

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-44-01

**Rule Type:** Amendment

**Rule Title/Tagline:** Nursing facility-based level of care home and community-based services programs: home and community-based settings.

**Agency Name:** Ohio Department of Medicaid

**Division:**

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#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?** 7/1/2021
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?** 5166.02
5. **What statute(s) does the rule implement or amplify?** 5162.03, 5164.02, 5166.02
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to update policy related to the administration of Ohio's nursing facility level of care HCBS waiver programs, and to make permanent during the ongoing COVID-19 public health emergency those emergency rule changes resulting from Executive Order 2020-23D.

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

This rule establishes the requirements for, and characteristics of, home and community-based settings. It affects Ohio Department of Medicaid (ODM) - administered and Ohio Department of Aging (ODA) -operated 1915(c) home and community-based service waivers and the 1915(i) Medicaid state plan option. The requirements and characteristics apply both to where the individual resides and where the individual receives services. The requirement in paragraph (C)(5) that individuals in a provider-owned or controlled residential setting can have visitors of their choice is removed. Paragraph (E) is added to ensure so services in an HCBS waiver or the 1915(i) state plan option may be provided in settings that have not been determined to meet the HCBS setting criteria set forth in this rule to accommodate individuals who require relocation to an alternative setting to ensure continuation of needed HCBS. Case managers must document what criteria was not met and what steps were taken to mitigate deficiencies. Miscellaneous dates are updated.

- 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 the Revised Code. Such reference is exempt from compliance with incorporation by reference requirements pursuant to ORC 121.75(A).

This rule incorporates one or more references to another rule or rules of the Administrative Code. Such reference is exempt from compliance with incorporation by reference requirements pursuant to ORC 121.75(A).

This rule incorporates one or more references to the Social Security Act. This question is not applicable to those references in this rule because such references are exempt from compliance with ORC 121.74 to 121.74 pursuant to ORC 121.75.

- 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

Amendment to this rule will not change the agency's projected budget during the current biennium.

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

There is no cost of compliance to individuals served by affected programs. Providers that control settings where individuals reside or receive services may incur costs associated with compliance if they do not currently adhere to the requirements. Potential costs will vary by provider and may be associated with such things as modifications to setting policies and procedures, staff training, service access and delivery methods, staffing patterns, interaction with the broader community and the elimination of institutional characteristics. Failure to comply with the rule could result in the inability of a provider to furnish HCBS.

**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? No**

**17. Does this rule have an adverse impact on business? No**

**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? No

**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