

PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF MEDICAID

DATE: August 28, 2020

TIME: 11:00 a.m.

Teleconference Phone Number: +1 614-721-2972

Teleconference Pin: 464164077# (Dial-in Number)

Pursuant to Chapter 119. and section 51642.02 of the Revised Code, the Director of the Ohio Department of Medicaid (ODM) gives notice of ODM's intent to consider the adoption, amendment, or rescission of the rule or rules identified below and of a public hearing thereon.

Rule 5160-31-03, entitled *Eligibility for enrollment in the PASSPORT HCBS waiver program*. OAC rule 5160-31-03 describes the enrollment and disenrollment processes for individuals served under the PASSPORT waiver.

As a result of flexibilities granted under the COVID-19 emergency relief approved by the Centers for Medicare and Medicaid (CMS), ODM is proposing to retain the ability to suspend the disenrollment process for any individual who fails to meet any of the PASSPORT eligibility requirements. Once enrolled, an individual will not be disenrolled unless the individual requests disenrollment, moves out of state, transitions between the PASSPORT and MyCare Ohio waiver programs, or is deceased.

ODM's intent is to rescind these provisions from this permanent rule filing once the public health emergency has ceased.

Rule 5160-31-06, entitled *Provider conditions of participation for the PASSPORT HCBS waiver program*. OAC rule 5160-31-06 outlines requirements for providers to serve individuals enrolled in the PASSPORT program administered by ODA.

As a result of flexibilities under the Appendix K applications submitted and approved by CMS on May 13, 2020, ODM is proposing to retain the ability of ODA to deem any provider who also holds appropriate certificate with ODM and DODD. To be eligible for deeming by ODA, providers must be approved by ODM or certified by DODD to provide the same or similar services offered under the PASSPORT waiver program.

Rule 5160-33-03, entitled *Eligibility for the assisted living home and community based services (HCBS) waiver program*. OAC rule 5160-33-03 describes the enrollment and disenrollment processes for individuals served under the Assisted Living waiver.

As a result of flexibilities granted under the COVID-19 emergency relief approved by the Centers for Medicare and Medicaid (CMS), ODM is proposing to retain the ability to suspend the

disenrollment process for any individual who fails to meet any of the Assisted Living waiver eligibility requirements. Once enrolled, an individual will not be disenrolled unless the individual requests disenrollment, moves out of state, transitions between the Assisted Living and MyCare Ohio waiver programs, or is deceased.

ODM's intent is to rescind these provisions from this permanent rule filing once the public health emergency has ceased.

Rule 5160-33-04, entitled *Enrollment process for assisted living HCBS waiver program*. OAC rule 5160-33-04 describes the enrollment processes for individuals who are determined eligible for the Assisted Living waiver program.

ODA is proposing changes in OAC 173-38-03 which detail the approval requirements needed for living units within a licensed residential care facility certified by ODA. OAC 5160-33-04 is proposing to incorporate by reference the new changes proposed by ODA in OAC 173-38-03.

Rule 5160-36-03, entitled *Program for all-inclusive care for the elderly (PACE) eligibility*. OAC rule 5160-36-03 describes the eligibility requirements for individuals served under the PACE program.

As a result of flexibilities granted under the COVID-19 emergency relief approved by the Centers for Medicare and Medicaid (CMS), ODM is proposing to retain the ability to suspend the disenrollment process for any individual who fails to meet any of the PACE program eligibility requirements. The requirement that if an individual does not or no longer meets Medicaid eligibility, the individual will be denied entry or disenrolled from the Medicaid program is suspended. The requirement that PACE participants are disenrolled if they no longer are Medicaid eligible and choose to remain in PACE as Medicare only or private pay is suspended.

ODM's intent is to rescind these provisions from this permanent rule filing once the public health emergency has ceased.

Rule 5160-36-04, entitled *Program for all-inclusive care for the elderly (PACE) enrollment, disenrollment, and waiting lists*. OAC rule 5160-36-04 describes the enrollment and disenrollment processes for individuals served under the PACE program.

As a result of flexibilities granted under the COVID-19 emergency relief approved by the Centers for Medicare and Medicaid (CMS), ODM is proposing to retain the ability to suspend the disenrollment process for any individual who fails to meet the PACE requirements or meets the criteria for involuntary disenrollment in ODA rules. Once enrolled, an individual will not be disenrolled unless the individual requests disenrollment, moves out of state, or is deceased.

Rule 5160-40-01, entitled *Medicaid home and community-based services program-individual options waiver*. Ohio Administrative Code (OAC) rule 5160-40-01 describes certification and licensure requirements for providers of home and community-based services approved under the Individual Options waiver.

As a result of flexibilities under the Appendix K applications submitted and approved by the Centers for Medicare and Medicaid (CMS) on May 13, 2020, the Ohio Department of Medicaid (ODM) is proposing to retain the ability of the Department of Developmental Disabilities (DODD) to deem any provider who also holds appropriate certificate with ODM and the Ohio Department of Aging (ODA). To be eligible for deeming by DODD providers must be approved by ODM or certified by ODA to provide the same or similar services offered under each of the three DODD-administered waiver programs.

Rule 5160-41-17, entitled *Medicaid home and community-based services program-self-empowered life funding waiver*. OAC rule 5160-41-17 describes certification and licensure requirements for providers of home and community-based services approved under the SELF waiver.

As a result of flexibilities under the Appendix K applications submitted and approved by the Centers for Medicare and Medicaid (CMS) on May 13, 2020, the Ohio Department of Medicaid (ODM) is proposing to retain the ability of the Department of Developmental Disabilities (DODD) to deem any provider who also holds appropriate certificate with ODM and the Ohio Department of Aging (ODA). To be eligible for deeming by DODD providers must be approved by ODM or certified by ODA to provide the same or similar services offered under each of the three DODD-administered waiver programs.

Rule 5160-42-01, entitled *Medicaid home and community-based services program-level one waiver*. OAC rule 5160-42-01 OAC rule 5160-41-17 describes certification and licensure requirements for providers of home and community-based services approved under the Level One waiver.

As a result of flexibilities under the Appendix K applications submitted and approved by the Centers for Medicare and Medicaid (CMS) on May 13, 2020, the Ohio Department of Medicaid (ODM) is proposing to retain the ability of the Department of Developmental Disabilities (DODD) to deem any provider who also holds appropriate certificate with ODM and the Ohio Department of Aging (ODA). To be eligible for deeming by DODD providers must be approved by ODM or certified by ODA to provide the same or similar services offered under each of the three DODD-administered waiver programs.

Rule 5160-44-01, entitled *Nursing facility-based level of care home and community-based services programs: home and community-based settings*. OAC 5160-44-01 describes the requirements set forth by CMS regarding HCBS settings criteria for all HCBS waiver programs.

As a result of flexibilities granted under the COVID-19 emergency relief approved by the Centers for Medicare and Medicaid (CMS), ODM is proposing to retain the ability to suspend the requirement that individuals in a provider-owned or controlled residential setting can have visitors of their choice at any time. ODM is also retaining the flexibility granted during the public health emergency that services in a 1915(c) nursing facility level of care (NF-LOC) or the 1915(I) SRS program may be provided in settings that have not been determined to meet the HCBS settings criteria to accommodate individuals who require relocation to an alternative setting to ensure

continuation of needed HCBS. Case managers must document what criteria was not met and what steps were taken to mitigate deficiencies.

ODM's intent is to rescind these provisions from this permanent rule filing once the public health emergency has ceased.

Rule 5160-44-22, entitled *Nursing facility-based level of care home and community-based services programs: waiver nursing services*. OAC 5160-44-22 describes the waiver nursing service as offered under the NF-LOC waivers, and the provisions required for delivering the service.

As a result of flexibilities under the Appendix K applications submitted and approved by CMS on May 13, 2020, ODM is proposing to retain the ability of a provider to conduct face-to-face nursing visits through telephonic or electronic means, unless the individual's needs require a face-to-face visit. ODM is also proposing to retain the ability of ODM and ODA to deem any provider who also holds appropriate certificate with ODM, ODA, or DODD, respectively. To be eligible for deeming by ODM or ODA providers must be approved by ODM, or certified by ODA or DODD, respectively to provide the same or similar service offered under each of the NF-LOC waivers.

ODM's intent is to rescind the provision regarding flexibilities with face-to-face assessments from this permanent rule filing once the public health emergency has ceased.

Rule 5160-45-01, entitled *Ohio department of medicaid (ODM)-administered waiver program: definitions*. OAC rule 5160-45-01 defines terms and keywords used throughout OAC chapter 45 rules.

As a result of flexibilities under the Appendix K applications submitted and approved by CMS on May 13, 2020, ODM is proposing to retain the modification to the definition of "case manager visit" to reflect that the face-to-face encounter between an individual and case manager may be conducted by telephone or electronically, unless the individuals' needs require a face-to-face visit.

Rule 5160-45-03, entitled *Ohio department of medicaid (ODM)-administered waiver program: individual rights and responsibilities*. OAC rule 5160-45-03 describes the afforded rights and responsibilities of program participant's in Ohio's Ohio Home Care waiver program.

As a result of flexibilities under the Appendix K applications submitted and approved by CMS on May 13, 2020, ODM is proposing to retain the provision allowing individual service verification requirements to be satisfied by an electronic signature or standard signature via regular mail, or otherwise at the next face-to-face visit with the case manager.

ODM's intent is to rescind these provisions from this permanent rule filing once the public health emergency has ceased.

Rule 5160-46-02, entitled *Ohio home care waiver program: eligibility and enrollment*. OAC rule 5160-46-02 describes the enrollment and disenrollment processes for individuals served under the Ohio Home Care waiver.

As a result of flexibilities under the Appendix K applications submitted and approved by CMS on May 13, 2020, ODM is proposing to retain the practice of allowing an individual to provide a signature electronically or via regular mail, or no later than at the next face-to-face visit with the case manager, if unable to do so at the time of enrollment. ODM also proposes to continue to suspend the annual reassessments of LOC; disenrollment is suspended unless the individual requests disenrollment, moves out of state, transitions between the Ohio Home Care and MyCare Ohio wavier programs, or is deceased. Additionally, disenrollment will not occur for individuals who reach their 60th birthday unless they voluntarily disenroll, move out of state, or are deceased.

ODM's intent is to rescind the provisions regarding signature flexibility and the suspension of the annual reassessment of LOC from this permanent filing once the public health emergency has ceased.

Pursuant to Section twelve of Am. Sub. H. B. No. 197 ODM will hold the public hearing for this rule package via teleconference. The phone number and pin and the date and time for this hearing are listed at the top of this Notice. All interested parties are invited to participate in the public hearing. Oral and written testimony will be accepted for this hearing and will be given the same consideration. Those who want to give oral testimony are asked to send an email to Rules@Medicaid.Ohio.gov no later than one hour before the hearing to be added to the witness list. There will be a final call at the end of the hearing for those who wish to offer oral testimony but are not yet on the witness list.

Written comments submitted via fax, United States Postal Service, and email that are received or postmarked no later than the day of the hearing will be accepted as testimony and become part of the hearing record. All testimony will become public record; therefore, the Ohio Department of Medicaid asks that protected health information only be included if the information belongs to the person submitting the testimony or a person for which the submitter is a legal guardian. Written testimony sent via email is highly recommended, all testimony received via email will receive a confirmation of receipt.

A copy of the proposed rule is available, without charge, to any person at the address listed below. The rules are also available on the internet at <http://www.registerofohio.state.oh.us/>. Requests for a copy of the proposed rule or comments on the rule should be submitted by mail to the Ohio Department of Medicaid, Office of Legal Counsel, 50 W. Town Street, Suite 400, Columbus, Ohio 43215-3414, by fax at (614) 995-1301, or by e-mail at Rules@Medicaid.Ohio.gov.