

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-3-14

**Rule Type:** Amendment

**Rule Title/Tagline:** Process and timeframes for a level of care determination for nursing facility-based level of care programs.

**Agency Name:** Ohio Department of Medicaid

**Division:**

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#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 1/15/2021
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?** 5164.02
5. **What statute(s) does the rule implement or amplify?** 5164.02, 5162.03, 5165.04
6. **What are the reasons for proposing the rule?**

On March 13, 2020 the President of the United States issued a proclamation that the COVID-19 outbreak constituted a national emergency. As a response to a significant decrease in access to services and resources as well as several national restrictions on travel, ODM sought to implement additional flexibilities that would allow LOC determinations to continue so that individuals may have uninterrupted access to the services they need. The proposed amended rules were initially approved as emergency rules in response to the pandemic and certain flexibilities are now being proposed as permanent changes. Proposed changes to the rule are outlined below.

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

An individual seeking Medicaid payment for a nursing facility stay or who is seeking enrollment on a home and community-based services (HCBS) waiver must be assessed to determine their level of care (LOC). A nursing facility-based level of care is necessary for Medicaid payment for a nursing facility stay or HCBS waiver enrollment. Current rules establish and define the process for determining level of care.

Changes to rule 5160-3-14 include:

- State agency name references, form numbers, and rule number references were updated to reflect statutory and Administrative Code changes.
- Allowing the submission of the physician certification to occur electronically in addition to standard mail
- Allowing face-to-face level of care assessments and determinations to occur by telephone, desk review, or video conference unless an individual requires a face-to-face visit.
- Added language to clarify that adverse level of care determinations must occur face-to-face
- Removing requirement for a delayed face-to-face visit for individuals seeking admission from a hospital, receiving adult protective services, or currently residing in a NF and requesting a change from a non-Medicaid payor to Medicaid payment for their continued nursing facility stay

**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 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)(d).

This rule incorporates one or more dated references to an ODM form. Each cited ODM form is dated and is generally available to persons affected by this rule via the "Resources" and "Publications" links on the ODM web site (<http://medicaid.ohio.gov/>).

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

*Not Applicable*

## **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 have no impact on revenues or expenditures.

0.00

Not applicable.

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

No new costs.

- 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?** No
  
- 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

This rule requires that a level of care assessment is completed for individuals seeking enrollment on a nursing facility-based home and community-based services (HCBS) waiver or Medicaid payment for a long-term nursing facility stay. After a level of care assessment has been completed, the nursing facility must complete a level of care request in order to receive Medicaid payment. When a level of care request is determined to be incomplete and the submitter does not complete the request within the allotted fourteen-calendar day timeframe, the request is denied and the nursing facility would not be eligible for payment from Medicaid for an individual without a qualifying level of care.

**IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

- 18. **Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95?** No
  - A. **How many new regulatory restrictions do you propose adding?**  
  
Not Applicable
  
  - B. **How many existing regulatory restrictions do you propose removing?**  
  
Not Applicable