

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Medicaid

Regulation/Package Title: DODD Authorization Rule and Administrative Appeal Rules

Rule Number(s): 5160-3-01.1 (Rescind), 5160-3-90 (New), 5160-3-04 (Amend)

5160-3-04.1 (Amend)

Date: June 21, 2017

**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☒ Rescinded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.*

**5160-3-01.1**

This rule sets forth the provisions for DODD to administer Medicaid program services provided by ICFs-IID. This rule is being proposed for rescission, and is being replaced by new rule 5160-3-90.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

### **5160-3-90**

This new rule sets forth the provisions for DODD to administer Medicaid program services provided by ICFs-IID. This rule replaces rule 5160-3-01.1, which is being rescinded. The differences between this rule and rescinded rule 5160-3-01.1 are:

- The term "intermediate care facility for the mentally retarded (ICF-MR)" is being replaced with "intermediate care facility for individuals with intellectual disabilities (ICF-IID)" due to a change in terminology.
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM) because of the creation of the Ohio Department of Medicaid.
- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130<sup>th</sup> General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
- In paragraph (A), a date is being added to a Code of Federal Regulations (C.F.R.) citation in order to comply with Joint Committee on Agency Rule Review (JCARR) rule filing requirements.
- In paragraph (B), a typographical error is being corrected.

### **5160-3-04**

This rule sets forth payment provisions during the ODM administrative appeals process for the denial or termination of a nursing facility's Medicaid provider agreement. The changes to the rule are:

- The rule title is being modified to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
- Regarding nursing facility provider agreements, the term "non-renewal" is being updated to "non-revalidation" due to a change in terminology.

#### **5160-3-04.1**

This rule sets forth payment provisions during the state survey agency administrative appeals process for the proposed termination or non-renewal of a nursing facility's Medicaid certification. The changes to the rule are:

- The rule title is being modified to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code, and to be more descriptive.
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM) because of the creation of the Ohio Department of Medicaid.
- Regarding Medicaid provider agreements, the term "non-renewal" is being updated to

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**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

"non-revalidation" due to a change in terminology.

- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130<sup>th</sup> General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
- In paragraphs (C)(1)(a) and (C)(2)(a), language is being corrected to accurately reflect the provisions in the Revised Code sections being cited.

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

**5160-3-01.1**

Not applicable. This rule is being proposed for rescission.

**5160-3-90**

Ohio Revised Code section 5165.02

**5160-3-04**

Ohio Revised Code section 5165.02

**5160-3-04.1**

Ohio Revised Code section 5165.02

**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.*

None of the proposed rules implement a federal requirement.

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

None of the proposed rules exceed a federal requirement.

**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)?**

**5160-3-01.1**

Not applicable. This rule is being proposed for rescission.

### **5160-3-90**

The public purpose of this rule is to ensure proper administration of the ICD-IID program by the Ohio department of developmental disabilities (DODD), and adequate oversight and payment monitoring of the program by the Department of Medicaid.

### **5160-3-04**

The public purpose of this rule is to ensure proper payments are made for Medicaid covered services provided to nursing facility residents during the appeal of the proposed termination or non-revalidation of a nursing facility's Medicaid provider agreement.

### **5160-3-04.1**

The public purpose of this rule is to ensure proper payments are made for Medicaid covered services provided to nursing facility residents during the appeals process provided by the state survey agency for the proposed termination or non-renewal of a nursing facility's Medicaid certification.

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

### **5160-3-01.1**

Not applicable. This rule is being proposed for rescission.

### **5160-3-90**

The success of this rule will be measured by the extent to which the ICF-IID program is properly administered by DODD, and the extent to which there is effective oversight of the program by the Department of Medicaid.

### **5160-3-04**

The success of this rule will be measured by the extent to which proper payments are made for Medicaid covered services provided to nursing facility residents during the appeal of the proposed termination or non-revalidation of a nursing facility's Medicaid provider agreement.

### **5160-3-04.1**

The success of this rule will be measured by the extent to which proper payments are made for Medicaid covered services provided to nursing facility residents during the appeals process provided by the state survey agency for the proposed termination or non-renewal of a nursing facility's Medicaid certification.

## **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 primary stakeholders are Ohio's three nursing facility provider associations. The nursing facility provider associations in Ohio are:

- Ohio Health Care Association (OHCA)
- The Academy of Senior Health Sciences, Inc.
- LeadingAge Ohio

Ohio's nursing facility provider associations represent and advocate for small and large nursing facilities and nursing facilities with both individual and group ownership, publicly-traded and government-owned properties, and for-profit and non-profit facilities. In addition to representing and advocating for nursing facilities, the associations are informational and educational resources to Ohio's nursing facilities, their suppliers, consultants, and the public at large.

The nursing facility provider associations were involved in review of the draft rules when the Department of Medicaid emailed the draft rules and summaries of the rule changes to the associations on June 12, 2017.

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

No comments were received from the nursing facility provider associations.

**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?**

Scientific data was not applicable to the development of these 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 were considered. The Department of Medicaid considers Administrative Code rules the most appropriate type of regulation for the provisions contained in these rules.

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

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*Performance-based regulations 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.

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

These rules have been reviewed by the Department of Medicaid's staff, including legal and legislative staff, to ensure there is no duplication within the Department of Medicaid's rules or any others in the OAC.

**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 final rules as adopted by the Department of Medicaid will be made available to all stakeholders and to the general public on the Department of Medicaid's 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;**

Provider participation in the Medicaid program is optional and at the provider's discretion. These rules impact intermediate care facilities for individuals with intellectual disabilities (ICFs-IID), and approximately 960 nursing facilities in Ohio that choose to participate in the Medicaid program.

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

Compliance with Medicaid program requirements is mandatory for providers who choose to participate in the program, and may result in administrative costs as detailed below.

**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.*

### **5160-3-01.1**

b). Not applicable. This rule is being proposed for rescission. The adverse impact in this rule is identified in new rule 5160-3-90, which is replacing this rule.

### **5160-3-90**

b.) In accordance with paragraph (B) of this rule, during a review by the Department of Medicaid, ICF-IID providers must provide any records related to the administration and/or provision of ICF-IID services to the Department of Medicaid, the Centers for Medicare and Medicaid Services (CMS), the Medicaid Fraud Control Unit, and any of their designees in accordance with the Medicaid provider agreement. This rule does not require the retention of any additional documents.

c.) The Department of Medicaid cannot quantify the adverse impact associated with this requirement because the Department does not know how extensive a review might be, what or how many records a facility might be required to provide, or to how many agencies.

### **5160-3-04**

b.) In accordance with paragraph (B)(2) of this rule, a nursing facility provider must cooperate with state, local, and federal entities in efforts to transfer residents to other nursing facilities, institutions, or community programs that can meet the residents' needs in order to receive payment for up to 30 days following the effective date of termination or non-revalidation of its Medicaid provider agreement.

c.) The Department of Medicaid cannot quantify the adverse impact because the Department does not know which particular nursing facilities might undergo termination or non-revalidation of their Medicaid provider agreement, what those facilities' specific per diem rates might be, or how many days any particular facility might receive payment following the effective date of termination or non-revalidation.

### **5160-3-04.1**

b.) In accordance with paragraph (C)(2)(b) of this rule, a nursing facility provider must cooperate with state, local, and federal entities in efforts to transfer residents to other nursing facilities, institutions, or community programs that can meet the residents' needs

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in order to receive payment during the appeals process provided by the state survey agency for the proposed termination or non-renewal of the facility's Medicaid certification.

c.) The Department of Medicaid cannot quantify the adverse impact because the Department does not know which particular nursing facilities might undergo termination or non-renewal of their Medicaid certification, what those facilities' specific per diem rates might be, or how long the appeals process might last for any particular facility.

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

**5160-3-01.1**

Not applicable. This rule is being proposed for rescission.

**5160-3-90**

The adverse impact associated with this rule is justified because this rule helps ensure the ICF-IID program is properly administered by DODD, and that there is adequate oversight of the program by the Department of Medicaid.

**5160-3-04**

The adverse impact associated with this rule is justified because this rule helps ensure proper payments are made for Medicaid covered services provided to nursing facility residents during the appeal of, and proposed termination or non-revalidation of, a nursing facility's Medicaid provider agreement.

**5160-3-04.1**

The adverse impact associated with this rule is justified because this rule helps ensure proper payments are made for Medicaid covered services provided to nursing facility residents during the appeals process provided by the state survey agency for the proposed termination or non-renewal of a nursing facility's Medicaid certification.

**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 nursing facilities and ICFs-IID regardless of 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?**

ORC section 119.14 is not applicable to these regulations.

**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 at (614) 466-6742.