

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

Agency Name

Division

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**5160-12-01**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Home health services: provision requirements, coverage and  
service specification.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
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, 5162.03, 5164.70**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:  
Five-year review.
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:

OAC 5160-12-01, entitled "Home health services; provision requirements, coverage and service specification" specifies the provisions that govern Medicaid home health services as set forth in Chapter 5160-12 of the Administrative Code. Amendments proposed to this rule include:

- Sentences are being restructured throughout the rule for clarity purposes.
- Permissive language was inserted in subparagraph (C)(2) to allow for more than fourteen hours per week of home health nursing and home health aide services if and when additional hours are prior approved by ODM or its designee.
- The definition of "habilitative care" in paragraph (E)(5)(b) was refined to coincide with definitions used by the Department of Aging.
- The definition of home health nursing in paragraph G was revised to require board certification and MCHHA employment or contract arrangement for nurses performing home health nursing services.
- Substantial language was added to paragraph (G)(1) to distinguish the specific nursing tasks and activities to be performed only by an RN compared to those that may be performed by an RN or LPN.
- Revisions were made in sub-paragraph G(2) to amend the date of the Code of Federal Regulation, 42 C.F.R. (June 18, 2011 to October 1, 2014) and to specify home health services are to be provided during an in-person visit versus a face-to-face encounter for wording consistency purposes.
- Paragraph (G)(2)(c) was added to list services excluded from home health nursing. Language was also added in paragraph (G)(2)(f) to include a list of health related services covered by the Ohio Department of Medicaid's State Plan.
- Substantial language was added to paragraph (G)(2)(f) to provide a list of home health services to be performed by an home health aide.
- Terminology edits are being made throughout the rule for the sake of consistency to minimize the number of interchangeable terms:

"covered" is being replaced with "reimbursable";

"consumer" changed to "individual";

MCRHHA, for "medicare certified home health agencies" was changed to "MCHHA" for clarity and accuracy purposes; and

"Intermediate care facility for the mentally retarded" or "ICF-MR" was changed to "intermediate care facility for individuals with intellectual disabilities" or "ICF-IID" to comply with the definition rule instated by the Ohio Department of Developmental Disabilities (DODD).

References to "face-to-face encounter" are being changed to "in-person visit" in references to contacts performed by nurses, to ensure consistency throughout the rule and with other rule references.

- Names of state departments are being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM), and the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD) to the Ohio Department of Developmental Disabilities (DODD).

- References to hearing rights are being added to several rules for consistency and expression.

- References to an ODM-required form are being modified to reflect a new naming system and revision date [i.e., JFS 07137 (rev 2/2011) was changed to ODM 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" (rev. 7/2014)].

- Coverage units are being changed from the use of minute unit increments to hours for consistency purposes, eliminating references to the measurement of "unit(s)".

- References to an "institutional" level of care are being modified to include a "nursing facility-based" level of care when applicable in order to comply with new definitions as enacted in Chapter 5160-3 of the Administrative Code.

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 response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

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:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

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:

*Not Applicable.*

12. Five Year Review (FYR) Date: **4/14/2015**

(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

There is impact to the current state budget.

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

Not applicable to current budget line items.

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:

OAC 5160-12-01 requires home health providers to allocate time for the completion of the report of information to the Ohio Department of Medicaid (i.e.,

medical necessity of services) using a state specific form. The amount of time needed to obtain and document medical necessity ranges from one to five hours per individual. A minimum of one half-hour of administrative time at \$24/hour, and one half-hour of nursing at \$25.5/hour are allocated by providers toward the process of obtaining the certification of medical necessity. Another .75 hours of administrative time and .25 hours of nursing time is allocated toward completing the ODM 07137 form. Hence, the cost to complete the certification process is a minimum of \$49.13 per individual, per agency provider. Additional cost are incurred for agencies who employ or contract with one or more physicians, at an average cost per face-to-face encounter is \$175 per hour. Source: Midwest Care Alliance and the Ohio Council for Home Care and Hospice.

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**

This rule requires providers of home health services to be certified as a Medicare Certified Home Health Agency (MCHHA).

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**

This rule requires the report of information on the individual's plan of care and on the ODM 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" (rev. 7/2014) to document the actions and decisions of the individual's qualifying physician's treatment and/or health professionals.

