

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-1-40

Rule Type: New

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?**
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?**

This new rule is being proposed for adoption in place of the current rule which is being proposed for rescission as the electronic visit verification (EVV) program has had programmatic and policy changes resulting in more than fifty percent of the current rule being revised. This rule builds on the original EVV program instituted in January 2018 as the Ohio Medicaid program took the initial steps toward compliance with the 21st Century Cures Act while providing transparency in service delivery and payment, ensuring that individuals receive the medically necessary services they need, and providing a tool to ensure appropriate reimbursement of providers. The new rule modifies the program in response to stakeholder feedback since the initial

implementation and expands the EVV program as Ohio takes the next steps toward full compliance with federal requirements set forth in the 21st Century Cures Act.

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

The 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 rule also outlines provider training requirements as determined by the Department and reasons for provider termination for non-compliance.

In addition, the new rule updates the provisions in the rescinded rule and takes the next step in achieving compliance with the 21st Century Cures Act by adding select services provided through the PASSPORT waiver administered by the Ohio Department of Aging (ODA), the Level One and Individual Options waivers administered through the Ohio Department of Developmental Disabilities (DODD) and through both traditional managed care and MyCare Ohio. In addition, the new rule incorporates an EVV data collection application software option which was added for the ease of visit information collection, giving further flexibility to the provider or direct care worker. Additionally, the 90 day exception to EVV requirements has been eliminated. References to Sandata as the Department's contractor were removed from the rule, reflecting stakeholder concern. The new rule also defines EVV data collection application, removes the definition of expected duration of service, removes unnecessary language, corrects terminology, rearranges paragraphs for better clarity and readability and updates paragraph numbering as appropriate.

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. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

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 121.71 pursuant to RC 121.76(A)(3). This rule also incorporates one or more references to information posted on the department's website. The cited material is generally available to persons affected by this rule in accordance with RC 121.75(E).

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

ODM updated an incorrect citation as identified by JCARR. The RSFAs for the EVV rule listed the incorrect authorizing statute. Incorrect ORC to question #4,119.03, was updated to be 5164.02.

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will increase expenditures.

\$57,000,000

The Department is investing approximately \$22 million (all funds) in development and implementation costs for the changes set forth in this rule. CMS is reimbursing the department for approximately 90% of the development cost. The work is nearing completion and payments have been made as deliverables have been accepted.

Operating costs for additional payers, programs and services will total approximately \$17.5 million per year (all funds). CMS will reimburse the department for approximately 75% of the operating costs.

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

Administrative costs incurred by impacted providers pursuant to 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 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. The capture of visit data and the effort to clear data integrity errors will vary based on the number of visits performed, the accuracy and compliance rates of providers and their staff when using EVV and current business practices used

to document the care provided in home and community based settings. Mandatory training is free of charge and will only be a cost of employee time. Reporting known or suspected tampering of devices or falsification of EVV data or requesting an administrative reconsideration will vary based on whether these situations apply to a provider and the circumstances.

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 of 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

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **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?** Yes

Medicaid providers of services subject to EVV requirements must complete mandatory training with respect to the EVV system requirements. Current providers complete training before they gain access to the system while new providers complete training before obtaining a Medicaid provider agreement. Prior authorization is required to use an alternate data collection component.

- 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 the requirements of this rule may lead to 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 impacted by the rule are required to report information related to services provided, the individual receiving services and, if applicable, the

individuals or employees providing the services. 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. In addition, for all impacted providers other than those providing services through waivers operated by the DODD, the provider must capture verification of the recorded information from the individual receiving services at the time the service is 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.