

**Rule Summary and Fiscal Analysis (Part A)****Ohio Department of Medicaid**

Agency Name

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Division

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**5160-45-10**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**ODM-administered waiver programs: Provider conditions of participation.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **5166.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5162.03, 5164.02, 5166.02**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

OAC rule 5160-45-10 is being amended to update Ohio Department of Medicaid (ODM) -administered waiver program provider conditions of participation. Rule changes incorporate a new requirement as designated in Chapter 5160-1 of the Administrative Code. The rule change implements an Electronic Visit Verification (EVV) initiative for selected home and community based services in compliance with the 21st Century Cures Act enacted by Congress.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule contains the conditions of participation for Ohio Home Care Waiver service providers. The proposed amendment establishes that providers of nursing, personal care and home care attendant services under the Ohio Home Care Waiver shall verify

service delivery using an ODM-approved electronic visit verification system (EVV) in accordance with Rule 5160-1-40 of the Administrative Code. Verification of service delivery shall include, but not be limited to the date and location of service delivery, service start and end times, and the signatures of the provider and the individual or authorized representative. The proposed amendment also includes updates to Administrative Code rule cites, Code of Federal Regulations effective dates and commonly used terminology.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by references 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 rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. 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).

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 121.71 to 121.74 pursuant to ORC 121.76 (B)(2).

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date: **2/1/2020**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

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The amendment of this rule will not impact ODM's projected budget during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A

15.

Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

No new costs.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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

Paragraph (B)(2)(b) states that ODM-administered waiver service providers must comply with the provider requirements set forth in rules 5160-46-04, 5160-46-04.1 or 5160-58-04 of the Administrative Code, as applicable. This may include licensure/certification, as appropriate.

EVV training must be completed before an agency or non-agency provider of selected home and community based services can enroll as a Medicaid provider. Current providers must complete the training to access the EVV system and bill for Medicaid covered services subject to EVV requirements. These requirements are defined in new OAC rule 5160-1-40 and the cost of compliance is reported in the RSFA.

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? **Yes**

Failure by ODM-administered waiver service providers to meet the requirements set forth in this rule may result in the imposition of sanctions against them, including, but not limited to suspension or termination of their Medicaid provider agreement.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

Paragraph (B)(4) requires that upon entering into a Medicaid provider agreement and annually thereafter, providers of ODM-administered waiver services acknowledge in writing they have reviewed rule 5160-45-05 of the Administrative Code regarding incident management and related procedures. Additionally, paragraph (B)(6) requires that upon request, and within the timeframe prescribed in the request, providers must furnish information and documentation to ODM, its designee and the Centers for Medicare and Medicaid Services (CMS). Paragraph (B)(13) requires the provider to notify ODM or its designee within 24 hours when the provider is aware of issues that may affect the individual and/or the provider's ability to render services as directed on the individual's person-centered services plan. Paragraph (B)(15) requires providers to submit and maintain a current email address to ODM and/or its designee in order to receive electronic notification of any rule adoption, amendment or rescission, and any other communication from ODM or its designee. Paragraph (B)(16) requires the provider submit written notification to the individual and ODM or its designee at least 30 calendar days before the anticipated last date of service if the provider is terminating the provision of ODM-administered waiver services to the individual. Paragraph (C) requires providers of nursing, personal care and home care attendant

services under the Ohio Home Care Waiver to verify service delivery using an ODM-approved EVV system in accordance with Rule 5160-1-40 of the Administrative Code. Paragraphs (G) and (H) require agency and non-agency providers to pay applicable federal, state and local income and employment taxes in compliance with federal, state and local requirements. On an annual basis, non-agency providers must submit an ODM-approved affidavit stating that they paid their applicable taxes.