

Rule Summary and Fiscal Analysis (Part A)**Ohio Department of Medicaid**

Agency Name

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Division

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5160-1-40

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Electronic Visit Verification (EVV).**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **5164.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5164.02**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The Ohio Department of Medicaid is proposing this rule to implement an Electronic Visit Verification (EVV) initiative for selected home and community based services in compliance with the 21st Century Cures Act enacted by Congress.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule provides definitions of terminology unique to the 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. This rule also outlines provider training requirements as determined by the Department and reasons for provider termination for non-compliance.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code (OAC). This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with Revised Code (RC) sections 121.171 to 121.74 pursuant to RC 121.76(A)(3). This rule also incorporates one or more references to information posted on the department's website.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Following the public hearing on Friday, November 17, 2017, ODM is making the following additional changes to proposed OAC Rule 5160-1-40 to address the concerns raised during testimony.

- 1) We are revising the requirements for alternate data collection systems to allow telephony as the primary method of data collection through December 31, 2018. This will give providers with existing systems additional time to transition to GPS.
- 2) Definitions have been added for Medicaid ID and Personal Identification Number to provide additional clarity in the list of required data elements for individuals and direct care workers.

After filing 5160-1-40, ODM continued to explore alternatives to address provider concerns identified in comments submitted to CSIO and ODM. As a result of that work, we are making the following changes to the proposed rule:

- 1) We are removing the requirement that times on claims match the visit times in the EVV system. This will significantly reduce the resources providers will need to invest in maintaining EVV visit data after implementation and will help ensure claims continue to get paid in a timely manner.
- 2) We are removing the references to the ODM website for required data elements and listing the elements in the body of the rule. The number of data elements is relatively small and can appropriately be accommodated in the body of the rule.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0.00

This rule will increase expenditures \$8,262,349 for the current biennium. However, the Department has anticipated and included this cost in the assumptions used to develop the department's baseline budget estimates.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

651685

651624

15.

Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Leading Age Ohio and The Ohio Council for Home Care and Hospice provided input into the cost to implement and maintain an EVV system provided by the department.

Below is an analysis of the annual cost for three representative home care providers in the state. The first is a medium provider with an average daily census of 1,100 Medicaid individuals for whom they are providing services, the next two are smaller providers with an average daily census of 90-100 Medicaid individuals in their care.

Training + E-mail + EVV Manager + Auto reconciliation Training + E-mail + EVV Manager + Manual reconciliation

Agency A \$987, 182 \$1,298,922

Agency B \$79,760 \$105,292

Agency C \$98,892 \$125,256

The Department recognizes there is a cost of compliance for EVV, however, assumptions in the above analysis assumes that employees of agencies and non-agency providers will require access to secure email accounts. Because email is only required for log-in to the device, which does not store data or personal information, a secure email is not required. Email access can be obtained at no cost through providers such as Gmail and Yahoo. The associations' estimate of a \$25/employee/month increased cost to allow for the secure email, is not a required cost of program compliance. If a provider chooses to obtain secure email access for employees, this is beyond the requirements for EVV implementation.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

EVV training must be completed before an agency or non-agency provider of selected home and community based services can enroll as a Medicaid provider. Current providers must complete the training to access the EVV system and bill for Medicaid covered services subject to EVV requirements. Providers subject to EVV must attend a free of charge, mandatory training available in three possible capacities; an in-person

training provided at various sites around the state, a self-paced training available online, or an instructor led webinar also available online. Agency providers can choose to use an alternate qualifying EVV system which is not at the expense of the state but which must be approved by the department prior to its use.

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? **Yes**

Failure to comply with requirements set forth in this rule may result in termination of the Medicaid provider agreement.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

Providers required to utilize EVV must comply with requirements regarding submission of visit information. Providers using the EVV data collection component provided by the department must notify the department or its designee when services will no longer be provided to an individual with an EVV mobile data collection device. Providers must also report to the department known or suspected tampering of devices and known or suspected falsification of EVV data.