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): Structured Family Caregiving

Rule Number(s): 5160-44-33 (amendment)

Date of Submission for CSI Review: 1/10/2025

Public Comment Period End Date: 1/17/2025

Rule Type/Number of Rules:

New/___ rules **No Change/____ rules (FYR? ___)**

Amended/_1___ rules (FYR? _No__) **Rescinded/____ rules (FYR?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.

   Rule 5160-44-33, entitled "Nursing facility-based level of care home and community-based services programs: structured family caregiving," defines the service called Structured Family Caregiving and sets forth provider qualifications and requirements for service delivery, documentation of services, and payment standards for the service.

   The amendment will expands optional qualifying criteria for providers by adding accreditation held by an organization recognized by the Centers for Medicare and Medicaid Services (CMS) or the United States Department of Health & Human Services (HHS).

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.**

   Authorized By: 5166.02
   Amplifies: 5162.03, 5166.02

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.

   Yes, in order for the Centers for Medicare and Medicaid Services (CMS) to approve a 1915(c) home and community-based services (HCBS) waiver, 42 C.F.R. 441.352 requires

ODM to establish provider-certification requirements to safeguard the health and welfare of individuals who receive services through the program.

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 does not exceed federal requirements and are aligned with the CMS-approved waivers. This rule does not contain provisions not specifically required by the federal government.

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 public purpose of this regulation is to assure the health and welfare of individuals enrolled in an ODM or ODA-administered HCBS waiver as currently required by 42 C.F.R. 441.302(a) through the provision of services by qualified providers. The State is doing so by establishing requirements that individuals, providers, and case management agencies must meet to participate in the program.

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

   ODM and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from ODM-certified providers. ODM will judge the to be proposed new rule to be a success when ODM and its designees find few violations against providers during structural compliance reviews or investigations of alleged incidents.

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.

   Throughout the original development of the regulation, effective October 1, 2024, the Ohio Department of Medicaid (ODM) engaged partner agencies for their continuous review and feedback. ODM met with partners at the Ohio Department of Aging (ODA) to discuss the drafted regulation. To engage a wide population of providers and participants, ODM also shared the draft proposed rule via email with nearly 10,000 stakeholders and requested their feedback.

ODM maintains ongoing communication with stakeholders. Stakeholders consists of nursing facility-based waiver providers and participants.

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

    Stakeholders are of critical importance in updating policy and practice, and in assuring the health and welfare of waiver participants. The intent during the original rule development was to permit organizations holding an accreditation recognized by CMS or HHS to serve as providers of the structured family caregiving service in the My Care, Ohio Home Care, and PASSPORT waiver programs. While this was accomplished for MyCare and PASSPORT programs, it was not for Ohio Home Care. The proposed update will permit providers with these accreditations to meet the requirements to become a structured family caregiver service provider in Ohio Home Care. ODA has been ODM's partner throughout this process.

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 outcome 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.
    No alternative regulations were considered, as this regulation needs to align with state and federal requirements. There is no regulatory alternative that would have had less of an adverse impact on businesses that would meet CMS approval.

13. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**
    The agency completed a review of the Ohio Revised Code and the Ohio Administrative Code to ensure there are no other regulations pertaining to this specific rule.

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.**
    Providers are anticipating the change that this amendment will provide, as it expands the capacity of providers available to deliver SFC to individuals on the OHC waiver.

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**

All nursing facility-based waiver service providers within the PASSPORT, Ohio Home Care, and MyCare waiver programs.

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.
The rule requires providers to be a medicare certified home health agency, otherwise-accredited agency, or hold an accreditation from an organization recognized by CMS, HHS, or be an ODA certified provider.

The rule requires the provider's coaching and support professional staff to have one of the following types of licensures: a registered nurse (RN) or licensed practical nurse (LPN), at the direction of an RN, in accordance with Chapter 4723. of the Revised Code, a licensed social worker (LSW) or licensed independent social worker (LISW), in accordance with Chapter 4757. of the Revised Code.

Quantify:
The tuition fees that are charged for home health aide certification programs are usually between $300 and $650.

SOURCE: https://www.bizinsure.com

In Ohio, the average STNA class costs $593 and is 3 weeks long. The exam costs $104 ($78 for skills and $26 for written).

SOURCE: https://dreambound.com

To be considered for a license to provide skilled or non-medical home health service as a home health agency or nonagency provider, the provider must submit a completed application and a non-refundable application fee of $250.00.

SOURCE: Home Health Agency Licensure (Ohio Department of Health)

16. Are there any proposed changes to the rules that will <u>reduce</u> 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).*
No.

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

~~Any~~ The adverse impacts in this rule are required by federal law and are outweighed by the need to ensure the health and welfare of waiver participants.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.
The rule treats all providers the same, regardless of their size.

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? There would be no impact related to 119.14 as a result of the implementation of the regulation.

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.

DRAFT - NOT FOR FILING

5160-44-33 Nursing facility-based level of care home and community-based services programs: structured family caregiving.

(A) "Structured Family Caregiving (SFC)" is a service in which an individual at least eighteen years of age who is enrolled on either the MyCare Ohio, Ohio home care, or pre-admission screening system providing options and resources today (PASSPORT) waiver program, resides with a caregiver who provides daily care and support to the individual when the individual meets the following criteria:

(1) The caregiver resides with the individual in the individual's private home or resides with the individual in the caregiver's private home.

(2) The individual needs assistance with daily personal care and household support, and assistance with activities needed to promote independence and integration into the community.

(3) The individual chooses to receive SFC.

(B) The waiver service provider will:

(1) Be an agency provider as defined in rule 5160-45-01 of the Administrative Code meeting the following criteria:

(a) For the Ohio home care waiver program, providers will be a medicare-certified home health agency, ~~or~~ otherwise-accredited agency, or hold an accreditation from an organization recognized by the centers for medicare and medicaid services (CMS) or the United States department of health and human services (HHS) and operate in accordance with Chapter 5160-45 of the Administrative Code.

(b) For the PASSPORT program, providers will be an Ohio department of aging (ODA) certified provider and operate in accordance with Chapter 173-39 of the Administrative Code.

(c) For MyCare waiver program, providers will operate in accordance with either paragraph (B)(1)(a) or paragraph (B)(1)(b) of this rule, as appropriate.

(2) Complete caregiver training.

(a) For medicare-certified home health agencies, the caregiver will successfully meet the trainings specified in 42 C.F.R. 484.80 (as in effect on October 1, 2023).

(b) For otherwise-accredited and Ohio department of aging certified agencies, the caregiver will successfully complete at least eight hours of initial training that the individual determines the provider needs to meet the individual's specific needs by the deadline the individual establishes.

(c) The provider will ensure the caregiver receives structured training tailored to support the caregiver to meet the individual's assessed needs.

(d) The provider will maintain documentation that demonstrates the training described in paragraph (B)(2) of this rule has been completed.

(3) Ensure SFC is provided as authorized and that any modifications needed in settings adhere to the individual's approved person-centered services plan (PCSP). Settings where the individual resides in a private residence owned or leased by a caregiver who is not related by blood or marriage are considered provider-owned or controlled settings and are subject to compliance with the conditions described in

paragraph (C) of rule 5160-44-01 of the Administrative Code.

(4) Ensure that the caregiver employed by or contracted with the agency provider is able to meet the individual's need for assistance with daily care as assessed by the waiver program case management entity for the relevant waiver program.

(5) Employ coaching and support professional staff.

(a) The provider's coaching and support professional staff will include:

(i) A registered nurse (RN), in accordance with Chapter 4723. of the Revised Code,

(ii) A licensed practical nurse (LPN), at the direction of an RN, in accordance with Chapter 4723. of the Revised Code,

(iii) A licensed social worker (LSW), in accordance with Chapter 4757. of the Revised Code, or

(iv) A licensed independent social worker (LISW), in accordance with Chapter 4757. of the Revised Code.

(b) The provider's coaching and support professional staff will:

(i) Conduct an initial in-person home visit with the individual and the caregiver of SFC to review the roles and responsibilities of the caregiver and the provider, applicable rules of ODM and ODA, and relevant policies of the provider which apply to provider staff.

(ii) Conduct monthly contact with the individual and caregiver to provide individualized coaching to the caregiver to increase the caregiver's competencies to provide care to the individual, help the caregiver identify signs of change in the individual's general condition and how to manage such circumstances. Monthly contact will also be made to ensure the caregiver is attending to self-care needs, assess the provision of SFC, review the caregiver's goals and needs, share relevant educational content, assess the individual's satisfaction with care delivery and relationship with the caregiver. Contacts may be a combination of telephonic and in-person visits, with no more than sixty calendar days between in-person visits.

(6) Maintain a record for each individual served, in accordance with the criteria outlined in:

(a) Paragraph (A)(9) of rule 5160-46-04 of the Administrative Code if providing SFC to an individual enrolled on the Ohio home care waiver program.

(b) Rule 173-39-02 of the Administrative Code if providing SFC to an individual enrolled on the PASSPORT program.

(c) Paragraph (B)(6)(a) or paragraph (B)(6)(b) of this rule if providing services to an individual enrolled on the MyCare waiver program, as appropriate.

(C) Limitations for SFC include the following:

(1) SFC will not be authorized for individuals who are medically unstable or medically complex as a substitute for skilled care provided by an RN, LPN, licensed nurse, or other licensed health care professional.

(2) SFC will not be provided on the same calendar day as out-of-home respite as described in rules 5160-44-17 and 173-39-02.23 of the Administrative Code.

(3) SFC will not be provided on the same calendar day when a combination of more than two hours of the following services are authorized on the individual's PCSP:

(a) Choices home care attendant service as described in rules 5160-58-04 and 173-39-02.4 of the Administrative Code.

(b) Home care attendant service as described in rules 5160-44-27 and 173-39-02.24 of the Administrative Code.

(c) Homemaker as described in rules 5160-31-05 and 173-39-02.8 of the Administrative Code.

(d) Personal care services as described in rule 5160-46-06 of the Administrative Code or personal care as described in rule 173-39-02.11 of the Administrative Code.

(D) Spouses and other relatives with legal decision-making authority may only provide SFC in accordance with the criteria outlined in rule 5160-44-32 of the Administrative Code.

(E) Authorization process.

(1) SFC may be authorized for individuals who are eligible and choose to access the service.

(2) The maximum allowable payment rates and procedure codes for SFC are listed in rule 5160-46-06 of the Administrative Code. SFC may be authorized as a full day, or a half day as indicated in the individual's PCSP.

(a) SFC will be authorized as a full day, unless the individual is assessed to need additional services described in paragraph (C) of this rule to be provided on the same calendar day as SFC.

(b) SFC will only be authorized as a half day when the individual is assessed to need additional services described in paragraph (C) of this rule to be provided on the same calendar day as SFC.

(3) The caregiver will provide SFC for no more than three individuals who reside at the same address. When SFC is provided to more than one individual at the same address, the provider will be reimbursed at a group rate as defined in:

(a) Paragraph (A)(5) of rule 5160-46-06 of the Administrative Code if providing SFC to individuals enrolled on the Ohio home care waiver program.

(b) Paragraph (C)(3) of rule 5160-31-07 of the Administrative Code if providing SFC to individuals enrolled on the PASSPORT program.

(c) Paragraph (C) of rule 5160-58-04 of the Administrative Code if providing SFC to individuals enrolled on the MyCare waiver program.

(F) As a condition of receiving SFC, individuals will agree to and cooperate with monthly waiver program care management agency contacts. Contacts may be a combination of telephonic and in-person visits, with no more than sixty calendar days between in-person visits.