

**PUBLIC HEARING NOTICE  
OHIO DEPARTMENT OF MEDICAID**

DATE: December 16, 2019  
TIME: 12:30 PM  
LOCATION: Lazarus Building, 50 West Town St.  
Room A401, Columbus, Ohio 43215

Pursuant to Sections 5162.03, 5164.02, and 5166.02 and Chapter 119. of the Ohio Revised Code, the director of the Ohio Department of Medicaid (ODM) gives notice of the department's intent to consider the adoption of the rules as identified below and of a public hearing thereon.

**OAC 5160-44-26**, entitled “Nursing facility-based level of care home and community-based services programs: community transition services,” is being proposed for amendment to update policy relating to the administration of the nursing facility-based level of care home and community-based services waivers. Specifically, it will remove language based on waiver feedback from the Centers for Medicare and Medicaid Services (CMS) that purchase of food cannot be included under community transition services due to the Medicaid room and board exclusion.

**OAC 5160-44-27**, entitled “Nursing facility-based level of care home and community-based services programs: home care attendant services,” is being proposed for amendment to correct rule citations.

**OAC 5160-44-31**, entitled “Ohio department of medicaid (ODM) -administered waiver program: provider conditions of participation,” is being proposed for amendment to add the requirement that new Medicaid providers complete "new provider" training no later than 90 days after they receive their Medicaid provider number. The rule also replaces OAC 5160-45-10 for providers of personal care aide services, adult day health center services, supplemental adaptive and assistive device services, and supplemental transportation services in an ODM-administered HCBS waiver. OAC 5160-45-10 is being rescinded as a result of five-year rule review as part of this rule package.

**OAC 5160-45-01**, entitled “Ohio department of medicaid (ODM) -administered waiver programs: definitions,” is being proposed for amendment as a result of five-year agency rule review. This rule sets forth the definitions that are pertinent to the ODM-administered waiver program. Program definitions and terminology have been updated to reflect current practice. Ohio Administrative Code citations have also been updated.

**OAC 5160-45-06**, entitled “Ohio department of medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences,” is being proposed for amendment as a result of five-year rule review. 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, language changes reflect the following:

- 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.

**OAC 5160-45-10**, entitled “ODM-administered waiver programs: provider conditions of participation,” is being proposed for rescission as a result of five-year rule review. This rule sets forth the Ohio Department of Medicaid (ODM) provider conditions of participation for services set forth in OAC Chapters 5160-44 and 5160-46. It establishes what a service provider shall and shall not do while providing services to individuals enrolled on an ODM-administered HCBS waiver. It is being replaced by existing OAC rule 5160-44-31.

**OAC 5160-46-04**, entitled “Ohio home care waiver: definitions of the covered services and provider requirements and specifications,” is being proposed for amendment to update policy relating to the administration of the nursing facility-based level of care home and community-based services waiver. 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 to specify that providers will meet provider conditions of participation set forth in OAC rule 5160-44-31. Language is being removed from paragraphs (A), (B), (C) and (D) that is duplicative of requirements in OAC 5160-44-31. Code of Federal Regulations citations and dates are also being updated.

A copy of the proposed rules are available at the address listed below and without charge, to any person affected by the rule and at the county department of job and family services. The proposed rules are also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rules will be held at the date, time and location listed at the top of this notice. Written and oral testimony will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than the date of the public hearing will be treated as testimony.

Requests for a copy of the proposed rules or comments on the rules should be submitted by mail to the Ohio Department of Medicaid, Office of Legal Counsel, 50 West Town Street, Suite 400, Columbus, Ohio 43215, by fax at (614) 995-1301, or by e-mail at [rules@medicaid.ohio.gov](mailto:rules@medicaid.ohio.gov). Comments received may be reviewed upon request.