

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Preadmission Screening and Resident Review (PASRR)

Rule Number(s): 5160-3-15.1

Date: April 22, 2014

Rule Type:

☒ **New (5160-3-15.1)**
☐ **Amended**

☒ **5-Year Review**
☒ **Rescinded (5160-3-15.1)**

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

5160-3-15.1 Preadmission Screening requirements for individuals seeking admission to nursing facilities.

Preadmission Screening and Resident Review (PASRR) is a process to ensure that nursing facilities admit individuals with serious mental illness or developmental disabilities only when a thorough evaluation indicates that such placement is appropriate and that the individual's necessary services will be provided by the nursing facility. States must meet federal PASRR requirements for individuals entering a Medicaid certified nursing facility detailed in 42 C.F.R. 483.100 to 42 C.F.R. 483.138. The regulations require a preliminary screening (Level 1 Screen) to determine whether an individual has indications of a mental illness or developmental disability

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prior to entering a nursing facility, unless the hospital exemption applies and the Level 1 Screen is not completed. Individuals who have indications of mental illness or a developmental disability during the Level 1 screening are then evaluated in depth (Level 2 Assessment) by the appropriate agency.

In accordance with H.B. No. 59 of the 130th General Assembly, the Ohio Department of Medicaid (ODM) is collaborating with the Ohio Department of Developmental Disabilities (DODD) and the Ohio Department of Mental Health and Addiction Services (MHAS) to amend each agency's respective rules regarding the term "hospital exemption." H.B. No. 59 created restrictions on the utilization of the hospital exemption for individuals who are being directly admitted to a nursing facility from a hospital that is either of the following:

1. A hospital that MHAS maintains, operates, manages, and governs under section 5119.14 of the Revised Code; or
2. A free-standing hospital or unit of a hospital, licensed by OhioMHAS under section 5119.33 of the Revised Code.

Other changes to the rules include:

- Changed state agency name references and rule number references to reflect agency name and statutory and Administrative Code numbering changes.
- Added a date after which hospitals will be required to submit a hospital exemption request electronically through the system approved by ODM.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

5164.02

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Yes; the rule implements the federal Pre Admission Screening and Resident Review (PASRR) requirement governed by 42 C.F.R. 483, Subpart C.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

These rules are consistent with and do not exceed the federal requirements. These rules are being amended to comply with statutory changes to the hospital exemption policy in accordance with section 5119.40 of the Revised Code.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The public purpose of this regulation is to allow individuals to reside in the least restrictive setting possible while having their long-term services and support needs met. The agency is required to regulate this process by federal law detailed in 42 C.F.R. 483.100 to 42 C.F.R. 483.138.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Successful outcomes are measured through a finding of compliance with these standards.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

- Ohio Department of Aging
- Ohio Department of Developmental Disabilities
- Ohio Department of Mental Health and Addiction Services
- Ohio Department of Health
- Ohio Hospital Association
- Providers, ODM-Administered Home and Community-Based Services
- Case Managers and Administrators, CareStar and CareSource
- Ohio Council of Behavioral Health & Family Services Providers
- Statewide Provider Oversight Contractor, Public Consulting Group Inc. (PCG)
- Directors, County Departments of Job and Family Services
- Directors, Area Agencies on Aging
- Directors, County Boards of Developmental Disabilities
- Directors, Centers for Independent Living
- Academy of Senior Health Sciences, Inc.
- Ohio Health Care Association
- Linking Employment, Abilities & Potential (LEAP)
- Ohio Long Term Care Ombudsmen
- Chairperson, Ohio Olmstead Task Force
- President/CEO, Ohio Council for Home Care and Hospice
- President/CEO, Midwest Care Alliance
- AARP

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- Disability Rights Ohio
- Ohio Provider Resource Association
- Leading Age Ohio
- Midwest Care Alliance
- Catholic Social Services of Miami Valley
- Transitional Living Centers, Inc.
- Vice-President, SEIU District 1199, WV/KY/OH

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The proposed amended rules were distributed on August 20, 2013 to the stakeholders included in question 7 and those stakeholders provided comments and questions that were addressed by ODM. The comments and questions lead to rule revisions.

An ODM transmittal letter was issued on September 26, 2013 to notify the stakeholders included in question 7 of the statutory changes to the hospital exemption policy that took effect on 9/29/13 and to alert them that ODM, MHAS and DODD would be amending OAC rules related to PASRR.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was used to develop the rules or the measurable outcomes of the rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

These rules are being amended to comply with statutory changes to the hospital exemption policy in accordance with section 5119.40 of the Revised Code.

ODM and the Inter-Agency workgroup considered alternative rule language as part of the rule amendment process and settled upon language which was mutually agreed upon and best suited to accomplish the purposes of the rule and comply with the statute.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The agency did not consider a performance-based regulation because the PASRR regulations implement a federal process that states are required to use to ensure individuals are residing in the least restrictive setting possible.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

ODM, MHAS, and DODD worked together to ensure the agencies' respective rules and the processes set forth therein are well-coordinated and are not duplicative.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

ODM is coordinating with MHAS and DODD to simultaneously implement new rules for a smooth and uniform transition throughout Ohio. ODM is engaging stakeholders throughout the process and will provide a training webinar that will be posted on the ODM, MHAS and DODD websites and will be available to the public.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The business community impacted by these rules are the MHAS licensed hospitals and psychiatric wards.

Estimates developed in conjunction with the business community predict that for each individual who remains in a hospital or psychiatric ward awaiting preadmission screening costs the facility approximately one thousand dollars per day. The federal guidelines for conducting preadmission screening recommend completing the screening within seven to nine business days from the time of the request from the facility. MHAS has typically completed the screening in two to three business days. Based on an average of a seven calendar day turnaround for screenings and 1,800 screenings per year, the estimated cost to stakeholders is \$12.6 million a year. Due to the statutory changes to the hospital exemption

policy, stakeholders are already impacted by the loss of the hospital exemption regardless of the proposed rule change.

In an effort to mitigate the effect of this rule change on the impacted facilities, MHAS is implementing an expedited screening process. The expedited screening will be completed in no more than forty-eight hours after the request is received from the hospital. The expedited screening is expected to cost MHAS up to \$0.5 million per year to conduct, with seventy-five percent of that cost reimbursed by the federal government. As a result of this investment, it is expected that the impact on stakeholders will be reduced considerably from \$12.6 million to an estimated \$3.6 million.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These rules are being amended to comply with statutory changes to the hospital exemption policy in accordance with section 5119.40 of the Revised Code.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The statutory change still allows a hospital exemption for individuals who are not being discharged from a psychiatric hospital that MHAS maintains, operates, manages, or governs under section 5119.14 of the Revised Code or a free-standing unit of a hospital licensed by MHAS under section 5119.33 of the Revised Code.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable for this program.

18. What resources are available to assist small businesses with compliance of the regulation?

ODM is coordinating with MHAS and DODD to develop workflows and processes to assist hospitals, County Boards of Developmental Disabilities and Area Agencies on Aging with compliance. ODM is engaging stakeholders throughout the process and will provide a training webinar that will be posted on the ODM, MHAS and DODD websites and will be available to the public.

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