

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-44-27

Rule Type: Amendment

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

Agency Name: Ohio Department of Medicaid

Division:

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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, 5166.30
5. **What statute(s) does the rule implement or amplify?** 5162.03, 5164.02, 5166.30, 5166.301, 5166.302, 5166.303, 5166.304, 5166.305, 5166.306, 5166.307, 5166.308, 5166.309, 5166.3010
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 5160-44-27, entitled "Nursing facility-based level of care home and community-based services programs: home care attendant services," sets forth the definitions related to the rule, service description, individual expectations, provider qualifications and requirements, and clinical record keeping requirements.

The proposed changes for this rule are the following:

- o Removed the requirement for continuing education hours.
- o Removed temporary flexibility allowing CPR and First Aide to be obtained solely through internet training.
- o Modified record keeping to eliminate the requirement for the clinical record to be stored at the providers place of business.
- o Removed requirement for a separate record to be maintained in the individuals home if the clinical record is accessible in the home.
- o Removed duplicative language describing group setting service authorization.
- o Reinstated requirement for face-to-face RN visits.
- o Modified temporary flexibilities allowing the individual's signature to be obtained at a later date.
- o Removed deeming language.
- o Removed restrictive language.
- o Modified language/reformatted requirements for clarification and grammatical errors.
- o Added language for the ODM 02389 "Home Care Attendant Medication Authorization" form and/or the ODM 02390 "Home Care Attendant Skilled Task Authorization" form to be updated and reflected in the clinical record when any changes in home care attendant service provisions are needed.
- o Statutory citation updates.

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 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 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 another rule or rules of the Code of Federal Regulations (CFR). This question is not applicable to any incorporation by reference to another CFR 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 an ODM form or forms. Each cited ODM form is generally available to persons affected by this rule via the "Resources/Publication/Forms Central" link on the Ohio Department of Medicaid website (<http://medicaid.ohio.gov/>). Such reference to ODM forms are exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(B)(4).

- 11. 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

- 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?**

There are no new costs of compliance associated with the changes to this rule. This rule requires home care attendant providers to submit an ODM-specified form as part of the provider application process. It also requires the provider to submit evidence of the following: successful completion of a competency evaluation and/or training program, certified vocational program and training specific to the services to be provided. The provider must also submit a written attestation of training, instruction and skills testing. Providers must complete first aid certification and CPR certification. When the home care attendant provider secures an RN, the RN must possess a current valid and unrestricted license with the Ohio board of nursing.

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? Yes**

- A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

When the home care attendant provider secures an RN, the RN must possess a current valid and unrestricted license 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? Yes**

This rule requires home care attendant providers to submit an ODM-specified form as part of the provider application process. It also requires the provider to submit evidence of the following: successful completion of a competency evaluation and/or training program, certified vocational program and/or training specific to the services to be provided. The provider must also submit a written attestation of training, instruction and skills testing. Providers must complete first aid certification and CPR certification. Home care attendant services providers must maintain clinical documentation in their place of business and within the individual's home.

- 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? 36

5160-44-27 (D) - "Shall" to be removed.

5160-44-27 (E)(1) - "Shall" to be removed.

5160-44-27 (E)(2) - "Shall" to be removed.

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5160-44-27 (E)(3) - "Shall" to be removed.

5160-44-27 (E)(3)(a) - "Shall" to be removed.

5160-44-27 (E)(3)(b) - "Shall" to be removed.

5160-44-27 (E)(3)(b) - "Shall" to be removed.

5160-44-27 (E)(3)(c) - "Shall" to be removed.

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5160-44-27 (E)(3)(d) - "Shall" to be removed.

5160-44-27 (F)(2) - "Shall" to be removed.

5160-44-27 (F)(3) - "Shall" to be removed.

5160-44-27 (G) - "Shall" to be removed.

5160-44-27 (G)(1)(c) - "Shall" to be removed.

5160-44-27 (G)(8)(b) - "Shall" to be removed.

5160-44-27 (G)(8)(c) - "Shall" to be removed.

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5160-44-27 (G)(8)(d) - "Shall" to be removed.

5160-44-27 (G)(8)(e) - "Shall" to be removed.

5160-44-27 (G)(8)(f) - "Shall" to be removed.

5160-44-27 (I) - "Shall" to be removed.

5160-44-27 (I)(2) - "Shall" to be removed.

5160-44-27 (I)(2) - "Shall" to be removed.

5160-44-27 (I)(2)(e) - "Shall" to be removed.

5160-44-27 (I)(2)(h) - "Shall" to be removed.

5160-44-27 (J) - "Shall" to be removed.

5160-44-27 (J)(1) - "Shall" to be removed.

5160-44-27 (K) - "Shall" to be removed.

5160-44-27 (K)(1) - "Shall" to be removed.

5160-44-27 (K)(2) - "Shall" to be removed.

5160-44-27 (K)(2)(k) - "Shall" to be removed.

5160-44-27 (K)(2)(k) - "Shall" to be removed.

5160-44-27 (M) - "Shall" 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