Rule Summary and Fiscal Analysis
Part A - General Questions

Rule Number: 5160-45-06

Rule Type: Amendment

Rule Title/Tagline: Ohio department of medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences.

Agency Name: Ohio Department of Medicaid

Division:

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I. Rule Summary

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

   A. **What is the rule's five year review date?** 11/15/2019

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?** 5166.02

5. **What statute(s) does the rule implement or amplify?** 5162.03, 5164.02, 5166.02

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

   This rule is being proposed for amendment as a result of five-year review.

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

   This rule sets forth the process and requirements for conducting structural reviews of ODM-administered waiver service providers to ensure providers' compliance with ODM-administered waiver requirements. Among other things,

--- Medicare-certified and otherwise-accredited agencies are subject to reviews in accordance with their certification/accreditation bodies and may be exempt from a regularly scheduled structural review as determined by ODM.
--- All other agency providers are subject to structural reviews by ODM or its designee every two years after the provider begins furnishing billable services.
--- All non-agency ODM-administered waiver providers are subject to structural reviews by ODM or its designee during each of the first three years after a provider begins furnishing billable services. Thereafter, and unless otherwise prescribed in the rule, structural reviews shall be conducted annually.
--- ODM or its designee shall examine all substantiated incident reports or provider occurrences related to a provider.
--- The provider's compliance with the home and community-based settings requirements set forth in OAC 5160-44-01 will be evaluated as part of the structural review, and will include interviews with individuals served in the setting.
--- Failure of a provider to successfully complete all plans of correction and/or the existence of repeat violations may lead to additional sanctions, including but not limited to the termination of their provider agreement.
--- A final exit interview summarizing the overall outcome of the review will occur between the non-agency provider, or in the case of the agency provider, the agency administrator or his or her designee, and ODM or its designee at the conclusion of the review.
--- The exit interview will be followed up with a written report to the provider from ODM or its designee. The report summarizes the overall outcome of the structural review, specifies the OAC rules that are the basis for noncompliance, and outlines the specific findings of noncompliance. When findings are indicated, the provider is to respond in writing to the report in a plan of correction, including any individual remediation.
--- Provider occurrences include alleged violations of provider conditions of participation.
--- Correcting findings of noncompliance may include acknowledgement of technical assistance and required training.
--- When a provider has submitted a plan of correction and it is not accepted by ODM or its designee, the provider is required to submit a new plan of correction within the prescribed timeframes, not to exceed 45 calendar days.
--- If the possibility of an overpayment is identified, ODM will conduct a final review, and as appropriate, issue all payment adjustments in accordance with OAC 5160-1-19.

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. 121.75 please explain the basis for the exemption and how an individual can find the referenced material.

This rule incorporates one or more references to another rule or rules of the Administrative Code. This question is not applicable to any incorporation by reference to another Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1). OAC Medicaid rules may be found online at: http://codes.ohio.gov/oac/5160.

10. 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

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

Not applicable.

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

Providers may be subject to costs associated with providing information for structural reviews and any corrective action associated with the results of such reviews. Assuming that ODM-administered waiver providers and contractors adhere to the ODM-administered waiver provider requirements, there should be little or no cost of compliance with this review. However, if the provider does not, and an incident or provider occurrence is reported, the provider will be subject to investigation and follow-up and could be subject to sanctions that could result in their inability to participate in the Medicaid waiver program.

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?** Yes

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?** Yes

       ODM may take action against a provider in accordance with rule 5160-45-09 of the Administrative Code for failure to comply with any of the requirements set forth in rule 5160-45-06 of the Administrative Code.

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

       Medicare-certified and otherwise-accredited agency providers must submit a copy of their updated certification and/or accreditation, and upon request by ODM or its designee, shall make available within ten business days, all review reports and accepted plans of correction from the certification and/or accreditation bodies.

       Except for unannounced reviews, as part of the structural review process, providers will be notified in advance of the list of the type of documents required for the review. The provider must ensure the availability of the documents.

       When findings are issued by ODM or its designee, the provider must respond in writing within 45 calendar days in a plan of correction. If the plan is not

acceptable, the provider will be asked to submit a new plan within prescribed timeframes not to exceed 45 calendar days.

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? Yes

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