

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Advanced Practice Registered Nurse (APRN) Services

Rule Number(s): 5160-4-04

Date: _____

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☐ Rescinded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.

OAC 5160-04-04, "Advanced practice registered nurse (APRN) services," sets forth coverage and payment policies for services provided by an APRN, a term that encompasses a certified registered nurse anesthetist (CRNA), clinical nurse specialist (CNS), certified nurse-midwife (CNM), and certified nurse practitioner (CNP).

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This rule is being proposed for amendment to clarify the existing policy for the reimbursement of assistant-at-surgery services. For assistant-at surgery services provided by a CNS, CNM, or CNP, regardless of setting, Medicaid will pay no more than twenty-five percent of the Medicaid maximum for the covered primary surgical procedure.

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?

No.

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

These policies are not required by federal law, but they do fall within the federal authority granted to states in implementing the Medicaid program.

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)?

This rule updates policy regarding Medicaid coverage and payment for professional medical services performed by a CNS, CNM or CNP.

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

The Medicaid Information Technology System (MITS) will be updated to implement the policy set forth in this rule once the rule goes into effect. Success will be measured by how claims submitted in MITS for APRN services adjudicate correctly.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

On March 20th, 2017, the Ohio Association of Advanced Practice Nurses (OAAPN) was contacted and provided with a copy of the proposed amended rule for their review. OAAPN is a large association in the state of Ohio representing APRNs, including the CNS, CNM, CNP specialties.

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On April 10th, 2017, ODM followed up to see if there were any concerns.

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

No concerns were expressed.

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 necessary.

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?

This rule addresses the coverage of and payment for APRN services by Ohio Medicaid. Such policies should be expressed clearly in rule. ODM determined this was most appropriate method and no other alternative were considered appropriate.

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

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 each provider type and item or service. Existing rules were checked and ODM verified that there is 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). They therefore will be applied by the Department's electronic claim-payment system automatically and claims will be paid correctly.

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;

This rule affects advanced practice registered nurses (certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners) who provide services to recipients of medical assistance from Ohio Medicaid.

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

The amended language does not create an adverse impact. However, the rule as a whole was determined to have an adverse impact; therefore, it was previously reviewed and approved by CSIO on September 26th, 2016.

Paragraph (B) (2) of 5160-4-04 describes payment to the APRN related to scope of practice and Medicaid enrollment. Direct payment may be made to an APRN only if the five conditions are met. Only condition (a) is an adverse impact as it affects payment.

- (a) The APRN must be enrolled as an Ohio Medicaid provider;
- (b) The services are rendered to a patient who is eligible for Ohio Medicaid in a state in which the APRN is licensed or authorized to practice;
- (c) The service is within the scope of practice of the APRN;
- (d) The APRN personally rendered the service to an individual patient; and
- (e) The service cannot be performed by a provider whose certification is less than those of an APRN.

Condition (a) affects only the method of payment. Payment for the services of an APRN not enrolled as a Medicaid provider is made to the billing provider submitting the claim, and the billing provider pays the APRN. Condition (b) allows payment for APRN service rendered outside of Ohio and grants full faith and credit to the licensure process in other states. Condition (c) recognizes the heterogeneity of APRNs; a CNM and a CRNA, for example, perform very different services. Conditions (d) and (e) are included as program integrity measures to ensure that APRN services are performed by APRNs.

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.

Provider enrollment is a basic Medicaid provider requirement. There is an application fee that applies to organizational providers only; it does not apply to individual

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providers and practitioners or practitioner groups. The estimated dollar impact for 2017 is \$560 per application. Medicaid makes direct payment only to providers enrolled in the program. This fee is a federal requirement described in 42 CFR 455.460 and OAC 5160-1-17.8. Costs associated with enrollment cannot be attributed to rule 5160-4-04.

The certification and licensure requirements in the existing rules are eligibility limitations rather than directives to obtain credentials.

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

The provisions in the existing rule that have an adverse impact were enacted as program integrity measures, intended to ensure the delivery of high-quality services to Medicaid recipients.

Rule 5160-4-04 describes constraints on payment for an APRN service. These constraints, which include enrollment as an Ohio Medicaid provider, are not new obligations imposed on APRNs but rather indications of when they may receive payment directly from ODM rather than through another entity.

Regulatory Flexibility

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

This rule outlines actions all providers must take in order to receive Medicaid payment. The requirements are applied uniformly and no exception is made based on 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?

This rule does not impose fines or penalties for paperwork violations

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

Providers who submit claims through an electronic clearinghouse (a “trading partner”) can generally rely on the clearinghouse to know current Medicaid claim submission procedures.

Information sheets and instruction manuals on various claim-related topics are readily available on the Medicaid website, www.medicaid.ohio.gov

Policy questions may be directed via-email to the Non-Institutional Policy section of ODM's policy bureau at noninstitutional_policy@medicaid.ohio.gov

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

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