

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-26-03

Rule Type: Amendment

Rule Title/Tagline: Managed health care programs: covered services.

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?** 2/1/2022
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?** 5167.02
5. **What statute(s) does the rule implement or amplify?** 5167.03, 5167.04, 5167.10
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to update the policy relating to the administration of the Medicaid managed care program.

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

OAC rule 5160-26-03, entitled "Managed health care programs: covered services", describes the services which must be covered by managed care plans (MCPs) and addresses any exclusions or limitations for those services. The rule is being updated to require MCPs to follow the Medicaid fee-for-service preferred drug list (PDL).

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. 121.75 please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to the Revised Code. This question is not applicable to any incorporation by reference to the Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1). The Ohio Revised Code references may be found online at: <http://codes.ohio.gov/orc/51>.

This rule incorporates one or more references to another rule or rules of the Administrative Code. This question is not applicable to any incorporation by reference to another Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1). OAC Medicaid rules may be found online at: <http://codes.ohio.gov/oac/5160>.

This rule incorporates one or more dated references to the Code of Federal Regulations (CFR). This question is not applicable to any dated incorporation by reference to the CFR because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(A)(2). The eCFR is available online at: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

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

Paragraph (C) was updated to correct a misspelled word.

II. Fiscal Analysis

11. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will increase revenues.

\$265,657,417

As a result of this rule change, the Ohio Department of Medicaid will retain additional supplemental and federal rebates from pharmaceutical manufacturers for all drugs on the Medicaid fee-for-service preferred drug list. Managed care plans will no longer retain any rebates for prescriptions drugs related to the Medicaid program. The state

will see increased expenditures because capitation rates will increase, but the state will also see enhanced revenues due to pharmacy rebates and health insuring corporation tax receipts. In the long run, the state will see a gain, but due to the timing of rebate revenue, there is a cost for the biennium.

Based on our actuary's analysis, here is the impact in total and by line item. All dollars have been funded in the SFY20-21 budget.

Total Expenditures - [SFY20] \$102,158,500; [SFY21] \$204,317,000
 Total Revenues - [SFY20] \$(840,417); [SFY21] \$(264,817,000)
 Net Impact - [SFY20] \$101,318,083; [SFY21] \$(60,500,000)

Line Item Totals

651525 Total - [SFY20] \$101,858,500; [SFY21] \$(59,083,000)
 651525 - State - [SFY20] \$30,557,550; [SFY21] \$(17,724,900)
 651525 - Federal - [SFY20] \$71,300,950; [SFY21] \$(41,358,100)
 651639 Rebates and Recoveries - [SFY20] \$0; [SFY21] \$78,840,000
 651623 Federal - [SFY20] \$0; [SFY21] \$183,960,000

Total Appropriated Budget - [SFY20] \$101,858,500; [SFY 21] \$203,717,000

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

There are no new costs of compliance with the changes to this rule. OAC rule 5160-26-03 holds managed care plans (MCPs) financially responsible for payment of certain services, including respite for children. Requirements in addition to the payment for covered services as outlined in this rule include: establishing, in writing, a process for the submission of claims for services delivered by non-contracting providers; designating a telephone line to receive provider requests for coverage of certain services; and submitting written requests or notifications to the Ohio Department of Medicaid (ODM), contracting providers and members. MCPs are paid per member per month and receive funds to cover required services. ODM must pay MCPs rates that are actuarially sound, as determined by an outside actuary in accordance with 42 CFR 438.4 and CMS's 2016 Managed Care Rate Setting Consultation Guide. All rates and actuarial methods can be found on the ODM website in Appendix E of the Medicaid Managed Care provider agreement.

Provider agencies are required to: be accredited by at least one of several national accreditation entities; hold a Medicaid provider agreement; comply with applicable background check requirements; and Behavioral health provider agencies must be OhioMHAS certified.

Agency employees: long-term care providers must obtain a certificate of completion from the Ohio Department of Health or a Medicare competency evaluation program; all providers must obtain first aid certification; and Long-term care providers must obtain evidence of completion of twelve hours of in-services continuing education each year.

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
15. **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

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

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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

As a result of this rule change, the Ohio Department of Medicaid will retain additional supplemental and federal rebates from pharmaceutical manufacturers for all drugs on the Medicaid fee-for-service PDL. Managed care plans (MCPs) will no longer retain any rebates for prescriptions drugs related to the Medicaid program. Each MCP's capitation rates will be adjusted for the unified preferred drug list, but financial impact to each MCP will vary depending on their specific current utilization patterns, supplement rebate agreement, and reimbursement levels.