

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Resident Review

Rule Number(s): 5160-3-15.2

Date: October 14, 2014

Rule Type:

☐ New
☒ Amended

☐ 5-Year Review
☐ Rescinded

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.

5160-3-15.2 Resident review requirements for individuals residing in nursing facilities.

Preadmission Screening and Resident Review (PASRR) is a process to ensure that nursing facilities admit and retain individuals with a developmental disability or serious mental illness

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

only when a thorough evaluation indicates that such admittance is appropriate. The nursing facility must be able to provide all necessary services for the individual being admitted. States must meet federal PASRR requirements for individuals residing in a Medicaid certified nursing facility detailed in 42 C.F.R. 483.100 to 42 C.F.R. 483.138.

This rule sets forth the Resident Review (RR) requirements for nursing facilities. It details the process for submitting a resident review, when to perform a resident review and notification of the resident review outcome.

This rule is being amended to comply with five year rule review. Changes to the rule include:

- Changed state agency name references, form numbers and rule number references to reflect agency name and statutory and Administrative Code numbering changes.
- Replaced the term “mental retardation” with the term “developmental disability.”
- Added the opportunity for providers to submit a resident review 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.

This rule is consistent with and does not exceed the federal requirements. This rule is being amended to comply with five year rule review.

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.

On July 23rd and on August 4th, the draft rule was sent via email to the following stakeholders with a request for review and feedback. Stakeholders were given approximately two weeks to respond. The rule was also discussed during a monthly stakeholder meeting which includes many of the groups listed below:

- Ohio Department of Aging
- Ohio Department of Developmental Disabilities
- Ohio Department of Health
- Ohio Department of Mental Health and Addiction Services
- Ohio Office of Budget and Management
- Ohio Hospital Association
- Leading Age Ohio
- Academy of Senior Health Services, Inc.
- American Association of Retired Persons (AARP)
- Case Managers and Administrators, CareStar and CareSource
- Buckeye Community Health Plan
- United Health Care
- Disability Rights Ohio
- Linking Employment, Abilities and Potential (LEAP)
- Transitional Living Centers, Inc.
- Ohio Health Care Association
- Ohio Assisted Living Association
- Access Center for Independent Living, Inc.
- Ohio Provider Resource Association
- Ohio Statewide Independent Living Council
- Area Agencies on Aging

- Centers for Independent Living
- Ohio Long Term Care Ombudsmen
- Ohio Olmstead Task Force
- Ohio Council for Home Care and Hospice
- President/CEO, Midwest Care Alliance

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 rule was distributed on July 23rd and on August 4th 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.

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 rule.

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?

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?

The Ohio Department of Medicaid is the sole agency responsible for implementing the federally mandated resident review process rule. However, we worked closely with sister state agencies when amending the rule to be sure their input was incorporated.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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 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.

Medicaid certified nursing facilities that have to complete and submit the resident review (RR) form will be impacted by this rule.

The federally mandated resident review form submission is the adverse impact of this rule. As part of the five year rule review process, we have amended this rule to allow for electronic submission of the RR form, which we believe will be beneficial to the nursing facilities that choose to submit electronically.

Estimates developed in conjunction with the business community projected that completing the form manually takes one person 30 to 60 minutes. We can estimate that the cost, on average, for a social worker completing the RR may be between \$5.86 - \$11.76/assessment and the cost for an RN completing the RR may be between \$12.80 - \$25.60/assessment. These amounts are based on the 2013 average hourly wage for a social worker of \$11.76/hour and the average hourly wage for an RN of \$25.60/hour.

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

This rule implements federal regulation and is being amended to comply with five year rule review.

Regulatory Flexibility

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

One change to this rule is to allow those completing the resident review process to submit the form via an electronic system approved by ODM. It is expected that this automation of the resident review form will allow for a quicker turnaround and cost savings to the nursing facility.

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 a webinar that will be posted on the ODM, MHAS and DODD websites and will be available to the public. ODM is engaging stakeholders throughout the process.