

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

Agency Name

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**5160-27-06**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Therapeutic behavioral group service-hourly and per diem.****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, 5162.05, 5162.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5164.02, 5164.03**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This new rule is being proposed to update policy relating to the administration of the Ohio Medicaid program.

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:

This rule describes a service that Ohio Medicaid will cover for the first time. The rule defines the service as well as the requirements that providers must meet in order to render the service and bill Ohio Medicaid for reimbursement. Service provision requirements and limitations as well as documentation requirements are stated.

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 rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. 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 121.76(A)(3).

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:

Not applicable.

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 If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation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:

Title: Removing "Mental health day treatment" and changing the rule name to "Therapeutic Behavioral Group Service-Hourly and Per Diem" to better reflect the service definition as defined by the Centers for Medicare and Medicaid.

(A) added "(day treatment)" to incorporate an informal but common term used by providers for this service.

(A)(1) replaced "mental health day treatment" with "therapeutic behavioral group service-hourly and per diem" to indicate new name.

(B)(1) and (B)(2) replaced "mental health day treatment" with "therapeutic behavioral group service" to indicate new name.

(C)(2) added "medically necessary" to indicate Ohio Medicaid requirement. Added "no more than four fifteen-minute units, or one hour" to indicate new policy as requested by stakeholders. Removed "and must be medically necessary" as it is stated earlier.

The following six changes were made to clarify they are individual services:

(C)(2)(a) removed "and SUD" and "group counseling".

(C)(2)(b) removed "Group therapeutic behavioral services" and added "SUD group psychotherapy."

(C)(2)(c) removed "Group community psychiatric supportive treatment" and added "Mental health counseling."

Added "(C)(2)(d) SUD group counseling."

Added "(C)(2)(e) Group community psychiatric supportive treatment."

(C)(3) removed "Other behavioral health individual services may be reimbursed on the same day as mental health day treatment" and added "A therapeutic behavioral group service per diem and therapeutic behavioral group service hourly reimbursement will not be made on the same day" to realign order of paragraphs and incorporate the new name of the service.

(C)(4) removed "A per diem and hourly reimbursement will not be made on the same day with the same provider for the same individual" and added "Other behavioral health individual services may be reimbursed on the same day as therapeutic behavioral group service-hourly and therapeutic behavioral group service per diem" to realign order of paragraphs.

(C)(5) removed "only" and replaced "mental health day treatment service" with "therapeutic behavioral group service." Added "Prior authorization may be approved for a different billing provider furnishing an additional therapeutic behavioral group service per diem on the same day" to add the option of additional service via prior authorization.

#### 12. Five Year Review (FYR) Date:

(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.

53,400,000

This new rule implements a part of the Behavioral Health Redesign that is a joint project of the Ohio Department of Medicaid (ODM), Ohio Department of Mental Health and Addiction Services, and the Ohio Office of Health Transformation. The expenditure increase stated here is for the entire project and not limited to the impact of this rule. The figure stated is that above budget neutrality and reflects new services that will be reimbursed by ODM for the first time and well as reimbursement rate adjustments.

The amount stated here is for SFY 18 and is in addition to the estimated \$ 1.1 billion spent on behavioral health services in SFY 16.

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:

Behavioral Health Redesign, as implemented by the proposed rule package, will affect approximately 625 provider agencies of mental health and/or substance use disorder treatment in Ohio who are Medicaid providers. Future Medicaid mental health and/or substance use disorder treatment providers will also be affected.

Areas of impact experienced by provider agencies could include: information technology and billing system updates, staff training and organizational transformation, and abiding by third party liability requirements and federally required program integrity provisions.

Quantifying the cost is difficult because of the significant variance of business design, number of service locations, agency workforce, client caseload, and business acumen among Ohio's 625 Medicaid enrolled providers of behavioral health services. Anecdotal information from providers and colleagues at the Ohio Department of Mental Health and Addiction Services (OhioMHAS) indicates that many sophisticated, multi-site providers are well equipped to comply with the requirements of this rules package. In fact, these provider organizations view Behavioral Health Redesign as a welcome change and opportunity to grow their business in line with the rest of the US health care market. They believe that the opportunities resulting from the adopting the Behavioral Health Redesign benefit package will outweigh the cost of implementation. The Ohio Department of Medicaid (ODM) has also communicated with smaller, less sophisticated providers as well as larger providers. ODM acknowledges the varying degrees of preparedness among providers and has worked with stakeholders to identify areas where additional support for providers may be needed to ensure successful implementation. Both ODM and Ohio MHAS have committed to monitoring the implementation of the Behavioral Health Redesign changes at the provider level and are ready to make the necessary investment to assure success and that Medicaid recipients continue to have access to needed care.

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? **Yes**

A provider of the service addressed in this rule must abide by the provision and billing requirements stated otherwise Medicaid payment may not be available.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**