

**Rule Summary and Fiscal Analysis (Part A)****Ohio Department of Medicaid**

Agency Name

Division

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**5160-45-06**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Ohio department of medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **5166.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5162.03, 5164.02, 5166.02**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:
 

This rule is being proposed as a result of five year review. It replaces existing rule 5160-45-06 which is being rescinded.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

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/or otherwise accredited agencies are subject to reviews in accordance with their certification and accreditation bodies, are exempt from regularly scheduled reviews, and shall submit a copy of their updated certification and/or accreditation, and upon request, all review reports and accepted plans of correction. All other ODM-administered waiver providers are subject to structural reviews during each of the first three years after they begin furnishing waiver services. Thereafter, at ODM's discretion, the provider may be subject to biennial structural reviews. Reviews include an evaluation of the provider's compliance with ODM-administered waiver rules and a unit of service verification to assure that all waiver services are properly authorized, delivered and reimbursed. Proposed OAC rule 5160-45-06 also sets forth the definition of and process and requirements for investigating provider occurrences. ODM or its designee shall investigate provider occurrences. If a provider occurrence is substantiated, the provider will be notified in writing. A plan of correction for all findings is required within forty-five days. Overpayments of provider claims must be adjusted by the provider and ODM may take action against a provider for failure to comply with any of the requirements set forth in this rule.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. This question is not applicable to incorporation by reference to another OAC rule because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with ORC 121.76(A)(3).

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

This proposed rule will not impact the agency's projected budget during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Providers may be subject to costs associated with providing information for the structural reviews and any corrective action associated with the results of the such

reviews. To mitigate any training costs, ODM will develop a training webinar for agency and non-agency providers for use when this rule is finalized. Assuming that ODM-administered providers and contractors adhere to the ODM-administered waiver provider requirements, there should be little or no cost of compliance with this rule. 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.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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/or otherwise accredited agencies are subject to reviews in accordance with their certification and accreditation bodies and therefore shall be exempt from a regularly scheduled structural review. They shall submit a copy of their updated certification and/or accreditation, and upon request of ODM or its designee, shall make available to ODM or its designee within ten business days, all review reports and accepted plans of correction from the certification and/or

accreditation bodies.

All providers who are subject to a structural review are required to make all requested information available in a manner consistent with paragraph (B)(3) of rule 5160-45-09 of the Administrative Code.

When ODM or its designee is investigating a provider occurrence, it is required to collect from the provider any documentation required for the investigation.

At the conclusion of a structural review or investigation of a provider occurrence, ODM or its designee will issue a written report to the provider. The provider must submit to ODM or its designee a plan of correction for all identified findings of noncompliance, including any individual remediation, within forty-five days after the date on the written report. If ODM or its designee determines that it cannot approve the plan of correction, it shall inform the provider in writing, require the provider submit a new plan of correction and specify the required actions that must be included in the plan of correction. The new plan of correction is required within ten calendar days.

If ODM or its designee determines through the structural review process or the investigation of a provider occurrence that an overpayment of a provider claim has occurred, the provider shall make all payment adjustments in accordance with rule 5160-1-19 of the Administrative Code and the provider's approved plan of correction.