determining whether its certification standards had been satisfied), implements new certification procedures based on the type of application being submitted. New 5122-25-03 applies to an applicant seeking to update its certification with OhioMHAS at any time before renewal (i.e., in the midst of a certification term).
5122-25-04	Certification procedure – renewal application	Rescind/New	<p>Rescinds current version pertaining to the certification procedure for deemed status.</p> <p>Due to the H.B 33's enactment of a requirement that providers generally hold national accreditation <i>as part of</i> qualifying for certification by OhioMHAS (in place of the prior law option to have a provider's certifiable services and supports nationally accredited in lieu of OhioMHAS determining whether its certification standards had been satisfied ("deemed status")), implements new certification procedures based on the type of application being submitted. New 5122-25-04 applies to an applicant seeking to renew certification for one or more of OhioMHAS's certifiable services and supports.</p>
5122-25-05	Determination of certification status by department	Rescind/New	<p>Rescinds current version pertaining to interim certification. (This topic is moved to 5122-25-06.)</p> <p>Specifies the next step in the certification process so that readers can follow, step-by-what, what is to occur after OhioMHAS receives an application for any type of certification (initial, update, or renewal). While experienced providers are aware of this step, it was explicitly stated in its own rule for new providers and the public at large.</p>
5122-25-06	Interim certification	Rescind/New	<p>Rescinds current version pertaining to waivers and variances. (This topic is moved to 5122-25-10.) Currently, interim certification is addressed in rule 5122-25-05.</p> <p>The new rule is dedicated solely to interim certification, whereas the current rule addresses interim, probationary, and full in one rule. Also, the new rule:</p> <p>--Defines "interim certification" and specifies the circumstances under which OhioMHAS may determine that an applicant for certification of certifiable services and supports qualifies for interim certification. The circumstances are being aligned with</p>

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			<p>new requirements in H.B. 33 (e.g., since H.B. 33 requires accreditation as part of qualifying for OhioMHAS certification).</p> <p>--Specifies that an interim certification terminates after 180 days of issuance in all circumstances, but authorizes an extension of one additional 180-day period. (The current rule authorizes two extensions, but specifies that an extension for emergency purposes expires after 90 days.)</p>
5122-25-07	Full certification	Rescind/New	<p>Rescinds current version pertaining to denial, revocation, and termination of certification. (These topics are moved to 5122-25-11.) Currently, full certification is addressed in rule 5122-25-05.</p> <p>The new rule is dedicated solely to full certification, whereas the current rule that addresses this topic also addresses interim, probationary, and full in one rule. Also, the new rule defines “full certification” and specifies the circumstances under which OhioMHAS may determine that an applicant for certification of certifiable services and supports qualifies for full certification. The circumstances are being aligned with new requirements enacted by H.B. 33 (e.g., since H.B. 33 requires accreditation as part of qualifying for OhioMHAS certification).</p>
5122-25-08	Probationary certification	Rescind/New	<p>Rescinds current version pertaining to fees. (This topic is moved to 5122-25-08.) Currently, probationary certification is addressed in rule 5122-25-05.</p> <p>The new rule is dedicated solely to probationary certification whereas the current rule that addresses this topic also addresses interim, probationary, and full certification in one rule. Also, the new rule:</p> <p>--Defines “probationary certification” and specifies the circumstances under which OhioMHAS may determine that an applicant for certification of certifiable services and supports qualifies for probationary certification. The circumstances are being aligned with new requirements enacted by H.B. 33 (e.g., since H.B. 33 requires accreditation as part of qualifying for OhioMHAS certification).</p> <p>--Specifies that probationary certification may be extended for a single 120-day period. (The current rule does not limit the number of extensions.)</p>
5122-25-10	Waivers and variances	New	<p>Specifies the circumstances under which OhioMHAS may grant a waiver or variance from any certification standard or portion thereof. (This topic is being moved</p>

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			to its own rule from rule 5122-25-06.) The only substantive change from the current rule is that the new rule prohibits OhioMHAS from granting a waiver or variance from any statutory mandate.
5122-25-11	Refusal and revocation of certification	New	Specifies the circumstances under which OhioMHAS may refuse to certify certifiable services and supports, refuse to renew certification, or revoke certification. (This topic is being moved from rule 5122-25-07.) The circumstances are being aligned with new requirements enacted by H.B. 33.
5122-25-12	Certification fees	New	Specifies the fees for initial certification, update certification, and renewal certification. (The topic of fees is being moved from rule 5122-25-08.) Since H.B. 33 eliminated deemed status, OhioMHAS had to modify its fee structure.
5122-26-01	Purpose	No Change	Specifies that O.A.C. chapter 5122-26 rules state the requirements for written policies and procedures for providers that provide addiction treatment or mental health services and activities.
5122-26-02	Applicability	Rescind/New	H.B. 33 generally requires all community addiction services providers and community mental health services providers to hold OhioMHAS certification for certifiable services and supports. This rule is accordingly being modified to specify that O.A.C. chapter 5122-26 rules apply to (1) a community behavioral health services provider (see definition in amended 5122-24-01) that provides one or more mental health or drug addiction services, known as OhioMHAS's "certifiable services," that are specified in O.A.C. chapter 5122-29 and (2) an individual who is not covered by an exemption in R.C. 5119.35 and who provides one or more OhioMHAS's certifiable services.
5122-26-03	Governing body and governance	Rescind/New	Requires each provider to have a leadership structure and specifies requirements concerning governance. The substance of this rule is not substantially changing. Rather, the rule is being reorganized and modified to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.
5122-26-04	Policy and procedure manual	Amended	Requires each provider to develop and comply with a written manual of policies and procedures regarding all activities of the provider and services delivered by the

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			provider. Makes stylistic changes to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.
5122-26-06	Human resources management	Rescind/New	The substance of this rule is not substantially changing. Rather, the rule is being reorganized and modified to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission. Requires each provider to have human resources policies, procedures, and processes; a job description for each position; verification that employees and contractors have mandated licenses, etc.; criminal records checks; orientation training; and other items related to hiring of contractors and employees.
5122-26-08	Confidentiality	Rescind/New	The substance of this rule is not substantially changing. Rather, the rule is being reorganized and modified to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission. Requires a provider to have a written policy on staff member access to, and disclosure of, an individual client's records, treatment information, diagnosis, or other protected health information. Specifies that storage of client records is to be in accordance with all applicable federal and state laws and regulations.
5122-26-08.1	Security of clinical records systems	Amended	The substance of this rule is not substantially changing, other than to add a provision requiring that policies and procedures for providers maintaining an electronically-stored clinical records system are to include multi-factor authentication, consideration of security of records outside of electronic health records and transfer of EHRs when operations cease. Makes stylistic changes to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.
5122-26-09	Provider service plan	Amended	The substance of this rule is not substantially changing. Rather the rule is being reorganized and modified to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission. Requires a provider to: --Define, in writing, its mission, vision, and goals; --Develop a written description of each service the provider provides; --Specify, in writing, which services it offers through referrals or affiliations with other providers; and

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			<p>--Develop a policy concerning how often it will revise and update each service description.</p> <p>--Also requires that a provider service plan be available for review by persons served and others, and available through certain formats.</p>
5122-26-11	Continuity of care agreements	Amended	The substance of this rule is not substantially changing. Rather the rule is being reorganized and modified to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission. Requires each provider designated by an ADAMHS board to screen, refer, or admit persons to a state-operated psychiatric hospital to have a signed continuity of care agreement.
5122-26-12	Environment of care and safety	Rescind/New	The substance of this rule is not substantially changing, other than to make paragraph (A) (the purpose statement) more consistent with the similar rule that applies to private psychiatric hospitals (5122-14-10); require that a provider's written policies and procedures on emergency situations include what is to be done in active shooter situations; require tornado drills to be conducted at least semiannually; and require providers to keep documentation regarding their regular walk-through and safety inspections.
5122-26-13	Incident notification and risk management	Rescind/New	<p>The substance of this rule is not substantially changing, other than to (a) remove references to O.A.C. 5122-26-16.2 (which was rescinded effective 10/20/2023) and appendix B, which will be rescinded in this package and (b) require that if more than one category of incident is applicable per occurrence, then all categories are to be reported in the same report. Through Appendix A, OhioMHAS is proposing to add to the list of reportable incidents the following:</p> <p>--Suicide attempt; --Accidental overdose, survived</p> <p>--Medication diversion; --Selling drugs on premises;</p> <p>--Missing/unaccounted for medication; and</p> <p>--Away without leave (AWOL).</p> <p>OhioMHAS is also proposing to add "death of a client resulting from accidental or unintentional overdose" as a subcategory under "Accidental death."</p>
5122-26-14	Provider closing or acquisition	Rescind/New	Requires a provider that intends to voluntarily close to provide each client with written notice of the closure as soon as practicable, but not less than 60 (rather than 30) days before the intended date of closure. Other parts of the rule are not substantially changing. The rule is being reorganized and modified to reflect

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			drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.
5122-26-15	Medication handling and theft	Amended	Clarifies when this rule applies, updates cross-references to other Revised Code sections, adds a provision regarding when a provider does not permit medications onsite, and reorganizes and modifies the rule to reflect drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission. Requires each provider to have written policies and procedures regarding the purchasing, receipt, storage, distribution, return, and destruction of medication that include accountability for and security of prescription and over-the-counter medications located within any of its facilities.
5122-26-17	Service accessibility and availability	Rescind/New	The substance of this rule is not substantially changing, other than to add a provision requiring the provider's policies, procedures, and processes regarding accessibility and availability of services to specify the steps the provider takes to comply with the appropriate title of the Americans with Disabilities Act.
5122-26-18	Client rights and grievance procedure	Amended	This rule requires each provider to have a written client rights policy, a written client grievance procedure, and a policy for maintaining for at least two years from resolution records of client grievances. The substance of this rule is not substantially changing, other than to (a) add that a client has a right to reasonable protection from sexual exploitation; (b) add that the right to confidentiality of communications and personal identifying information includes, with respect to an adult client receiving substance use disorder services described in 5122-29-09, the right to write or receive uncensored, unopened correspondence subject to the provider's rules on contraband; (c) add that the right to confidentiality of communications and personal identifying information includes, with respect to a minor client receiving residential SUD services described in 5122-29-09, the right to write or receive mail subject to the provider's rule regarding contraband and directives from the minor's parent or legal guardian; and (d) add that at least one person to whom the client may give the grievance will be on site during a core number of hours each day the provider is open and one or more advocates will be available onsite or through videoconferencing or other virtual means.

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5122-26-20	Eligible providers and supervisors	New	This is current 5122-29-30 being renumbered to 5122-26-20. The proposed rule also removes the majority of material about qualified behavioral health specialists and moves that content to 5122-26-21. This rule specifies that individuals are eligible to provide, as well as supervise within their professional scope of practice, those services certified by OhioMHAS and listed in O.A.C. chapter 5122-29. Also specifies that licensed, certified, or registered individuals must comply with current applicable scope of practice, supervisory, and ethical requirements identified by appropriate licensing, certifying, or registering bodies.
5122-26-21	Qualified behavioral health specialists	New (content moved from part of 5122-29-30)	<p>Requires an individual seeking to become a qualified behavioral health specialist to:</p> <ul style="list-style-type: none"> --Meet certain age and secondary school requirements; --Complete at least 40 hours of education or training, or a combination of both, in certain topic areas prior to or within 90 days of hire; --Demonstrate the ability to do certain activities and refrain from certain activities prior to or within 90 days of hire; and --Complete a minimum of 30 hours of continuing education every two years to include at least three hours in ethics and boundaries. <p>Also requires a QBHS to be supervised at all times by a licensed professional qualified to supervise the provision of services within the professional's scope of practice who holds a master's degree in a field related to the provision of such services. Clarifies that supervision is sufficient if the supervising professional is available to the QBHS on-site or through teleconferencing or videoconferencing.</p> <p>Also requires a QBHS's employer to maintain a supervision log that contains the date and time of supervision and a summary of topics discussed.</p>
5122-26-22	Telehealth	New (content moved from 5122-29-31)	The substance of this rule is not substantially changing. Most small changes are to conform the rule to drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.
5122-27-01	Applicability	Rescind/New	H.B. 33 enacted a requirement that a person or government entity, as a condition of providing a mental health or alcohol or drug addiction service in Ohio, must be certified by OhioMHAS to provide that service. Accordingly, this new rule specifies that rules in O.A.C. chapter 5122-27 apply to all of the following: (a) A community behavioral health provider

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			that provides one or more mental health or alcohol and drug addiction services, known as OhioMHAS's "certifiable services," specified in O.A.C. chapter 5122-29; (b) An individual who is not covered by an exemption in R.C. 5119.35 and who provides one of OhioMHAS's certifiable services; (c) A provider seeking licensure as an opioid treatment program in accordance with O.A.C. chapter 5122-40.
5122-27-02	Individual client record requirements	Rescind/New	The new proposed rule specifies minimum client record requirements and differing client record requirements for behavioral health hotline service, forensic evaluation service, prevention services, general services, and driver intervention program. These latter requirements are currently in other rules and are being consolidated here.
5122-27-03	Treatment planning	Rescind/New	The substance of this rule is not substantially changing, other than (a) to require a comprehensive individualized treatment plan to contain the client's ASAM level of care if the client is receiving addiction services treatment; (b) accept electronic signatures of the staff member responsible for developing the comprehensive individualized treatment plan and their clinical supervisor; and (c) to require a comprehensive individualized treatment plan to be reviewed every 90 days if the client receives residential and withdrawal management substance use disorder services or SUD case management services.
5122-27-04	Progress notes	Rescind/New	The substance of this rule is not substantially changing, other than to require that the clinician who prepares the progress notes be credentialed to provide all services documented in the daily notes and to accept the electronic signature of the clinician who prepares the progress notes.
5122-27-05	Treatment summary	Rescind/New	The substance of this rule is not substantially changing, other than to require that a discharge summary must specify any recommendations the provider made to the client associated with the client's comprehensive individualized treatment plan, including recommendations for where to seek crisis care or emergency services or referrals to other community resources and to accept the electronic signature of the provider staff member who prepares the discharge summary.
5122-27-06	Release of information	Rescind/New	The substance of this rule is not substantially changing, other than to update the information that must be specified under federal law (see paragraph (B)(10)).

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5122-27-07	Addiction treatment level of care	Amended	The substance of this rule is not substantially changing. The small changes are to conform the rule to drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.
5122-28-01	Purpose	No Change	Specifies that the purpose O.A.C. chapter 5122-28 is to state the requirements and procedures for performance improvement activities, consumer outcome activities, and research activities for providers providing mental health and addiction services.
5122-28-02	Applicability	Rescind/New	To make this rule more consistent with 5122-2501, 5122-26-01, and 5122-27-01, as well as in consideration of certification changes made by H.B. 33, specifies that rules in O.A.C. chapter 5122-28 apply to all of the following: (a) A community behavioral health services provider that provides one or more mental health or alcohol and drug addiction services, known as OhioMHAS's certifiable services," that are specified in O.A.C. chapter 5122-29; (b) An individual who is not covered by an exemption in R.C. 5119.35 and who provides one or more of OhioMHAS's certifiable services; (c) A provider licensed as an opioid treatment program in accordance with O.A.C. chapter 5122-40; and (d) A class one residential treatment facility as described in R.C. 5119.34(B)(1).
5122-28-03	Performance improvement Appendix A - new	Amended	<p>This rule is being combined with 5122-28-04 and adds an appendix (appendix A).</p> <p>Under the new proposed rule, a provider is to develop a written performance improvement plan. The provider must take an ongoing, systematic approach when developing its plan and ensure that the plan includes certain elements. The new proposed rule also requires a provider to report data, statistics, and other information to OhioMHAS on OhioMHAS's request for purposes of OhioMHAS's responsibilities under R.C. 5119.61.</p>
5122-28-04	Consumer outcomes	Rescind	This rule is being rescinded and the content of it is being combined into 5122-28-03. The current rule requires providers to use a system to measure consumer outcomes.
5122-28-05	Research and evaluation activities	Amended	The substance of this rule is not changing. The small changes are to conform the rule to drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.

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5122-29-30	Eligible providers and supervisors	Rescind	This rule is being rescinded because the content regarding eligible providers and supervisors is moving to rule 5122-26-20. The content regarding QBHSs is moving to 5122-26-21.
5122-29-31	Telehealth	Rescind	This rule is being rescinded because the content is moving to rule 5122-26-22. The substance of this rule is not substantially changing. Most small changes are to conform the rule to drafting standards in the Rule Drafting Manual published by the Ohio Legislative Service Commission.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authorized by R.C. 5119.10 and 5119.36; amplifies R.C. 5119.36

**4. 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” is the answer to both questions.

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

6. 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)?

OhioMHAS is required by R.C. 5119.36 to adopt rules regarding the certification of community mental health and addiction services providers to improve the quality of certifiable services and supports or the health and safety of persons receiving certifiable services and supports.

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

OhioMHAS reviews the work of certified providers and monitors the field through outcomes data reported by providers.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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 proposed rules were posted to OhioMHAS's Draft Rules web site on February 16, 2024. A notice regarding the posting was sent to several hundreds of stakeholders subscribing to receive OhioMHAS's administrative rules bulletins.

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

5122-25-01 - Kelly Carey, Ohio Association of Community Health Centers, proposed that OhioMHAS clarify that FQHCs offering behavioral health services within the scope of their FQHC designation are not subject to the rules in O.A.C. ch. 5122-25. OhioMHAS incorporated this change.

5122-25-02 – Several commenters asked that OhioMHAS remove the requirement in its draft that certification applicants submit their budgets. OhioMHAS removed this requirement.

5122-25-03 - Lesley Wimmer, Community Medical Services, asked that OhioMHAS add additional clarification regarding when an update application is to be used. OhioMHAS added such additional language.

5122-25-04 - Tracey Campbell asked that OhioMHAS clarify that a provider would not have to list as a physical site a school building where the provider does not maintain an office but merely provides services on the premises of a school. OhioMHAS incorporated this change.

Tracey also asked that contact information only be required for an applicant's board president, as it is cumbersome to provide contact information for all board members. In the new draft, OhioMHAS is proposing that contact information be provided only for three members of the applicant's board.

Several commenters asked that OhioMHAS remove the requirement in its draft that certification applicants submit their budgets. Similar to the -02 draft above, OhioMHAS removed this requirement.

5122-25-06 - Donna Sabo, DS Consulting, asked that OhioMHAS add a reference to a certification being revoked in accordance with 5122-25-11. OhioMHAS incorporated this change.

5122-25-08 – Several commenters pointed out that this rule referenced interim certification instead of probationary certification. OhioMHAS corrected this mistake.

5122-25-11 – Donna Sabo, DS Consulting, asked that paragraph (E) specify that a provider may not operate or provide certified services after the date OhioMHAS refuses or revoked certification. OhioMHAS clarified this point.

5122-26-03 – Jennifer Riha, IAMBOUNDLESS, asked that this rule be rescinded, commenting that R.C. Chapter 1702 already defines the requirements regarding board governance and responsibilities of non-profit corporations. This rule is specific to community behavioral health services providers and needs to be maintained.

5122-26-06 – Several commenters asked that this rule be clarified to allow for online verification. A change was made to accommodate for this in paragraph (D).

Several commenters asked that OhioMHAS not modify the background checks requirement regarding adult background checks (i.e., only require repeated background checks on individuals who serve children). OhioMHAS incorporated this change.

Alyssa Wren, OhioGuidestone, asked that paragraph (H) eliminate the requirement that orientation training be completed and documented with 30 days of the first date of employment. OhioMHAS is not incorporating this change, as OhioMHAS believes one month is a reasonable amount of time in which a provider can complete orientation training and, from a consumer protection standpoint, clients should be served by employees who have had their orientation completed.

Tracey Campbell, Firelands Health, asked that the continuing education requirement be restated to specify that primary responsibility is on the supervisor. Instead of this change, OhioMHAS clarified continuing education requirements for non-licensed staff who are not QBHSs, QBHSs, and licensed staff.

Teresa Lampl, The Ohio Council, said it was not clear if OhioMHAS intended for paragraph (J)(1)(b) to apply to administrative, non-licensed staff or if OhioMHAS was signaling its intent to develop a QBHS credential. As stated above, OhioMHAS clarified the continuing education requirements for non-licensed staff who are not QBHSs, QBHSs, and licensed staff.

Tracey Campbell, Firelands Health, asked that the rule specify that the provider does not need to provide hard copies of all referenced HR policies. OhioMHAS is not making this

change as Licensure & Certification believes employees need to receive hard copies.

Jennifer Riha, IAMBOUNDLESS, asked that copies of awards not be required for a personnel file. OhioMHAS incorporated this change by removing (L)(1)(j).

5122-26-12 – Donna Sabo, DS Consulting, asked that more details be required for disaster preparedness plans. OhioMHAS changed this requirement to specify that each provider must have an established plan that is consistent with federal and state EMA requirements.

Donna also asked that the rule specify frequency of training. OhioMHAS incorporated this change.

5122-26-13 App. A – Teresa Lampl, The Ohio Council, asked that OhioMHAS file the rule using “track changes” to show changes being made from the current appendix. OhioMHAS is not making this change as the marked up copy looks messy. A clean copy is easier to read and is encouraged by Register of Ohio staff.

Some commenters asked that the six additional reporting requirements be removed. As a compromise, OhioMHAS clarified that the reporting for suicide attempts and diversion of drugs will be limited to class 1 residential facilities and SUD residential facilities. OhioMHAS also changed the reference from “overdose” to “alleged overdose, survived.”

5122-26-17 – Tracey Campbell, Firelands Health, asked that a reference to an individual’s guardian be added in paragraph (A). OhioMHAS incorporated this change.

Jennifer Riha, IAMBOUNDLESS, said that paragraph (A) implies a provider is required to see a patient referred to them by a psychiatric inpatient setting within two weeks of discharge. License and Certification clarified that this requirement is for existing clients.

5122-26-18 – Some commenters asked that OhioMHAS make changes regarding when a client advocate has to be available and how. OhioMHAS made changes to this rule, specifying that client advocate must be available for a core number of hours each week either for in-person meetings or meeting through videoconferencing. If the provider makes the advocate available through videoconferencing, the provider has to provide the space and technology for the individual to meet with the advocate through videoconferencing.

5122-26-22 – Tracey Campbell, Firelands Health, asked that a reference to synchronous telehealth be added in paragraph (O)(2). OhioMHAS incorporated this change.

Zach Holzapfel, Hicks Partners, LLP, and Kyle Zebley, ATA Action, asked that, for purposes of paragraph (Q), providers be given the option of having the ability to refer patients to a physical site in Ohio. OhioMHAS believes that each provider have at least one physical location in Ohio or have access to a physical site in Ohio where individuals may opt to receive in-person services rather than telehealth services.

5122-27-03 – Jennifer Riha, IAMBOUNDLESS, asked that “description” be removed from paragraph (B). OhioMHAS is not making this change, as it believes the patient has the right to know the service they will be receiving.

Jennifer Riha also asked that the proposed requirement to update the plan when the anticipated period of treatment has passed be removed. She said it is not uncommon for treatment to be shorter or longer than anticipated. OhioMHAS is not making this change. Providers need to identify how frequently the services will be provided. If the review part is removed, there could be no review and up updates will occur. As a result, there is no evaluation of medical necessity.

Teresa Lampl, The Ohio Council, asked that electronic signatures be acceptable for purposes of paragraph (B)(7). OhioMHAS is incorporating this change.

Some commenters asked that OhioMHAS consider changing the requirement for a supervisor’s signature in paragraph (B)(7). OhioMHAS is addressing the request by authorizing electronic signatures to be acceptable.

Jennifer Riha, IAMBOUNDLESS, asked that paragraph (E) be modified to remove the requirement that every person who participated in the plan document be listed. OhioMHAS is modifying the language to allow for this documentation to be in the plan or clinical record.

Teresa Lampl, The Ohio Council, asked that paragraph (D) be modified to restore the language requiring completion of SUD case management plans every 90 days consistent with federal targeted case management regulations. OhioMHAS is incorporating this change.

5122-27-04 – Teresa Lampl, The Ohio Council, asked that language in paragraph (B) to allow for weekly documentation be restored. OhioMHAS incorporated this change.

5122-27-05 – Some commenters asked that paragraph (B)(6) be modified, saying this was administratively burdensome because clients receive multiple services in every episode of care. OhioMHAS modified this requirement to go back to the current language.

Jennifer Riha, IAMBOUNDLESS, asked that (B)(4) be modified as EHRs are not configured to include initial diagnosis on a discharge document. OhioMHAS modified this requirement to specify that only the final diagnosis will be required. She also asked that (B)(5) be eliminated. OhioMHAS eliminated this provision.

5122-27-06 – Some commenters asked that paragraph (B)(10) be modified to align with updated federal requirements (42 C.F.R. part 2). OhioMHAS incorporated this change.

11. 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 proposed rules are based on experience with behavioral health accreditation standards, industry practice, and statutory requirements.

12. 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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

Based on internal review and stakeholder feedback, OhioMHAS believes the current regulatory scheme is serving its intended purposes and is not in need of alternatives at this time.

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

The General Assembly authorized OhioMHAS, as the regulator of behavioral health services in Ohio, to adopt rules under R.C. 5119.36(K). OhioMHAS closely reviewed R.C. 5119.36 and other sections in R.C. Chapter 5119. to ensure the rules align with statute.

14. 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.

This is a five-year review of existing rules. The changes OhioMHAS is proposing will be communicated to the stakeholder community prior to implementation. Beyond the rule renewal, rules are applied consistently through OhioMHAS's Bureau of Licensure and Certification during surveys to issue initial certifications, renew existing certifications, or investigate complaints.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

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

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.

- a. The impacted business community includes all providers of community addiction and mental health services.
- b. The primary impact is through fees for certification; however, providers' employees will also spend time ensuring compliance with the rules.

The primary adverse impact in this rule package will be the certification fee changes. In the main appropriations act for the 135th General Assembly, H.B. 33, the General Assembly eliminated deemed status and, instead, generally required that providers hold national accreditation *as part of* qualifying for OhioMHAS certification. This change necessitated a modification of OhioMHAS's fee structure for community behavioral health services. To align with changes to new proposed rules -02, -03, and -04, the new proposed fee rule specifies a base fee for initial certification, update certification, and renewal certification and then a flat per service fee for each service or support for which national accreditation does not exist for the service or support as determined by OhioMHAS.

OhioMHAS has not changed its fees since 2016. Due to inflation and rising resource costs, OhioMHAS is proposing the changes to defray the costs of surveys and providing technical assistance. Even with these changes, the fees do not cover the full cost of compliance monitoring. OhioMHAS is proposing to charge a base fee for all providers, regardless of whether all, some, or none of the services provided by a particular provider need to be accredited. This table compares the current fee rule with the proposed changes:

Provider Type	Current Fee Structure	Proposed Fee Structure
Community Behavioral Health Services	<p>For providers with national accreditation for all certified services: \$0 fee for initial, renewal, and update applications</p> <p>For providers with no national accreditation and/or a mix of nationally accredited & non-nationally accredited services: A minimum \$1000 plus either \$100 or \$200 based on specific certified services for initial, renewal, and update applications</p>	<p>All Providers*:</p> <p>Initial Application:</p> <p>\$1000 base plus \$100 for services with national accreditation \$200 for services without national accreditation**</p> <p>Update Application: (no base fee) \$100 for services with national accreditation</p>

		<p>or \$200 for services without national accreditation*</p> <p>3 year Renewal Application: (no base fee)</p> <p>\$75 for services with national accreditation</p> <p>\$150 for services without national accreditation</p> <p>*Exempt from Certification Fees Peer Recovery Organizations</p> <p>**There are 8 services without national accreditation standards</p>
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16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

OhioMHAS is reorganizing the rules in O.A.C. ch. 5122-25 not only to align with the requirements enacted by H.B. 33 of the 135th General Assembly, but also to be easier to follow based on whether a provider is applying for initial, update, or renewal certification. For the ease of certain providers, the rules clarify when they do not apply to federally-qualified health centers (FQHCs) and federally-qualified health center look-alikes (FQHC look-alikes). For the ease of all providers, especially newer ones, as well as the public at large, OhioMHAS is including the -05 rule so that providers can follow, step-by-what, what is to occur *after* OhioMHAS receives an application for any type of certification (initial, update, or renewal). The reorganization, then, outlines the sequence of events that occur in the certification application and review process.

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

OhioMHAS is required by R.C. 5119.36(L), as amended by H.B. 33 of the 135th General Assembly, to implement rules to satisfy a variety of requirements associated with regulation of community behavioral health services providers, including establishing certification standards for certifiable services and supports that are consistent with nationally recognized applicable standards and facilitate participation in federal assistance programs (R.C. 5119.36(L)(2)).

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance. The rules are intended to protect the health and safety of clients. Peer run organizations and coalitions seeking certification for prevention services are exempt from certification fees.

19. 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?

OhioMHAS works with providers to educate and provide technical assistance. OhioMHAS works to fix problems rather than proceed with administrative penalties.

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

OhioMHAS intends to assist providers and make available educational resources about the upcoming changes.