

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-44-22

Rule Type: New

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

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?**
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 as new to update policy relating to the administration of the nursing facility-based level of care, home and community-based services (HCBS) waivers.

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. It replaces language currently set forth in paragraph (A) of OAC rule 5160-46-04. Differences between this rule and OAC rule 5160-46-04 include adding references to ODA and clarifying provider requirements as they are different between ODM and ODA. The clinical records requirements were updated and conditions of participation were included in OAC rule 5160-44-31, also filed with this rule package. Other technical changes were made throughout.

- 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 (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 121.76(A)(3). OAC Medicaid rules may be found online at: <http://codes.ohio.gov/oac/5160>.

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). The Ohio Revised Code references may be found online at: <http://codes.ohio.gov/orc/51>.

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). The eCFR is available online at: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>

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

Based upon stakeholder feedback minor changes were made to this rule to clarify in paragraph (D) that the paragraph pertains to waiver nursing providers. The term "nurse" was replaced with "nursing service providers" and the language was simplified. Also, in paragraph (D)(1), the reference to OAC Chapter 173-9 was changed to Chapter 173-39 and OAC Chapter 5160-38 was corrected and changed to Chapter 5160-58.

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.

0.00

Not Applicable.

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

There are no new costs associated with implementation of this rule in OAC chapter 5160-44. Waiver nursing providers must be registered nurses or licensed practical nurses who possess a current, valid and unrestricted licensed with the Ohio Board of Nursing.

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? No

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

Waiver nursing providers must be registered nurses or licensed practical nurses who possess a current, valid and unrestricted licensed with the Ohio Board of Nursing.

- 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