

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-1-06.5

Rule Type: Amendment

Rule Title/Tagline: Home and community based services (HCBS) waivers: assisted living.

Agency Name: Ohio Department of Medicaid

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 10/16/2023
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 33 - 135
- Jay Edwards
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5166.02
5. **What statute(s) does the rule implement or amplify?** 173.54
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

The planned proposed amendment includes an increase to the maximum allowable reimbursement for the assisted living service set forth in Appendix A as a result of house bill 33.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

Rule 5160-1-06.5, entitled "Home and community based services (HCBS) waivers: assisted living," is the rule that sets forth the covered services and the maximum allowable rates for services furnished under the assisted living waiver. The planned proposed amendment includes an increase to the maximum allowable reimbursement for the assisted living service set forth in Appendix A as a result of house bill 33. In addition, Am. Sub. H. B. 166 (133rd G. A.) lists six terms that cause a rule to be deemed to contain regulatory restrictions: "shall," "shall not," "must," "may not," forms of "require," and forms of "prohibit." All of these terms have been removed and the passages in which they appeared have been recast. Additionally, in Appendix A, Tiers 1 and 2 will be collapsed into the same per diem rate and the former Tier 3 will represent a new memory care assisted living service tier for individuals who need additional support especially as it relates to higher personnel cost needed for support of individuals with a form of dementia.

9. Does the rule incorporate material by reference? Yes

10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code (OAC). This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75.

This rule incorporates one or more references to the Revised Code. Such reference is exempt from compliance with incorporation by reference requirements pursuant to ORC 121.75.

11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

Not Applicable

II. Fiscal Analysis

12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will increase revenues.

\$81,975,738

The Ohio Department of Medicaid (ODM) biennial budget incorporates billing maximum rate increases for services provided through the Assisted Living waiver. Ohio Administrative Code (OAC) rules associated with proposed rate increases reflect an increase for the following assisted living services: Base assisted living and memory care assisted living service. The impact of these proposed changes is projected to result in an increase in expenditures of \$29,446,664 in SFY2024 and \$52,529,074 in SFY2025.

13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

Not Applicable.

14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not Applicable.

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? No

18. Does this rule have an adverse impact on business? No

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? No

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

- 19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding to this rule? 0

- B. How many existing regulatory restrictions do you propose removing from this rule? 1

5160-1-06.5 (B)(3) - "Shall" to be removed.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

- D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable