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):

OhioRISE 1915(c) Waiver Rules

Rule Number(s): 5160-59-05 and 5160-59-05.2

Date of Submission for CSI Review: 12/20/2024

Public Comment Period End Date: 12/27/2024

Rule Type/Number of Rules:

New/___ rules
No Change/____ rules (FYR? ___)
Amended/__2__ 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Rescinded/____ rules (FYR?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.

   The rules listed below have been summarized to help describe the services being provided and the eligible providers along with brief description of the proposed changes.

   OAC rule 5160-59-05, **entitled "OhioRISE home and community-based services waiver: covered services and providers,"** describes the services available through the OhioRISE 1915(c) waiver and the provider criteria. This rule is proposed for amendment to align the provider criteria with the OhioRISE 1915(c) waiver. The amendment also includes grammar changes and updated U.S.C. citation dates.

   OAC rule 5160-59-05.2, entitled "OhioRISE home and community-based services waiver: transitional services and supports (TSS)," entitled "OhioRISE 1915(c) Waiver: Transitional Services and Supports", defines the eligible providers able to render the service, settings where the service can be provided, and limitations to the service. This rule is proposed for amendment to align the provider criteria with the OhioRISE 1915(c) waiver. The amendment also includes updated U.S.C. and C.F.R. citation dates.

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.**

   - Revised Code Section 5164.02, 5166.02, 5167.02 authorizes ODM to adopt the rules.
   - Revised Code Sections 5162.02, 5162.03, 5164.02, 5166.02, 5166.04, 5167.02, 5167.03, 5167.10, amplify that authority.

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 rules implement the federal requirements; however, the amendment to the rules are not being made as part of CMS requirements.

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 rules are consistent with federal managed care requirements outlined in 42 CFR Part 438 that require the state to implement policies and regulations as the state deems necessary and appropriate. There is nothing in these rules that go beyond the federal regulations.

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 regulation in rules 5160-59-05 and 5160-59-05.2 are necessary for various reasons. Federal regulations require state Medicaid agencies to ensure PIHP, 1915(b), and 1915(c) waiver compliance with federal standards, therefore these rules ensure ODM compliance with federal regulations governing Medicaid managed care programs, compliance with the 1915(c) home and community-based services waiver, and the OhioRISE program.

   The public purpose of these regulations is also to:

   - Ensure the provision of medically necessary services, emergency services, and post stabilization services to promote the best outcomes for individuals enrolled in the Medicaid managed care program by requiring the OhioRISE plan to follow established guidelines and to ensure providers are paid appropriately for services delivered.
   - Ensure that information maintained by the OhioRISE plan is readily available to the State and, if requested, by the Centers for Medicare and Medicaid Services (CMS).
   - Ensure oversight of the OhioRISE program and the OhioRISE plan.

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

   Successful outcomes are measured through a finding of compliance with these standards as determined by monitoring and oversight.

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.

ODM consistently involves interested parties in the development and operational activities pertaining to managed care and behavioral health. The OhioRISE Advisory Council and its workgroups were developed to obtain critical stakeholder feedback and expert clinical advice for OhioRISE's services and operations. Since the Advisory Council's creation in January 2021, ODM holds monthly meetings with stakeholders to discuss general program principles and system of care philosophy, federal authorities, and service concepts. The state plan, 1915(b), and 1915(c) waiver behavioral health services, service specifications and regulatory concepts, draft rule language, and service rate setting are also discussed with these groups.

Stakeholders include, but are not limited to:
The ARC of Ohio
Ohio Association of Health Plans
Ohio Association of County Boards Serving People with Developmental Disabilities
Ohio Family & Children First Councils
County Public Children Services Agencies
The Center for Community Solutions
The Ohio Council for Behavioral Health & Family Services Providers
Ohio Center for Autism and Low Incidence
Ohio Children's Alliance
New Directions and Crossroads Health
Mercy Health Foundations Behavioral Health Services
Centers for Innovative Practices, Case Western Reserve University
Ohio Association of County Behavioral Health Authorities

ODM worked collaboratively with other state and local agencies such as Ohio Department of Job and Family Services (ODJFS), County Departments of Job and Family Services (CDJFS), Mental Health Addiction Services (MHAS), Department of Developmental Disabilities (DODD), Department of Youth Services (DYS) and Ohio Department of Education (ODE), Ohio Department of Health (ODH) to keep the focus of the program on the individual with the goal of providing a seamless experience for the members and providers.

The rules to be proposed are a result of feedback received from stakeholders that would allow for additional providers to begin providing OhioRISE 1915(c) waiver services for youth enrolled on the OhioRISE waiver when there are no other available waiver services providers, or when they are at capacity. The proposed rule changes were sent to stakeholders for feedback and were available for comment from November 18-November 22, 2024. ODM has provided a response to the comment received.

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

ODM received positive feedback on aligning language in the OAC 5160-59-05 and OAC 5160-59-05.2 with the OhioRISE 1915(c) waiver to allow for additional providers to begin providing OhioRISE 1915(c) waiver services for youth enrolled on the OhioRISE waiver when there are no other available waiver services providers, or when providers are at capacity.

The agency received one comment which asked for additional clarification on what prompted the proposed rule changes. This feedback went through an internal review process and no revisions to the draft rules were made based on the stakeholder comment.

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?

Ohio Medicaid claims data were the main source of information used to guide the policy and budget models that undergird these rules. This data was used to determine the fiscal impact on ODM.

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.***

These rules implement regulations so ODM can enforce and, when necessary, conduct program integrity activities regarding the provision of services to Medicaid recipients. If ODM attempted to use alternative regulations, it could allow for inconsistencies and not enforce the regulations.

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

ODM, as the agency charged with administrating the Ohio Medicaid program, is the only entity authorized to enact the regulations in these rules. The ODM OhioRISE staff reviewed the rules with other ODM policy areas. Incorporation by reference is used in the rules to prevent duplication to of existing Ohio regulation.

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 will notify the OhioRISE Advisory Council, the OhioRISE plan and other Managed Care Organizations (MCO) when the OhioRISE OAC rules have been final filed along with their effective date via email notification. Additionally, per the OhioRISE Plan Provider Agreement, the OhioRISE plan and other MCOs are required to subscribe to the relative distribution lists for notification of OAC RuleWatch Ohio. ODM will ensure the OhioRISE plan is made aware of any future OAC rule changes via established communication processes.

Adverse Impact to Business

14. 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

These rules will impact the OhioRISE plan (Aetna Better Health of Ohio), MCOs that contract with Ohio Medicaid, and those behavioral health providers that render the services addressed in

these rules and provided to Medicaid recipients enrolled in OhioRISE that are 21 years of age and younger.

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.

- **OAC rule 5160-59-05.2 OhioRISE home and community-based services waiver: transitional services and supports** requires providers to be certified by OhioMHAS, or for agency providers/ individual practitioners to hold a certification for homemaker/ personal care services and complete behavioral health support trainings. Providers must also obtain first aid certification. The cost of certification through OhioMHAS is based upon the budget of the agency that is applying for certification. The fee schedule showing the correlation between the agency's budget and the certification cost is located in OhioMHAS OAC rule 5122-25-08. This rule requires first aid training, costs will ~~also~~ vary by program and geographic region. An informal survey of American Red Cross, American Heart Association and other first aid courses around the state suggests that the average cost is about $70-75. Tuition can range anywhere from $50 to over $110, with lower rates in more rural counties.
- **OAC rule 5160-59-05 OhioRISE home and community-based services waiver: covered services and providers** This rule change requires impacted providers to obtain prior approval from ODM before OhioRISE 1915(c) waiver services can be rendered. The estimated cost of the prior approval would be in the form of staff hours and administrative time spent training existing staff, updating technology where applicable, and requesting approval. The source for the prior approval requirement is in the OhioRISE 1915(c) waiver.

15. 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).*

The changes that will be ~~were~~ made to OAC rules 5160-59-05.2 "OhioRISE home and community-based services waiver: transitional services and supports" and 5160-59-05 "OhioRISE home and community-based services waiver: covered services and providers" will allow an additional provider type to provide OhioRISE 1915(c) waiver services. The rule changes to be proposed are the result of stakeholder feedback; however, they will not reduce a regulatory burden on the business community.

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

The OhioRISE program supports the most vulnerable children in the state of Ohio who need specialized and targeted behavioral health support and services. It also moves the behavioral health system from out-of-home placements to a community care network, providing support where youth and young adults live.

Regulatory Flexibility

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

No, to ensure uniform and consistent treatment of Medicaid providers, ODM is not able to make exemptions or provide alternative means for compliance for small businesses.

18. 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?

This regulation does not apply to this rules package because these rules do not impose any fine or penalty for a paperwork violation.

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

All Medicaid providers in need of technical assistance can contact the Medicaid Provider Assistance telephone line at 1-800-686-1516. Behavioral health providers impacted by the proposed rules have a unique email address available to them for assistance, OhioRISE@medicaid.ohio.gov. They can also contact the OhioRISE plan, Aetna, through their telephone line at 1-833-711-0773, or by e-mail at OHRise-Network@aetna.com. Providers also have access to detailed information by visiting the dedicated OhioRISE internet site: https://managedcare.medicaid.ohio.gov/wps/portal/gov/manc/managed-care/ohiorise/.

DRAFT - NOT FOR FILING

5160-59-05 OhioRISE home and community-based services waiver: covered services and providers.

(A) This rule establishes the services available under the Ohio resilience through integrated systems and excellence (OhioRISE) home and community-based services (HCBS) ~~1915(c)~~ waiver program (waiver) established in accordance with 1915(c) of the Social Security Act 42 U.S.C. 1396n (January 1, 2025~~2022~~), and the providers eligible to deliver those services to youth enrolled on the waiver.

(B) Providers seeking to deliver services in the waiver program will meet the criteria in Chapter 5160-59 and ~~set forth in~~ rules 5160-44-02 and 5160-44-31 of the Administrative Code, as appropriate. Upon prior approval by the Ohio department of medicaid (ODM), providers~~Providers~~ that have responsibility for developing the child and family-centered care plan for a youth can~~cannot~~ provide other direct OhioRISE 1915(c) waiver services to that~~the~~ youth.

(C) Prior to a qualified waiver provider delivering services to waiver recipients, the services will be documented on the youth's child and family-centered care plan as described in Chapter 5160-59 of the Administrative Code and approved by the OhioRISE plan. The child and family-centered care plan will be developed in accordance with person-centered practices as set forth in rule 5160-44-02 of the Administrative Code.

(D) Waiver covered services are limited to the following and are subject to any reimbursement provisions in the Ohio Administrative Code rules cited therein:

(1) Out-of-home respite as set forth in rule 5160-59-05.1 of the Administrative Code;

(2) Transitional services and supports as set forth in rule 5160-59-05.2 of the Administrative Code; and

(3) Secondary flex funds as set forth in rule 5160-59-05.3 of the Administrative Code. Secondary~~secondary~~ flex funds service is subject to participant-direction through budget authority.

(E) When the OhioRISE plan denies, reduces, terminates or suspends an OhioRISE waiver service, this constitutes an adverse benefit determination, and can be appealed in accordance with rule 5160-26-08.4 of the Administrative Code.

DRAFT - NOT FOR FILING

5160-59-05.2 OhioRISE home and community-based services waiver: transitional services and supports.

(A) Scope. This rule sets forth provisions governing coverage for transitional services and supports provided as part of the Ohio resilience through integrated systems and excellence (OhioRISE) ~~1915(c)~~ waiver program (waiver) established in accordance with 1915(c) of the Social Security Act 42, U.S.C. 1396n (January 1, 2025~~2022~~).

(B) Definitions. For this rule, the following definitions apply:

(1) "Homemaker/personal care" has the same meaning as set forth in rule 5123-9-30 of the Administrative Code.

(2) "Transitional services and supports" (TSS) is a service designed to provide family stability supports for the youth, primary caregiver and family as a pathway to creating a stable environment for the youth and the family that lives in the home. It is meant to assist the youth, in conjunction with their family/primary caregiver, as a means to overcome the functional limitations as identified due to the result of the youth's intensive behaviors. TSS is used to support youth and their caregivers in understanding, mitigating, and transitioning to long term solutions for behavior challenges. TSS is used to support a youth and their caregiver to stabilize during a transition of care and is not intended to de-escalate crises. TSS is an additional service for OhioRISE 1915(c) waiver enrollees and is limited to care not otherwise covered under the state plan, including early and periodic screening, diagnostic, and treatment (EPSDT) covered services set forth in rule 5160-1-14 of the Administrative Code.

(C) Eligible providers and conditions of participation.

(1) The following providers are eligible to provide TSS under the waiver program:

(a) An entity operating in accordance with paragraph (A)(1) or (A)(2) of rule 5160-27-01 of the Administrative Code. Eligible rendering practitioners employed by or under contract with the entity include those described in paragraph (A)(3), (A)(4), (A)(5), or (A)(6)(a) of rule 5160-27-01 of the Administrative Code.

(b) An agency provider holding certification for homemaker/personal care services in accordance with rule 5123-9-30 of the Administrative Code.

(c) An individual provider who meets the criteria of an independent practitioner or licensed psychologist as described in rule 5160-8-05 of the Administrative Code.

(d) An individual provider holding certification for homemaker/personal care services in accordance with rule 5123-9-30 of the Administrative Code.

(e) A care management entity (CME) acting in accordance with rule 5160-59-03.2 of the Administrative Code. Eligible rendering practitioners employed by or under contract with the entity include those described in paragraph (A)(3), (A)(4), (A)(5), or (A)(6)(a) of rule 5160-27-01 of the Administrative Code.

(2) Providers who hold certification for homemaker/personal care services, as designated in paragraphs (C)(1)(b) and (C)(1)(d) of this rule, will also complete behavioral health support trainings sponsored by the Ohio department of developmental disabilities (DODD) or an Ohio department of medicaid (ODM)

approved behavioral health training prior to rendering the TSS service.

(3) With the exception of paragraph (B)(14) of rule 5160-44-31 of the Administrative Code, providers will comply with conditions of participation as set forth in rule 5160-44-31 of the Administrative Code.

(4) TSS providers will obtain and maintain first aid certification from an instruction which includes hands-on training by a certified first aid instructor. At its discretion, ODM may accept training conducted by a solely internet-based class as sufficient for the purposes of first aid certification.

(5) TSS providers serving an OhioRISE youth with behaviors that pose safety concerns for the youth or others will have been trained in de-escalation strategies that can be used to support the youth and prevent the use of restraints, seclusion, and restrictive interventions.

(6) TSS providers serving an OhioRISE youth with an individual crisis and safety plan including the use of restraints, seclusion, or restrictive intervention will be trained in the appropriate use of restraints, seclusion, and restrictive interventions.

(7) TSS providers will retain all initial and subsequent child and family-centered care plans.

(8) TSS providers are subject to compliance reviews specific to conditions of their licensure or certification in addition to ongoing monitoring conducted by the OhioRISE plan.

(9) For youth under age eighteen, authorized representatives, legal guardians, birth parents, adoptive parents, foster parents, and stepparents of the OhioRISE-enrolled youth are prohibited from providing or receiving payment for TSS services.

(D) Coverage.

(1) Primary components of the TSS service may include:

(a) Training the youth and family or caregivers in behavior stabilization techniques related to the youth's serious emotional disturbance diagnosis;

(b) Working with the youth and family or caregivers to identify triggers and develop~~developing~~ person-centered approaches for preventing behavioral crisis prior to occurrence;

(c) Assistance to the youth in acquiring, retaining, and improving areas of self-help and socialization.

(d) Training and skill-building for families and caregivers regarding mitigation and support techniques for when crises occur;

(e) Training and skill-building for families and caregivers to understand and implement positive coping strategies to directly address crisis or escalation of risk behaviors;

(f) Acting as a conduit between the family or caregivers, the youth and the youth's care coordinator to assist in system navigation;

(g) Assistance to the youth with engagement in the broader community; and

(h) Assistance to the youth and family or caregivers with coping skills both in home and community settings.

(2) Other family stability supports activities related to youth and family or caregivers; stabilization and transition beyond those listed in paragraph (D)(1) ~~and (D)(2)~~ of this rule may be considered as permissible tangential activities allowable under the TSS service only when approved by the OhioRISE plan as part of the child and family-centered care plan prior to a provider rendering and receiving reimbursement for the service.

(3) ~~Staffing may be provided to a youth at a ratio of up to two to one when there is a demonstrated need for the staffing level and when approved by the OhioRISE plan and documented on the child and family-centered care plan by the youth's care coordinator working within the CME as defined in rule 5160-59-01 of the Administrative Code, or the OhioRISE plan.~~When there is a demonstrated need, staffing may be provided to a youth at a ratio of up to two to one when documented on the child and family-centered plan and approved by the OhioRISE plan.

(4) The TSS service may be made available within twenty-four hours upon a change in circumstance or qualifying condition as described in paragraph (E) of this rule.

(5) The youth's care coordinator working within the CME or OhioRISE plan will assist the youth and their primary caregiver in determining the need for the TSS service.

(6) The youth's care coordinator working within the CME or OhioRISE plan may recommend TSS services, as well as the providers of TSS, as part of the child and family-centered care plan.

(7) The OhioRISE plan will need to approve TSS services as part of the child and family-centered care plan prior to receipt and reimbursement of the TSS service.

(E) Limitations.

(1) The TSS service will only be provided to youth meeting eligibility criteria for the waiver as set forth in rule 5160-59-04 of the Administrative Code and who are enrolled on the waiver at the time of service delivery.

(2) The TSS service will not be provided to a youth prior to establishment of initial or ongoing enrollment and eligibility criteria for the waiver as set forth in rule 5160-59-04 of the Administrative Code.

(3) The TSS service will assist a youth who experiences changes in circumstances or qualifying conditions, which include but are not limited to:

(a) Within twenty-four hours of the youth enrolling on the waiver following a discharge from one of the following settings:

(i) A psychiatric residential treatment facility (PRTF) as described in 42 C.F.R. 441.150 (October 1, 2024~~2023~~) through 42 C.F.R 441.184 (October 1, 2024~~2023~~);

(ii) An intermediate care facility for individuals with an intellectual disability (ICF/IID) as defined in section 5124.01 of the Revised Code;

(iii) An inpatient psychiatric hospital as defined in 42 CFR 440.160 (October 1, 2024~~2023~~);

(iv) A residential facility as defined in rule 5122-30-03 of the Administrative Code; or

(v) A qualified residential treatment program (QRTP) as described in rule 5101:2-9-42 of the Administrative Code.

(b) Within twenty-four hours of when the youth is transitioning between custodians or caregivers, for example, following a transition into a kinship caregiver's home.

(4) Reimbursement may be made for the TSS service when rendered by a provider in accordance with paragraph (C) of this rule to a youth enrolled in the OhioRISE 1915(c) waiver program in accordance with rule 5160-59-04 of the Administrative Code.

(5) When determined eligible for the OhioRISE 1915(c) waiver, the initial seventy-two hours will be approved with the child and family-centered care plan, or until other appropriate behavioral health service provided under the OhioRISE plan are scheduled to begin, or whichever occurs first. When the TSS service is needed beyond a seventy-two hour period, the child and family-centered care plan will need to be updated, reviewed, and approved by the OhioRISE plan prior to additional TSS services being provided.

(6) When the OhioRISE plan denies, reduces, terminates or suspends TSS services, this constitutes an adverse benefit determination and can be appealed in accordance with rule 5160-26-08.4 of the Administrative Code.

(F) Service documentation for TSS will include each of the following to validate reimbursement for medicaid services:

(1) Date of service;

(2) Place of service;

(3) Name of youth receiving service;

(4) Medicaid identification number of youth receiving service;

(5) Name of provider;

(6) Provider identifier;

(7) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and corresponding initials are on file with the provider; and

(8) A summary of the amount, scope, duration, and frequency of services delivered that directly relate to the services specified in the approved child and family-centered care plan to be provided.

(9) A summary of when restraints, seclusion, and restrictive interventions were used including a date, time, the de-escalation techniques used to prevent the restraints, seclusion, and restrictive interventions and whether or not the use of restraints, seclusion, and restrictive interventions was included on the individual crisis and safety plan.