



## Common Sense Initiative

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

**Sean McCullough**, 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):

RN Assessment and RN Consultation Services

Rule Number(s): Ohio Administrative Code Rule 5160-12-08

Date of Submission for CSI Review: 08/06/2021

Public Comment Period End Date: 08/13/2021

Rule Type/Number of Rules:

New/\_\_\_ rules

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

Amended/ 1 rules (FYR?N \_\_\_)

Rescinded/\_\_\_ rules (FYR?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.**

Ohio Administrative Code Rule 5160-12-08 defines coverage and reimbursement for the RN assessment and RN consultation services. The amendment increases the rates paid for RN assessment and consultation services as a result of the budget. The rate increase was funded in Amended Substitute House Bill 110.

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.**

Ohio Administrative Code Rule 560-12-08 amplifies Ohio Revised Code Section 5164.02.

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?**  
No.

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

Ohio Administrative Code Rule 5160-12-08 aligns with federal guidelines related to the provision of home and community based services through the Medicaid program.

- 6. 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)?**

RN assessment and RN consultation services 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. The rule is needed to provide regulation for the RN assessment and RB consultation services to ensure the safety of recipients and provide program integrity and to ensure reimbursement for those services.

- 7. 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 the RN assessment and RN consultation 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.

- 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?**

No.

### **Development of the Regulation**

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

The agency's approach to implementing rate increases funded in the biennial budget for state fiscal years 2022 and 2023 was shared with Leading Age Ohio, the Ohio Council for Home Care and Hospice, and the Ohio Health Care Association.

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

Stakeholders were engaged throughout the entire budget process via meetings, testimony, and submission of direct correspondence to the Director. ODM incorporated the stakeholders' request to include RN Assessment and Consultation services as well as home health therapies. These services were not included in the original agency or Executive Budget.

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**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?**

Historical utilization data for the RN assessment and consultation services was used to calculate the rate adjustments included in the rule. In addition, qualitative information from providers of these services and individuals receiving services was used to develop the rule.

**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 did not include rate adjustments for the RN assessment and RN consultation services in the Executive Budget. However, these services were added to the budget based on stakeholder feedback.

**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 addition, Ohio law and regulations issued by the Ohio Board of Nursing govern requirements for individuals performing nursing tasks. In order to avoid unnecessary administrative complexity, the rule is aligned with those requirements.

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

The amended rule as reviewed by Ohio Medicaid policy development staff, the Office of Legal Services and the Office of Legislation to ensure there was no duplication. This rule pertains only to ODM payment for these services and contains no regulations found elsewhere in Ohio law.

**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 and with stakeholder groups. Systems used to adjudicate claims will be updated to reflect the increased rates for dates on and after the new rates are effective.

**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

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The impacted business community includes Medicare certified home health agencies, home health agencies accredited by another nationally recognized body, and non-agency providers of RN assessment and consultation services. Only providers of the RN assessment and RN consultation services are impacted by this regulation.

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

Ohio Administrative Code Rule 5160-12-08 limits the individuals who can provide services to registered nurses (RNs). In addition, the RN 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.**

*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.*

OAC Rule 5160-12-08 required specific professional licensure for individuals providing RN consultation and RN assessment 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.

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

The requirements in Ohio Administrative Code 5160-12-08 are intended to assure the 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**

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

No. The provision OAC Rule 5160-12-08 are mandatory for all providers of RN assessment and RN consultation services reimbursed through the Ohio Medicaid program.

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**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?**

Ohio Revised Code Section 119.14 does not apply to this rule.

**20. 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 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).