

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-44-22

**Rule Type:** Amendment

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

**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?** No
  - A. **What is the rule's five year review date?** 1/1/2024
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?** 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 sets forth the service description, limitations, provider qualifications and requirements, and clinical record keeping requirements for HCBS waiver nursing services. The proposed amendment :

- Removes paragraph (B)(1), permitting use of waiver nursing in lieu of similar services when they are available;
- Permits face-to-face visits required by this rule to be conducted by telephone or electronically, unless the individual's needs require a face-to-face visit.
- Permits the Ohio Department of Medicaid and the Ohio Department of Aging to deem any ODM, ODA or Ohio Department of Developmental Disabilities waiver provider as having satisfied ODM or ODA requirements for same or similar services.

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 Code of Federal Regulations (CFR). 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

Not applicable.

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

Not applicable.

- 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? Yes**

**A. How many new regulatory restrictions do you propose adding? 1**

(H) Face-to-face visits required by this rule may be conducted by telephone or electronically, unless the individual's needs require a face-to-face visit

**B. How many existing regulatory restrictions do you propose removing? 1**

(B) Waiver nursing shall not be used in lieu of similar services available through third-party insurers, community supports, resources or other Ohio medicaid state plan services when it has been determined an individual's needs can be met by those services.