

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid (ODM)

Regulation/Package Title: Dental services

Rule Number(s): Rule 5160-5-01 with appendices A and B

Date: January 26, 2018

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☐ Rescinded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.

Rule 5160-5-01, "Dental services," sets forth Medicaid coverage and payment policies for dental services. It includes two appendices, one that lays out coverage of services by category and one that lists maximum payment amounts by procedure.

The following changes have been incorporated into the appendices:

- Procedure terminology has been updated. The descriptors for a number of preventive and diagnostic services have been revised. In Appendices A & B, new procedure codes are listed, and coverage changes are noted.
- Certain longstanding program policies have been codified and clarified.
- Set payment amounts have been established for certain services or procedures that previously required manual pricing.
- Coverage has been established for the application of silver diamine fluoride.
- Coverage to allow payment for a limited problem focused examination on the same date of service as other dental treatment services.
- Coverage for therapeutic parenteral drug administration, two or more administration, and different medications has been added to reflect proper coding.
- Coverage has been extended to equivalent services or procedures.

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?

If yes, please briefly explain the source and substance of the federal requirement.

No.

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

This rule does not exceed federal 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)?

Medicaid rules perform several core business functions: They establish and update coverage and payment policies for medical goods and services. They set limits on the types

of entities that can receive Medicaid payment for these goods and services. They publish payment formulas or fee schedules for the use of providers and the general public

This rule articulates Medicaid coverage and payment policies for dental services. It serves as a resource for use by the general public to understand current Medicaid policy, payment amounts, and any service limits.

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

The success of this rule will be measured by the extent to which operational updates to the Medicaid Information Technology System (MITS) result in the correct payment of claims.

With the coverage of Silver Diamine Fluoride (SDF), ODM expects to see a reduction in tooth extractions and fillings for Ohio's high risk, high need populations. SDF offers an alternative, low cost and easy to apply care path to treating dental caries when traditional restorative treatment is not immediately available. The success of the policy change will be measured by the rate with which we slow down dental caries and lesions, and reduce pain, resulting in an improved quality of life and increased overall health outcomes for our vulnerable populations

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.

Over a period of at least a year, the following stakeholders have had the opportunity to review and shape the policies expressed in the dental services rule:

- Ohio Dental Association (ODA)
 - ODA Council on Access to Care and Public Services
 - ODA Medicaid workgroup
- Ohio Department of Health's Oral Health and Maternal and Child Health Services staff
- Ohio State and Case Western Reserve Colleges of Dentistry leadership and clinic administrators
- Lobbyists representing dentists and other oral health stakeholders
- Children's Oral Health Action Team (COHAT)
- Ohio Association of Community Health Centers (OACHC)
- Ohio Department of Medicaid's Dental Director
- Medicaid managed care plans
- Practicing Medicaid dentists including several who serve as dental technical advisors (MTAs) to Ohio Medicaid Managed Care plans.

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

Discussions with the Ohio Dental Association (ODA), its members, and other oral health stakeholders helped to continue the dental program review and development.

Regular meetings are held with the ODA Council on Access to Care and Public Services; meetings of the ODA Medicaid work group are called as needed. Some dentists are members of both groups. ODM and ODA staff members also get in contact periodically (in person or by telephone, e-mail, or surface mail) to discuss dental industry and provider issues, concerns, and opportunities.

The Council met with ODM staff members on October 14, 2016, and on January 13, March 16, July 14, and August 2, 2017. Discussion topics included Medicaid dental services coverage and limitations, program requirements, and program policy. As a result of these meetings, rule language was drafted to incorporate coverage of silver diamine fluoride, maximum fees were established for several covered services currently manually priced and coverage was extended to equivalent procedure codes at the same maximum payment amounts as existing covered codes.

The ODA Medicaid work group met with ODM staff members on August 30, 2017. The purpose of the meeting was to follow-up on previous discussions with ODA regarding ADA coding changes for 2018, consideration of new procedure codes/services and to continue the discussion of program issues including coverage of silver diamine fluoride. Consensus was reached on coverage of equivalent procedure codes, rule language, prior authorization requirements, and coverage of silver diamine fluoride. After the exchange of numerous e-mails, ODM staff met with Ohio Department of Health (ODH) staff from their maternal and child health and oral health units on May 19, 2017. The primary topics were pending budget reductions and ideas for maintaining certain oral health programs operated by ODH. Medicaid coverage of dental services and the future of Medicaid expansion was discussed. Coverage of Silver Diamine Fluoride and equivalent services were also discussed. Both organizations shared their concerns and ideas regarding improving access to oral health services, coordination of resources, program coverage and the upcoming budget discussions.

ODM met with representatives of the two Ohio dental colleges between September of 2016 and April of 2017. Discussions generally focused on the short supply of dentists in Ohio, training efforts to coordinate oral health and primary medical health services and Medicaid funding (fees) for their clinics. Clarification of program coding and coverage of certain services was a major point of discussion.

ODM has had direct and indirect contact with other state agencies and various associations and oral health advocacy groups, such as COHAT and OACHC regarding access to dental services for Medicaid consumers, program fees and program funding.

Other advocates, providers, and lobbyists met with ODM staff members in 2016 and 2017, primarily about coverage of equivalent services to assist in correct coding initiatives, program fees and possible incentives for high volume Medicaid dental providers. Medicaid payment methodology and the proposed changes to the dental services rules were also discussed.

Proposed dental program changes were communicated to Ohio Medicaid managed care plans through ODM's plan contract administrators and during regular meetings with the plans.

From April 2017 through October 2017, ODM's dental director and managed care plan MTAs thoroughly reviewed proposed program changes and offered their own suggestions. Establishing set maximum fees for service requiring manual pricing was discussed.

Coverage of silver diamine fluoride as well as several incidental services was also presented.

As a result of these meetings, rule language was drafted to incorporate coverage of preventive services to include silver diamine fluoride, procedure codes were updated, maximum fees were established for dental services manually priced, and coverage was extended to "equivalent" procedure codes at the same maximum payment amounts as existing covered codes. The aim of this rule update is to provide cost-effective alternatives, to recognize changes in the practice of dentistry and to increase program participation without additional cost to the state.

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?

Utilization and expenditure data drawn from ODM's Quality Decision Support System were used in projecting the fiscal impact of the proposed changes.

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 involves the coverage of and payment for dental procedures. Whatever the policy may be, the form of the rule is the same; no alternative is readily apparent.

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.

The concept of performance-based rule-making does not apply to these items and 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 which type of provider and item or service; in this instance, there was 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) as of the effective date of the applicable rule. They will therefore be automatically and consistently applied by the ODM's electronic claim-payment system whenever an appropriate provider submits a claim for an applicable service.

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

- a. Changes to this rule affect dentists and other eligible Medicaid providers of dental services, such as fee-for-service clinics.
- b. This rule imposes no license fees or fines. The rule specifies that participating practitioners must maintain and, as appropriate, submit documentation that the services were provided and the medical necessity of the services. The documentation of medical necessity and the services provided helps to substantiate the appropriateness of the services rendered to Medicaid-eligible individuals. These requirements are consistent with professional standards, and are imposed for program integrity purposes.
- c. The adverse impact lies in the time needed to complete documentation of medical necessity and the services provided. Completing documentation of medical necessity and the services provided takes between five and thirty minutes of provider staff time. This estimate is based on the personal experience of practicing dentists, including the ODM medical technical advisors (MTAs). The wage cost depends on who performs the task. The median statewide hourly wage for a billing clerk, according to Labor Market Information (LMI) data published by the Ohio Department of Job and Family Services, is \$16.10; for a dentist, it is \$87.21. Adding 30% for fringe benefits brings these figures to \$20.93 and \$113.37. Therefore, generating a necessary document costs between \$1.75 (five minutes at \$20.93 per hour) and \$56.69 (thirty minutes at \$113.37 per hour).

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

The documentation requirements spelled out in this rule serves as an effective tool for preventing fraud, waste, and abuse and for promoting quality and cost-effectiveness; they help to ensure that the Ohio Medicaid program pays for dental services that are most appropriate to the needs of the person who will receive them.

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. It does not set forth requirements for engaging in business, and no exception is made on the basis of 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 imposes no sanctions on providers.

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

Providers that 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.

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