Ohio | Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Medicaid (ODM)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Dental Services

Rule Number(s): 5160-5-01

Date of Submission for CSI Review: 11/04/2020

Public Comment Period End Date: 11/11/2020

Rule Type/Number of Rules:

New/___rules

No Change/____rules (FYR?___)

Amended/ 1 rules (FYR? Y)

Rescinded/____rules (FYR?___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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 one appendix that lays out coverage of dental services by category.

   A dated reference has been updated and reference to OAC 5160-1-18 “Telehealth” has been added in the rule body.

   Changes incorporated into appendix A include the following:

   - Procedure code terminology is updated based on Code on Dental Procedures and Nomenclature (CDT) changes for 2021. The descriptors for covered exams, prophylaxis and several covered procedure codes for partial dentures have been revised.
   - New procedure codes for a covered service to indicate more specific anatomy being treated have been added. Two new frenectomy procedure codes have been added to replace a single non-specific procedure code which has been deleted.

- A new procedure code for prefabricated porcelain - ceramic crown – permanent tooth will be covered. This new procedure code allows coverage of these crowns for permanent teeth as an equivalent to stainless steel crowns and at the same fees.
- A new procedure code for counseling for the control and prevention of adverse oral, behavioral, and systemic health effects associated with high-risk substance use will be covered.
- Coverage of new services recementation of crowns (D2920), cone beam CT (D0367)), interim therapeutic restorations (ITR) for primary and permanent teeth (D2940, D2941)), alveoloplasty in conjunction with extractions – one to three teeth (D7311) and COVID-19 testing (D0604, D0605) will be implemented.
- Procedure code "teledentistry – synchronous: real time" will be used to indicate the service was provided through teledentistry.

The purpose of these changes is to comply with five-year rule review, streamline, remove or update rule language and rule references, as well as, remove regulatory restrictive words in accordance with section 121.95 of the Ohio Revised Code as enacted under House bill 166.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   Section 5164.02 of the Ohio Revised Code.

4. **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 an optional service under 42 U.S.C. 1396d(a)(10) that the Ohio Department of Medicaid has decided to cover under its state plan which is approved by the Centers for Medicare and Medicaid Services (CMS).

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

   This rule, as well as the proposed changes in the rule, includes provisions that are not addressed in federal requirements. ODM, to support the effective and efficient administration of the Medicaid program and for the safety of Medicaid recipients, places desired policy provisions and requirements in OAC rule so they may be enforceable.

6. **What is the public purpose for this regulation (i.e., why does the Agency feel thatthere needs to be any regulation in this area at all)?**

   The public purpose for this regulation is to assure that Medicaid-eligible individuals can receive Medicaid covered dental services provided by Medicaid-eligible dental providers authorized to provide such services at the fees or pricing as determined by ODM. The documentation requirements spelled out in this rule serve 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.

7. **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 Medicaid-eligible individuals are able to receive covered dental services from Medicaid-eligible dental providers and operational updates to the Medicaid Information Technology System (MITS) result in the correct payment of claims for these services.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
   If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

   No.

Development of the Regulation

9. **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 and ODA Medicaid workgroup
   - Ohio Department of Health's Oral Health and Maternal and Child Health Services staff
   - Ohio State Colleges of Dentistry leadership and clinic administrators
   - Ohio State Dental Board
   - Hamilton County Oral Health Coalition
   - Lobbyists representing dentists and other oral health stakeholders
   - Oral Health Ohio (formerly Children's Oral Health Action Team)
   - Ohio Association of Community Health Centers (OACHC)

- Medicaid's Dental Directors
- Medicaid managed care plans and their dental directors
- Practicing Medicaid dentists including several who serve as dental technical advisors (MTAs) to Ohio Medicaid Managed Care plans.

10. 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. The primary suggestions were proposals for increased Medicaid fees, coverage of equivalent procedure codes at the same maximum payment amounts as existing covered codes and adoption of ADA procedure coding for 2021.

Suggestions identified by specific stakeholders are often discussed with other stakeholders for additional viewpoints and feedback.

HB 11 which requires ODM to cover two dental cleanings per year for pregnant women and several special groups such as foster children and employed individuals with disabilities regardless of age was discussed with all stakeholders. OAC allows two cleanings/exams per year for individuals ages 0-20 years of age and one cleaning /exam for individuals ages 21 and over. All MMCPs cover two cleanings/exams for all ages. Cleanings and exams are overwhelmingly rendered during the same visit. All stakeholders expressed support to add coverage for two dental exams as well as two cleanings per year for these individuals.

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 which fosters on-going input. 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 January 13, 2020, March 27, 2020, and August 7, 2020. Discussion topics included Medicaid dental services coverage and limitations, program requirements, and program policy.

The ODA Medicaid Workgroup was presented potential dental program changes. Consensus was reached regarding ADA coding changes for 2021, coverage of equivalent procedure codes and coverage of interim therapeutic restorations.

ODM staff met with representatives of the Ohio dental colleges during 2019. Discussions generally focused on the short supply of dentists in Ohio, research and training efforts and Medicaid funding (fees) for their clinics. Clarification of program coding and coverage of certain services were a major point of discussion.

Both colleges support covering cone beam CT with view of both jaws (D0367) and interim therapeutic restorations.

ODM meet with staff of the Ohio State Dental board on January 14, 2020 to discuss several Board initiatives including teledentistry and which dental professionals could render certain Medicaid covered services within their licensure and scope of practice. The application of silver diamide fluoride and interim therapeutic restorations (ITR) through teledentistry were two of the services discussed.

ODM met with the Hamilton County Oral Health Coalition on September 4 and October 22, 2019. The Coalition had a number of suggestions including increased fees, reduced prior authorization requirements and coverage of additional services such as re-cementation of crowns, additional periodontal services and partial interim dentures.

ODM has had direct and indirect contact with other state agencies and various associations and oral health advocacy groups, such as OHO 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 2019 and 2020, primarily about coverage of equivalent services to assist in correct coding initiatives, program fees and coverage of teledentistry.

On March 31, 2020 and August 5, 2020, administrative staff and ODM's dental director and managed care plan dental directors met to discuss program operation and possible program changes for 2021.

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

Because of these meetings and HB 11, ODM is proposing to adopt the ADA 2021 code set and rule language was drafted to incorporate coverage of: additional equivalent procedure codes at the same maximum payment amounts as existing covered codes, new procedure codes for prefabricated porcelain - ceramic crown – permanent tooth, interim therapeutic restorations (ITR) per tooth, new frenectomy procedure codes, new procedure code for counseling for the control and prevention of adverse oral, behavioral, and systemic health effects associated with high-risk substance use, alveoloplasty in conjunction with extraction – one to three tooth spaces/quadrant and coverage recementation/re-bonding of crowns. Additionally, coverage of two dental cleanings per year for pregnant women and several special groups such as foster children and employed individuals with disabilities regardless of age is being implemented. Certain dental services will be covered through teledentistry coverage of which is specified in OAC 5160-1-18.

ODM will not be covering new imaging procedure codes for "image capture only" for currently covered dental imaging services, interim partial dentures or additional periodontal services.

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 with minimal additional cost to the state.

11. **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.

12. **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?**

    ODM has determined that an OAC rule stating the coverage of and payment for dental procedures is the most effective way to administer this program.

13. **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 was determined to be beyond the scope of this program rule.

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

    ODM reviewed existing state laws to ensure there was not duplication or conflict with these regulations. In the process of reviewing rule text, ODM staff members took great care not to duplicate provisions. Any provision of another rule that applies specifically to these services is incorporated by reference. (Provisions in other rules that apply to the entire Medicaid program are not noted.)

15. **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) claims payment system 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.

    Information sheets and instruction manuals on various claim-related topics are readily available on the Medicaid website.

Adverse Impact to Business

16. 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; and

b. Identify the nature of all adverse impact (e.g., 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 enrolled as Medicaid providers and other eligible Medicaid providers of dental services who may employ or contract with dentists who are enrolled as Medicaid providers, such as fee- for-service clinics to render services to Medicaid covered individuals.

b. This rule imposes no license fees or fines. 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. It is not expected that the proposed revisions to the rule will create any new adverse impact.

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. So, 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).

17. 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

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

This rule outlines actions all dental providers must take to receive Medicaid payment and no exception is made based on the size of an entity.

19. 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.

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

Providers may utilize ODM resources to understand dental program coverage and limitations and current Medicaid claim-submission procedures.

Information sheets and instruction manuals on various claim-related topics are readily available on the Medicaid website.

ODM's Bureau of Provider Services also renders technical assistance to providers through its provider hotline, (800) 686-1516.

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.