

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-46-04

Rule Type: Amendment

Rule Title/Tagline: Ohio home care waiver: definitions of the covered services and provider requirements and specifications.

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? 2/1/2025
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 to update policy related to the administration of the Ohio Department of Medicaid-administered HCBS waiver programs, and to make permanent during the ongoing COVID-19 public health emergency those emergency rule changes resulting from Executive Order 2020-23D.

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

This rule sets forth the definitions of services, provider requirements and specifications for the delivery of Ohio Home Care Waiver services. The rule is being amended as follows:

- Paragraphs (A)(7)(a)(ii), (A)(8)(a)(ii), (D)(3) and (D)(4) will permit first aid to be provided by a course that is solely through the internet and that does not have to include hands-on training by a certified first aid instructor with performance of a successful return demonstration of what was learned in the course.
- Face-to-face visits referenced in paragraph (A) may be conducted by telephone or electronically, unless the individual's needs necessitate a face-to-face visit.
- Paragraph (B)(1)(e) is added to reflect that ADHCS providers approved to provide services on the effective date of this rule may also furnish ADHCS described in paragraph (B) of this rule at the individual's place of residence, telephonically, or electronically.
- The paid ADHCS direct care staff to individual ratio in Paragraph (B)(4)(f) is increased from 1:6 to 1:10.
- Paragraph (E) is added to reflect that ODM is authorized to deem any provider certified by ODA or the Ohio department of developmental disabilities (DODD) to provide waiver services as having satisfied the requirements for approval by ODM for the same or similar services.
- Miscellaneous dates are updated.

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 the Revised Code. Such reference is exempt from compliance with incorporation by reference requirements pursuant to ORC 121.75(A).

This rule incorporates one or more references to another rule or rules of the Administrative Code. Such reference is exempt from compliance with incorporation by reference requirements pursuant to ORC 121.75(A).

This rule incorporates one or more references to the Code of Federal Regulations (CFR). This question is not applicable to those references in this rule because such references are exempt from compliance with ORC 121.74 to 121.74 pursuant to ORC 121.75

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

- Paragraphs (A)(6)(a) and (A)(6)(b) of this rule are being revised to permit legally responsible family members and foster caregivers to be waiver personal care aide service providers if they are employed by a Medicare-certified, otherwise-accredited, or other ODM-approved agency.
- Paragraph (B)(4)(f) is being revised to remove the 1:10 paid direct care staff to individuals ratio in adult day health centers that was proposed in the originally filed rule. The staff to individual ratio will remain 1:6 at all times to help ensure the ongoing health and welfare of individuals.

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?

There are no new costs of compliance associated with implementing this rule change. This rule includes many service providers. It requires certain providers to have a certification, accreditation or licensure based upon provider types. Certain providers are required to show proof of training or certification prior to rendering services and must maintain evidence of completion of continuing education or training. Supplemental transportation providers must maintain collision/liability insurance and obtain vehicle inspections for all vehicles. Please see response to #16 for more details regarding such costs of compliance.

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? Yes

Home health agencies must be Medicare-certified or otherwise accredited by a national accreditation body. Personal care aides must have a certificate of completion of either a competency evaluation program or training and competency evaluation program approved and conducted by the Ohio Department of Health, or the Medicare competency evaluation program for home health aides. They must also obtain and maintain first aid certification. Supplemental transportation service providers must possess a valid driver's license.

- 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

Adult day health center must provide for replacement coverage due to theft, property damage and/or personal injury. Supplemental transportation service providers must maintain collision/liability insurance for each vehicle/driver, and obtain and exhibit evidence of valid motor vehicle inspections from the Ohio Highway Patrol for all vehicles used to provide services. Nonagency drivers must possess collision/liability insurance and obtain and exhibit evidence of required motor vehicle inspections. Drivers must also obtain and maintain a certificate of completion of a course in first aid.

- 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? Yes

A. How many new regulatory restrictions do you propose adding? 0

B. How many existing regulatory restrictions do you propose removing? 2

(D)(3)(f): Obtain and maintain a certificate of completion of a course in first aid for each driver used to provide supplemental transportation services that:
(iii) Requires the individual to perform a successful return demonstration of what was learned in the course.

(D)(4)(e): Obtain and maintain a certificate of completion of a course in first aid that:
(iii) Requires the individual to perform a successful return demonstration of what was learned in the course.