

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-1-40

Rule Type: Amendment

Rule Title/Tagline: Electronic visit verification (EVV).

Agency Name: Ohio Department of Medicaid

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 9/26/2024
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5164.02
5. **What statute(s) does the rule implement or amplify?** 5164.02
6. **What are the reasons for proposing the rule?**

The rule is being amended to eliminate requirements to collect verification from the individual receiving services and the requirements to complete mandatory training, providing additional flexibility for providers who are required to use EVV.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The amended rule provides definitions of terminology unique to the Electronic Visit Verification (EVV) implementation, specifies services subject to EVV requirements, establishes operational requirements for providers of those services and outlines the

regulatory foundation for using an alternate data collection component from what is provided by the Department.

The changes in the rule eliminate requirements to collect verification from the individual receiving services and to complete mandatory training, providing additional flexibility for providers who are required to use EVV.

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The technical specifications and business requirements for alternate EVV systems are readily available on the Ohio Department of Medicaid website.

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0

No impact on the amount spent for home and community based services is anticipated as utilization is not expected to change.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Because the costs will vary significantly based on provider business choices, processes and volume, and because the department does not have access to information related to the costs incurred by impacted providers, we are unable to provide a reasonable estimate costs per provider.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable

III. Common Sense Initiative (CSI) Questions

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **Does this rule have an adverse impact on business? Yes**
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**
 - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**
 - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

Providers impacted by the amended rule may have incurred administrative expenses associated with reporting information using EVV. The information reported includes demographic information about the individuals served and, for agency providers, for the direct care workers they employ. Impacted providers will use EVV to record the start and end of the visit, the individual receiving the service, and the service provided. Finally, providers are required to use the EVV system to clear data integrity errors (exceptions) in order to ensure that the EVV system accurately reflects the services provided through Medicaid programs operated by ODM, DODD and the Ohio Department of Aging (ODA). Providers are also required to notify Sandata when devices are no longer being used, triggering the Sandata device recovery process and to request replacement devices in the event of device failure. Providers must also report to ODM known or suspected tampering of devices or falsification of EVV data. If use of an alternate data collection component is requested by a provider, the provider must satisfy all the technical and business requirements of ODM. If an alternate data collection component is not approved by ODM, a provider may request an administrative reconsideration.

A provider who fails to comply with EVV requirements may be subject to termination of its provider agreement.

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes

Administrative costs incurred by impacted providers pursuant to both the rescinded rule and the new rule will vary widely by provider. Demographic information related to individuals receiving services varies based on the number of Medicaid individuals served, business practices regarding client intake and discharge, the average duration of service for individuals served by the provider, and existing business practices regarding maintenance of demographic information regarding the individuals served. Demographic information related to direct care workers employed by the provider are only be recorded by agency providers and varies widely based on the number of individuals employed, current business practices regarding hiring and termination of employees and employee turnover rates.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding? 0

B. How many existing regulatory restrictions do you propose removing? 2

Deleted OAC Rule 5160-1-40(D)(1)(b)(viii) and (ix) required providers to collect a voice verification or an electronic signature from the individual receiving services.

Deleted OAC Rule 5160-1-40(F) required providers to complete EVV training.