

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-44-05

Rule Type: New

Rule Title/Tagline: Nursing facility-based level of care home and community-based services programs, medicaid managed care organizations, the OhioRISE program, and specialized recovery services program: incident management.

Agency Name: Ohio Department of Medicaid

Division:

Address: 50 West Town Street Suite 400 Columbus OH 43218-2709

Contact: Tommi Potter **Phone:** 614-752-3877

Email: Tommi.Potter@medicaid.ohio.gov

I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date?
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, 5164.91, 5166.02
5. What statute(s) does the rule implement or amplify? 5162.03, 5164.02, 5164.91, 5166.02, 5166.11, 5167.02
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?

This rule is being proposed as new, to replace 5160-44-05, to update incident management policy related to the Ohio Department of Aging (ODA) and the Ohio Department of Medicaid (ODM) Home and Community Based Services (HCBS) waivers, OhioRISE program, Medicaid Managed Care Organizations, and Specialized Recovery Services (SRS) program.

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

This rule sets forth the requirements for reporting, documenting, and investigating incidents involving individuals enrolled on the waivers and program mentioned above. The primary purpose of the update is to improve the readability of the rule and to streamline processes and improve alignment of requirements across all programs and organizations governed by the rule. In doing so, the rule is being reformatted to introduce all programs and their high-level requirements at the beginning so that the bulk of the rule can focus on the incident management process rather than breaking things down separately for each applicable program. This allows requirements to be found easily and for the incident management process to be more straightforward. Additionally, the reporting requirements for members enrolled in the OhioRISE program are being updated to add required reporting of the critical incident, "The health and welfare of the individual is at risk due to the individual being lost or missing," for those members receiving treatment in a psychiatric residential treatment facility. Another revision involves the removal of entities from the list of appropriate entities with investigative or protective authority that should be notified of an incident. With seven different programs governed under a single rule, it is impossible to formulate a comprehensive list or one that accounts for the intricacies of each program. This list edited to retain only the most-pertinent entities to avoid confusion and unnecessary outreach. Any need to notify additional entities beyond those listed in the rule will be outlined in other program-specific guidance, allowing each program to clearly define their expectations. Other changes include various updates to timeframe requirements. The requirement for reporting an incident to the relevant waiver case management or recovery management agency or to the OhioRISE plan or MCO was standardized to one business day for all programs. The timeline for investigating critical incidents was also modified, with a change from 45 calendar days to 45 business days. This change allows for alignment across all programs and investigative entities since most do not have weekend business hours. Finally, the timeline for investigating reportable incidents was modified to match the requirement for critical incidents, to support more thorough investigative efforts and maximize alignment.

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 the Ohio Administrative Code. 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(A)(1)(d).

This rule does not incorporate any references to the Ohio Revised Code.

- 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 have no impact on revenues or expenditures.

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Not Applicable

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

All rates and actuarial methods can be found on the ODM website in Appendix M of the Medicaid Managed Care provider agreement, Appendix E of the MyCare Ohio provider agreement, and Appendix M of the OhioRISE provider agreement. Through the administrative component of the capitation rate paid to the MCOs, MCOPs, and the OhioRISE plan by ODM, MCOs, MCOPs, and the OhioRISE plan will be compensated for the cost of the requirements found in this rule. For CY 2024, the administrative component of the capitation rate varies by program/population and ranges from 5.0% - 7.0% for MCPs, from 2.8% to 7.5% for MCOPs, and 6% for the OhioRISE program.

- 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? Yes**

- 18. 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? 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? Yes**

This rule requires ODM, ODA, or their designees, and all service providers that serve individuals enrolled in a home and community-based services (HCBS) waiver, OhioRISE, Medicaid MCO, or Specialized Recovery Services (SRS) program to report all incidents related to individual. This report of information for the HCBS waivers and the SRS program is a federal requirement and is required for Medicaid MCOs and OhioRISE per their agreement with ODM. Reporting this information is necessary to ensure the health and safety of individuals receiving services through Medicaid. Specifically, the rule requires the entities noted above to take immediate action to ensure the health and welfare of the individual and report the incident immediately upon discovering the incident. The incident report requirements and timeframes are outlined in the rule.

The entities noted above are required to verify the above actions were taken to protect the health and welfare of the individual, to address the issues impacting the individual, and to report the incident in the incident management system. If it is discovered that a required action was not taken, the case management or recovery management entity is required to do so.

The investigative entity is required to verify the above actions were taken to protect the health and welfare of the individual. If it is discovered that a required action was not taken, the investigative entity is required to do so. At the conclusion of an investigation, the investigative entity shall provide to the case management or recovery management agency, a summary of the investigative findings, and whether the incident was substantiated, the case management or recovery management agency in turn, will inform the individual of the findings unless such action could jeopardize the health and welfare of the individual.

- 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? No

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

DRAFT – NOT YET FILED

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- 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? Yes**

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

Not applicable.

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

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