CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid (ODM)

Regulation/Package Title: Dental Services

Rule Number(s):

SUBJECT TO BUSINESS IMPACT ANALYSIS:
Rule 5160-5-01

Date: July 31, 2018

Rule Type:

☐ **New**
X 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☐ **Rescinded**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.

   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. This rule was most recently amended effective July 1, 2018.

   The following changes will be proposed:

   - American Dental Association (ADA) Current Dental terminology (CDT) procedure codes and terminology for 2019 will be updated. The procedure codes and descriptors for a number of dental services will be revised.

   - Appendix B listing covered CDT procedure codes and their maximum fees is being removed from the rule. The list of CDT procedure codes, maximum fees and effective dates of coverage will be moved to Appendix DD of 5160-1-60 "Medicaid payment" and posted on the Fees Schedules and Rates page of the Ohio Medicaid web site, **http://medicaid.ohio.gov/providers/FeeScheduleAndRates.aspx** (or its successor).

   - Ambulatory Surgery Centers (ASC) will be added as a service type for payment of dental services in conjunction with amendment of OAC rule 5160-22-01.

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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.

   Dental services are mandatory for children under the Early and Periodic Screening, Diagnostic and Treatment benefit (EPSDT).

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

   Dental services for adults are not mandated by the federal government to be covered by Medicaid. However, ODM has determined it to be cost effective and beneficial to cover these services. Federal law does not provide detailed requirements regarding payments to Medicaid providers so ODM must specify the 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)?**

   This rule articulates Medicaid coverage and payment policies for dental services. It serves as a resource for use by providers and 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 the information in this rule contributes to the efficient and effective administration of the Medicaid dental program and correct payment of claims.

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 the last year, the following stakeholders have reviewed and shaped 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 University and Case Western Reserve Colleges of Dentistry leadership and clinic administrators
   - Lobbyists representing dentists and other oral health stakeholders
   - Oral Health Ohio (OHO) formerly 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 have continued the review and development of the dental rule as being proposed.

   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 the dental rule and provider issues, concerns and opportunities.

The ODA Council met with ODM staff members on July 13, 2018. Discussion topics included the adoption of the 2019 ADA CDT procedure code set and the question of how and where stakeholders could find a list of covered Medicaid dental services. The issue of the rule filing process for minor or routine coding changes was discussed. It was noted procedure code changes and fees are posted on the ODM website and that prior to 2016 the list of covered dental services was maintained in OAC 5160-1-60. The consensus was amending the dental rule for non-policy issues was a questionable use of resources when other alternatives were available. Returning the list of dental procedure codes to Appendix DD of 5160-1-60 "Medicaid Reimbursement" was supported.

The ODA Medicaid workgroup and dental directors of Medicaid managed care plans were sent the proposed changed and asked to comment. The proposed changes are supported by both of these groups.

As a result of these meetings, ODM is proposing to adopt the ADA 2019 code set and the removal of Appendix B to 5160-5-01. The list of CDT procedure codes, maximum fees and effective dates of coverage will be moved to Appendix DD of 5160-1-60 "Medicaid payment" and will be posted on the Fees Schedules and Rates page of the Ohio Medicaid web site.

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 relevant in the development of proposed amendments to this rule.

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?

Other alternative regulations were considered such as contracting with a dental benefit administrator for the provision of dental services. However, ODM considers Administrative Codes rules the most appropriate type of regulation for the provisions contained in the dental program as the considered alternatives added a level of superfluous complexity when compared to these proposed OAC changes. Under R.C. 5164.02, ODM is required to adopt rules to establish coverage of Medicaid services and payment for those services.

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?

ODM staff reviewed the applicable OAC regulations to ensure this rule does not duplicate any of the department's rules or any other regulation in the OAC.

Rules involving Medicaid payments to non-institutional 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 final rules and Medicaid transmittal letters will be posted on ODM's website. In addition, stakeholders will be notified through various stakeholder and association meetings.

    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. Claims payment edits and audits will be 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 who are Medicaid providers and other eligible Medicaid providers of dental services such as fee-for-services clinics.

b. This rule imposes no license fees or fines. The adverse impact is the report of information for dental services and services provided to residents of long-term care facilities. 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) per claim.

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

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

   This rule outlines actions all Medicaid providers of dental services must take to receive reimbursement from Medicaid for appropriately submitted claims. No exception is made based on an entity's size.

2. **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.

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

   Program communications, information sheets and instruction manuals on various program policy and 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.