

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid (ODM)

Regulation/Package Title: Mental Health Services-Other Licensed Practitioners

Rule Number(s): 5160-8-05

Date: March 4, 2016

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☐ Rescinded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.

Amended rule 5160-8-05, "Mental health services," sets forth coverage and payment provisions for mental health services provided by other licensed practitioners

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Rule 5160-8-05 recognizes certain professionals capable of rendering covered mental health services and their enrollment as a Medicaid providers:

- Physicians, advanced practice registered nurses (APRNs), and physician assistants (PAs)
- Licensed psychologists
- Licensed professional clinical counselors, licensed independent social workers, licensed independent marriage and family therapists, and licensed independent chemical dependency counselors (collectively termed "independent practitioners")

The rule also recognized certain professionals capable of rendering covered mental health services with appropriate supervision:

- Licensed professional counselors, licensed social workers, licensed marriage and family therapists, and licensed chemical dependency counselors II and III (collectively termed "supervised practitioners")
- Doctoral-level psychology interns
- Registered counselor trainees, registered social work trainees, marriage and family therapist trainees, and doctoral psychology trainees (collectively termed "supervised trainees")

The proposed amended rule recognizes licensed independent chemical dependency counselors as eligible Medicaid providers with their own provider types; they will be able to submit claims and receive payment for Medicaid services they provide. An existing provision that in effect compels licensed psychologists to enroll in Medicaid as eligible providers, even if their services are rendered under the supervision of an eligible provider, was previously is extended to independent practitioners and will also apply to the new licensed independent chemical dependency counselors. In addition, an existing provision that requires licensed psychologists in independent practice to participate in Medicare if they can do so (or, if the practice is limited to pediatric treatment, to meet all requirements for Medicare participation other than serving Medicare beneficiaries) that was previously is extended to independent practitioners in independent practice will also apply to the new licensed independent chemical dependency counselors.

The maximum payment amount for psychological or neuropsychological testing is 100% of the amount specified in the published payment schedule (Appendix DD to rule 5160-1-60 of the Administrative Code), regardless of provider. For a mental health service (other than testing) rendered by a physician, APRN, PA, or licensed psychologist, the maximum payment amount is 100% of the payment schedule amount; for a mental health service (other than testing) rendered by an independent practitioner or a supervised practitioner, it is 85%. Payment made to licensed psychologists is 100% of the payment schedule amount, and payment made to supervised practitioners is 85%.

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

Section 5164.02 of the Ohio Revised Code.

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?

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If yes, please briefly explain the source and substance of the federal requirement.

No.

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

These rules do not exceed 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)?**

Medicaid rules perform several core business functions: They establish and update coverage and payment policies for medical goods and services. They set limits on the types of entities that can receive Medicaid payment for these goods and services. They publish payment schedules or formulas for use by providers and the general public.

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

The success of rule 5160-8-05 will be measured by the extent to which payment is made for services rendered by licensed professional clinical counselors, licensed independent social workers, licensed independent marriage and family therapists, and licensed independent chemical dependency counselors (collectively termed "independent practitioners"); licensed professional counselors, licensed social workers, licensed marriage and family therapists and licensed chemical dependency counselors II and III (collectively termed "supervised practitioners"); and registered counselor trainees, registered social work trainees, marriage and family therapist trainees, chemical dependency counselor assistants and trainees, and doctoral psychology trainees (collectively termed "supervised trainees"), under appropriate supervision when applicable.

The recognition of licensed independent chemical dependency counselors as their own provider types with the ability to submit claims and receive payment for Medicaid services will enhance access by expanding the number of available mental health professionals in the Medicaid program.

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.

SW = social worker, C = counselor, MFT = marriage and family therapist, ISAC = independent substance abuse counselor, LICDC = independent licensed chemical dependency counselor

ORGANIZATION	DATE AND MEDIUM OF INITIAL CONTACT	TOPICS OF INTEREST OR CONCERN
National Association of Social Workers Ohio Chapter	08/17/2013, meeting	Medicare and Medicaid fees for psychologists, SWs, and Cs; authorization of SWs, Cs, and MFTs as direct providers; work supervision and clinical supervision; practice settings and organization; differences between independent and supervised SWs; payment for super-vision; program limits on covered services, Medicaid managed care plans; enrollment; claim submission; utilization and fiscal impact
Ohio Counselor, Social Worker, and Marriage and Family Therapist Board	08/27/2013, e-mail	Medicare and Medicaid fees for psychologists, SWs, and Cs; authorization of SWs, Cs, and MFTs as direct providers; work supervision and clinical supervision; practice settings and organization; clarification of licensure requirements; providing assistance in establishing fiscal impact
Ohio Association of Marriage and Family Therapy	08/30/2013, e-mail	Medicare and Medicaid fees for psychologists, SWs, and Cs; authorization of SWs, Cs, and MFTs as direct providers; work supervision and clinical supervision; practice settings and organization; differences between independent and supervised SWs

Ohio Medicaid Managed Care Plans (MCPs) – Buckeye, CareSource, Molina, Paramount, UnitedHealthcare	09/08/2013, survey, with follow-up contact	Current coverage of services and enrollment of providers by MCPs; payment and other program considerations for SWs, Cs, and MFTs
Ohio Counseling Association	09/12/2013, e-mail	Medicare and Medicaid fees for psychologists, SWs, and Cs; authorization of SWs, Cs, and MFTs as direct providers; work supervision and clinical supervision; practice settings and organization; differences between independent and supervised SWs; payment for super-vision; program limits on covered services, Medicaid managed care plans; enrollment; claim submission; utilization and fiscal impact
Ohio Psychological Association	08/15/2014, e-mail	Medicare and Medicaid fees for psychologists, SWs, and Cs; authorization of SWs, Cs, and MFTs as direct providers; supervision; definition and coverage of services rendered by trainees, students, or unlicensed staff members
Ohio Board of Psychology	03/09/2015, e-mail	Authorization of SWs, Cs, and MFTs as direct providers; Medicare and Medicaid fees for psychologists, SWs, and Cs; supervision by psychologists; potential impact of policy change on psychologists; coverage and requirements established by

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Ohio Chemical Dependency Professionals Board	04/21/2015, e-mail	Medicare and other payers; coverage and rule language for "doctoral level psychology intern" Selection of new direct providers; omission of ISACs and ILCDCs
Behavioral Health Stakeholder Working Group (Includes individual providers, Provider associations, nonprofit organizations representing patients, and managed care plans)	October 2014-Present, in person, e-mail, and phone.	Approved additions of new practitioners and have been involved in all changes involving mental health services
Ohio Board of Psychologists, Ohio Chemical Dependency Professionals Board, Ohio Counselor Board, and Ohio Social Worker Board.	December 2015, in person	Reviewed the revisions to rule 5160-8-05 and got approval for the language and the practitioner types.

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

Most of the suggestions made by stakeholders have been incorporated into the rule, particularly changes involving terminology (e.g., the definition of "doctoral level psychology intern"). ODM worked with the Ohio Chemical Dependency Professionals Board, and other behavioral health organizations, and chemical dependency professionals to extend provider status to licensed independent chemical dependency counselors.

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?

Utilization and expenditure data drawn from ODM's Quality Decision Support System were used in projecting the fiscal impact of the proposed changes.

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?

Each Medicaid rule in the Ohio Administrative Code is specific to a particular subject or aspect of a subject. No other rules specifically address mental health services provided in non-institutional settings.

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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 concept of performance-based regulation does not apply to these services.

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

Rules involving Medicaid providers are housed exclusively within agency 5160 of the Ohio Administrative Code. Within this division, rules are generally separated out by topic. It is clear which rules apply to which type of provider and item or service; in this instance, 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.

The policies set forth in this rule will be incorporated into the Medicaid Information Technology System (MITS) as of the effective date of the rule. They will therefore be automatically and consistently applied by the department's electronic claim-payment system whenever an appropriate provider submits a claim for an applicable service.

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;

These rules affect physicians, advanced practice registered nurses (APRNs), physician assistants (PAs), licensed psychologists, licensed professional clinical counselors, licensed independent social workers, licensed independent marriage and family therapists, licensed independent chemical dependency counselors, licensed professional counselors, licensed social workers, licensed marriage and family therapists, chemical dependency counselors II and III, registered counselor trainees, registered social work trainees, marriage and family therapist trainees, chemical dependency counselor trainees, and doctoral psychology trainees.

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

This rule imposes no license fees or fines. The existing rule indicates that no eligible provider may receive payment without a valid Medicaid provider agreement. The existing rule specifies that participating practitioners must hold a current license, and, when appropriate, medical necessity must be documented for certain services over the specified program limits. 5160-8-05 specifies that the patient's file must substantiate the medical necessity of services performed and that each record is expected to bear the signature and indicate the discipline of the professional who entered it. It sets forth a list of items that requires the types of information to be included. This requirement is consistent with professional standards, and it is imposed for program integrity purposes.

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 requirements for holding a Medicaid provider agreement and licensure are means of identifying providers by credentials they already possess; these provisions impose no additional requirements. Documentation of medical necessity consists of spending a few minutes making or transferring notations in a medical file. The time involved in documentation is less than 15 minutes, an estimate based on ODM's knowledge of the type and quantity of information needed and an understanding of provider office operations and staffing. The median hourly wage for the mental health professionals mentioned in this rule is \$20.57 to \$34.55 according to the Labor Market Information (LMI) data published by the Ohio Department of Job and Family Services and the United States Bureau of Labor and Statistics; adding 30% for fringe benefits brings these figures

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to between \$26.64 and \$44.91. So the cost associated with documenting medical necessity can be up to between \$6.60 and \$11.22 depending on which mental health professional is completing the documentation.

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

The requirements for holding a Medicaid provider agreement, licensure and to document services in a patient's file is imposed for program integrity purposes.

Regulatory Flexibility

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

No alternate means of compliance is available, and no exception can be made on the basis of an entity's size.

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?

These rules impose no sanctions on providers

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

Information on the documentation requirements for medical records is readily available on the Centers for Medicare and Medicaid Services (CMS) website.

The Bureau of Provider Services renders technical assistance to providers through its hotline, (800) 686-1516.

Policy questions may be directed via e-mail to the Policy Management and Development section of ODM's policy bureau, at sylilie.hill@medicaid.ohio.gov.