Rule Summary and Fiscal Analysis (Part A)

Ohio Department of Medicaid
Agency Name

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5160-8-05 | **NEW**
Rule Number | TYPE of rule filing

Rule Title/Tag Line | **Mental health services.**

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: **5164.02**

5. Statute(s) the rule, as filed, amplifies or implements: **5164.02**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being adopted to facilitate the updating of Medicaid program policy. It replaces existing rules 5160-4-29 and 5160-8-05.

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 sets forth coverage and payment provisions for mental health services provided in non-institutional settings.

Existing rules 5160-4-29 and 5160-8-05 recognize certain professionals capable of rendering covered mental health services, under appropriate supervision as necessary:

New rule 5160-8-05 identifies not only these professionals (some of them by updated title) but also other individuals capable of rendering covered mental health services:

* Physicians, advanced practice registered nurses (APRNs), and physician assistants (PAs)

* Licensed psychologists

* Licensed professional clinical counselors, independent social workers, and independent marriage and family therapists (collectively termed "independent practitioners")

* Licensed professional counselors, social workers, and marriage and family therapists (collectively termed "supervised practitioners")

* Registered counselor trainees, registered social work trainees, marriage and family therapist trainees, and doctoral psychology trainees (collectively termed "supervised trainees")

The new rule recognizes independent practitioners as eligible Medicaid providers with their own provider types; they will be able to submit claims and receive payment for Medicaid services they provide. An existing provision that in effect compels licensed psychologists to enroll in Medicaid as eligible providers, even if their services are rendered under the supervision of an eligible provider, is extended to independent practitioners.

An existing provision that requires licensed psychologists in independent practice to participate in Medicare if they can do so (or, if the practice is limited to pediatric treatment, to meet all requirements for Medicare participation other than serving Medicare beneficiaries) is extended to independent practitioners in independent practice.

The list of covered services is expanded to include assessment and behavior change intervention and psychotherapy for crisis.

Specific provisions concerning supervision are replaced by a statement that every mental health service reported on a claim must be performed in accordance with any supervision requirements established in law, regulation, statute, or rule.

The payment structure for some mental health services is being modified. The maximum payment amount for psychological or neuropsychological testing is 100% of the amount specified in the published payment schedule (Appendix DD to rule 5160-1-60 of the Administrative Code), regardless of provider. For a mental

health service (other than testing) rendered by a physician, APRN, PA, or licensed psychologist, the maximum payment amount is 100% of the payment schedule amount; for a mental health service (other than testing) rendered by a independent practitioner or a supervised practitioner, it is 85%. Payment made to licensed psychologists is thus increasing from 85% to 100% of the payment schedule amount, and payment made to supervised practitioners is increasing from 50% to 85%.

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 reference 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).

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 increase expenditures.

$358,968

The adoption of this rule will increase expenditures by approximately $358,968 over the remainder of the biennium.

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

651-525

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:

The new rule imposes no license fees or fines. The existing and new rules indicate that no eligible provider may receive payment without a valid Medicaid provider agreement. Both the existing rules and the new rule specify that participating practitioners must hold a current license. The requirements for holding a Medicaid provider agreement and licensure are means of identifying providers by credentials they already possess; these provisions impose no additional requirements. The documentation requirements in the rule concern activities that are standard business practices for these providers, the cost of which is not attributable to Medicaid rules.

16. Does this rule have a fiscal effect on school districts, counties, townships, or

municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

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**

This rule allows payment only to practitioners who hold a valid professional license and are enrolled in the Medicaid program.

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**

The rule requires the recording and maintenance of information.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	**No**	**No**	**No**

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

This rule includes a new provision that allows payment for services provided by any of six types of licensed mental health professional: professional counselor, professional clinical counselor, social worker, independent social worker, marriage and family therapist, and independent marriage and family therapist. This rule also increases the maximum amount to be paid for a service provided by a psychologist, from 85% to 100% of the amount listed in the published payment schedule. For any individual local government provider, Medicaid payment for mental health services will depend not only on the volume of services rendered but also on which practitioners render them; the aggregate payment therefore could increase, stay relatively the same, or decrease.

The new rule imposes no license fees or fines. The existing and new rules indicate that no eligible provider may receive payment without a valid Medicaid provider agreement. Both the existing rules and the new rule specify that participating practitioners must hold a current license. The requirements for holding a Medicaid provider agreement and licensure are means of identifying providers by credentials they already possess; these provisions impose no additional requirements. The documentation requirements in the rule concern activities that are standard business

practices for these providers, the cost of which is not attributable to Medicaid rules.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

The comprehensive cost estimates are provided in the following sections.

(a) Personnel Costs

ODM does not expect that the proposed rule will result in any change in personnel costs to Medicaid providers.

(b) New Equipment or Other Capital Costs

ODM does not expect that the proposed rule will result in any change in new equipment or other capital costs to Medicaid providers.

(c) Operating Costs

ODM does not expect that the proposed rule will result in any change in operating costs to Medicaid providers.

(d) Any Indirect Central Service Costs

ODM does not expect that the proposed rule will result in any change in indirect central service costs to Medicaid providers.

(e) Other Costs

ODM does not expect that the proposed rule will result in any change in other costs to Medicaid providers.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

The change in payment structure, which will be implemented in the ODM claim-payment system, represents a routine maintenance cost for ODM; local governments are not expected to incur any similar expense.

7. Please provide a statement on the proposed rule's impact on economic development.

This proposed rule has no discernible impact on economic development.