

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-4-06

Rule Type: Amendment

Rule Title/Tagline: Specific provisions for evaluation and management (E&M) services.

Agency Name: Ohio Department of Medicaid

Division:

Address: 50 West Town Street Suite 400 Columbus OH 43218-2709

Contact: Tommi Potter

Email: Tommi.Potter@medicaid.ohio.gov **Phone:** 614-752-3877

I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 6/1/2022
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?** 5164.02
5. **What statute(s) does the rule implement or amplify?** 5164.02
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to update policy regarding the administration of the Medicaid program by adopting a more holistic approach to healthcare delivery for individuals with opioid abuse disorders.

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

This rule sets forth Medicaid coverage and payment policies for specific types of evaluation and management (E&M) services (office visits). The amendments to

this rule will allow separate payment to eligible providers for medication-assisted treatment, in addition to payment for an E&M service.

- 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. 121.71 to 121.76, 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 Ohio Administrative Code. This question is not applicable to any incorporation by reference to another Ohio Administrative Code 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 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(D).

This rule incorporates one or more dated references to the U.S. Code. This question is not applicable to any dated incorporation by reference to the U.S. Code because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(A).

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

In paragraph (B)(7)(b), the United States Drug Enforcement Administration has been added to the list of regulatory entities with whose rules and requirements a provider must comply; this change was made in response to input from the Ohio Department of Mental Health and Addiction Services. Some minor capitalization errors have also been corrected.

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0

Not Applicable.

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

The cost to comply is the time it takes to obtain a federal waiver for each type of practitioner. Under this rule, physicians, physician assistants, and advanced practice registered nurses must receive a waiver under Section 303(g)(2) of the Drug Addiction Treatment Act of 2000 (DATA 2000). This permits the rendering provider to treat narcotic dependence without registering separately with the United States drug enforcement administration as an opioid program. For physicians, this requires 8-hours of training through either classroom situations, seminars at professional society meetings, electronic communications, or training otherwise provided by the Substance Abuse and Mental Health Services Administration (SAMHSA) and other organizations. The estimated fiscal impact for physicians for an 8-hour day to attend training is \$734.00. This figure takes the average salary of a physician in Ohio and converted into an hourly wage divided by 8 hours.

For physician assistants and eligible APRNs, this requires 24 hours of training to be eligible for a prescribing waiver. The estimated fiscal impact for physician assistants for 24 hours to attend training is \$1,207 and for eligible APRNs is \$1,017. These figures also take the average salary of a physician assistant and APRN in Ohio converted into an hourly wage divided by 24 hours. These estimates were obtained from the U.S News and Rankings. Specialists in psychiatry may have already obtained their board certification in addiction psychiatry from the American Board of Medical Specialties. Even in the absence of the training described above, SAMHSA will consider other criteria in determining whether to grant a DATA 2000 waiver. SAMHSA will consider training or experience that the state's medical licensing board considers a demonstration of the physician's ability to treat and manage patients with an opioid dependency. The applicable laws of Ohio's State Medical Board for medication-assisted treatment are set forth in R.C. 4731.83, 4731.056 (requirements for physicians), 4730.55, and 4730.56 (requirements for physician assistants). Currently, State Medical Board rule 4731-11-12 contains requirements for office-based opioid treatment; however, it is ODM's understanding that this rule will soon be rescinded and replaced by new State Medical Board rules in O.A.C. Chapters 4730-4 and 4731-33. SAMHSA will also consider whether a licensed physician has completed other training or experience that that HHS considers a demonstration of the physician's ability to treat and manage patients with an opioid dependency. The applicable federal rules and federal guidance do not indicate how SAMHSA will apply this criterion. Accordingly, we cannot provide any additional detail regarding the training and

experience that HHS might find to be a demonstration of the physician's ability in this area.

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

III. Common Sense Initiative (CSI) Questions

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

Under this rule, physicians, physician assistants, and advanced practice registered nurses must receive a waiver under Section 303(g)(2) of the Drug Addiction Treatment Act of 2000 (DATA 2000), or meet other criteria to demonstrate the ability to treat and manage patients with opioid dependency.

- 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 the report of information and any expenditures necessary to obtain a DATA 2000 waiver from SAMHSA.