

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: BLTSS: PASSPORT Shared Living Service  
Rule Number(s): 5160-31-07

(Additional OAC Rule 5160-1-06.1 and 5160-31-05 are also attached for reference.)

Date: March 2, 2017

**Rule Type:**

New

Amended X

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Rescinded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.*

OAC Rule 5160-31-07 describes the rate setting methods used to determine provider rates for all covered services available through the PASSPORT waiver. The rule is being proposed for amendment to establish a statewide rate setting methodology for a new PASSPORT waiver service: shared living.

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Another rule package containing an amendment to OAC 5160-31-07 and a BIA was reviewed and approved by CSIO on 10/7/2016, and the package was approved by JCARR for a 1/1/17 effective date. However, subsequent to CSIO approval, and prior to JCARR, OAC 5160-31-07 was revised to remove all references to the new shared living service. CSIO was notified on 11/18/2016 of the revision to the rule due to the postponement of the addition of the new service to the PASSPORT waiver.

At this time, the only amendment proposed to OAC 5160-31-07 is to restore the same references to the addition of the new service previously vetted with stakeholders and approved by CSIO. While restoring the references in the rule to the new service does not does not warrant a BIA, other language contained in OAC 5160-31-07 has been determined to have a potential impact on business.

**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. Payments for HCBS waiver services must be consistent with the provisions of §1902(a)(30)(A) of the Social Security Act and the related Federal regulations at 42 CFR §447.200-205. Adding the proposed new language will allow the Department to offer the additional service while complying with the federal regulations.

Resource: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/rate-setting-methodology.pdf>

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

The rule does not include provisions not specifically required by the federal requirements outlined §1902(a)(30)(A) of the Social Security Act, the related Federal regulations at 42 CFR §447.200-205, or the federally approved PASSPORT waiver.

**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 the amended rule is to provide the business communities with current information on the rate setting methodologies employed to determine the maximum billing reimbursement for PASSPORT covered services listed in OAC 5160-1-06.1, Appendix A.

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

Success outputs are measured through a finding of compliance with the provider's billing practices as determined by the provider monitoring and oversight function.

**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.*

Initially, ODM collaborated with the state partner agency, Ohio Department of Aging, to development the draft regulation. This work began in January 2016.

The following stakeholders were initially contacted in August 2016. The stakeholders were provided with copies of the draft regulation for review and comment, which included the references to the shared living service: Leading Age Ohio, Ohio Council for Home Care and Hospice, three Medicare certified home health agencies which furnish the PASSPORT personal care service, one non-profit organization representing non-skilled home care agencies which furnishes the PASSPORT personal care service, Ohio Area Agencies on Aging, five PASSPORT Administrative Agencies, and three consumer-directed individual providers.

In December 2016, OAC 5160-31-07 was revised to remove the references to the new shared living service. The stakeholders were notified of the revision to the rule due to the postponement of the addition of the new service to the PASSPORT waiver.

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In January 2017, the proposed changes to restore the references to the shared living service were distributed to the members of the ODM HCBS Rules workgroup to provide an opportunity for review and comment. This workgroup is comprised 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?**

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ODM did not receive any input from stakeholders specific to the addition of the shared living service.

**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?**

Extensive data analysis was completed on the PASSPORT service utilization trends for similar services (personal care, homemaker, independent living service, chore, and adult day health center service) by individuals who need either partial or 24 hour supervision. The results were used to inform development of the statewide rate methodology for the shared living service.

**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 alternatives were considered. The proposed rule language is necessary to implement the addition of the new service that will be reimbursed by Ohio Medicaid.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

The Agency did not specifically consider a performance-based regulation. The rule is intended to educate providers on the methods used to determine provider rates in the PASSPORT program and outline the conditions under which an eligible provider will be reimbursed for services and the billing maximums of those services.

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

There are no other regulations in the Medicaid program that define the methods used to determine provider rates in the PASSPORT program.

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 Medicaid 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. As the operating agency for the PASSPORT waiver, the Ohio Department of Aging will notify their stakeholder groups of the rule promulgation and provide training to and oversight of the PASSPORT Administrative Agencies to ensure consistent and timely implementation.

**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) the agency providers and consumer-directed individual provides of the personal care service, and agency providers of the new shared living service.

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

Each agency provider is required to have a contract with ODA or its designee to provide services to an individual enrolled on PASSPORT. The providers may incur administrative and legal costs in time spent in the contract review and execution process. The associated costs may vary based on the service and the provider type.

As ODA's designed, the PASSPORT Administrative Agencies (PAAs) are required to review and document the negotiated services rates on the individual's person-centered services plan. The PAAs were consulted and indicated the impact of the requirements is minimal.

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

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ODM received the following consolidated input from the Ohio Council for Home Care and Hospice, Leading Age Ohio, and three Medicare certified home health agencies that furnish the PASSPORT personal care service;

- *ODA data indicates there are 867 agency providers with a current contract, as of 9/1/2016, for the PASSPORT personal care service.*
- *“We determined that home health agencies (HHAs) will need to request enhancements for billing software changes, and depending on whether changes are made by internal staff versus an outside billing vendor will determine the length of time to comply with updating the rates. Usually internal staff may take a few weeks to make changes, and external vendors may need up to 3 months to make the changes. Also, vendors must make sure that the current rates remain in effect for services on or before the last date they will be used, and the new rates would go into effect for services provided on or after the effective date.*

*We calculated that the enhancements would take approximately 15 hours to complete at a total cost to a HHA of \$2,625.00. Along with changes, the billing staff will need to be trained/educated to implement the new rates according to dates of service. We calculated that it would take at least 3 man hours, depending on the size of the HHs billing department or billing staff. At an hourly rate of \$25.00, this would be a total of \$75.00 per HHA. The total program administrative cost is calculated to be \$50.00 per HHA. This indicates the average per agency cost is \$2,750.”*

ODM identified eight consumer-directed individual providers furnishing services to individuals enrolled on PASSPORT. Three of the eight providers offered input on the impact of the requirement to obtain a signed agreement with the individual served. Each provider indicated no significant resources or time were required in order to obtain the signed agreement. No administrative or travel costs were identified and the providers reported an average wage of \$12.00/hour.

Pursuant to three-party agreements with ODM and ODA, the PASSPORT Administrative Agencies (PAAs) serve as ODA’s designee. Each of these entities varies in size, infrastructure, size of caseloads and size of provider networks. ODA establishes the site operating budget for each PAA. The operating budget provides funding for waiver case management and administrative functions including maintaining HCBS waiver provider

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quality assurance processes. The operating budgets are calculated based on assumptions of estimated FY 2017 caseload multiplied by an estimated statewide monthly amount per consumer, and an amount for other operating, which includes provider based on FY 2016 budgets.

The PAAs estimated the approximate amount of time required to enter into a contract with a new provider is between 45 to 60 minutes per contract. The projected hourly cost per new contract is approximately \$40.00 per contract. Pursuant to the interagency agreement, the Ohio Department of Medicaid supplies administrative funding to the PASSPORT Administrative Agency (PAA) for this activity.

The PAAs estimated the approximate amount of case management time required to negotiate unit rates of home medical equipment and to document on the person-centered service plan ranges from 30 to 60 minutes per individual. The projected hourly cost is \$40.00 per hour. Pursuant to the interagency agreement, the Ohio Department of Medicaid supplies administrative funding to the PASSPORT Administrative Agency (PAA) for this activity.

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

The Agency determined the impact on agency and consumer-directed individuals providers is justified for the following reasons: (a) Transparency: The accessibility of the information allows the regulated business community to make an informed decision regarding participation in the PASSPORT program and stay current on any changes made to the methodology; (b) Program Integrity: the regional rate contracting process documents the billing maximum for each provider; (c) Accountability: The signed agreement process outlines the employer/employee relationship when the individual has elected self-direction.

Pursuant to the interagency agreement, the Ohio Department of Medicaid supplies administrative and waiver case management funding to the PASSPORT Administrative Agency (PAA). This funding is intended to properly supply the PAAs with enough resources to support waiver case management and provider quality assurance processes.

**Regulatory Flexibility**

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

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In order to ensure uniform and consistent treatment of Medicaid providers, the rule does not provide any exemptions or alternative means of compliance and no exception can be made specifically for small businesses.

**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?**

There are no fines or penalties for paperwork violations associated with this regulation.

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

The regulation does not require significant resources to comply. There are several support services available for small businesses who may require additional assistance understanding the methods for determining the rate. ODM has a designated web page tailored to provider enrollment and support where many resources can be found to assist all providers, including small businesses. The Ohio Department of Aging (ODA) maintains a dedicated webpage provider certification.

<http://aging.ohio.gov/resources/providerinformation>.

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