

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-58-05.3

**Rule Type:** Rescission

**Rule Title/Tagline:** MyCare Ohio waiver and 1915(i) specialized recovery services program (SRSP): incident management system.

**Agency Name:** Ohio Department of Medicaid

**Division:**

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

**Contact:** Tommi Potter

**Email:** tommi.potter@medicaid.ohio.gov **Phone:** 614-752-3877

#### I. Rule Summary

1. Is this a five year rule review? Yes
  - A. What is the rule's five year review date? 4/15/2019
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, 5164.91
5. What statute(s) does the rule implement or amplify? 5164.02, 5164.91, 5166.02, 5167.02
6. What are the reasons for proposing the rule?

This rule is being proposed for rescission and will be replaced by new rule 5160-44-05 to implement aligned nursing facility based home and community based services (HCBS) waiver programs.
7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

OAC rule 5160-58-05.3 "MyCare Ohio waiver and 1915(i) specialized recovery services program: incident management system," sets forth the definitions, standards and procedures related to incident reporting for Ohio Department of Medicaid (ODM), their designees (including MyCare Ohio Plans), service providers and individuals. It applies to the MyCare Ohio waiver and Specialized Recovery Services (SRS) program when the individual is enrolled in a MyCare Ohio Plan.

8. Does the rule incorporate material by reference? No
9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

*Not Applicable*

10. 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

11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.

This will have no impact on revenues or expenditures.

0.00

Not applicable.

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

ODM, MyCare Ohio Plans, or their designees, and service providers are currently required to report incidents as a condition of doing business with the State. There are no new costs due to rescission of this rule which sets forth a level of reporting and investigative requirements for those entities. ODM cannot estimate the cost of compliance as costs will vary depending on the number of incidents an individual may

encounter and that are discovered by ODM, the MyCare Ohio Plan, their designee, or the service provider.

MyCare Ohio Plans are paid per member per month. ODM must pay MCOPs rates that are actuarially sound, as determined by an outside actuary in accordance with 42 C.F.R. 438.6(c) and CMS's "2018/2019 Managed Care Rate Setting Consultation Guide." Ohio Medicaid capitation rates are "actuarially sound" for the period covered by the certification, projected capitation rates and other revenue sources provide for all reasonable, appropriate and attainable costs. Costs include but are not limited to expected health benefits, health benefit settlement expenses, administrative expenses, the cost of capital and government mandated assessments, fees, and taxes.

All rates and actuarial methods can be found on the ODM website in Appendix E of both the Medicaid Managed Care and MyCare Ohio provider agreements. Through the administrative component of the capitation rate paid to the MCPs and MCOPs by ODM, MCPs and MCOPs will be compensated for the cost of the requirements found in these rules. For CY 2018, the administrative component of the capitation rate varies by program/population and ranges from 3.50% to 8.48% for MCPs and from 2.25% to 10.00% for MCOPs.

The investigative entity and ODM designees are contracted providers who apply through the request for proposal (RFP) process to become a contracted vendor to perform this work. The providers are aware of the requirements and rate of payment prior to seeking and signing their contracts with the state. The rate of payment to contractors are negotiated according to the work required by the rule. The rule maintains a level of reporting and investigative requirements not expected to have a significant adverse impact on the contractors' costs of doing business.

The HCBS service providers are also paid rates that are actuarially sound and include an administrative component to cover costs such as those incurred when reporting an incident. The rule maintains a similar level of reporting requirements and is not expected to have a significant adverse impact on the providers' current costs of doing business.

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**

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

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

**16. 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? Yes**

OAC rule 5160-58-05.3 requires ODM, its designees (including MyCare Ohio Plans), and all service providers to report all incidents related to individuals enrolled in an ODM-administered home and community-based services (HCBS) waiver program (MyCare Ohio Waiver). This report of information is a federal requirement and is necessary to ensure the health and safety of individuals enrolled in an HCBS program. Specifically, this rule requires the entities noted above to: take immediate action to ensure the health and welfare of the individual, report the incident immediately upon discovering the incident, and when reporter is a waiver provider who has a supervisor, immediately notify his/her supervisor. The incident report requirements and timeframes are outlined in the rule.

The Care Management (CM) entity is required to verify the above actions were taken to protect the health and welfare of the individual, to address the issues effecting the individual, and to report the incident in the incident management system. If it is discovered that a required action was not taken, the CM entity is required to do so.

The investigative entity (ODM designee), is required to verify the above actions were taken to protect the health and welfare of the individual. If it is discovered that a required action was not taken, the investigative entity is required to do so. At the conclusion of an investigation, the investigative entity shall provide a summary of the investigative findings, and whether the incident was substantiated, unless such action could jeopardize the health and welfare of the individual. The investigative entity shall submit incident data to ODM as requested, and in a format and frequency established by ODM.