

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Ohio Home Care Waiver: Home Care Attendant Services and Reimbursement

Rule Number(s): 5160-46-04.1

The following rule is attached for informational purposes only: 5160-46-06.1

Date: March 27, 2015

**Rule Type:**

New	<input checked="" type="checkbox"/> 5-Year Review
Amended	Rescinded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.

#### OAC 5160-46-04.1

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This rule is being proposed for rescission as a result of five-year review. It is being replaced with a new OAC rule 5160-46-04.1. It sets forth the requirements a home care attendant must meet in order to provide home care attendant services, as well as the requirements the attendant must follow when providing services. The individual who is authorized to receive home care attendant services can train the home care attendant in cooperation with the authorizing health care professional. The content of the rule is not changing. However, requirements are being reordered and reworded for clarity, and terminology is being updated (i.e., Ohio Department of Medicaid, individual instead of consumer, etc.).

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

Ohio Revised Code Sections 5162.02 and 5166.30.

**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. In order for CMS to approve a 1915(c) home and community-based services waiver, a state must meet certain assurances concerning the operation of the waiver. These assurances are spelled out in 42 C.F.R 441.302, and include:

(a) *“Health and Welfare* - Assurance that necessary safeguards have been taken to protect the health and welfare of the beneficiaries of the services. Those safeguards must include—

(1) Adequate standards for all types of providers that provide services under the waiver;

(2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver; ....”

Ohio Home Care Waiver participants must have the ability to direct home care attendant service providers, and only those persons who meet the state’s provider requirements can provide home care attendant services to Ohio Home Care Waiver participants. The proposed rule will assist the State in assuring the health and welfare of waiver participants by among other things, establishing specific qualifications and requirements that providers must meet in order to furnish home care attendant services.

**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 federal requirements. It defines specific processes for meeting waiver program provider eligibility requirements as required by CMS.

**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 these regulations is to assure the health and welfare of Ohio Home Care Waiver participants as required by 42 C.F.R 441.302(a) through the provision of services by qualified providers. The State is doing so by establishing requirements that home care attendant service providers must meet in order to be Ohio Home Care Waiver service providers.

**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 provider standards. The expectation is that adherence to the provider requirements will result in a reduced number of incidents that threaten the health and welfare of individuals participating in the waiver program. This is evidenced, in part, by no adverse findings resulting from structural reviews and investigation of alleged provider occurrences.

**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.**

The changes included in the proposed rule were developed by ODM following review of the current home care attendant service statutes set forth in Sections 5166.30 through 5166.3010 of the Revised Code. The draft rule was shared with ODM's HCBS Rules Workgroup. ODM has been convening this stakeholder group since May 2013, for the purpose of crafting and reviewing OAC rules governing ODM-administered waivers, including 5160-46-04.1. The workgroup generally meets every two weeks to four weeks (in-person and by phone) and has been responsible for the development, adoption, rescission and amendment of many rules

thus far. It consists of individuals enrolled on ODM-administered waivers, as well as members of the following organizations:

The Ohio Council for Home Care and Hospice  
Midwest Care Alliance  
CareSource (case management contractor)  
CareStar (case management contractor)  
Council on Aging (case management contractor)  
Public Consulting Group (PCG) (provider oversight contractor)  
Ohio Olmstead Task Force  
Disability Rights Ohio  
Ohio Department of Aging  
Ohio Department of Developmental Disabilities

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

Terminology used in paragraph (F)(14) of the rule (i.e., “team”) was corrected as a result of the workgroup’s review. Also, per the review, paragraph (F)(15) was modified to reflect that the face-to-face RN visit with the home care attendant and individual receiving services must occur “at least” every 90 days, and paragraph (F)(15)(e) was modified to reflect that the RN “must” bill the state plan nursing assessment code set forth in rule 5160-12-08 of the Administrative Code for that visit. These changes provide increased clarity within the rule as well as consistency with other ODM-administered waiver rules.

**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?**

No alternative regulations have been considered to date as the requirements regarding home care attendant services are set forth in Sections 5166.30 through 5166.3010 of the Revised

Code. Additionally, the language had to meet the federal and state guidelines under which ODM-administered waivers are permitted to operate.

**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.**

No. Performance-based regulations are not deemed appropriate and are not authorized by statute.

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

All regulations regarding ODM-administered waivers are promulgated by ODM and implemented by ODM, its designees and providers, as appropriate. The regulations were reviewed by ODM's legal and legislative staff to ensure that there is no duplication within the rules.

**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.**

A robust effort will be employed by ODM to notify Ohio Home Care Waiver participants and home care attendant service providers of the rule changes found in OAC rule 5160-46-04.1. Initial notification of rule changes will occur via a variety of communication methods which may include, but are not limited to ODM's issuance via manual transmittal letter, remittance advice, emails to agency and independent providers, notifications to individuals enrolled on the Ohio Home Care Waiver, electronic communication via the myohiohcp.org website and the provider oversight contractor's (PCG) 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;**
- 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.**

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**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.**

(a) Currently, there are approximately 40 providers enrolled as home care attendant service providers in the Ohio Medicaid Program.

(b) As part of the Medicaid provider agreement application process, prospective home care attendants must provide ODM with evidence to its satisfaction of the submission of an ODM 02389 “Home Care Attendant Medication Authorization” form and/or an ODM 02390 “Home Care Attendant Skilled Task Authorization” form.

They must also meet the personnel qualifications specified in 42 CFR 484.4 for home health aides, or successfully complete either a home care attendants must have a certificate of completion of either a competency evaluation program or training and competency evaluation program approved and conducted by the Ohio Department of Health, or the Medicare competency evaluation program for home health aides. It must include training on basic home safety; universal precautions for the prevention of disease transmission; personal care aide services that are specific to the individual receiving services; and the labeling, counting and storage requirements for schedule II, schedule III, schedule IV and schedule V medications. Training and instruction about how to deliver the specific home care attendant services authorized by the individual’s authorizing health care professional must be completed prior to beginning home care attendant services. It can be provided by the authorizing health care professional the individual receiving services, and/or the individual’s authorized representative.

They must also obtain and maintain first aid certification from a class that is not solely internet-based and that includes hands-on training by a certified first aid instructor and a successful return demonstration of what was learned in the course. They must also maintain evidence of completion of 12 hours of in-service continuing education every 12 months and program-specific orientation.

As a condition of participation in the Ohio Home Care Waiver, home care attendants will incur costs associated with meeting these requirements. They will also incur costs

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associated with maintaining required documentation pertaining to their particular service as set forth in the rule.

ODM will conduct training for providers when the new rule is finalized. Assuming that home care attendants adhere to the provider requirements set forth in the new rule, there should be little or no cost of compliance with these changes. However, if the provider does not, and an incident or provider occurrence is reported, they will be subject to investigation and follow-up and could be subject to sanctions that could result in their inability to participate in the Medicaid waiver program.

- (c) A prospective provider can receive home health aide/competency training through adult vocational schools. An informal survey of courses approximates this cost at \$200 - \$500 depending on the program and type of instruction. State tested nurse assistant (STNA) programs costs also vary but are generally around \$400.

The cost of 12 hours of continuing education each year for a home care attendant will vary by subject, source and location. A home care attendant would be responsible for training costs and would not be paid wages while receiving training.

First aid training costs will also vary by program and geographic region. An informal survey of American Red Cross, American Heart Association and other first aid courses around the state suggests that the average cost is about \$70-\$75. Tuition can range anywhere from \$50 to over \$110, with lower rates in more rural counties.

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

The assurance of waiver participants' health and welfare is integral to the Ohio Home Care Waiver program – both at the state and federal levels. Provider participation in this waiver is optional and at the provider's discretion. Compliance with program requirements is required for providers who choose to participate and may include administrative costs associated with compliance with the requirements of these rules (e.g., training, monitoring and oversight, etc.). Failure to comply with such requirements may result in a provider's inability to be an Ohio Home Care Waiver service provider.

**Regulatory Flexibility**

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

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No, not applicable for this program.

**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?**

Not applicable for this program.