# CSI - Ohio
The Common Sense Initiative

## Business Impact Analysis

**Agency Name: Ohio Department of Medicaid**

**Regulation/Package Title: Home Health and PDN Rules pursuant to Five-Year Review**

**Rule Number(s): 5160-12-01 (amended); 5160-12-02 (amended); 5160-12-02.3 (amended); 5160-12-03 (amended); 5160-12-03.1 (amended); and 5160-12-08 (new).**

**Note: OAC 5160-12-02.1 (rescinded), 5160-12-04 (amended), 5160-12-05 (amended), 5160-12-06 (amended), and 5160-12-07 (amended) are being filed as part of the Home Health and Private Duty Nursing Five-Year Review packet. Those particular rules do not require a Business Impact Analysis, but are listed for reviewers for information purposes.**

**Date: March 20, 2015**

**Rule Type(s):**

**X New** | **X 5-Year Review**

**X Amended** | **__ Rescinded**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.**

Key Provisions - Home Health (HH) and Private Duty Nursing (PDN) are comprehensive services offered by the Ohio Department of Medicaid (ODM) to eligible individuals. The

purpose of the services is assist individuals who reside in their home, who without the provision of these services, would otherwise be in a hospital or nursing facility. Home health services are provided on a part-time, intermittent basis and may encompass nursing, aide services, and/or skilled therapies (physical therapy, occupational therapy, and speech-language pathology). Private duty nursing services are provided to an individual on a continuous basis and involves skilled nursing services. Both home health and private duty nursing services are Medicaid State Plan benefits available to individuals of any age.

As a result of a five-year rule review, OAC rules 5160-12-01, 5160-12-02, 5160-12-02.3, 5160-12-03, and 5160-12-03.1 are being updated to clarify home health and private duty nursing service policy pending a comprehensive forthcoming review of the entire Chapter (OAC Chapter 5160-12) in 2015. Some of the changes currently being proposed include:

- Names of state departments are being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM), and the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD) to the Ohio Department of Developmental Disabilities (DODD).
- Updates are being made to reflect changes in terminology, citations and form names.
- Language throughout the rules has been non-substantively restructured, replaced or, in the case of redundancies, eliminated for clarity purposes.

OAC 5160-12-01, entitled "Home health services; provision requirements, coverage and service specification" specifies the provisions that govern Medicaid home health services as set forth in Chapter 5160-12 of the Administrative Code. Amendments proposed to this rule include:

- Permissive language was inserted in subparagraph (C)(2) to allow for more than fourteen hours per week of home health nursing and home health aide services with prior approval by ODM.
- The definition of "habilitative care" in paragraph (E)(5)(b) was revised to align with the definition used by the Department of Aging.
- The definition of “home health nursing” in paragraph G was revised to clarify provider requirements.
- Language was added in (G)(1) to distinguish the nursing tasks and activities to be performed only by an RN compared to those that may be performed by an RN or LPN.
- Revisions were made in sub-paragraph G(2) for clarification and consistency purposes, and language was added to detail some of the services that are (and are not) covered.

OAC 5160-12-02, entitled "Private duty nursing services: provision requirements, coverage and service specification" specifies the provisions that govern Private Duty Nursing (PDN) services as set forth in Chapter 5160-12 of the Administrative Code. Amendments proposed to this rule include:

- A new paragraph (C) was inserted into rule to distinguish specific nursing tasks and activities to be performed only by an RN.
- Paragraph (D) was added to list services not covered under PDN.

- Paragraph (F) was added to align with similar language in 5160-12-02.3 and will allow for the delivery of PDN services in emergency cases when the provider has an existing authorization.
- Sub-paragraph (E)(4) was deleted from rule to eliminate redundancy.
- Sub-paragraph (F)(3) was merged with sub-paragraph (I)(4) to allow for the permissive use versus the required use of an U5 modifier when billing for private duty nursing services to a child.

OAC 5160-12-02.3, entitled "Private duty nursing: procedures for service authorization" details how authorization for private duty nursing services is obtained. Amendments proposed to this rule include:

- Subparagraphs (A)(1) and (A)(2) were merged.
- Paragraph (F) was deleted to remove the provision of ODM prior authorization for visits that are four hours or less in length as the provision is incongruent with the definition of private duty nursing services.

OAC 5160-12-03, entitled "Medicare certified home health agencies qualifications and requirements" describes the requirements for a MCHHA to provide home health services. Amendments proposed to this rule include:

- Language and references were updated.
- Language was added to sub-paragraph (B)(9) to clarify record retention requirements are subject to monitoring by the Ohio Department of Medicaid.
- Paragraphs (B) and (C) were merged.

OAC 5160-12-03.1, entitled "Non-agency nurses and otherwise-accredited agencies: qualifications and requirements" sets forth the qualifications and requirements for non-agency nurses and/or nurses employed by an otherwise-accredited agency to provide PDN services. Amendments proposed to this rule include:

- Paragraphs were re-lettered, and language was added clarifying that non-agency nurses are required to comply with applicable laws and regulations.

OAC 5160-12-08, entitled "Registered nurse assessment and registered nurse consultation services" is a new rule that introduces two new State Plan services – “RN Assessments” and “RN Consultations”. This new rule includes definitions, and outlines provider qualifications, the provision of services, reimbursement procedures, and record keeping requirements.

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

- RC 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 proposed regulations being amended and introduced will enable Ohio to maintain approval to administer and enforce the State Plan Medicaid home health and private duty nursing services pursuant to federally imposed requirements.

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, but do not extend beyond, federal requirements.

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)?**

   OAC rules 5160-12-01, 5160-12-02, 5160-12-02.3, 5160-12-03, 5160-12-03.1, and 5160-12-08 are necessary for the statewide administration of Medicaid home health and private duty nursing services. They enable ODM to comply with federal requirements, and also to ensure the appropriate level of safety and statewide compliance for home health and PDN services. Home health and private duty nursing service providers must be qualified and maintain core standards when providing services.

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

   The success of these regulations will be measured by the safe and effective provision of home health and private duty nursing services furnished by qualified providers who can effectively meet the needs of Medicaid recipients.

## Development of the Regulations

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.**

   Academy of Senior Health Sciences

   Disability Rights Ohio

   Leading Age Ohio

   Midwest Care Alliance

   Ohio Association of Area Agencies on Aging

Ohio Association of Health Plans

Ohio Council for Home Care & Hospice

Ohio Department of Developmental Disabilities

Ohio Department of Health

Ohio Department of Mental Health and Addiction Services

Ohio Department of Aging

Ohio Health Care Association

Ohio Department of Medicaid - Managed Care Plans

Ohio Nurses Association

Ohio Olmstead Task Force

Ohio Provider Resource Association

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

The Ohio Department of Medicaid has an existing relationship with stakeholders affiliated with the provision of home health and private duty nursing services in the state. Ohio's State Plan Services Workgroup – which includes the organizations listed in response to question 7 – convened on multiple occasions to ensure stakeholder engagement in the process. Representatives of two statewide associations, the Ohio Council for Home Care and Hospice and Midwest Care Alliance participated along with the Ohio Department of Development Disabilities and the Ohio Department of Aging in the development of the proposed new rule, OAC 5160-12-08. The Ohio Department of Medicaid also engaged various internal and external stakeholder groups for two years around the development of a rate methodology for nursing and aide services in both the home health and private duty nursing benefits. The Ohio Department of Medicaid has spent over six months working with three associations (Midwest Care Alliance, Ohio Council for Home Care and Hospice, and Ohio Provider Resource Association) on finalizing rates and/or the draft of rules relative to the services being added to the Medicaid state plan (i.e., RN Assessment and RN Consultation). Stakeholder input will continue to play an intricate part during the anticipated comprehensive overhaul of Chapter 5160-12 forthcoming in 2015.

**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?**

Scientific data was not applicable to the development of these 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?**

None. Alternative regulations were not considered by the Ohio Department of Medicaid as the requirements of these rules are dictated by federal and state laws and regulations.

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

Performance-based regulations were not considered appropriate for these rules, as the rules are guided by federal law. Performance-based regulations are not authorized by statute for home health and private duty nursing services.

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

The proposed rules were reviewed by policy development staff in consultation with the Ohio Department of Medicaid, Office of Legal Services and the Office of Legislation to ensure there was no duplication.

**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.**

Written correspondence will be sent to providers and other stakeholders, including but not limited to all county departments of job and family services, explaining the changes that have been made to these rules. Additionally, the final rules will be made available to stakeholders and the general public on the Ohio Department of Medicaid's website.

## 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;**

As of December 1, 2014, there were 3,503 providers of home health and/or private duty nursing services in Ohio. This includes medicare certified home health agencies, other accredited agencies, and independent nurse providers, and is broken down as follows:

a. 727 certified home health providers

b. 82 other accredited agencies
c. 2694 independent nurses

**b) Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);**

1. OAC 5160-12-01: This rule requires home health providers to allocate time for the completion of the provider certification process and the allocation of time to report required information to the Ohio Department of Medicaid (i.e., medical necessity of services) using a state specific form.

2. OAC 5160-12-02: This rule requires private duty nursing providers to allocate time to report required information to the Ohio Department of Medicaid based upon individual plans of care (i.e., certification of medical necessity of services on a state specific form) and to secure authorization prior to the start of services as a condition of compliance.

3. OAC 5160-12-02.3: This rule requires private duty nursing providers to allocate time to secure the Ohio Department of Medicaid authorization as a condition of compliance, prior to the start of private duty nursing services.

4. OAC 5160-12-03: This rule requires agencies to be certified as a medicare certified home health agency provider (MCHHA) and for the MCHHA to execute provider agreements as a condition of participation and compliance.

5. OAC 5160-12-03.1: This rule requires providers to allocate time to execute provider agreements with ODM.

6. OAC 5160-12-08: This rule imposes record keeping requirements on providers of RN assessment and RN consultation services, and also requires providers to allocate time to execute provider agreements with ODM.

**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.**

1. OAC 5160-12-01 –The amount of time needed to obtain and document medical necessity ranges from one to five hours per individual. A minimum of one half-hour of administrative time at $24/hour, and one half-hour of nursing at $25.5/hour are allocated toward the process of obtaining the certification of medical necessity. Another .75 hours of administrative time

and .25 hours of nursing time is allocated toward completing the ODM 07137 form. Hence, the cost to complete the certification process is a minimum of $49.13 per patient, per agency provider. Additional cost are incurred for agencies who employ or contract with one or more physicians, at an average cost per face-to-face encounter is $175 per hour, for the purpose of completing the face-to-face encounter. Source: Midwest Care Alliance and the Ohio Council for Home Care and Hospice.

2. OAC 5160-12-02 - $175 an hour, per physician, is the amount of time needed to initiate and to secure the required signatures for the medical necessity form (Source: Ohio Council for Home Care and Hospice). In addition, a plan of care is reported by Midwest Care Alliance to cost as much as $58 per plan when administrative and skilled nursing staff are considered. An added $.25 an hour per patient (a minimum of $7.25 per visit) can also be attributed to updating the plan of care for skilled care patients as needed.

3. OAC 5160-12-02.3 - Additional costs attributed to the process of securing signatures and completing the ODM 07137 form, as noted in questions 1 and 2 for OAC 5160-12-01 and 5160-12-02, may be incurred at a minimum of 1 hr. of administrative time and .25 hours of nursing time to complete and process the certification of medical necessity once forwarded by the treating physician. As many as 14 staffing hours may be accumulate when intake coordinators, administrator, assistant, clinical managers, billing manager, staffing coordinator, office nurse, and Transitional Care Coordinators are considered.

4. OAC 5160-12-03 - The cost of a Medicare certification can be more than a $250,000 endeavor depending on the number of staff hired to support the process. To maintain Medicare certification, surveys are required to be completed once every three years (or sooner, depending on the number of deficiencies found per survey). An agency may require .5 to1.5 FTE's at $29 per hour to complete the certification and/or recertification review. Once certified, agencies must execute provider agreements in order to provide Medicaid services in Ohio. Provider agreements may take anywhere from one to two hours.

5. OAC 5160-12-03.1 –Provider agreements may take anywhere from one to two hours at a rate of $29 per hour.

6. OAC 5160-12-08 - This rule requires agency and non-agency skilled nurses who engage in the provision of in-person RN assessment and/or RN consultation services to ensure compliance with individual plans of care, to maintain documentation of services provided and to enter into provider agreements with Medicare certified agencies. An RN assessment would be approximately $46.59 total per nurse, or equivalent to the salary of a registered nurse (RN) plus his or her administrative costs, e.g., average $37.70 salary, plus $3.19 overhead and $5.70 mileage more or less depending where the agency is located. SOURCE: Midwest Care Alliance (MCA). An additional 5 hours per individual is initially projected to ensure the compliance with individual plans of care, to collaborate and consult amongst

nurses, and to maintain copious documentation of service. It is reported that the daily cost to keep records for one patient is $3.56 (e.g., 90 patients at $320.00).

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

Home health and private duty nursing are offered as part of the Ohio's state plan services and as are subject to certain requirements. Provider participation is optional, although compliance with program requirements is required for providers who choose to participate. Providers understand that compliance with program requirements may include various operating costs including administrative costs (e.g., training, monitoring and oversight, etc.).

## Regulatory Flexibility

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

No. The provisions in these rules are mandatory for all Home Health and PDN services providers.

**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?**

ORC section 119.14 is not applicable to these rules.

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

Providers in need of assistance may contact the Bureau of Long Term Care Services and Supports, through the Provider Relations Hotline at (800) 686-1516.