Rule Summary and Fiscal Analysis
<u>Part A</u> - General Questions

Rule Number: 5160-1-40

Rule Type: Rescission

Rule Title/Tagline: Electronic visit verification (EVV).

Agency Name: Ohio Department of Medicaid

Division:

Address: 50 Town St 4th floor Columbus OH 43218-2709

Contact: Tommi Potter

Email: tommi.potter@medicaid.ohio.gov   **Phone:** 614-752-3877

I.   <u>Rule Summary</u>

1. **Is this a five year rule review?** Yes

   A. **What is the rule's five year review date?** 6/28/2019

2. **Is this rule the result of recent legislation?** No

3. **What statute is this rule being promulgated under?** 119.03

4. **What statute(s) grant rule writing authority?** 5164.02

5. **What statute(s) does the rule implement or amplify?** 5164.02

6. **What are the reasons for proposing the rule?**

   The Electronic Visit Verification rule is being proposed for rescission as greater than 50% of the rule has been revised. The rule will be replaced with a new rule with the same name and rule number.

   The rule implements federal requirements. Congress enacted the 21st Century Cures Act which requires Medicaid programs to implement EVV for home and community based services. The EVV system implemented must capture the type of service provided, the time the service is provided, the location of service delivery, and the person providing the service. Failure to implement a compliant EVV system will result in a reduction in the federal funding for Medicaid services.

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

    The rule provides definitions of terminology unique to the Electronic Visit Verification (EVV) implementation, specifies services subject to EVV requirements, establishes operational requirements for providers of those services and outlines the regulatory foundation for using an alternate data collection component from what is provided by the Department. The rule also outlines provider training requirements as determined by the Department and reasons for provider termination for non-compliance.

8. **Does the rule incorporate material by reference?** Yes

9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, 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 Revised Code (RC) sections 121.71 pursuant to RC 121.76(A)(3). This rule also incorporates one or more references to information posted on the department's website. The cited material is generally available to persons affected by this rule in accordance with RC 121.75(E).

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

    ODM updated an incorrect citation as identified by JCARR. The RSFAs for the EVV rule listed the incorrect authorizing statute. Incorrect ORC to question #4,119.03, was updated to be 5164.02.

II. <u>Fiscal Analysis</u>

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

    This will have no impact on revenues or expenditures.

    $0

Not Applicable

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

   Administrative costs incurred by impacted providers pursuant to the rule will vary widely by provider. Demographic information related to individuals receiving services varies based on the number of Medicaid individuals served, business practices regarding client intake and discharge, the average duration of service for individuals served by the provider, and existing business practices regarding maintenance of demographic information regarding the individuals served. Demographic information related to direct care workers employed by the provider are only recorded by agency providers and varies widely based on the number of individuals employed, current business practices regarding hiring and termination of employees, and employee turnover rates. The capture of visit data and the effort to clear data integrity errors will vary based on the number of visits performed, the accuracy and compliance rates of providers and their staff when using EVV and current business practices used to document the care provided in home and community based settings. Mandatory training is free of charge and will only be a cost of employee time. Reporting known or suspected tampering of devices or falsification of EVV data or requesting an administrative reconsideration will vary based on whether these situations apply to a provider and the circumstances.

   Because the costs will vary significantly based on provider, business choices, processes and volume, and because the department does not have access to information related to the costs incurred by impacted providers, we are unable to provide a reasonable estimate of costs per provider.

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

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

III.   Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office?** Yes

16. **Does this rule have an adverse impact on business?** Yes

A.   Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

Medicaid providers of services subject to EVV requirements must complete mandatory training with respect to the EVV system requirements. Prior authorization is required to use an alternate data collection component.

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? Yes

Failure to comply with the requirements of this rule may lead to termination of the Medicaid provider agreement.

C.   Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Providers impacted by the rule are required to report information related to services provided, the individuals receiving services, and, if applicable, the individuals or employees providing the services. The information reported includes demographic information about the individuals served and, for agency providers, for the direct care workers they employ. Impacted providers will use EVV to record the start and end of the visit, the individual receiving the service, and the service provided. In addition, for all impacted providers other than those providing services through waivers operated by the DODD, the provider must capture verification of the recorded information from the individual receiving services at the time the service is provided. Finally, providers are required to use the EVV system to clear data integrity errors (exceptions) in order to ensure that the EVV system accurately reflects the services provided through Medicaid programs operated by ODM, DODD and the Ohio Department of Aging (ODA). Providers are also required to notify Sandata when devices are no longer being used, triggering the Sandata device recovery process and to request replacement devices in the event of device failure. Providers must also report to ODM known or suspected tampering of devices or falsification of EVV data. If use of an alternate data collection component is requested by a provider, the provider must satisfy all the technical and business requirements of ODM. If an alternate data collection component is not approved by ODM, a provider may request an administrative reconsideration.