

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-1-40

**Rule Type:** Rescission

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

**Agency Name:** Ohio Department of Medicaid

**Division:**

**Address:** 50 Town St 4th floor Columbus OH 43218-2709

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#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 4/16/2024
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. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
  - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

State plan and Home and community-based services are integral to the provision of long-term services and supports. The rule chapter is a key component in compliance with the 21st Century Cures Act under Section 1903 of the Social Security Act (42 U.S.C. 1396b) and provides transparency in service delivery and payment, ensuring that individuals receive the medically necessary services they need, and that the

department reimburses providers appropriately for the services provided. The rule is being rescinded and replaced with four proposed rules in a new chapter dedicated to the Electronic Visit Verification program.

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

The rescinded and subsequent new rules provide definitions of terminology unique to the Electronic Visit Verification (EVV) implementation, specifies services subject to EVV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 to the rule provide additional flexibility and clarity for providers who are required to use EVV. The proposed rules reduce administrative burdens for providers.

**9. Does the rule incorporate material by reference? Yes**

**10. 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.**

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 RC 121.71 to 121.74 pursuant to RC 121.75.

This rule incorporates one or more references to the Revised Code. Such reference is exempt from compliance with incorporation by reference requirements pursuant to ORC 121.75.

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

The content of the rule has not changed, the rule was revised to correct issue of appearance of the CSIO files.

## **II. Fiscal Analysis**

**12. 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.

Not Applicable.

Not Applicable.

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

Providers impacted by the rescinded 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 the EVV requirements may be subject to termination of its provider agreement.

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

**15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

**16. 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**

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

**18. 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 rescinded 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 the 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 rules 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 Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**

**19. 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 to this rule? 0**

**B. How many existing regulatory restrictions do you propose removing from this rule? 108**

5160-01-40(A)(1) "Shall" to be removed

5160-01-40(A)(10) "Shall" to be removed

5160-01-40(A)(11) "Shall" to be removed

5160-01-40(A)(12) "Shall" to be removed

5160-01-40(A)(13) "Shall" to be removed

5160-01-40(A)(14) "Shall" to be removed

5160-01-40(A)(15) "Shall" to be removed

5160-01-40(A)(16) "Shall" to be removed

5160-01-40(A)(17) "Shall" to be removed

5160-01-40(A)(18) "Shall" to be removed

5160-01-40(A)(19) "Shall" to be removed

5160-01-40(A)(2) "Shall" to be removed

5160-01-40(A)(20) "Shall" to be removed

5160-01-40(A)(21) "Shall" to be removed

5160-01-40(A)(22) "Shall" to be removed

5160-01-40(A)(23) "Shall" to be removed

5160-01-40(A)(24) "Shall" to be removed

5160-01-40(A)(25) "Shall" to be removed

5160-01-40(A)(26) "Shall" to be removed

5160-01-40(A)(27) "Shall" to be removed

5160-01-40(A)(28) "Shall" to be removed

5160-01-40(A)(3) "Shall" to be removed

5160-01-40(A)(4) "Shall" to be removed

5160-01-40(A)(5) "Shall" to be removed

5160-01-40(A)(6) "Shall" to be removed

5160-01-40(A)(7) "Shall" to be removed

5160-01-40(A)(8) "Shall" to be removed

5160-01-40(A)(9) "Shall" to be removed

5160-01-40(B)(1) "Required" to be removed

5160-01-40(B)(2) "Required" to be removed

5160-01-40(B)(3) "Required" to be removed

5160-01-40(B)(4) "Required" to be removed

5160-01-40(B)(5) "Required" to be removed

5160-01-40(B)(6) "Required" to be removed

5160-01-40(B)(7) "Required" to be removed

5160-01-40(B)(8) "Required" to be removed

5160-01-40(B)(9) "Required" to be removed

5160-01-40(C) "Requirement" to be removed

5160-01-40(D) "Must" to be removed

5160-01-40(D) "Shall" to be removed

5160-01-40(D)(1)(b)(i) "Shall not" to be removed

5160-01-40(D)(1)(b)(ii) "Must" to be removed

5160-01-40(D)(1)(b)(iii) "Shall" to be removed

5160-01-40(D)(1)(b)(iii) "Shall not" to be removed

5160-01-40(D)(1)(b)(iv) "Must" to be removed

5160-01-40(D)(1)(b)(iv) "Requirements" to be removed

5160-01-40(D)(1)(b)(v) "Require" to be removed

5160-01-40(D)(2)(a) "Shall" to be removed

5160-01-40(D)(2)(a) "Must" to be removed

5160-01-40(D)(2)(b) "Shall" to be removed

5160-01-40(D)(2)(c) "Shall" to be removed

5160-01-40(D)(2)(c) "Must" to be removed

5160-01-40(D)(2)(c) "Must" to be removed

5160-01-40(D)(2)(c) "Must" to be removed

5160-01-40(D)(2)(c) "Required" to be removed

5160-01-40(D)(2)(c) "Required" to be removed

- 5160-01-40(D)(3) "Must" to be removed
- 5160-01-40(D)(3)(a) "Must" to be removed
- 5160-01-40(D)(3)(a) "Require" to be removed
- 5160-01-40(D)(3)(b) "Must" to be removed
- 5160-01-40(E)(1) "Must" to be removed
- 5160-01-40(E)(1)(a) "Must" to be removed
- 5160-01-40(E)(1)(a) "Must" to be removed
- 5160-01-40(E)(1)(d) "Requirements" to be removed
- 5160-01-40(E)(2) "Must" to be removed
- 5160-01-40(E)(4) "Require" to be removed
- 5160-01-40(E)(4)(a) "Must" to be removed
- 5160-01-40(E)(4)(b) "Requirements" to be removed
- 5160-01-40(E)(4)(c) "Required" to be removed
- 5160-01-40(E)(4)(c) "Require" to be removed
- 5160-01-40(E)(5) "Shall not" to be removed
- 5160-01-40(F) "Required" to be removed
- 5160-01-40(F)(1) "Shall" to be removed
- 5160-01-40(F)(1) "Required" to be removed
- 5160-01-40(F)(3) "Must" to be removed
- 5160-01-40(F)(4) "Must" to be removed
- 5160-01-40(F)(4) "Required" to be removed



5160-01-40(F)(5) "Must" to be removed

5160-01-40(F)(5) "Required" to be removed

5160-01-40(G)(1) "Shall" to be removed

5160-01-40(G)(2) "Shall" to be removed

5160-01-40(G)(2)(a) "Must" to be removed

5160-01-40(G)(2)(a) "Required" to be removed

5160-01-40(G)(2)(b) "Must" to be removed

5160-01-40(G)(2)(b) "Required" to be removed

5160-01-40(G)(2)(c) "Must" to be removed

5160-01-40(G)(2)(c) "Required" to be removed

5160-01-40(G)(2)(d) "Must" to be removed

5160-01-40(G)(2)(d) "Required" to be removed

5160-01-40(G)(2)(e) "Must" to be removed

5160-01-40(G)(2)(e) "Required" to be removed

5160-01-40(G)(2)(f) "Must" to be removed

5160-01-40(G)(2)(f) "Required" to be removed

5160-01-40(G)(2)(g) "Must" to be removed

5160-01-40(G)(2)(g) "Required" to be removed

5160-01-40(G)(3) "Shall" to be removed

5160-01-40(G)(3)(a) "Must" to be removed

5160-01-40(G)(3)(b) "Must" to be removed

5160-01-40(G)(3)(c) "Must" to be removed

5160-01-40(G)(3)(d) "Must" to be removed

5160-01-40(G)(3)(e) "Must" to be removed

5160-01-40(G)(4) "Shall" to be removed

5160-01-40(G)(5) "Shall" to be removed

5160-01-40(G)(6) "Shall" to be removed

5160-01-40(G)(7) "Shall" to be removed

5160-01-40(G)(8) "Shall" to be removed

5160-01-40(G)(9) "Shall" to be removed

5160-01-40(G)(9) "Required" to be removed

**C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

**D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable