

Rule Summary and Fiscal Analysis (Part A)**Ohio Department of Medicaid**

Agency Name

Tommi Potter

Contact

Division

50 Town St 4th floor Columbus OH 43218-2709**614-752-3877****614-995-1301**

Agency Mailing Address (Plus Zip)

Phone

Fax

tommi.potter@medicaid.ohio.gov

Email

5160-1-18

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Telehealth.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **5164.02, 5164.95**
5. Statute(s) the rule, as filed, amplifies or implements: **5164.02, 5164.95**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Rule 5160-1-18, entitled "Telehealth" is a new rule that is being proposed to replace the existing rule that is being proposed for rescission. This new rule expands the existing program and resulted in changes to more than fifty per cent of the existing rule language.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule provides definitional information, identifies eligible rendering providers and, service locations, identifies requirements and responsibilities for services rendered using telehealth and payment for telehealth services. This rule includes many of the same provisions and language from the rule proposed for rescission however some key changes were made. It defines telemedicine as the direct delivery of services to a Medicaid covered individual via synchronous interactive, real-time electronic communication comprised of both audio and video elements. This rule provides

definitional information related to patient site, practitioner site, and requirements surrounding both. It identifies practitioners eligible to provide services via telemedicine and requirements of the distant site provider.

The title of the rule is being changed from "telemedicine" to "telehealth" to encompass all the various services that can be provided through electronic communication. The term "telemedicine" has a specific limited definition for physicians.

The definition of "telemedicine" used in the rule to be rescinded is also used to define "telehealth" in this rule however it clarifies that communication must be secure. This new rule adds a definition for "health system", "active patient" and changes the following terminology to provide clarity: "originating site" has been changed to "patient site" and "distant site" has been changed to "practitioner site." This rule removes the five-mile radius restriction and originating site fee found in the current rule and expands the list of patient site locations to include the patient's home or school and an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID).

This new rule expands the list of practitioners eligible to render services using telehealth to include physicians' assistants (PA), clinical nurse specialists (CNS), certified nurse-midwives (CNW), certified nurse practitioners (CNP), licensed independent social workers (LISW), licensed independent chemical dependency counselors (LICDC), licensed independent marriage and family therapists (LIMFT), and licensed professional clinical counselors (LPCC). This rule provides fewer restrictions on practitioner site location and allows a practitioner, under certain circumstances, to provide services from any location including their home.

This rule identifies the provider types eligible to bill for services rendered using telehealth and sets forth practitioner site requirements and restrictions. It identifies additional requirements and responsibilities for when a service is provided using telehealth, including documenting patient and practitioner site locations, having access to patient medical records at time of service delivery, coding guidelines and requirements for patients who receive telehealth services for a period longer than twelve consecutive months. This rule expands the services that may be paid for when delivered using telehealth by including certain behavioral health services, inpatient consultation services provided to patients of different health systems, and the procedure codes found in the appendix of this rule. This rule identifies where fee schedules may be found for the services and provider types included in this rule and clarifies that inmates are not eligible for reimbursement for telehealth services.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally**

available to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another Ohio Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(3).

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation reference by the Ohio Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(1).

This rule incorporates one or more dated references to the Health Insurance Portability and Accountability Act (HIPAA). This question is not applicable to any dated incorporation by reference to the Act because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(C).

This rule incorporates one or more dated references to the Code of Federal Regulations (CFR). This question is not applicable to any dated incorporation by reference to the CFR because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(D).

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

This rule is being revised to incorporate feedback from the public hearing held on Monday May 20th, 2019. The following changes are proposed in this revised file:

- Paragraph (A): Remove definition of "health system." This term was removed from the rule therefore a definition is not needed.

- Paragraph (D)(1):
 - clarified definition of the described service from "office or other outpatient consultation" to "office or other outpatient visit"
 - Changed language from "low complexity" to "moderate complexity"

- Struck paragraphs (D)(2) and (D)(4) which restricted certain evaluation and management services to behavioral health conditions only

- Paragraph (D)(3):
 - clarified definition of the described service from "office or other outpatient consultation" to "office or other outpatient visit"
 - Changed language from "low complexity" to "moderate complexity"

- Paragraph (D)(5):
 - added "office consultation"
 - Removed "health system" and replaced with "when providing same quality and timeliness of care to the patient other than by telehealth is not possible, as documented in the medical record."
 - Removed (D)(5)(a) through (D)(5)(c)

- Appendix: Added procedure code 99244 and 99245

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will increase expenditures.

15,000,000

The change in coverage of services delivered via Telehealth in the Medicaid program is expected to increase expenditures by \$15 million over the SFY 20/21 biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

ALI 651-525

15.

Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

There is no estimated cost of compliance.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **No**

19. Specific to this rule, answer the following:

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**