

## 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, community-based services (HCBS) programs and specialized recovery services (SRS) program: incident management.

**Agency Name:** Ohio Department of Medicaid

**Division:**

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#### **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?**

OAC rule 5160-44-05 is being proposed as new to update and align policy related to the administration of Ohio Department of Medicaid (ODM) and Ohio Department of Aging (ODA) home and community based services (HCBS) waiver programs. This rule will replace OAC rules 5160-43-06, 5160-45-05 and 5160-58-05.3.

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

OAC rule 5160-44-05 "Nursing facility-based level of care home and community-based services programs and specialized recovery services program: incident management" sets forth the definitions, standards and procedures related to incident reporting for Ohio Department of Medicaid (ODM), Ohio Department of Aging (ODA), their designees, service providers and individuals. It applies to ODM and ODA administered waivers and replaces language currently set forth in rules 5160-43-06 (which sets forth Specialized Recovery Service program incident management policy) 5160-58-05.3 (which sets forth MyCare Ohio waiver incident management policy) and 5160-45-05 (which sets forth Ohio Home Care Waiver incident management policy). ODA does not include waiver incident management in OAC rule today. Differences between the current rules proposed for rescission (5160-43-06, 5160-45-05 and 5160-58-05.3) and rule 5160-44-05 proposed as new include: formalizing incident management requirements for ODA that are general practice, but not currently in rule; focusing resources on "critical incidents" that require a full investigation and identifying "reportable incidents" that the case management (CM) or recovery management (RM) entity will address and enter into the database to allow for identification of trends and patterns; better focusing of resources for more critical incidents that require more resources, while still retaining the ability to identify issues before they turn into something more serious; aligning the ODA and ODM waivers and Specialized Recovery Services (SRS) program so that the same set of incident types are reported regardless of program enrollment; making it easier and more consistent for all providers and ODA/ODM designees and contracted entities to identify and report an incident; aligning safeguards for individuals across ODA and ODM waivers and SRS; allowing the investigative entity to pend an investigation when a third party (e.g., police, fire department) is conducting an investigation; reducing potential for duplication of investigations, and less unnecessary intrusion on individuals and providers; and allowing for a single incident management database to be established so that ODA and ODM waiver and SRS incidents can be reported into a single incident database to allow better data collection.

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 RC 121.71 to 121.74 pursuant to RC 121.76(A)(3). OAC Medicaid rules may be found online at: <http://codes.ohio.gov/oac/5160>.

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to 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). The Ohio Revised Code references may be found online at: <http://codes.ohio.gov/orc/51>.

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

In paragraph (E)(7)(c), changed the term "prescribed drug" to "prescribed medication" at the request of the Ohio Department of Aging.

Based upon feedback from the Legal Aid Society of Columbus (LASC) during the public hearing, ODM has revised the rule as suggested to incorporate the comment regarding paragraph (E) and subsequently, paragraph (F). The language has been updated to require the incident outcome to be documented in accordance with paragraph (D) of this rule.

## **II. Fiscal Analysis**

**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.

0.00

Not Applicable.

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

ODM/ODA, or their designees, and service providers are currently required to report incidents as a condition of doing business with the State. This rule maintains a similar level of reporting and investigative requirements and the rule is not expected to impact current costs of doing business. By having one rule for all nursing facility-based home and community based services waivers and the Specialized Recovery Services program, providers will have one process to follow instead of several which benefits providers. ODM cannot estimate the cost of compliance as costs will vary depending on the number of incidents an individual may encounter and that are discovered by ODM/ODA, or their designee, or the service provider.

MyCare Ohio Plans are paid per member per month. ODM must pay MCPs and MCOPs rates that are actuarially sound, as determined by an outside actuary in accordance with 42 C.F.R. 438.6(c) and CMS's "2018/2019 Managed Care Rate Setting Consultation Guide." Ohio Medicaid capitation rates are "actuarially sound" for the period covered by the certification, projected capitation rates and other revenue sources provide for all reasonable, appropriate and attainable costs. Costs include but are not limited to expected health benefits, health benefit settlement expenses, administrative expenses, the cost of capital and government mandated assessments, fees, and taxes.

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 2018, the administrative component of the capitation rate varies by program/population and ranges from 3.50% to 8.48% for MCPs and from 2.25% to 10.00% for MCOPs.

The investigative entity and ODM/ODA designees are contracted providers who apply through the request for proposal (RFP) process to become a contracted vendor to perform this work. The providers are aware of the requirements and rate of payment prior to seeking and signing their contracts with the state. The rate of payment to contractors are negotiated according to the work required by the rule. The rule maintains a similar level of reporting and investigative requirements and is not expected to have a significant adverse impact on the contractors' current costs of doing business.

The HCBS service providers are also paid rates that are actuarially sound and include an administrative component to cover costs such as those incurred when reporting an incident. The rule maintains a similar level of reporting requirements and is not expected to have a significant adverse impact on the providers' current costs of doing business.

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? 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**

OAC rules 5160-44-05, 5160-43-06, 5160-45-05 and 5160-58-05.3 require ODM, ODA, or their designees, and all service providers to report all incidents related to individuals enrolled in a home and community-based services (HCBS) waiver or Specialized Recovery Services (SRS) Program. This report of information is a federal requirement and is necessary to ensure the health and safety of individuals enrolled in an HCBS program. Specifically, each 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. The incident report requirements and timeframes are outlined in the rules.

The Care Management (CM) entity is required to verify the above actions were taken to protect the health and welfare of the individual, to address the issues effecting 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 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 a summary of the investigative findings, and whether the incident was substantiated, unless such action could jeopardize the health and welfare of the individual. The investigative entity shall submit incident data to ODM/ODA as requested, and in a format and frequency established by ODM/ODA.