CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Hospice Chapter Rules

Rule Number(s): 5160-56-02 (rescinded); 5160-56-03 (rescinded); 5160-56-03.3 (rescinded); 5160-56-04 (rescinded); 5160-56-02 (new); 5160-56-03 (new); 5160-56-03.3 (new); and 5160-56-04 (new)

The following rules are for informational purposes only OAC 5160-56-01 (rescind and new), 5160-56-05 (rescind and new), and 5160-56-06 (rescind and new)

Date: June 15, 2017

Rule Type:

X New	X 5-Year Review
Amended	X Rescinded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.**

Rules in Chapter 5160-56 of the Administrative Code are being rescinded and replaced by new rules to update the provisions related to the reimbursement of hospice services covered by Ohio Medicaid, and ensure compliance with federal law. The proposed changes impact all rules in

OAC Chapter 5160-56 and reflect new definitions, service rate methodology, and procedural changes. The key provisions undergoing the Business Impact Analysis are:

OAC 5160-56-02, entitled "Hospice services: eligibility and election requirements" outlines the criteria that must be met for an individual to receive the Ohio Medicaid hospice benefit. This rule is being rescinded and will be made new to provide additional clarity of instruction for providers, including prescribing the language to be contained in the hospice election statement.

OAC 5160-56-03, entitled "Hospice services; discharge requirements" details the circumstances and/or process whereby a hospice would discharge, transfer, or revoke an individual from Ohio Medicaid hospice. This rule is being rescinded and will be made new to provide further clarity of instruction for providers regarding the discharge of an individual from a hospice.

OAC 5160-56-03.3, entitled "Hospice services; reporting requirements" describes the requirements for recording hospice spans and certification information using the telephone-based, Interactive Voice Response (IVR) System. The current rule enables the recording of the hospice provider span for individuals receiving Medicaid hospice care in accordance with Chapter 5160-56 of the Administrative Code, including individuals who may be covered by third-party insurance, such as Medicare, for which the hospice seeks reimbursement. This rule is being rescinded and will be made new primarily to reflect the new manner in which hospice enrollment data is to be reported to ODM, through the Medicaid Information Technology System (MITS), and to remove all references to the legacy system, the Interactive Voice Response System. The rule provides needed instructions for hospice providers on how to bill for hospice services rendered using newly created portals in MITS.

OAC 5160-56-04, entitled "Hospice services; provider requirements" outlines the conditions of participation for a provider engaged in the provision of Medicaid hospice services. This rule is being rescinded and will be made new to remove the requirement of labeling the Medicaid cards, to denote individuals on hospice, and to further clarify provider requirements for designated hospices.

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. Section 1861(dd) of the Social Security Act and 42 C.F.R. Part 418 specify services covered under hospice care and the conditions which a hospice program must meet in order to participate in Medicaid. Those provisions apply to the Medicaid program and serve as the basis for the requirements prescribed in rules 5160-56-02, 5160-56-03, 5160-56-03.3, and 5160-56-04

of the Administrative Code. The drafted regulations in this packet will ensure Ohio's compliance with federal codes and rate structures for routine home care, an existing hospice service under HCPCS procedure code, T2042, and the new "Service Intensity Add-on" service.

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

The regulations amplify hospice provisions in the C.F.R. and do not extend beyond these federally imposed 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)?

The public purposes for these regulations are to comply with federally imposed, regulatory standards that govern the Medicaid hospice benefit in Ohio and express the rate in which hospices are reimbursed for the provision of services in Ohio. The standards are congruent with federal policy for Medicare and Medicaid hospice and purposed to ensure that such standards are uniformly established and enforced across Ohio. The regulations establish the minimal conditions whereby certified providers shall participate in hospice. The regulations also prohibit the involuntary discontinuance of hospice service with respect to an individual because of the inability of the individual to pay for such care.

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

The success of the regulations will be determined by monitoring rate payments through MITS to ensure that the rules are followed.

<u>Development of the Regulations</u>

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.

- Hospice Alliance of Ohio
- Home Care Network
- LeadingAge of Ohio
- Ohio Council for Home Care & Hospice
- Ohio Department of Health
- Nationwide Children's Hospital

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

For the past two years, the Ohio Hospice Sub Workgroup has met to review proposed changes to OAC Chapter 5160-56. The group included the stakeholders noted in Question 7. The workgroup met over two dozen times to thoroughly review these hospice rules. During the process, the group was afforded the opportunity to provide comment on the components of each rule and to offer suggested changes when recommended. The majority of the changes made to the hospice rule packet were the result of the Workgroup which was instrumentally engaged in the drafting of each rule and/or the result of existing regulations imposed by the Center for Medicare and Medicaid Services (CMS).

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 were used to develop these rules as it is not applicable.

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. The regulations in OAC Chapter 5160-56 are based on provisions prescribed by federal law, which does not allow ODM flexibility to enact different requirements.

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

Performance-based regulations were not considered appropriate for these rules as the requirements for Medicaid coverage of hospice are dictated by federal law.

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. None of these rules were found to be duplicative in scope.

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 rule packet will be filed in concert with billing system changes and new rates imposed on the state by CMS, slated to take effect on October 1, 2017. Consequently, rules and billing training will be provided to hospices and other stakeholders on August 21 and August 29, 2017,

in advance of the effective date of the rules, to explain changes that have been made to these rules and to MITS. Additionally, the final rules as adopted by the Ohio Department of Medicaid will be made available to stakeholders and the general public online at http://codes.ohio.gov/oac/5160-56.

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;

OAC 5160-56-02, 5160-56-03, 5160-56-03.3, and 5160-56-04 impact approximately 140 certified hospice providers in Ohio. An average per year, hospices care for 8500 terminally ill individuals, ranging from infants to seniors. The hospices provide hospice care to Medicaid eligible individuals, directly or indirectly, for hours, days and often for years. Hospice care begins at the onset of the election of hospice, and extends across multiple assessments and plans of care, through discharge planning, and a year beyond the individual's death (e.g., to provide counseling to the bereaved family).

The 140 hospices in Ohio under agreement with ODM are responsible for the professional management of services furnished to the estimated 8500 individuals who elect hospice. For these reasons, the hospice's own employees and volunteers, other certified hospice providers, nursing facilities which are paid by hospices, billers, contracted and non-contracted facilities, physicians responsible for the oral and/or written certification of terminal illness, and other professionals (e.g., nurses and social workers) are likely to be impacted by the proposed new rules as well.

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

5160-56-02
Report of Information: Pursuant to this rule, the designated hospice must provide the individual under hospice care with a copy of the hospice agency's grievance procedures, and information pertaining to advance directives.

5160-56-03
Reports of Information: Pursuant to this rule, when an individual is discharged from hospice care, the hospice provider must complete a written statement of discharge that clearly states the reason for discharge. When an individual voluntarily revokes the hospice benefit, the hospice provider must complete a written statement of revocation that clearly states the reason for the

revocation. These requirements are found in both the existing rule, which is being rescinded, and the proposed new rule.

Report of Information: As a result of the proposed new rule, the hospice provider must also notify the Ohio Department of Medicaid (ODM) through the Medicaid Information Technology System (MITS) or ODM's designee if the individual is enrolled on a waiver or in a managed care plan. The report of the individual's discharge from the designated hospice's care is needed so that the designated hospice's service spans and billing cycles coincide with the date of the individual's discharge and/or so that hospice services may continue with the new hospice when if applicable, e.g., following a transfer.

5160-56-03.3

Reports of Information: The current rule, which is being proposed for rescission, requires the submission of information into the Interactive Voice Response System. The proposed new rule specifies the enrollment information that hospices must report to ODM via the hospice portal in the Medicaid Information Technology System (MITS). The rule also lists the timeframes during which the information must be entered into MITS. The types of information that providers must enter into MITS is pertinent for payment purposes and therefore must include:

- Physician's certification dates;
- Dates of election;
- Terminal illness diagnosis codes for the individual;
- Begin and end dates of hospice services;
- Begin and end dates of every benefit period;
- Hospice provider number;
- Individual recipient number (uniquely assigned for billing purposes);
- National Provider Identifiers (NPI) for physicians;
- NPI for the long term care facility (LTFC) when applicable;
- County where services were provided; and
- Any updates or changes to be made to the benefit period as a result of a discharge.

5160-56-04

Certification and Provider Agreement Requirements: This rule requires that hospice providers be licensed by the Ohio Department of Health according to ORC Chapter 3712. In addition, this rule requires hospice providers to execute a Medicaid provider agreement according to OAC rule 5160-1-17.2 to be eligible to provide Medicaid hospice services. These requirements are set forth in the current rule proposed for rescission and the new proposed rule.

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.

Hospices are reimbursed for services and for documenting such services via level of care per diems, purposed to offset the cost of providing end-of-life care to individuals who are terminally ill as follows:

5160-56-02 - The estimated cost for a hospice provider to complete a hospice election form and advance directive's form is approximately $44. Either an RN or MSW would take 1.5 hours at an average rate of $28/hour plus copying the Advance Directive forms (20 pages at $0.10/page). SOURCE: The Ohio Council on Home Care and Hospice, and LeadingAge Ohio.

5160-56-03 - The estimated cost for a hospice provider to complete a written statement of discharge is approximately $75. An RN at $30/hour could take up to 2 hours to complete discharge instructions and documentation. Also, a Communication note and discharge summary will take another 0.5 hours. SOURCE: The Ohio Council on Home Care and Hospice, and LeadingAge Ohio.

The estimated cost for a hospice provider to obtain a written statement of revocation is approximately $60. The entire process could take up to 2 hours. SOURCE: The Ohio Council on Home Care and Hospice, and LeadingAge Ohio.

5160-56-03.3 - The estimated cost of entering information and uploading documents into MITS is approximately $18.50. Depending on how many pages of information, it may take up to hour at $18.50/hour per enrollment/per benefit period. The hospice agencies would need to enroll each individual into MITS. SOURCE: The- Ohio Council on Home Care and Hospice, and LeadingAge Ohio.

5160-56-04 - The initial and renewal application fee for hospice licensure is $600 per provider. The Medicaid application fee of $560 is waived for licensed hospices that are Medicare certified, which is required by ODM pursuant to 5160-1- 17.2 of the Administrative Code. The hospice provider must be licensed and Medicare certified by the Ohio Department of Health (or accrediting organization) in order to be a Medicaid hospice provider, as licensure and Medicare certification are requirements for all hospice providers in Ohio regardless of whether they serve Medicaid or non-Medicaid individuals. See rule 3701-19-02 of the Administrative Code. The every three years' renewal for ODH licensure cost is $600 every three years, and at least every 36 months ODH (or an accrediting organization) completes a Medicare recertification survey at a cost of $1,625.

The estimated cost for a hospice provider to complete a signed agreement with a nursing facility, ICF-IID, or inpatient facility is approximately $76.92 per hour or $300 per agreement. The estimated cost for a hospice's legal counsel to review an amended agreement is $250/hr., and the cost of administrator time is estimated as $50/hr. to work with facility administration. The length of time to complete an agreement varies from an hour up to 3 hours.

The estimated cost for a hospice provider to obtain a written certification of terminal illness is approximately $145, or $115/physician and $30/nurse per certification.

The estimated cost to establish a written plan of care for an individual is approximately $141. (RN $30/hour X 3 hours, MSW $26/hour X 1 hour, and Chaplain $25/hour x 1 hour per plan,) and the estimated cost to update the plan of care is approximately $85.50 (for an RN $30/hour X 2 hours, MSW $26/hour X 0.5 hour, and Chaplain $25/hour x 0.5 hour per plan). Sources: Hospice providers; Hospice Salary & Benefit Report, 2016-2017, Hospital & Healthcare Compensation Service

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

The regulations are necessary for ODM to reimburse for hospice services consistent with federal law.

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 the same for all hospice 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 as these rules do not impose any fines or penalties for paperwork violations.

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 Services and Supports, through the Provider Relations Hotline at (800) 686-1516.