

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-44-05

**Rule Type:** Rescission

**Rule Title/Tagline:** Nursing facility-based level of care home and community-based services (HCBS) programs, medicaid managed care organizations, the OhioRISE program, and specialized recovery services (SRS) 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? Yes
  - A. What is the rule's five year review date? 7/22/2024
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 and investigating incidents involving individuals enrolled on the waivers and program mentioned above. The primary purpose is to add to the rule, individuals enrolled in the OhioRISE program, and those being served through a Medicaid Managed Care Organization. In doing so, the rule is being reformatted to keep programs together that follow similar processes. This will make it easier to locate and follow the processes that apply to those new populations. Other changes include adding new definitions and revising current ones for better clarity. Certain incident types are also being revised for better clarity and consistency in application. Another significant revision includes a process change to the conclusion of critical incident investigations so the Investigative Entity will send the results of its investigation to the Case Management Agency (CM agency) or Recovery Management Agency (RM agency) rather than directly to the individual; the CM or RM Agency, in turn, will inform the individual verbally (unless the individual requests it in writing) of the investigation results. This is a more person-centered approach because the sensitive nature of the information will be provided to the individual by a person s/he is more familiar with. The addition of timeframes is also being proposed to establish how soon a prevention plan should be entered into the Incident Management System (IMS), and for closing and entering a reportable incident.

**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 incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to another ORC rule because

such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(a).

- 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 E of both the Medicaid Managed Care and MyCare Ohio provider agreements. Through the administrative component of the capitation rate paid to the MCPs and MCOPs by ODM, MCPs and MCOPs will be compensated for the cost of the requirements found in these rules. For CY 2021, the administrative component of the capitation rate varies by program/population and ranges from 4.0% to 6.5% for MCPs and from 3.0% to 6.0% for MCOPs.

- 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 per agreement with ODM. Reporting this information is necessary to ensure the health and safety of individuals enrolled in an HCBS program. Specifically, the rule requires the entities noted above to take immediate action to ensure the health and welfare of the individual, report the incident immediately upon discovering the incident, and when reporter is a waiver provider who has a supervisor, immediately notify his/her supervisor, as applicable. The incident report requirements and timeframes are outlined in the rules.

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 CM or RM entity is required to do so.

The investigative entity (an ODM or ODA designee), 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 CM or RM agency, a summary of the investigative findings, and whether the incident was substantiated, the CM or RM 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~~**Rule Summary and Fiscal Analysis****Part A - General Questions****Rule Number:** 5160-44-05**Rule Type:** Rescission**Rule Title/Tagline:** Nursing facility-based level of care home and community-based services (HCBS) programs, medicaid managed care organizations, the OhioRISE program, and specialized recovery services (SRS) program: incident management.**Agency Name:** Ohio Department of Medicaid**Division:****Address:** 50 Town St 4th floor 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. What are the reasons for proposing the rule?**

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



The revised version of new rule 5160-44-05 removes (E)(3)(a)(iii)(a) from the rule version that was original filed. In the original filed version of the rule, 5160-44-05(E)(3)(iii)(a) stated: "A critical incident identified in paragraph (C) of this rule;"

## **II. Fiscal Analysis**

- 11. 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.

\$0.00

This will have no impact on revenues or expenditures.

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

There are no costs of compliance associated with this rule.

- 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**

- 15. 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**

- 16. Was this rule filed with the Common Sense Initiative Office? No**

- 17. 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**

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**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 Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

**18. 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? 0**
- B. How many existing regulatory restrictions do you propose removing from this rule? 0**
- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**