

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

Agency Name

Division

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**5160-3-05**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Level of care definitions.****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: **5162.03, 5164.02, 5165.04**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:
 

This rule is replacing rescinded rule 5160-3-05, which is being rescinded because of the five-year review and due to policy updates relating to the administration of the nursing facility-based level of care process and associated criteria.
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 sets forth definitions related to level of care (LOC), including protective

LOC and nursing facility-based LOC. An individual must meet a nursing facility-based level of care in order for Medicaid to cover the costs of a nursing facility stay or for an individual to be enrolled on a home and community based services (HCBS) Medicaid waiver. Differences between this rule and the rule it is replacing are: State agency name references, form numbers, and rule number references were updated to reflect statutory and Administrative Code changes; Removed unnecessary definitions related to intermediate care facility for persons with mental retardation (ICF-MR) level of care; Detailed the components of Activities of Daily Living (ADLs); Updated the definition and components of Instrumental Activities of Daily Living (IADLs); Added definitions specific to the Child Comprehensive Assessment Tool (CCAT), Adult Comprehensive Assessment Tool (ACAT), Child Level of Care Questionnaire, Adult Level of Care Questionnaire, and Linking Ohioans to Independence, Services and Supports (LOTISS); Added definitions of #child," #adult# and "qualified assessor" for level of care purposes; Removed the definition of #alternative form"; Modified the definitions of #unstable medical condition# and "level of care validation."

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).

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the Ohio Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(1).

This rule incorporates one or more dated references to an ODM form or forms. Each cited ODM form is dated and is generally available to persons affected by this rule via the "Resources/Publication/Forms Central" link on the Ohio Department of Medicaid web site (<http://medicaid.ohio.gov/>) in accordance with RC 121.75(E).

This rule incorporates one or more dated references to the Social Security Act. This question is not applicable to those references in this rule because such dated references are exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(B)(2).

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:

5160-3-05 (new) added a date for the reference to the Social Security Act. The date should be as in effect on February 8, 2006.

May 19, 2015

Added language regarding other licensed health professionals acting within their applicable scope of practice (which would include physician assistants) along with the physician as those who can make a determination of medical instability in Paragraph(B)(38). This is in response to written testimony received during public hearing process from the physician assistants association.

March 21, 2016

Removed the definition of #Linking Ohioans to independence, services and supports (LOTISS)# in paragraph (B)(22).

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 have no impact on revenues or expenditures.

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This will have no impact on revenues or expenditures.

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:

Not applicable.

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? **No**

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? **No**