

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

Agency Name

Division

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**5160-12-02**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Private duty nursing: 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: **5162.03, 5164.02, 5160.70**
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 5160-12-02, entitled "Private duty nursing services: provision requirements,

coverage and service specification" prescribes services, provision, and coverage specific to PDN. Proposed changes to the rule include:

- Several sentences were reformatted throughout the rule for clarity purposes.
- References to the Ohio Department of Medicaid (ODM) are being added due to the creation of the department by Am. Sub. HB 59 of the 130th General Assembly and the subsequent renumbering of rules by the Legislative Services Commission.
- Process language is being removed from the definition of private duty nursing in Paragraph A as this language is captured in other areas of rule.
- Language is being added to Paragraph A to express the parameters surrounding the length of a private duty nursing visit (i.e., more than 4 hours, up to 12 hours per nurse, unless unforeseen events causes the visit to end or go up to no more than 16 hours).
- The permissive provision of prior authorization for visits that are four hours or less in length is being removed from this rule as the provision is incongruent with the definition of private duty nursing.
- "Consumer" is being changed to "individual" throughout the rule for the sake of consistency.
- Paragraph (B)(5) is being incorporated with the new paragraph (C).
- PDN nursing tasks and activities specific to RN are being added to this rule as the new paragraph C. The new paragraph (C) was inserted into rule to distinguish the specific PDN tasks and activities to be performed only by an RN.
- New references pertaining to habilitative care, RN Assessment and RN Consultation services are being adding the rule in paragraph D as services not included in the list of tasks and activities associated with private duty nursing.
- The acronym, MCRHHA, for "medicare certified home health agencies" is being changed to "MCHHA" for clarity and accuracy purposes.
- 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).
- The reference to an "institutional" level of care is 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.
- Paragraph F is being inserted in 5160-12-02 to coincide with similar language in 5160-12-02.3 of the Administrative Code, to allow for the delivery of PDN services

in emergency cases when the provider has an existing authorization.

- Reference to an ODM-required form is 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)].

- Clarifying language is being added to paragraph I through J to differentiate requirements specific to a child and adult.

- Former sub-paragraph (E)(4) is deleted from rule to eliminate redundancy.

- The reference to hearing rights is being added to maintain consistency with other related rules.

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

This proposed rule will not change the ODM's projected budget during the current biennium.

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

Not applicable.

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 5160-12-02 requires private duty nursing providers to allocate time to report required information to the Ohio Department of Medicaid based upon individual plans of care (i.e., certification of medical necessity of services on a state specific form) and to secure authorization prior to the start of services as a condition of compliance. \$175 an hour, per physician, is the amount of time needed to initiate and to secure the required signatures for the medical necessity form (Source: Ohio Council for Home Care and Hospice). In addition, a plan of care is reported by Midwest Care Alliance to cost as much as \$58 per plan when administrative and skilled nursing staff are considered. An added \$.25 an hour per patient (a minimum of \$7.25 per visit) can also be attributed to updating the plan of care for skilled care patients as needed.

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**

A certification of medical necessity and ODM prior authorization are both required conditions of PDN services.

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**

Documentation of plans of care, all service plans, and service plans as applicable.