CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: ODA-operated HCBS Waiver Eligibility: HCBS Settings and Person-Centered Planning

Rule Number(s): 5160-31-03

(The following rule is attached for informational purposes only: 5160-33-03

Rule Type:

New	X 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Amended	Rescinded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 Rule 5160-31-03 sets forth the eligibility criteria for enrollment in the PASSPORT Waiver. It is being amended to comply with the home and community-based settings and person-centered planning requirements issued by the Centers for Medicare and Medicaid Services (CMS) for 1915(c) home and community-based service waivers. Individuals

eligible for PASSPORT enrollment must reside in a setting that possesses home and community-based characteristics as set forth in proposed new OAC rule 5160-44-01. Additionally, individuals eligible for PASSPORT enrollment must participate in person-centered plan development as set forth in proposed new OAC rule 5160-44-02.

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

   Ohio Revised Code Section 5166.02.

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. OAC Rule 5160-31-03 is being amended to reference the HCBS settings and person-centered planning requirements issued by the Centers for Medicare and Medicaid Services (CMS) on January 16, 2014 in 42 CFR 441.301 and 42 CFR 441.725 and contained in proposed new OAC rules 5160-44-01 and 5160-44-02.

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

   The regulation does not exceed the federal requirements for HCBS settings or person-centered planning.

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 rule is to establish the eligibility requirements for enrollment in the PASSPORT Waiver, including compliance with the federal requirements for HCBS settings and person-centered planning.

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

   Successful outcomes are measured through:

- CMS' approval of Ohio's HCBS programs.
- Individuals' enrollment in the PASSPORT Waiver.
- Individuals' active participation in the person-centered planning process.
- Ongoing monitoring conducted by ODM as described in the approved waiver including but not limited to: targeted reviews, ongoing data review, and the bi-annual Quality Briefings with the operating agency.

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.

ODM program staff actively worked with representatives from ODA to amend OAC 5160-31-03. ODM staff included representatives from the Bureaus of Long Term Care Services and Supports, Health Plan Policy and Managed Care and the Office of Legal Counsel. In addition, staff also shared the proposed policy changes with the ODM HCBS Rules Workgroup that consists of the stakeholders listed below.

AARP
Brain Injury Association of Ohio
Caregiver Homes
CareSource
CareStar
Council on Aging
Disability Rights Ohio
Easter Seals of Ohio
Help 4 Seniors
Individuals served through the Ohio Medicaid program, including HCBS waivers
LeadingAge Ohio
LEAP
Molina Healthcare
NAMI Ohio
Ohio Academy of Senior Health Sciences, Inc.
Ohio Assisted Living Association
Ohio Association of Area Agencies on Aging

Ohio Association of County Behavioral Health Authorities
Ohio Association of Senior Centers
Ohio Council for Home Care and Hospice
Ohio Council of Behavioral Health & Family Services Providers
Ohio Department of Developmental Disabilities
Ohio Health Care Association
Ohio Long Term Care Ombudsman
Ohio Olmstead Task Force
Public Consulting Group (PCG) (provider oversight contractor)
Senior Resource Connection
United Healthcare

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

   ODM and ODA first partnered in March 2015 for the purpose of drafting OAC rules 5160-44-01 and 5160-44-02, which are referenced in OAC 5160-31-03. The workgroup met monthly beginning in June and finalized the drafts in December. Upon finalization of the draft HCBS rules, the proposed changes to OAC 5160-31-03 were drafted and distributed to the workgroup for review. The workgroup did not recommend any changes to the proposed rule.

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.

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 were considered as the proposed rule language reflects compliance with the federal regulations and the proposed new HCBS settings and person-centered planning rules.

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. The HCBS settings requirements and person-centered planning requirements contained in OAC rules 5160-44-01 and 5160-44-02 and that are referenced in OAC 5160-31-03, are prescriptive. They implement the federal regulations set forth in 42 CFR 441.301 and 42 CFR 441.725.

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

The agency performed a review of the Ohio Administrative Code. Regulations regarding the federal requirements for home and community-based settings and person-centered planned (outlined in 42 CFR 441.301 and 42 CFR 441.725) exist only in OAC 5160-44-01 and 5160-44-02.

Further, under Ohio Revised Code Section 5162.03, ODM is the single state agency to supervise the administration of the Medicaid program, and under Ohio Revised Code Section 5162.022, ODM's regulations governing Medicaid are binding on other agencies that administer components of the Medicaid program. No agency may establish, by rule or otherwise, a policy governing Medicaid that is inconsistent with a Medicaid policy established, in rule or otherwise, by the medical assistance director.

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.

Initial notification of rule promulgation will occur using standard communication methods including, but not limited to publication of the rules on the ODM webpage and emails to ODM-administered waiver stakeholder groups including state agency partners. In addition, ODM has developed a series of recorded trainings to educate the regulated community on the HCBS setting requirements.

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;

The business communities most likely to be impacted by the rule are Ohio Department of Aging's (ODA) designees (i.e., the 13 PASSPORT Administrative Agencies (PAA)) and the attending physicians of individuals seeking enrollment on the PASSPORT waiver. Pursuant to three-party agreements with ODM and ODA, Ohio's designee is responsible for furnishing assessment and case management services to individuals enrolled on the PASSPORT and Assisted Living waivers. Each of these entities varies in size, infrastructure, delegation of functions and size of caseloads, etc. As ODA's designees, these businesses conduct in-person assessments to determine an individual's eligibility for enrollment in the PASSPORT waiver, including ensuring the individual resides in an HCBS compliant setting and his or her waiver service plan is developed according to the person-centered planning requirements set forth in OAC 5160-44-02. In addition, ODA's designees are responsible for obtaining the attending physician's approval for the waiver service plan.

While this is a rule that establishes the eligibility requirements for an individual seeking enrollment in the PASSPORT Waiver, paragraph (B) (7) also identifies a potential adverse impact on the individual's attending physician. The rule requires the individual's attending physician to approve that services are appropriate to meet the individual's assessed needs. Approval may be either verbal or written. If the approval is verbal, written approval must be obtained within 30 days of the individual's enrollment date.

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

5160-31-03 (A)(7) This rule requires the PASSPORT Administrative Agencies (PAA) to allocate time to obtain the attending physician's approval for the waiver service plan. The attending physician's approval of the individual's waiver service plan is required prior to the start of waiver services as a condition of eligibility for enrollment on the PASSPORT waiver.

This rule requires the individual's attending physician to review the waiver service plan submitted by the PASSPORT Administrative Agency and sign the waiver service plan, indicating their approval.

(c) **Quantify the expected adverse impact from the regulation**

OAC 5160-31-03 (A) (7) – The PAA's general practice is to communicate the initial request for written physician approval of the waiver service plan electronically (either by fax or email). The PAA estimates in about 75% of cases, the approval is received with the initial request, with no follow-up required. In those cases, the estimated time per request is approximately 30 minutes from start to finish. However, in about 25% of cases, additional follow-up, including phone calls with the physician's office is required due to lack of response from the physician. The estimated time per request for follow-up is approximately 2 hours. The average cost per hour for this activity is $37.00. With an average monthly enrollment of 100 new individuals, the estimated cost to a PAA for this task is approximately $3200.00. In accordance with the 3-party agreement with the Department of Medicaid, Department of Aging and the PASSPORT Administrative Agencies, the Department of Medicaid provides payment to the PAA for the costs incurred.

The amount of time allocated by the attending physician for approval of the waiver service plan varies by the operational protocols of each physician practice. However, the review is comparable to the amount of time needed to initiate and secure the required signatures for the medical necessity form required in OAC 5160-31-03. An estimate of minimum of one half-hour of administrative time at $24/hour, and an estimated one half-hour of physician time at $175 an hour are allocated toward the process of obtaining the attending physician approval of the waiver service plan.

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

The State's compliance with CMS' HCBS regulations is required. CMS will not approve, nor will it renew HCBS programs if the State does not comply. CMS could also withhold federal medical assistance percentage (FMAP) dollars if an HCBS program is found to be out of compliance.

The practice of obtaining the attending physician's approval of the waiver service plan is directly linked to ensuring the individual's health and safety and strengthens the care coordination between medical and waiver service planning

Regulatory Flexibility

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

No. The HCBS settings and Person-centered planning requirements are established in federal regulation. In addition, the practice of obtaining the attending physician's approval of the waiver service plan is directly linked to ensuring the individual's health and safety and strengthens the care coordination between medical and waiver service planning.

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. There are no fines or penalties assessed for non-compliance with the regulation.

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

    ODM has been and will continue to collaborate with ODA and the affected stakeholders to ensure there are consistent expectations regarding HCBS setting requirements and person-centered planning, as well as the availability of the training and technical assistance necessary to support implementation of the rule changes. Case management guides will include or be updated to reflect the new HCBS requirements, including those set forth in OAC Rule 5160-44-02, and training will be conducted with the PAAs. Additionally, ODM and ODA will be available to answer questions associated with the rule.

    Entities seeking technical assistance can contact the Medicaid Provider Hotline (1-800-686-1576) or the Ohio Department of Aging (1-800- 266–4346).