

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

Agency Name

Division

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**5160-46-04**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Ohio home care waiver: definitions of the covered services and provider requirements and specifications.****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:

Ohio Administrative Code (OAC) Rule 5160-46-04 is being proposed for amendment in order to provide clarification about the waiver nursing service available under the Ohio Home Care Waiver Program, and to update terminology and citations referred to in the rule.

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 service specifications and provider requirements for the services that are available on the Ohio Home Care Waiver. Paragraph (A) is being expanded to identify those nursing tasks that shall only be performed by a registered nurse (RN). Further, it clarifies that waiver nursing does not include visits performed for the purpose of conducting an RN assessment or an RN consultation as those services are described in OAC rule 5160-12-08. Additionally, Ohio Revised Code (ORC) and OAC cites have been updated, references to the Ohio Department of Job and Family Services have been changed to the Ohio Department of Medicaid, terms of art have been updated (i.e., consumer is now individual, etc.), and Code of Federal Regulation cites have been updated. No substantive changes are being made to the rest of the rule pending five-year review in 2015.

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 dated references to a federal act or acts. This question is not applicable to any dated incorporation by reference to a federal act because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(C).

This rule incorporates one or more dated references to the Code of Federal Regulations (CFR). This question is not applicable to any dated incorporation by reference to the CFR because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(D).

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).

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).

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: **10/1/2015**

(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

Amendment of this rule will not change the agency's projected budget for 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:

There are no new costs for providers and no new costs for individuals enrolled on the Ohio Home Care Waiver resulting from the amendment of this rule.

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? **Yes**

This rule requires that providers meet specific requirements in order to furnish services to individuals enrolled on the Ohio Home Care Waiver. For instance,

(a) All waiver service providers, depending on the specific service, must have either an active Medicaid provider agreement or be employed by an entity that has an active Medicaid provider agreement.

(b) Providers of waiver nursing services must possess current, valid and unrestricted licenses with the Ohio Board of Nursing.

(c) Personal care aides must be an employee of a Medicare-certified or otherwise-accredited home health agency; or a non-agency personal care aide. All providers must obtain a certificate of completion of either a competency evaluation program approved or conducted by the Ohio Department of Health, or the Medicare competency evaluation for home health aides, and obtain and maintain first aide certification. They must also complete 12 hours of in-service continuing education within a 12-month period, excluding agency and program-specific orientation. Non-agency personal care aides must also comply with the individual's specific

personal care aide service instructions and perform a return demonstration upon request of the individual or case manager.

(d) Under the adult day health center service, nursing must be provided by personnel who meet the requirements for a waiver nurse, personal care must be provided by personnel who meet the criteria of the waiver personal care aide service and skilled therapy services must be provided in accordance with the requirements set forth in rule 5160-12-01 of the Administrative Code.

(e) Home delivered meals must be prepared by a provider who is in compliance with Chapters 918, 3715 and 3717 of the Revised Code and all applicable Administrative Code rules.

(f) Home modification service providers must maintain licensure, insurance and bonding for general contracting services of applicable jurisdictions. Family members and volunteers are exempt from this requirement when they deliver home modifications to the individual.

(g) Out-of-home respite services must be provided by an intermediate care facility for individuals with an intellectual disability or nursing facility licensed and certified in accordance with rules 5160-3-02 and 5160-3-02.3 of the Administrative Code, or another licensed setting approved by ODM.

(h) Supplemental transportation service providers can be an agency or non-agency provider, and must maintain evidence of collision and liability insurance and of a valid motor vehicle inspection from the Ohio Highway Patrol for each vehicle used in the provision of the service. The actual driver must have a valid driver's license and must obtain and maintain a certificate of completion of a course in first aid.

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**

Ohio Home Care Waiver service providers must maintain clinical records for the individuals they serve. Record requirements will vary depending upon the service and may include such things as all services plans, plans of care, documentation of verbal orders, clinical notes, advance directives, documentation of tasks/services performed/not performed, discharge summaries, etc. Providers are expected to make this information available to ODM during a compliance review.