

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-56-05

Rule Type: Amendment

Rule Title/Tagline: Hospice services: covered services.

Agency Name: Ohio Department of Medicaid

Division:

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

Contact: Tommi Potter **Phone:** 614-752-3877

Email: tommi.potter@medicaid.ohio.gov

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?** 5162.02
5. **What statute(s) does the rule implement or amplify?** 5162.03
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 Medicaid covered services that hospice providers may or must furnish to the extent specified by the individual's plan of care. The additions to the rule include:

1) In paragraph (D)(1), language is being added to allow core services to be provided through a combination of contracting services and telehealth services as necessary.

2) In paragraph (D)(1)(c), language is being added to include physician assistants as a health professional who may act as an attending physician to render physicians' services.

3) In paragraph (D)(2), language is being added to allow non-core services to be provided through a combination of contracting services and telehealth services as necessary and appropriate.

- 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 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 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.**

Based on testimony received at the 119 public hearing for this rule package and to align with federal regulations, language is being added to paragraph (D)(1)(c) to include physician assistants as a health professional who may act as an attending physician to render physicians' services.

10/09/2020 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)(1) of this rule, the designated hospice shall ensure the hospice services furnished to an individual in accordance with this rule are reasonable and necessary for the palliation and management of the terminal illness and related conditions. 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 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 (C) of this rule, the designated hospice shall ensure covered services provided to the individual are furnished by qualified personnel pursuant to 42 C.F.R. 418.114 (October 1, 2017), who are employed by the hospice, under an individual contract, or under arrangement with another provider. 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 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 (D)(1) of this rule, core hospice services that are outlined in this paragraph must be furnished or arranged by the designated hospice based on the individual's needs, appropriate level of care and plan of care. These core services may be provided through a combination of contracting services and telehealth services as necessary. The Department cannot quantify the adverse impact because the department cannot predict which core services will be provided because the services are based on the individual's needs, appropriate level of care and plan of care. 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 (D)(2) of this rule, non-core hospice services that are outlined in this paragraph must be furnished or arranged by the designated hospice

based on the individual's needs, appropriate level of care and plan of care. These non-core services may be provided through a combination of contracting services and telehealth services as necessary. The Department cannot quantify the adverse impact because the department cannot predict which non-core services will be provided because the services are based on the individual's needs, appropriate level of care and plan of care. 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 (D)(3) of this rule, the hospice provider is responsible for providing ambulance transports for an individual under the guidelines provided in this paragraph. 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 these guidelines and multiplying by the applicable rate of pay for each staff person, as well as the cost of the ambulance transport, then adding any additional costs that would be incurred to comply with this requirement.

In accordance with paragraph (E) of this rule, when an individual is eligible to receive room and board coverage in a NF or ICF-IID, the designated hospice shall pay the facility per diem reimbursed to the designated hospice by the Ohio department of Medicaid in accordance with rule 5160-56-06 of the Administrative Code which includes the room and board services listed in the paragraph and that are covered pursuant to section 20.3 of the "Medicare benefit policy manual, chapter nine: coverage of hospice services under hospital insurance" under hospital insurance, www.cms.gov (revised May 08, 2015). The department estimates that it will take a hospice biller approximately .25 hour at the rate of approximately \$20.00 per hour (total estimated cost: \$5.00) pay the facility for room and board charges for a hospice patient residing in a NF or ICF-IID.

In accordance with paragraph (F) of this rule, when an individual is enrolled in a home and community-based services waiver program, the designated hospice has the responsibility to cover hospice services pursuant to paragraph (M) of rule 5160-56-04 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 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.

- 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? No
 - 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? Yes

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In accordance with paragraph (D)(2) of this rule, non-core hospice services that are outlined in this paragraph must be furnished or arranged by the designated hospice based on the individual's needs, appropriate level of care and plan of care. These non-core services may be provided through a combination of contracting services and telehealth services as necessary. The Department cannot quantify the adverse impact because the department cannot predict which non-core services will be provided because the services are based on the individual's needs, appropriate level of care and plan of care. 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. However, all costs of compliance are existing costs. There are no new costs of compliance.

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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