

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

Agency Name

Division

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**5160-45-10**

Rule Number

**NEW**

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:

This new rule is being adopted to replace existing rule 5160-45-10 which is being rescinded as a result of five-year review.

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 core conditions of participation that a provider must meet in

order to furnish ODM-administered waiver services. ODM-administered waiver service providers shall maintain a professional relationship with the individuals to whom they provide services. Among other things, services shall be provided in a person-centered manner in accordance with the individual's approved all services plan, and in a manner that is attentive to the individual's needs and maximizes the individual's independence. Providers must maintain an active, valid Medicaid provider agreement and comply with all applicable provider requirements set forth in the Administrative Code and federal and state law. The rule also establishes what a provider can never do and what they cannot do while rendering services. For example, ODM-administered waiver service providers shall never engage in behavior that may cause abuse or distress, or that may compromise the individual's health and welfare; nor shall they engage in behavior that may be manipulative or pose a conflict of interest. While rendering services, a provider is prohibited from taking the individual to the provider's place of residence, or bringing children, animals, or other persons to the individual's place of residence so as not to distract from, or interfere with service delivery.

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).

This 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:

(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.

\$0.00

The proposed rule will have no impact on the projected budget during the current biennium.

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

Not applicable.

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 meet the provider requirements set forth in rules 5160-46-04, 5160-46-04.1, 5160-50-04, 5160-50-04.1 or 5160-58-04 of the Administrative Code, as applicable. This may include licensure/certification, as appropriate.

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 all services plan. Paragraph (B)(15) 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 (F) 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. 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.