

**PUBLIC HEARING NOTICE  
OHIO DEPARTMENT OF MEDICAID**

DATE: October 23, 2023

TIME: 11:00 a.m.

Teleconference Dial-in Phone Number: 614-721-2972

Teleconference Pin: 485534743#

Link to Microsoft Teams Meeting for Hearing: [Click here to join the meeting](#)

In-Person Location: 50 W. Town Street, Suite 400, Columbus, Ohio 43215-3414, Room A501

Pursuant to Chapter 119. And section 5164.02 of the Revised Code, the Director of the Ohio Department of Medicaid (ODM) gives notice of ODM's intent to consider the amendment of the rules identified below and of a public hearing thereon.

- Rule 5160-44-01, entitled "Nursing facility-based level of care home and community-based services programs: home and community-based settings," describes the requirements set forth by CMS regarding HCBS settings criteria for all HCBS waiver programs.
  - Statutory citation updates.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Modified language to reflect HCBS Settings CFR language.
  - Reinstated allowance for visitors at any time.
  - Removed the temporary allowance for services to be provided in settings that have not been determined to meet the HCBS settings criteria.
- Rule 5160-44-11, entitled "Nursing facility-based level of care home and community-based services programs: home delivered meals," sets forth the definitions, service description, meal specifications (menu and delivery), limitations and provider qualifications for the home delivered meals service.
  - Better defined billable meal types (standard, kosher and therapeutic)
  - Added flexibility to enable an individual to select reduced calorie, reduced sugar, reduced sodium, gluten-free, and vegetarian diet meals due to personal preference.
  - Removed the use of the term special diet.
  - Reformatted person-centered plan element description.
  - Removed provider deeming language.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates.
  - Per the LSC guidelines, the rule is being filed as rescind/new as more than fifty percent of the rule is being amended with the addition and rescission of text.
- Rule 5160-44-12, entitled "Nursing facility-based level of care home and community-based services programs: home maintenance and chore," sets forth the definitions of services, provider requirements and specifications for the home maintenance and chore services.
  - Added environmental hazards, warranty and maintenance plan for adaptive assistive devices and home modifications to be allowable through the service.

- Added allowance for service to be bundled to meet the needs of an individual (a combination of services may be authorized to complete a job).
  - Removed provider deeming language.
  - Per CMS direction, removed allowance for the service to be accessed 180 days prior to an individual's transition from an institutional setting into the community.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates
- Rule 5160-44-13, entitled "Nursing facility-based level of care home and community-based services programs: home modification," sets forth the service description, authorization process and amount, service limitations and provider requirements for home modification services.
  - Added allowance for service to be bundled to meet the needs of an individual (i.e. a combination of services may be authorized to complete a job).
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates.
  - Per the LSC guidelines, the rule is being filed as rescind/new as more than fifty percent of the rule is being amended with the addition and rescission of text.
- Rule 5160-44-14, entitled "Nursing facility-based level of care home and community-based services programs: community integration," sets forth the definitions of services, provider requirements and specifications for community integration services.
  - Removed provider deeming language.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates.
- Rule 5160-44-16, entitled "Nursing facility-based level of care home and community-based services programs: personal emergency response systems," sets forth the service description, equipment specifications, personal emergency response systems (PERS) limitations, and PERS provider requirements.
  - Removed deeming language.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates.
- Rule 5160-44-17, entitled "Nursing facility-based level of care home and community-based services programs: out-of-home respite," sets forth the service description, provider qualifications and clinical record keeping requirements for the nursing facility-based home and community services waiver out-of-home respite service.
  - Removed deeming language.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates.
- Rule 5160-44-22, entitled "Nursing facility-based level of care home and community-based services programs: waiver nursing services," describes the waiver nursing service as offered under the NF-LOC waivers, and the provisions required for delivering the service.
  - Removed restrictive language.

- Reinstated requirement for waiver nursing to not be used in lieu of similar services.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Added requirement for RN assessment to be billed using state plan nursing assessment code.
  - Removed deeming language.
  - Added language permitting spouse and relatives appointed legal decision making authority to serve as direct care workers of certain waiver services.
- Rule 5160-44-26, entitled “Nursing facility-based level of care home and community-based services programs: community transition,” sets forth the definitions of services, provider requirements and specifications for community transition services.
    - Removed deeming language.
    - Broadened examples of allowable basic household expenses.
    - Added CMS requirement language stating the service does not include furnishing arrangements that are owned or leased by a waiver provider where the provision of these items are inherent to the service they are already providing.
    - Removed the flexibility allowing signature to be obtained at a later date.
    - Removed restrictive language.
    - Modified language/reformatted requirements for clarification and grammatical errors.
    - Statutory citation updates.
- Rule 5160-44-27, entitled “Nursing facility-based level of care home and community-based services programs: home care attendant services,” sets forth the definitions related to the rule, service description, individual expectations, provider qualifications and requirements, and clinical record keeping requirements.
    - Removed the requirement for continuing education hours.
    - Removed temporary flexibility allowing CPR and First Aide to be obtained solely through internet training.
    - Modified record keeping to eliminate the requirement for the clinical record to be stored at the providers place of business.
    - Removed requirement for a separate record to be maintained in the individuals home if the clinical record is accessible in the home.
    - Removed duplicative language describing group setting service authorization.
    - Reinstated requirement for face-to-face RN visits.
    - Modified temporary flexibilities allowing the individual’s signature to be obtained at a later date.
    - Removed deeming language.
    - Removed restrictive language.
    - Modified language/reformatted requirements for clarification and grammatical errors.
    - Statutory citation updates.
- Rule 5160-44-31, entitled “Ohio department of medicaid (ODM)-administered waiver programs: provider conditions of participation,” describes provider conditions of participation for services outlined in OAC Chapters 5160-44 and 5160-46. It sets forth what a service provider shall and shall not do while providing services to individuals.
    - Added language permitting spouse and relatives appointed legal decision making authority to serve as direct care workers of certain waiver services.
    - Removed the temporary flexibility to obtain the individual’s signature from the next face-to fact visit to within one business day.
    - Removed restrictive language.
    - Modified language/reformatted requirements for clarification and grammatical errors.

- Statutory citation updates.
- Rule 5160-45-01, entitled “Ohio department of medicaid (ODM) -administered waiver program: definitions,” defines terms and keywords used throughout OAC chapter 45 rules.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Removed restrictive language.
- Rule 5160-45-03, entitled “Ohio department of medicaid (ODM) -administered waiver program: individual rights and responsibilities,” describes the afforded rights and responsibilities of program participants in Ohio’s Ohio Home Care waiver program.
  - Removed restrictive language.
  - Removed the flexibility allowing signature to be obtained at a later date.
- Rule 5160-46-04, entitled “Ohio home care waiver: definitions of the covered services and provider requirements and specifications,” describes the definitions of services, provider requirements and specifications for the delivery of Ohio Home Care Waiver services.
  - Decreased in-service continuing education requirements for non-agency personal care providers from twelve to six.
  - Reinstated restriction on solely internet-based training requirements.
  - Modified RN assessment in-person requirements.
  - Excluded the requirement for a discharge summary in the event the individual passes away.
  - Removed the temporary allowance for the service to be provided remotely or in the home of the individual.
  - Added allowance for service to be bundled to meet the needs of an individual (a combination of services may be authorized to complete a job).
  - Removed deeming language.
  - Removed restrictive language.
  - Modified language/reformatted requirements for clarification and grammatical errors.
  - Statutory citation updates.

ODM will hold the public hearing for this rule package via teleconference and in-person. ODM will not require masks for individuals attending in person. However, visitors are welcome to wear masks if that is their preference. The date and time for the public hearing are listed at the top of this Notice as well as the phone number, PIN (access code), and link for teleconference attendance, and location for in-person attendance.

All interested parties are invited to participate in the public hearing. Both oral and written testimony will be accepted for this hearing and will be given the same consideration. Persons who want to give oral testimony are asked to send a message by e-mail to [Rules@medicaid.ohio.gov](mailto:Rules@medicaid.ohio.gov) no later than one hour before the hearing to be added to the witness list. Those attending in person can be added to the witness list at the hearing. There will be a final call at the end of the hearing for persons who wish to offer oral testimony but are not yet on the witness list.

Written comments submitted in-person, by e-mail, postal mail, or fax that are received or postmarked no later than the day of the hearing will be accepted as testimony and will become part of the hearing record. All testimony will become public record; therefore, ODM asks that protected health information (PHI) be excluded unless the information belongs to the person submitting the testimony or to a person for which the submitter is a legal guardian. Written

testimony sent by e-mail is highly recommended. All persons who submit testimony by e-mail will be sent a confirmation of receipt.

A copy of the proposed rules are 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 rules or comments on the rules 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](mailto:Rules@Medicaid.Ohio.gov).

ODM is committed to providing access and inclusion and reasonable accommodation in its services, activities, programs, and employment opportunities in accordance with the Americans with Disabilities Act (ADA), Title VI of the Civil Rights Act, and other applicable laws. To request an interpreter, written information in a language other than English or in other formats (large print, audio, accessible electronic formats, other formats), or a reasonable accommodation due to a disability, please contact ODM's Civil Rights/ADA Coordinator at 614-995-9981/TTY 711, Fax 1-614-644-1434, or Email: [ODM\\_EEO\\_EmployeeRelations@medicaid.ohio.gov](mailto:ODM_EEO_EmployeeRelations@medicaid.ohio.gov). Requests should be made at least three (3) business days prior to the scheduled hearing. \*If you believe ODM has failed to provide these services or discriminated in another way, you can file a grievance with ODM's Civil Rights Coordinator and/or file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights. Further information on these processes and ODM's compliance with civil rights and other applicable laws can be found here: [Notice of Nondiscrimination](#).\*\*