

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-56-04

**Rule Type:** Amendment

**Rule Title/Tagline:** Hospice services: provider requirements.

**Agency Name:** Ohio Department of Medicaid

**Division:**

**Address:** 50 Town St 4th floor Columbus OH 43218-2709

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#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?** 10/1/2022
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?** 5164.02
5. **What statute(s) does the rule implement or amplify?** 5162.02
6. **What are the reasons for proposing the rule?**

As a result of recent review, the department determined amendments to the rule are necessary to update and clarify certain provisions to allow flexibility in how hospice services can be provided.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the provisions for the responsibilities of a hospice to be eligible to provide and to request reimbursement for hospice services.

- In paragraph (E), language is being added to allow the utilization of pseudo-patients in competency testing for hospice aides and to allow individuals who are competency tested only in tasks in which they will be assigned to function as hospice aides.

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. This question is not applicable to any incorporation by reference to the Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(a).

This rule incorporates one or more references to another rule or rules of the Administrative Code. This question is not applicable to any incorporation by reference to another Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(d).

This rule incorporates one or more dated references to the U.S. Code. This question is not applicable to any dated incorporation by reference to the U.S. Code because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(A).

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 121.75(A)(2)(d).

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

Revising to correct date of public hearing notice.

## 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

No impact on current budget.

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

In accordance with paragraph (A) of this rule, hospice providers must execute the Medicaid provider agreement in the format provided by the Department of Medicaid. The Department estimates it will take a hospice provider's attorney approximately 1.5 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$600.00) to review one provider agreement. The Department further estimates it will take a hospice director of operations approximately 1 hour at the rate of approximately \$55.00 per hour (total estimated cost: \$55.00) to prepare one provider agreement in the format provided by the Department. The Department therefore estimates it will cost a total of approximately \$655.00 for a hospice provider to execute one Medicaid provider agreement in the format provided by the Department.

In accordance with paragraph (B) of this rule, hospice providers are required to meet the Medicare guidelines in accordance with 42 C.F.R. part 418. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours for various hospice staff to meet the various Medicare guidelines and multiplying by the applicable rate of pay for each staff person, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (C) of this rule, hospice providers are required to be licensed by the Ohio Department of Health according to ORC Chapter 3712. There should be no cost of compliance for providers to be licensed by the Ohio Department of Health in order to be Medicaid hospice providers, as licensure is a requirement for all hospice providers in Ohio regardless of whether they serve Medicaid or non-Medicaid individuals. The hospice providers have already been licensed and therefore there are no additional costs.

In accordance with paragraph (D) of this rule, hospice providers must comply with all the requirements for Medicaid providers in Chapter 5160-1 of the Administrative Code. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours for various hospice staff to meet the various Medicaid guidelines and multiplying by the applicable rate of pay for each staff person, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (E) of this rule, hospice providers are required to ensure that all employees, volunteers, and contracted staff who provide direct services to hospice individuals are trained, licensed, certified, and/or registered in accordance with applicable federal and state law. The department estimates it will take a hospice director of operations approximately 4 hours at the rate of approximately \$55.00 per hour (total estimated cost \$220) to ensure that hospice employees, volunteers and contracted staff are trained, licensed, certified and/or registered in accordance with applicable law.

In accordance with paragraph (G) of this rule, hospice providers must arrange for another individual or entity to furnish hospice services when the designated hospice cannot provide services to the individual. This arrangement must include a signed agreement that is to remain on file with the hospice agency. The department estimates that it will take a hospice RN case manager approximately 2 hours at the rate of approximately \$32.00 per hour (total estimated cost: \$64.00) to arrange for services that cannot be provided by the designated hospice. The department estimates that it will take a hospice RN case manager approximately 1 hour at the rate of approximately \$32.00 per hour (total estimated cost: \$32.00) to complete a signed agreement to document the arrangement between the designated hospice and other individual or entity furnishing hospice services to the individual when the designated hospice cannot.

In accordance with paragraph (H) of this rule, hospice providers must assume professional management of the individual's hospice care, including providing for and ensuring the ongoing sharing of information between all disciplines providing care across all settings. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours for various hospice staff to meet these guidelines and multiplying by the applicable rate of pay for each staff person, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (I) of this rule, hospice providers must facilitate concurrent care with other Medicaid providers for individuals under the age of twenty-one. Hospice providers must ensure hospice services are maintained and coordinated with concurrent care service; document the delineation in which services and the assessment process are coordinated between Medicaid hospice and non-hospice providers to avoid duplication of similar services; maintain up-to-date contact information for providers of concurrent care and services. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours for various hospice staff to meet these guidelines and multiplying by the applicable rate

of pay for each staff person, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (J) of this rule, hospice providers must have a signed agreement with a nursing facility, ICF-IID, or inpatient facility and must contain the information specified in this paragraph. The department estimates that it will take a hospice director of operations approximately .5 hour at the rate of approximately \$55.00 per hour (total estimated cost: \$27.50) to complete one signed agreement.

In accordance with paragraph (K) of this rule, hospice providers must ensure all necessary hospice care and services are furnished to the individual and that such care and services are specified in the individual's plan of care for the items as specified in the paragraph. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours it would take for a hospice RN case manager to meet these guidelines and multiplying by \$32.00 per hour, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (L) of this rule, hospice providers must designate a registered nurse, who is a member of the interdisciplinary group to provide care coordination and assist with the implementation of the plan of care. The department estimates that it will take a hospice director of operations approximately .25 hours at the rate of approximately \$55.00 per hour (total estimated cost: \$13.75) to designate a registered nurse to meet the requirements of this rule.

In accordance with paragraph (M)(3)(a) of this rule, hospice providers must ensure care coordination for individuals enrolled in a home and community-based waiver program, by reviewing and approving a comprehensive plan for concurrent provision of services. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours it would take for a hospice RN case manager to meet these guidelines and multiplying by \$32.00 per hour, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (M)(3)(b) of this rule, hospice providers must ensure care coordination for individuals enrolled in a home and community-based waiver program, by resolving any issues resulting from the comprehensive plan for the concurrent provision of waiver services by waiver and hospice providers. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours it would take for a hospice RN case manager to meet these guidelines

and multiplying by \$32.00 per hour, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (M)(3)(c) of this rule, hospice providers must ensure care coordination for individuals enrolled in a home and community-based waiver program, by resolving any issues of interpretation when implementing the requirements in this chapter. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours it would take for a hospice RN case manager to meet these guidelines and multiplying by \$32.00 per hour, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (M)(3)(d) of this rule, hospice providers must ensure care coordination for individuals enrolled in a home and community-based waiver program, by applying any exceptions to the requirements of this chapter on a case-by-case basis. The department cannot quantify the cost of compliance for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours it would take for a hospice RN case manager to meet these guidelines and multiplying by \$32.00 per hour, then adding any additional costs that would be incurred to comply with this requirement.

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.**

This rule does not impose a regulation fee.

### **III. Common Sense Initiative (CSI) Questions**

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **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**

In accordance with paragraph (A) of this rule, hospice providers must execute the Medicaid provider agreement in the format provided by the Department

of Medicaid. The Department estimates it will take a hospice provider's attorney approximately 1.5 hours at the rate of approximately \$400.00 per hour (total estimated cost: \$600.00) to review one provider agreement. The Department further estimates it will take a hospice director of operations approximately 1 hour at the rate of approximately \$55.00 per hour (total estimated cost: \$55.00) to prepare one provider agreement in the format provided by the Department. The Department therefore estimates it will cost a total of approximately \$655.00 for a hospice provider to execute one Medicaid provider agreement in the format provided by the Department. However, all costs of compliance are existing costs. There are no new costs of compliance.

In accordance with paragraph (B) of this rule, hospice providers are required to meet the Medicare guidelines in accordance with 42 C.F.R. part 418. The department cannot quantify the adverse impact for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours for various hospice staff to meet the various Medicare guidelines and multiplying by the applicable rate of pay for each staff person, then adding any additional costs that would be incurred to comply with this requirement. However, all costs of compliance are existing costs. There are no new costs of compliance.

In accordance with paragraph (C) of this rule, hospice providers are required to be licensed by the Ohio Department of Health according to ORC Chapter 3712. There should be no cost of compliance for providers to be licensed by the Ohio Department of Health in order to be Medicaid hospice providers, as licensure is a requirement for all hospice providers in Ohio regardless of whether they serve Medicaid or non-Medicaid individuals. The hospice providers have already been licensed and therefore there are no additional costs.

In accordance with paragraph (D) of this rule, hospice providers must comply with all the requirements for Medicaid providers in Chapter 5160-1 of the Administrative Code. The department cannot quantify the adverse impact for this requirement because it is not feasible to do so. However, the impact might be quantified by determining the number of hours for various hospice staff to meet the various Medicaid guidelines and multiplying by the applicable rate of pay for each staff person, then adding any additional costs that would be incurred to comply with this requirement. However, all costs of compliance are existing costs. There are no new costs of compliance.

- 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? No
  - A. How many new regulatory restrictions do you propose adding?  
Not Applicable
  
  - B. How many existing regulatory restrictions do you propose removing?  
Not Applicable