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Hearing Date: 10/23/2023

Today's Date: 10/27/2023

Agency: Ohio Department of Medicaid

Rule Number(s): 5160-44-01, 5160-44-11, 5160-44-12, 5160-44-13, 5160-44-14, 5160-44-16, 5160-44-17, 5160-44-22, 5160-44-26, 5160-44-27, 5160-45-01, 5160-45-03, 5160-46-04

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If no comments at the hearing, please check the box. ☐

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List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Janemarie Sowers
2. Ohio Association of Medical Equipment Services (OAMES)
3. ATA Action
4. Moms Meals
5. Ohio Association of Area Agencies on Aging
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## Hearing Summary Report

### **Consolidated Summary of Comments Received**

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

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Janemarie Sowers Comments:

5160-44-01

(A) Remove "Notwithstanding any provisions to the contrary in paragraph (E) of this rule". There is no need for this phrase since paragraph (E) is being removed.

(A)(1) Remove "For the purposes of this rule, provider owned or controlled settings are not private residences." Per CMS "settings where the beneficiary lives in a private residence-owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) are considered provider-owned or controlled settings and should be treated as such.

5160-44-12

(A)(1) Please add repair or replacement of refrigerators, blenders, washers, and dryers.

(A)(4) Thank you for adding upkeep and maintenance of a home modification or adaptive / assistive devices.

(B)(3) "Jobs that can be accomplished through existing informal or formal supports." I don't like this phrase.

5160-44-13

The home modification allotment needs increased.

5160-44-22

(C)(1)(b) It should not just be the parents of minor children who the maximum weekly direct care hours as set forth in oac 5160-44-32 do not apply to.

5160-44-26

(A) The services in this section should be extended to everyone on a Medicaid waiver.

5160-44-27

(G)(1)(e)(f) Thank god! You can not learn first aide and CPR over the internet. Providers need hands on training with this.

5160-46-04

(A)(4) How does this work then? PCA's cannot administer otc or rx medications but OAC 5160-44-32 classifies parent providers, Legal Guardians, spouse as PCAs. How do we give our kids their prescription medications? My daughter, and other like her, cannot self-administer their medication.

OAMES Comments:

ODM staff has met numerous times with OAMES including an in-service meeting in May providing an opportunity to view the products and challenges first-hand. We provided input during the Clearance process in the summer and while not every recommendation we presented has been included in the rules proposed today, our primary concern of funding limitations was addressed in part by allowing the "bundling" of services based on a Medicaid recipient's medical needs. We appreciate and support these changes to the rules and look forward to continuing to work with the Department to improve the benefit and address any access-to-service issues going forward.

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### ATA Action Comments:

#### 5160-44-22

Takes a step forward by removing the face-to-face requirement for non-agency LPNs visiting the directing RN, instead allowing the visit to be conducted via “telehealth”. The Department should however note that, based on the existing definition of telehealth in rule 5160-1-18, such provider to provider communications are not considered telehealth unless those communications are billable. While this change does represent progress, the implementation of an in-person visit requirement with the individual and the directing RN at least every 120 days for the purpose of evaluating the provision of waiver nursing services limits the effectiveness of the expanded telehealth flexibility. Instead, the RN and LPN should be allowed to decide, based on their clinical expertise and in coordination with the patient, how often services should need to be reviewed in-person rather than setting blanket standards in state regulation.

#### 5160-44-27

Includes an amended definition of “RN home care attendant service visit” which would not allow visits to be conducted via telehealth unless patient needs require in-person visitation. ATA Action is in strong support of this amendment as it allows for flexibility for both patients and providers to make the care decisions which best meet the needs of the patient, as long as the standard of care for the condition presented by the patient is met.

(G)(8) also includes a requirement for twice annual service visits in-person, which, like the blanket in-person language in 5160-44-22, is arbitrary and imposes unnecessary requirements on telehealth providers and patients to facilitate in-person visits. It is clear the Department believes the standard of care can drive care delivery without these in-person blanket requirements as further down the proposed rules, at (8)(a)(i), state “all other RN home care attendant service visits may be conducted via telehealth, unless the individual's needs necessitate an in-person visit.” This indicates that the Department recognizes the benefits of telehealth and views it as an acceptable method for delivery of care, as long as the needs of the patient are met, making the requirement for an in-person visit confusing.

#### 5160-46-04

ATA Action has similar concerns with the amendments to Rule 5160-46-04 as to the previous two rules as the amendment allows for RN assessment service visits in the Ohio home care waiver program to be conducted via telehealth, unless the patient's needs necessitate an in-person visit, while also including the same arbitrary twice annual in-person visit requirement.

### Mom's Meals Comments:

#### 5160-44-31

Paragraph (B)14 requires retaining certain documentation related to service delivery. Mom's Meals suggests clarifying that paragraphs (B)(14)(a) through (c) do not require maintaining service documentation greater than necessary for the respective service. For example, home-delivered meal service can be verified by the attestation of the delivery driver (see 5160-44-11(B)(4)(c) – (d)) without the need for a client signature.

#### 5160-44-11

(A)(2) Throughout the country, Mom's Meals provides pureed meals and condition specific meals through orders that case managers arrange. Over the past two years, Mom's Meals has served almost 28,000 pureed meals in Ohio alone. The below edits will remove a restriction in the therapeutic meal process for case managers, clients, and providers.

(C)(1) Mom's Meals encourages ODM to greater clarify the intent behind the change to the restriction found in paragraph (C)(1). Two of ODM's goals in the public announcement are to increase meal flexibility and reduce restrictions. In the past, the restriction now found in paragraph (C)(1) has been focused narrowly on preventing TV dinners from being reimbursed. Removing “frozen” from this restriction, however, could greatly reduce meal flexibility and expand restrictions through limiting the types of meals that can be offered. Dietitians design Mom's Meal's meals to meet the Dietary Guidelines for Americans and the 33% dietary references intakes. The meals are then packaged using modified-atmosphere packaging and kept cool through delivery. Mom's Meals, therefore,

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encourages ODM to add “frozen” back into this provision to ensure the focus is on TV dinners. This will keep the restriction narrow and maximize meal flexibility for clients.

(B) and (F)

Finally, Mom’s Meals encourages ODM to move the requirement that the person-centered services plan contain the delivery-verification method. Delivery verification would be better as a general requirement unattached to the person-centered service plan as it will simplify processes for case managers, clients, and providers while avoiding unnecessary write-offs for providers. The simplest way to accomplish that would be to renumber paragraph (B)(2)(d) to (B)(3) and to delete the relevant language out of paragraph (F)(3) as shown below.

Ohio Association of Area Agencies on Aging Comments:

5160-44-26

Can language be added to this rule to note that both home modification and home maintenance and chore are allowable with the 180 pre transition to allow for a home to be ready for the consumer to be discharged to the community?

5160-44-12

Language has been removed that permitted 180 days pre-transition for home maintenance and chore. This service is permitted under community transition service rule but not the service category. Can that language be added to this rule?

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### **Incorporated Comments into Rule(s)**

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

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#### Janemarie Sower Comments:

Comment for 5160-44-01(A) was incorporated. The phrase was removed as paragraph E is being removed.

Comment for 5160-44-01(A)(1) was not incorporated. The language reflects current federal requirements.

Comment for 5160-44-12(A)(1) was not incorporated. These items are not allowable and any changes would have to be addressed through federal authorities and budgetary considerations.

Comment for 5160-44-12(B)(3) was not incorporated. Federal requirements for Medicaid services exclude any service that can be accomplished through existing formal and informal supports.

Comment for 5160-44-22(C)(1)(b) was not incorporated. The updated draft version of OAC Rule 5160-44-32 Home and community based medicaid waiver program provider and direct care worker relationships addresses this question.

Comment for 5160-44-26(A) was not incorporated. CMS defines community transition services as non-recurring set-up expenses for individuals who are transitioning from an institutional or another provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses. The requested change cannot be completed.

Comment for 5160-46-04(A)(4) was not incorporated. Medication administration is outside of the scope of practice standards for a personal care aide in the nursing-facility based waiver programs.

#### ATA Action Comments:

Comments for 5160-44-22, 5160-44-27 and 5160-46-04 were not incorporated. The modifications made in the proposed rules add flexibility to meet the needs of the individual while also fulfilling ODM's obligation to assure health and safety as is required per CMS.

#### Mom's Meals Comments:

Comment for 5160-44-31(B)(14) was not incorporated. There are no other service specific requirements. The requirements in (B)(14)(a-c) all apply to paragraph 14 and are not optional requirements.

Comment for 5160-44-11(A)(2)(c) was not incorporated. Therapeutic meals ordered for the purpose of the management of a disease or clinical condition requires the involvement and management through licensed healthcare professionals to ensure holistic person-centered planning.

Comment for 5160-44-11(A)(2)(c)(i) was incorporated. The suggested language has been incorporated.

Comment for 5160-44-11(C)(1) was not incorporated. The prohibition is for processed, prepacked and commercially available to the general public. Using the word "frozen" is unnecessary as it is already captured within the intent of the rule.

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Comment for 5160-44-11(B) and (F) was not incorporated. The person-centered service planning process determines all service authorizations and deliveries in accordance with the individual's needs. Inclusion in the person-centered service plan supports OAC 5160-44-02 requirements.

Ohio Association of Area Agencies on Aging Comments:

Comment for 5160-44-26 was not incorporated. Home modifications and home maintenance and chore have separate rules that detail those services.

Comment for 5160-44-12 was not incorporated. This is not a federal allowance.