

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-44-05

Rule Type: Amendment

Rule Title/Tagline: Nursing facility-based level of care home, community-based services (HCBS) programs and specialized recovery services (SRS) program: incident management.

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?** 7/1/2024
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, 5164.91, 5166.02
5. **What statute(s) does the rule implement or amplify?** 5162.03, 5164.02, 5164.91, 5166.02 , 5166.11, 5167.02
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to update policy related to the Ohio Department of Medicaid Home and Community Based Services (HCBS) waivers, and Specialized Recovery Services program.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the requirements for reporting and investigating incidents involving individuals enrolled on the waivers and program mentioned above. Changes include: Revising the ODM programs timeframe for entering incidents into the Incident Management System (IMS), and accordingly, for notifying the State of certain incidents to align with current Ohio Department of Aging (ODA) timeframes. This will better allow the Case Management and Recovery Management Entities to focus on ensuring the health and safety of the individual in the first 24 hrs as the more urgent matter of importance.

- 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. This question is not applicable to any incorporation by reference to the Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1). The Ohio Revised Code references may be found online at: <http://codes.ohio.gov/orc/51>.

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(A)(1). OAC Medicaid rules may be found online at <http://codes.ohio.gov/oac/5160>.

- 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.

0.0

Not applicable.

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

There are no costs of compliance associated with this rule.

- 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? Yes

This rule requires ODM, ODA, or their designees, and all service providers to report all incidents related to individuals enrolled in a home and community-based services (HCBS) waiver or Specialized Recovery Services (SRS) Program. This report of information is a federal requirement and is necessary to ensure the health and safety of individuals enrolled in an HCBS program. Specifically, the rule requires the entities noted above to: take immediate action to ensure the health and welfare of the individual, report the incident immediately upon discovering the incident, and when reporter is a waiver provider who has a supervisor, immediately notify his/her supervisor. The incident report requirements and timeframes are outlined in the rules.

The Care Management (CM) entity is required to verify the above actions were taken to protect the health and welfare of the individual, to address the issues effecting the individual, and to report the incident in the incident management system. If it is discovered that a required action was not taken, the CM entity is required to do so.

The investigative entity (an ODM or ODA designee), is required to verify the above actions were taken to protect the health and welfare of the individual. If it is discovered that a required action was not taken, the investigative entity is required to do so. At the conclusion of an investigation, the investigative entity shall provide a summary of the investigative findings, and whether the incident was substantiated, unless such action could jeopardize the health and welfare of the individual. The investigative entity shall submit incident data to ODM/ODA as requested, and in a format and frequency established by ODM/ODA.

- 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? Yes**

- A. **How many new regulatory restrictions do you propose adding?** 0
- B. **How many existing regulatory restrictions do you propose removing?** 1

5160-44-05(H)(5) - the regulatory restriction was removed as language was incorporated into a different paragraph within the rule.