

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

Agency Name

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Division

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5160-3-14

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Nursing facility-based level of care assessment and determination process for adults.**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This rule is replacing rescinded rule 5160-3-14 which is being rescinded because of five-year review and due to policy changes to the level of care determination process for adults.

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 the level of care assessment and determination process for nursing facility-based level of care programs, that includes a description of the process for nursing facilities, hospitals, PASSPORT Administrative Agencies (PAAs), and waiver case management agencies to use during the level of care

assessment and determination process. 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; clarified that this rule is specific to the adult population; removed unnecessary references to intermediate care facility for persons with mental retardation (ICF-MR) level of care; added the use of an Ohio Department of Medicaid (ODM) approved assessment instrument to determine the need for less than twenty-four hour support in order to prevent harm due to a cognitive impairment; replaced the usage of the Job and Family Services (JFS) 03697, "Level of Care Assessment" or alternative form to determine level of care with the ODM 10125 "Adult Comprehensive Assessment Tool" (ACAT) or ODM 10127 "Adult Level of Care Questionnaire;" removed the requirement for a physician certification on the JFS 03697.

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 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).

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:

Not Applicable.

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.

0.00

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? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

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**

This rule requires that a level of care assessment is completed by a licensed social worker (LSW), licensed independent social worker (LISW), or registered nurse (RN).

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**

This rule requires a level of care assessment to be completed and submitted for any adult requesting Medicaid payment for a nursing facility stay or enrollment on a Medicaid waiver. The assessment may be completed by a nursing facility, hospital, PASSPORT Administrative Agency or case management agency.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

| | | | |
|----------------------|--------------|---------------|----------------------------|
| (a) School Districts | (b) Counties | (c) Townships | (d) Municipal Corporations |
| No | Yes | No | Yes |

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

Counties and municipal corporations that operate nursing facilities could incur costs of compliance with the proposed rule. Per paragraph (B) of this rule, nursing facilities must complete and submit the ODM 10127 "Adult Level of Care Questionnaire" (2/2018) along with any supporting documentation in order to get a level of care determination for a nursing facility resident, which is necessary in order for a nursing facility to be paid by Medicaid.

However, these costs are existing costs of compliance. There are no new costs of compliance.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

The Ohio Department of Medicaid cannot estimate the cost of compliance if a nursing facility does not complete and submit a level of care questionnaire in order to get a level of care determination, because business practices vary from nursing facility to nursing facility.

(a) Personnel Costs

ODM does not expect that the proposed rule will result in any personnel costs to nursing facilities.

(b) New Equipment or Other Capital Costs

ODM does not expect that the proposed rule will result in any new equipment or other capital costs to nursing facilities.

(c) Operating Costs

ODM does not expect that the proposed rule will result in any operating costs to nursing facilities.

(d) Any Indirect Central Service Costs

ODM does not expect that the proposed rule will result in any indirect central service costs to nursing facilities.

(e) Other Costs

ODM does not expect that the proposed rule will result in any other costs to nursing facilities.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

ODM is unable to provide an explanation of the ability of nursing facilities operated by counties and municipal corporations to pay for the new requirements imposed by this proposed rule because the Department does not have this type of data about the finances of these nursing facilities.

7. Please provide a statement on the proposed rule's impact on economic development.

There is no discernible impact on economic development as a result of this proposed rule.