

**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)? **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, 5162.03.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being proposed for amendment primarily to comply with federal regulations that prohibit States from limiting the provision of home health services to services delivered only in the home, or to services furnished solely to individuals who are homebound.

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:

Paragraph (E)(4) is being amended to allow home health services to be provided outside of the individual's place of residence, in any setting in which normal life activities take place, other than a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board.

Paragraphs (B), (B)(1), (D)(2)(b), (E)(3)(a), (G)(2), and (H)(3) are being revised to update references to form, rule and federal citations, and to update terminology used by the ODM (for consistency purposes) as follows:

1. In Paragraph (B), a reference to rule 5160-8-21 (recently rescinded) was removed and replaced with 5160-4-04, the current rule pertinent to advanced practice nursing services; Paragraph (B)(1), the revision date for ODM form 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" was updated;

2. In Paragraph (D)(2)(b) a rule reference is being corrected;

3. In Paragraph (E)(3)(a), references to the "services plan" are being changed to "person-centered services plan" for consistency purposes to align with similar language used in 5160 Chapter 45 and 46 of the Administrative Code;

4. The reference to 42 C.F.R. 484.36 in Paragraph (G)(2)(a) is being update to refer to the most current federal statutory reference; and

5. Paragraph (H)(3) is being revised to correct a rule citation.

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:

References to another rule or rules of the Ohio Administrative Code, the Ohio Revised Code, the Code of Federal Regulations, and/or dated references to ODM forms are generally available to persons affected by this rule via the "Legal and Contract", "Rules" and/or "Publications" under the "Resources" links on the ODM web site (<http://medicaid.ohio.gov>) in accordance with RC 121.75(E).

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:

N/A

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: **7/1/2020**

(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 increase expenditures.

4,000,000.00

The population to be served under the proposed amendment is a proximity to the historical population of individuals enrolled on a Nursing Facility Level of Care Waiver, who from time to time are provided like services (personal care and home care services) outside of their residence by a Medicare Certified Home Health Agency. Based on the data provided for State Fiscal Year 2016 the crux of services provided in the community were provided in an office as a place of service. It is expected that once home health aide and home health nursing services expand to

allow for services to be provided outside of the individual's residence, that services under waiver will shift from waiver personal care aid and home care to state plan home health aide and nursing.

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

651525

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:

Because of the expansion of the rule (to include additional place settings where home health services may be provided), providers may hire employees and require additional liability insurance (e.g., automobile coverage) to accommodate for times when it is medically necessary to provide home health services outside of the home. Components of OAC 5160-12-01 require employee/administrative staff time, a completion of a statewide form, and face-face contact between health professional and consumers. 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 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 patient, 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, for the purpose of completing the face-to-face encounter. 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? **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**

OAC 5160-12-01 requires a qualifying treating physician to complete a face-to-face encounter with the individual within ninety days prior to the start of care date, or within thirty days following the start of care date. The rule also requires the physician to order home health services deemed medically necessary using a form. The rule also requires the provider to be a Medicare Certified Home Health Agency in order to provide home health services.