

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:

Address: 50 Town St 4th floor Columbus OH 43218-2709

Contact: Tommi Potter **Phone:** 614-752-3877

Email: tommi.potter@medicaid.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 9/22/2023
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. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

The reasons for proposing the rule are for five-year rule review and the expiration of the appendix K authorities.
8. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Rule 5160-44-01, entitled "Nursing facility-based level of care home and community-based services programs: home and community-based settings," describes the requirements set forth by CMS regarding HCBS settings criteria for all HCBS waiver programs.

The proposed changes for this rule are the following:

- o Statutory citation updates.
- o Removed restrictive language.
- o Modified language/reformatted requirements for clarification and grammatical errors.
- o Added a setting that is not considered a home and community-based setting
- o Modified language to reflect HCBS Settings CFR language.
- o Reinstated allowance for visitors at any time.
- o Removed the temporary allowance for services to be provided in settings that have not been determined to meet the HCBS settings criteria.

- 9. Does the rule incorporate material by reference? Yes**
- 10. 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 Ohio Administrative Code (OAC). 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 121.75.

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.

This rule incorporates one or more references to the Social Security Act. 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 121.75.

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

The change made to the rule is removing language in paragraph (A). The language being removed is "Notwithstanding any provisions to the contrary in paragraph (E) of

this rule". The reason for removing this language is because paragraph (E) is being removed completely.

II. Fiscal Analysis

- 12. 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.

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

Not Applicable.

- 14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

- 15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

- 16. 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

- 17. Was this rule filed with the Common Sense Initiative Office? Yes**

- 18. 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 Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding to this rule? 0
- B. How many existing regulatory restrictions do you propose removing from this rule? 6

5160-44-01 (A) - "Must" to be removed.

5160-44-01 (B) - "Must" to be removed.

5160-44-01 (C) - "Must" to be removed.

5160-44-01 (C)(1)(b) - "Must" to be removed.

5160-44-01 (C)(1)(b)(iii) - "Must" to be removed.

5160-44-01 (D) - "Must" to be removed.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.
- D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable