Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Medicaid

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Regulation/Package Title (a general description of the rules' substantive content):

Ohio Home Care Waiver Self-Directed Services

Rule Number(s): 5160-45-03.2
For informational purposes only 5160-45-3.5

Date of Submission for CSI Review: 6/20/2024

Public Comment Period End Date: 6/27/2024

Rule Type/Number of Rules:

New/1 rules
No Change/____ rules (FYR? ___)
Amended/____ rules (FYR? ___)
Rescinded/____ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   The rule(s):

   a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**

   b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

   c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**

   d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   Participant direction, also known as self-direction, is a voluntary service option available to individuals on two of Ohio's nursing facility Medicaid waiver programs: PASSPORT and MyCare. This option is expanding to a third nursing facility Medicaid waiver program, the Ohio Home Care Waiver. Additionally, the Ohio Department of Medicaid (ODM) is increasing self-direction options in the MyCare Ohio Waiver. The rule to be proposed contained in this BIA provide definitions and program information about self-directed service options for individuals on waiver programs administered by ODM.

   OAC rule 5160-45-03.2, entitled "ODM-administered waiver services: self-direction and self-directed caregivers", identifies differences between the requirements for supplying self-directed services versus provider-managed services. The self-direction rule provides individuals with the control needed to manage their waiver services, within the defined scope, and sets parameters for oversight and management.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

   Section 5166.02 of the Ohio Revised Code.

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

The rule to be proposed will enable Ohio to operationalize self-directed waiver services in accordance with 1915(c) of the Social Security Act. The 1915(c) federal waiver authority approval is required to implement the rule to be proposed. The rule is not related to changes to federal regulations.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   The rule to be proposed will not exceed federal requirements.

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   The rule to be proposed in OAC Chapter 5160-45 is necessary to meet federal requirements and adequately meet the needs of stakeholders. Federal regulations require state Medicaid agencies to ensure 1915(c) home- and community-based services (HCBS) are in compliance with federal standards. This rule to be proposed will ensure ODM compliance with these federal regulations. The public purpose of this state regulation is to ensure the availability of self-directed service options in all ODM-administered waivers, including the Ohio Home Care Waiver and the MyCare Ohio Waiver. In response to feedback received from stakeholders, advocacy organizations, and the Ohio Self-Direction Summit held in March 2023 (hosted by United HealthCare and Applied Self-Direction), ODM developed this rule to provide HCBS waiver services in a way that supports the best outcomes for individuals enrolled in the waiver. With this rule to be proposed, we will be establishing guidelines for service delivery, improving access to care, and ensuring caregivers are paid appropriately for services delivered.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   ODM monitors compliance with these established regulations through:

   1) Reporting requirements defined in FMS contracts.
   2) Review of claims and authorization data from contracted MyCare plans and case management entities.

   Success, on a high level, is determined by improved access to care. Outcome measurements include, but are not limited to:

   1) Decrease in caregiver enrollment timelines.
   2) Decrease in gaps in care for individuals on waiver, as reported by care management agencies.
   3) Increase in utilization of self-directed services.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

In November 2023, ODM established a multi-stakeholder group focused on self-direction, known as the Self-Direction Workgroup. The primary purpose of this group is to help guide the expansion of self-direction options for ODM-managed waiver programs. The Self-Direction Workgroup meets twice monthly to outline specific program requirements and develop process improvements for self-direction. In addition, sub-workgroups focused on select priorities, such as materials development and budgeting, also meet regularly. Membership for this workgroup is open to the public and includes various representatives, such as:

- Advocacy groups (for example, Breaking Silences).
- Individuals who currently use or wish to use self-directed services.
- Family members of individuals who currently use of wish to use self-directed services.
- Providers serving on both ODM-administered waiver programs.

Additionally, ODM developed a website dedicated to self-direction (https://medicaid.ohio.gov/families-and-individuals/self-direction/self-direction-webpage). ODM uses this website to share updates, post workgroup materials, and disseminate resources. ODM also maintains a self-direction listserv and receives stakeholder comments and inquiries to a dedicated mailbox.

Throughout this process, ODM consulted with other state agencies, such as the Ohio Department of Aging (ODA) and Department of Developmental Disabilities (DODD), to obtain insights and lessons learned from their respective self-directed service programs.

10. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The draft rule presented with this BIA reflects the insights and recommendations of the Self-Direction Workgroup. The Self-Direction Workgroup's efforts help address concerns identified during the Ohio Self-Direction Summit. These concerns were related to the complexity of the enrollment process, timeliness, lack of adequate supports, limited choice, and access challenges. The rule to be proposed is drafted in direct response to issues raised at

the Ohio Self-Direction Summit. Specifically, the group provided input on employer authority, representatives, budget authority, enrollment requirements, oversight, and training.

Additionally, the draft rule also take into account stakeholder feedback received via other platforms, including town halls, webinars, and emails received to ODM mailboxes.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was used to develop the rule or the measurable outcomes of the rule.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? ***Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

This draft rule is designed to align with federal (CMS) requirements for 1915(c) HCBS waivers. During its review of regulatory alternatives, ODM determined there is no alternative regulatory approach that also ensures compliance with CMS' expectations for self-directed services under HCBS waivers. As such, this draft rule offers the best-fit approach for meeting the needs of populations served by self-direction.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

In developing this draft rule, ODM reviewed existing Ohio regulations for self-directed services in Ohio. Where possible, existing OAC requirements were incorporated by reference and consistent standards were maintained.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

ODM posted the regulations to be proposed in this rule on its website for public comment in the draft 1915(c) HCBS waivers. Once implemented, ODM and its designees (including the FMS provider and case management entities) monitor self-directed caregivers for compliance through regular monitoring activities. Self-directed caregivers must be willing and able to comply with the requirements of ODM's provider conditions of participation as outlined in OAC rule 5160-45-06. ODM's expectations for compliance are the same for self-directed caregivers as they are for caregivers who currently provide standard care services under HCBS waiver programs. Efforts to ensure the regulation will be applied consistently and predictably include multiple compliance requirements that will be monitored with the assistance of the financial management service (FMS) provider and case management entities. Compliance expectations include:

- Self-directed caregivers are required to enroll with the FMS and supply required documentation to complete and maintain enrollment.

- Self-directed caregivers must use the FMS for recording all service time.
- Self-directed caregivers must participate in self-direction reviews in accordance with OAC rule 5160-45-03.2.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The impacted business community includes providers of self-directed care, ODM's designated FMS provider, case management entities for the Ohio Home Care Waiver and MyCare Ohio Waiver and entities providing trainings required for providers enrolling through ODM.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

Providers of self-directed care must ensure compliance with enrollment, which includes enrolling with ODM's FMS provider. Caregivers enrolling with the FMS must supply documentation to demonstrate that they qualify for the service to be provided. All providers rendering self-directed services must submit tax and employment documentation for payroll processing.

Additionally, individual-specific or service-specific training may be required, which may result in an adverse impact. To render self-directed care, providers require prior approval through ODM's FMS. Self-directed personal care aides can be trained by the individual they will serve, which will have no cost. They can also obtain training from another entity that may have associated costs for the provider. The costliest training, if required, is to become a certified state-tested nurse aide which costs approximately six-hundred fifty dollars and seventy-five hours to complete.

Self-directed caregivers who are not enrolled providers with ODM are required to enroll with ODM's designated FMS provider. To be in compliance with the rule, the FMS will need to ensure that providers complete and maintain the following documentation:

- Enrollment with contact information.
- Evidence of qualifications to supply the self-directed service.
- Federal and state employment and tax forms.
- Consent for screening and criminal record checks in accordance with rules 5160-45-03.2 and 5160-1-17.8 of the OAC. Costs for the criminal record check for self-

directed caregivers enrolled through the FMS will be incurred by ODM, not the caregiver or individual receiving services.
- Medicaid provider agreement.
- Program forms identified by ODM.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. ***(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).***

Draft rule 5160-45-03.2 reduces the current administrative timeline for enrolling caregivers from the current average of 45 days to 14 days. The FMS is required to enroll self-directed caregivers within this timeline or, for expedited enrollment requests, within one business day or receipt from the case manager. To reduce regulatory burden, currently enrolled ODM providers will not need to complete FMS enrollment and will only need to file paperwork needed for payroll processing. The individual may determine the caregiver does not require additional training or certifications, which reduces administrative burden. Likewise, self-directed caregivers will not need to obtain a National Provider Identifier (NPI) or enroll with ODM if they only want to supply self-directed services.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Ohio HCBS waiver programs are designed to prioritize waiver participants' health and welfare. At both the state and federal levels, there is increased interest in ensuring access to self-directed care for individuals who seek flexibility and ownership around their unique care needs. Meeting these needs is of the upmost importance to ODM and the communities it serves. This draft rule is crafted in line with significant stakeholder feedback and account for potential impacts on the regulated business community. In drafting the rules, ODM considered these potential impacts, tailored its approach to minimize impact, and centered the individuals who seek self-directed services to ensure their needs are adequately met.

In addition, allowing individuals to determine the training and certification needs of their caregiver, if enrolling through the FMS, allows the individual additional flexibility and ownership of their unique care. It may also result in expedited enrollment or identifying appropriate caregivers.

Additionally, provider participation in self-directed care is optional and at the provider's discretion. Providers who choose to participate in self-direction must comply with program requirements. Those who choose not to provide self-directed care services experience minimal impact.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

This draft rule does not provide exemptions or alternative means for compliance for small businesses as self-directed care is supplied by someone who is the employee of the individual receiving services. Compliance is required in accordance with the requirements of ODM's provider conditions of participation as outlined in OAC rule 5160-45-06, and small business exemptions are not included as part of this rule to be proposed. The primary purpose of this rule to be proposed is to ensure the health and safety of individuals enrolled in ODM-administered waiver programs. ODM seeks to allow individuals who wish to self-direct services to do so with the greatest possible flexibility and accessibility.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODM's primary concern is the health and safety of individuals receiving services from ODM-certified providers. Whenever possible, ODM or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement. As needed, ODM will issue warning notices and require corrective action.

20. What resources are available to assist small businesses with compliance of the regulation?

ODM and its designees are available to help providers of all sizes with their questions. Providers may contact the ODM provider hotline at 1-800-686-1516. ODM's FMS also offers assistance, including enrollment specialists and customer services specialists available through enrollment and ongoing via their Customer Experience Team available at 866-886-1818.

DRAFT - NOT FOR FILING

5160-45-03.5 ODM-administered waiver program: self-directed goods and services.

(A) Scope. This rule sets forth provisions governing coverage for self-directed goods and services provided as part of an Ohio department of medicaid-(ODM) administered waiver program.

(B) "Self-directed goods and services" are services, equipment, or supplies that:

(1) Are not available through the medicaid state plan benefit or a home and community-based services (HCBS) waiver program;

(2) Address an individual's assessed need and are included on the person-centered services plan; and

(3) Supplement the medicaid state plan benefit and HCBS waiver services to help the individual successfully remain in the community.

(C) The ODM contracted financial management services (FMS) entity is the provider of self-directed goods and services. The FMS completes the purchase and reimbursement of self-directed goods and services approved in the person-centered services plan.

(D) Coverage.

(1) Self-directed goods and services are covered through self-direction budget authority, as described in rule 5160-45-03.2 of the Administrative Code.

(2) Self-directed goods and services may be approved if it is determined they will:

(a) Increase the individual's independence, safety, or community participation;

(b) Decrease the individual's need for other medicaid services; or

(c) Support the individual who does not have funds to purchase the services, equipment, or supplies, that are not available through another source.

(3) Self-directed goods and services are individualized; therefore an exhaustive list cannot be developed. Goods and services include any needed equipment, supplies, or services not covered by medicaid or another approved HCBS waiver service. This may include but is not limited to:

(a) Community classes, memberships, training, or coaching;

(b) Household related items or devices;

(c) Camps; and

(d) Art, music, or other alternative therapies.

(E) Limitations.

(1) The following items cannot be purchases as self-directed goods and services:

(a) Experimental treatments as outlined in rule 5160-1-61 of the Administrative Code;

(b) Items used solely for entertainment or recreational purposes;

(c) Monthly rent, utilities, or internet service; and

(d) Items that are illegal or otherwise prohibited through federal or state regulations.

(2) Self-directed goods and services are limited to two-thousand five hundred dollars per individual within three-hundred and sixty-five days.

(3) The individual, representative, or self-directed caregiver can be a supplier of items purchased with the self-directed goods and services funds.

(F) Service documentation for self-directed goods and services will include each of the following to validate reimbursement for medicaid services:

(1) Receipts to validate purchase of items are submitted to the case manager containing all the following:

(a) Item description;

(b) Vendor name;

(c) Purchase date; and

(d) Paid amount.

(2) An invoice for payment to a vendor is submitted to the FMS containing all the following:

(a) Individual’s name and Medicaid identification number;

(b) Item or service description;

(c) Vendor name;

(d) Purchaser of service if not the individual;

(e) Purchase date, delivery or service date; and

(f) Paid amount.

DRAFT - NOT FOR FILING

5160-45-03.2 ODM-administered waiver services: self-direction and self-directed caregivers.

(A) An individual may choose how waiver services are delivered pursuant to the person-centered planning process outlined in rule 5160-44-02 of the Administrative Code.

(B) For purposes of this rule and rule 5160-45-03.5 of the Administrative Code:

(1) Home and community-based services (HCBS) are services available under the Ohio Home Care and MyCare waiver programs as described in chapters 5160-46 and 5160-58 of the Administrative Code.

(2) Individuals are people enrolled on or applying for an HCBS waiver.

(3) Self-directed representatives (representatives) are people an individual may choose to assist with self-directing their services.

(4) Self-directed caregivers (caregivers) are employees of individuals using self-directed services.

(5) Financial management service (FMS) is an Ohio department of medicaid (ODM)-contracted agency that enrolls caregivers and processes payments for self-directed services.

(6) Employer-authority allows the individual to hire, manage, and dismiss their caregivers.

(7) Budget-authority allows the individual to manage the funds for self-directed waiver services.

(8) Self-directed budgets include the total cost of all waiver services that are or could be self-directed.

(9) Self-direction reviews are opportunities for an individual to discuss caregiver performance and to self-direction review compliance with required program rules.

(C) The following services can be self-directed with employer-authority:

(1) Personal care aide services as defined in rule 5160-46-04 of the Administrative Code;

(2) Home care attendant services as described in rule 5160-44-27 of the Administrative Code; and

(3) Waiver nursing services as described in rule 5160-44-22 of the Administrative Code.

(D) Services that can be self-directed with budget-authority include:

(1) All services identified in paragraph (C) of this rule;

(2) Home modifications as described in rule 5160-44-13 of the Administrative Code; and

(3) Self-directed goods and services as described in rule 5160-45-03.5 of the Administrative Code.

(E) Individuals enrolled on an HCBS waiver who self-direct their services work with ODM's designated FMS and the waiver case manager to coordinate the authorized service delivery. Individuals need to be willing and able to:

(1) Understand the service the caregiver furnishes.

(2) Understand how to direct the caregiver.

(3) Enroll in self-direction through the waiver case manager and FMS.

(4) Complete employer-authority related tasks, which may include:

(a) Identifying, selecting, and dismissing caregivers;

(b) Entering into written agreements with caregivers for specific activities and training expectations;

(c) Training caregivers to meet their needs and verifying training is completed;

(d) Scheduling services;

(e) Supervising the caregiver's performance; and

(f) Approving the caregiver's time sheets and other documents needed for payment as determined by the FMS.

(5) Perform budget-authority related tasks within the self-directed budget, including:

(a) Determining wages for caregivers;

(b) Deciding spending for other self-directed services in accordance with paragraphs (D) and (E) of this rule and the person-centered services plan; and

(c) Managing services within the approved self-directed budget.

(F) Representatives.

(1) The individual may choose a representative to assist in self-directing services.

(2) Representatives help with employer tasks identified in paragraph (E)(4) of this rule.

(3) A representative cannot be the employer or caregiver.

(G) Caregivers.

(1) Before providing paid services, the caregiver will need to enroll with the FMS as a caregiver. Caregivers qualify to supply the services as follows:

(a) Personal care aide services:

(i) Completion of training as determined and verified by the individual;

(ii) Completion of training identified in paragraph (A)(8) of rule 5160-46-04 of the Administrative Code; or

(iii) Enrollment with ODM as a non-agency personal care aide provider.

(b) Home care attendant services:

(i) Completion of training identified in paragraph (A)(8) of rule 5160-44-27 of the Administrative Code; or

(ii) Enrollment with ODM as a home care attendant provider and having completed training for the individual served.

(c) Waiver nursing services:

(i) Maintain an active, unrestricted Ohio nursing license, as identified in rule 5160-44-22 of the Administrative Code; or

(ii) Enrollment with ODM as a non-agency waiver nursing provider.

(2) All caregivers enrolled with individual-specific training as identified in paragraph (G)(1)(a)(i) of this rule will be trained by each individual they serve.

(3) At enrollment, caregivers will complete and submit documentation to the FMS, including:

(a) Proof of the following:

(i) Training or qualifications as noted in paragraph (G)(1) of this rule;

(ii) Review of the applicable Administrative Code requirements for the service being provided; and

(iii) Training in incident management reporting responsibilities as required in rule 5160-44-05 of the Administrative Code.

(b) Completed forms, including:

(i) Self-direction enrollment, including disclosure of any indictment or conviction of a violation of state or federal law;

(ii) Federal and state employment and tax forms, including for the Ohio bureau of workers' compensation;

(iii) Medicaid provider agreement (ODM Form 10283); and

(iv) Consent for screening and criminal record checks in accordance with rule 5160-1-17.8 of the Administrative Code.

(4) Caregivers who are a parent, spouse, or other relative of the individual and meet the conditions set forth in rule 5160-44-32 of the Administrative Code may deliver any self-directed service identified in paragraph (C) of this rule.

(5) Caregivers will use the FMS time-keeping system for recording all service time for which the caregiver expects to be reimbursed. This system will include electronic visit verification as described in chapter 5160-32 of the Administrative Code.

(6) Caregivers will at all times meet the requirements of ODM's provider conditions of participation as outlined in rule 5160-44-31 of the Administrative Code except paragraph (B)(2)(a) of that rule.

(7) Caregivers maintain documentation of services delivered as required for each service type identified in paragraph (C) of this rule.

(8) Caregivers will participate in self-direction reviews led by the individual with assistance from ODM's contracted review team. Caregivers are not required to participate in structural reviews as described in rule 5160-45-06 of the Administrative Code. Self-direction reviews are conducted as follows:

(a) Individuals or representatives will participate, by leading or at least being present during the

self-direction reviews;

(b) Both the individual and caregiver will be notified by ODM's contracted self-direction review team when a self-direction review is due and will be scheduled prior to the due date at the individual's and caregiver's convenience;

(c) Initial self-direction reviews are conducted within the first twelve to twenty-four months of the caregiver's employment with the individual and are intended to provide guidance and technical assistance on compliance with applicable Administrative Code requirements; and

(d) Additional self-direction reviews are conducted as requested by the individual or caregiver with no more than three years between self-direction reviews.

(e) Self-direction reviews are educational and an opportunity to provide feedback on positive performance and areas for improvement including the following:

(i) Accountability: following the conditions of participation and documenting services that support the plan;

(ii) Performance: supplying the services requested and submitting payroll on time; and

(iii) Individual satisfaction.

(f) Outcomes of the self-direction reviews are documented and signed by the individual and the caregiver.

(g) If any issues are identified during the self-direction review process, the caregiver will work with the individual on an opportunity for improvement plan. The improvement plan needs to include:

(i) Area(s) where improvement is needed;

(ii) Action(s) expected to meet the expectation; and

(iii) Timeline for completing the action(s).

(H) The FMS assists the caregiver to complete enrollment. The FMS conducts caregiver enrollment activities, including but not limited to:

(1) Validating employment, including:

(a) Complete, file, and execute IRS and Ohio state forms necessary for employment; and

(b) Conduct limited-risk screening and criminal record checks in accordance with rule 5160-1-17.8 of the Administrative Code. Criminal record checks will be conducted at initial enrollment and at least once every five years or as requested by the individual employer.

(2) Verifying caregiver eligibility as outlined in paragraph (C) of this rule.

(3) Reviewing with or ensuring that the caregiver completes a review of the applicable Administrative Code responsibilities for the service being provided.

(I) Caregivers will be enrolled when all required documentation as identified in paragraph (G) of this rule has been submitted. Enrollment will be completed within:

(1) Fourteen calendar days; or

(2) One business day of an expedited enrollment request from the case manager.

(J) Conditional employment.

(1) A caregiver who is not yet enrolled as a provider with ODM may be conditionally employed by the individual prior to obtaining the results of the criminal record check identified in paragraph (G) of this rule. Conditional employment can be in effect for up to sixty calendar days. The FMS will:

(a) Conduct a review of the databases listed in paragraph (G)(4) of this rule to determine whether the caregiver is barred from rendering self-directed services; and

(b) Begin the criminal records check no later than five business days after conditional employment begins.

(2) The FMS agency will notify the individual, case manager, and ODM when the results of the criminal records check request:

(a) Are not obtained within sixty days of the criminal records check request, other than the results of any request for information from the federal bureau of investigation; or

(b) Reveal a disqualifying offense and the caregiver is not able to supply paid services.

(3) The FMS agency will advise the individual if a caregiver has a criminal offense on their record which is not disqualifying. The individual can choose to continue employing the caregiver or discontinue employment.

(K) If the FMS determines that a caregiver cannot be enrolled or maintain enrollment for any reason, the FMS will notify ODM. If a caregiver cannot be enrolled or maintain enrollment due to a disqualifying offense on a criminal record check, the FMS, with consent of the caregiver, will provide a copy of the criminal record check to ODM. ODM will review these results and issue a final decision to the caregiver, including information on how to appeal the decision.

(L) Individuals who cannot meet the requirements set forth in paragraph (E) of this rule, or whose health and welfare cannot be ensured with the delivery of self-directed services will not be able to self-direct their services. The individual will be afforded notice and hearing rights in accordance with division 5101:6 of the Administrative Code.