



RULE MEMORANDUM

Date: October 1, 2024; updated 10/11/2024

To: Interested Constituents

From: Lisa Musielewicz, Staff Counsel

Subject: Proposed Rule Amendments – O.A.C. Chapters 5122-24 through -28; O.A.C. 5122-29-30 and -31

[Note: An updated version of this memorandum was prepared on 10/11/2024 due to O.A.C. 5122-29-30 and -31 missing from the original business impact analysis. Those two rule numbers need to be rescinded because the content of those rules is moving to other rule numbers as noted in the table, below.]

Pursuant to the requirements of Senate Bill 2 of the 129th General Assembly, OhioMHAS, along with other state agencies, must draft rules in collaboration with stakeholders, assess and justify any adverse impact on the business community (as defined by S.B. 2), and provide an opportunity for the affected public to provide input on the rules.

OhioMHAS is undergoing the five year review process for rules in Ohio Administrative Code (O.A.C.) chapters 5122-24 through -28 governing certification procedures for community behavioral health services providers. Many of the changes OhioMHAS is proposing to these rules result from changes to statutes made by the biennial budget bill for the 2024-2025 biennium, H.B. 33. 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. chapter 5122-25 in particular.

Earlier this year, OhioMHAS posted first drafts of these rules for public comment. Following OhioMHAS's review of the comments, second drafts have been prepared, as well as finalization of a draft fee rule (the fee rule is being renumbered from O.A.C. 5122-25-08 to 5122-25-12).



Please review these draft proposed rules and provide any comments you may have **by Friday, November 1, 2024, at 5 pm.** Comments may be sent through the link for the “Community Behavioral Health Services Certification – Procedure” rules on OhioMHAS’s Draft Rules web site: <https://mha.ohio.gov/rules-and-regulations/rules/draft-rules>. Rules submitted through that link will automatically be sent to OhioMHAS and the Common Sense Initiative (CSI) Office.

A summary of the rule changes is in the table below.

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</p>



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			agency amends more than 50% of a rule, the agency must rescind the existing rule and enact a new rule in its place.
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 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).</p>
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</p>



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			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.
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 new requirements in H.B. 33 (e.g., since H.B. 33 requires accreditation as part of qualifying for OhioMHAS certification).</p>



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			--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.)
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</p>



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			qualifying for OhioMHAS certification). --Specifies that probationary certification may be extended for a single 120-day period. (The current rule does not limit the number of extensions.)
5122-25-10	Waivers and variances	New	Specifies the circumstances under which OhioMHAS may grant a waiver or variance from any certification standard or portion thereof. (This topic is being moved 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.



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			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 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



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			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	<p>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.</p> <p>Requires a provider to:</p> <ul style="list-style-type: none">--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--Develop a policy concerning how often it will revise and update each service description. <p>--Also requires that a provider service plan be available for review by persons served and others, and available through certain formats.</p>



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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>



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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 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



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			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.
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)	Requires an individual seeking to become a qualified behavioral health specialist to: --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



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			<p>--Complete a minimum of 30 hours of continuing education every two years to include at least three hours in ethics and boundaries.</p> <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 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.



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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.



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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)).
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</p>



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			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.
5122-28-04	Consumer outcomes	Rescinded	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.
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.

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