



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Medicaid

Rule Contact Name and Contact Information:

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

Home Health and Private Duty Nursing (the rules in this package establish the requirements for home health services, private duty nursing services, RN assessment, and RN consultation in the Medicaid program)

Rule Number(s): Ohio Administrative Code Rules 5160-12-01, 5160-12-02, 5160-12-04, and 5160-12-08

OAC Rule 5160-12-05 does not have an adverse impact and is included for reference purposes only

Date of Submission for CSI Review: 8/17/2020

Public Comment Period End Date: 8/24/2020

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_)

Amended/ 4 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Rescinded/\_\_\_ rules (FYR?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

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**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.**

### **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.**

Ohio Administrative Code Rule 5160-12-01 outlines guidelines for coverage of home health services, including benefit limitations. Changes in the rule align Medicaid policy with changes in federal guidelines enacted in the Cares Act and provide opportunities to use telehealth when it is clinically appropriate.

Ohio Administrative Code Rule 5160-12-02 outlines guidelines for coverage of private duty nursing services, including benefit limitations. Changes in the rule align private duty nursing changes with changes in federal guidelines enacted in the Cares Act and with proposed changes in home health policy.

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Ohio Administrative Code Rule 5160-12-04 defines a visit and a group visit for purposes of Medicaid reimbursement of home health and private duty nursing services. The amendments allow home health services to be provided using telehealth when clinically appropriate.

Ohio Administrative Code 5160-12-05 provides for reimbursement of home health services. The amendment instructs providers to use a modifier if the service is provided using telehealth.

Ohio Administrative Code 5160-12-08 defines coverage and reimbursement for the RN consultation and RN assessment services. The amendments allow the RN assessment service to be providing using telehealth when clinically appropriate.

**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.**

4. Ohio Administrative Code Rules 5160-12-01, 5160-12-02, 5160-12-03, 5160-12-04 and 5160-12-08 is authorized by Ohio Revised Code Section 5164.02.

Ohio Administrative Code Rule 5160-12-05 is authorized by Ohio Revised Code Sections 5164.70 and 5164.77.

Ohio Administrative Code Rules 5160-12-01 and 5160-12-04 amplify Ohio Revised Code Sections 5162.03.

Ohio Administrative Code Rule 5160-12-02 amplifies Ohio Revised Code Sections 5162.03, 5164.02, 5164.70. and 5166.02.

Ohio Administrative Code Rule 5160-12-05 amplifies 5164.70 and 5164.77.

Ohio Administrative Code Rule 5160-12-08 amplifies 5164.02.

**5. 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?**

Ohio Administrative Code Rules 5160-12-01 and 5160-12-02 are amended to aligned with the Cares Act which modifies the requirements related to ordering physicians to allow physicians, physician assistants, and advance practice nurses to order services provided by Medicare certified home health agencies and to sign the care plans.

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

Ohio Administrative Code Rules 5160-12-04, 5160-12-05, and 5160-12-08 align with federal guidelines related to the provision of home and community based services through the Medicaid program.

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**7. 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)?**

Home health, private duty nursing, RN assessment and RN consultation are services that are integral to the home and community based service delivery system. These services support the desire of many Ohioans to receive services in their homes rather than institutions.

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

The agency will use information submitted on claims to monitor the utilization of telehealth services. In addition, feedback from individuals receiving services and providers of those services will be reviewed to determine the impact of these changes on the delivery of services.

**9. 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.**

Policy changes included in these amendments were shared with Leading Age Ohio, the Ohio Council for Home Care and Hospice and the Ohio Health Care Association. They were also shared with other stakeholders, including the Ohio Nursing Coalition.

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

Stakeholders approached the department when the Cares Act was enacted requesting the changes. The changes were initially implemented in emergency rules, and stakeholders have indicated that this had a significant impact on removing barriers to care and has enhanced access to home and community based services.

**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?**

Qualitative information from providers and individuals receiving services was used to develop the rule. Scientific data is not applicable to these rules.

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- 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?**

The agency considered leaving existing policy in place, but chose to align with the federal provisions for Medicare certified home health agencies and to permit telehealth when clinically appropriate. These changes significantly improve access to care and avoid administrative complexity that is created when federal and state provider requirement are not aligned.

- 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.***

Federal regulations governing Medicare certified home health agencies are specific. In order to avoid unnecessary administrative complexity, the rules are being updated to align with changes in those requirements.

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

The amended rule was reviewed by Ohio Medicaid policy development staff, Office of Legal Services and the Office of Legislation to ensure there was no duplication.

- 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.**

Information about the amended rules will be shared with the provider trade associations, stakeholder groups and partner agencies.

#### **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**

The impacted business community includes all providers of home health services, private duty nursing services, RN assessment services and RN consultation services.

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

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OAC Rule 5160-12-01 requires Medicare certification for agency providers who would like to be Medicaid providers of home health services. It further limits employees who can provide nursing services to LPNs and RNs and employees who can provide therapy services to licensed physical therapists, speech-language pathologists, physical therapy assistants and certified occupational therapy assistants.

OAC Rule 5160-12-02 limits individuals who can provide services to RNs and LPNs. In addition, OAC Rule 5160-12-02(I)(5) and (J)(5) require the report of information to obtain authorization for services.

OAC Rule 5160-12-04 requires the report of information using electronic visit verification.

OAC 5160-12-08 limits the individuals who can provide services to RNs and LPNs. In addition, the RN or LPN is required to be a non-agency Medicaid provider or be employed by either a Medicare certified home health agency or a home health agency accredited by another nationally recognized body.

**c. Quantify the expected adverse impact from the regulation.**

OAC Rule 5160-12-01 requires Medicare certification for home health agencies who want to be Medicaid providers of home health services. CMS charges home health agencies an application fee for the initial application, revalidation and the addition of a location. The application fee is \$595. Note that this requirement is not a new requirement added with these amendments.

OAC Rules 5160-12-01, 5160-12-02 and 5160-12-08 require specific professional licensure for individuals providing some services. Staff costs vary widely based on specific job requirements, the needs of the clients served, the time of day services are provided and the agency business model. As a result, we are unable to provide an estimate of related costs. Note that this requirement is not a new requirement added with these amendments.

OAC Rule 5160-12-02 requires the report of information to obtain prior authorization of services for Medicaid reimbursement. This effort will take a minimal amount of staff time but there is no charge for requesting prior authorization. Note that this requirement is not a new requirement added with these amendments.

OAC Rule 5160-12-04 requires the report of information using electronic visit verification (EVV). The department offers providers of home health and private duty nursing services electronic visit verification systems at no cost. Administrative time to comply with EVV varies widely among providers; the cost of that administrative time

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cannot be estimated. Note that this requirement is not a new requirement added with these amendments.

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

The requirements in Ohio Administrative Code 5160-12-01 are intended to assure quality of care to individuals receiving home and community based services and to align with requirements establishing scope of practice for health care professionals in Ohio.

**Regulatory Flexibility**

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

No. The provisions in these rules are mandatory for all providers of home health, private duty nursing, RN assessment and RN consultation services.

**18. 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?**

Ohio Revised Code Section 119.14 does not apply to these rules.

**19. 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 Care Services and Supports through the Provider Relations Hotline at (800)686-1516 and by email at [HomeHealthPolicy@medicaid.ohio.gov](mailto:HomeHealthPolicy@medicaid.ohio.gov).