



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):

HCBS Electronic Visit Verification

Rule Number(s): 5160-32-02, 5160-32-03

Date of Submission for CSI Review: 6/26/2025

Public Comment Period End Date: 7/3/2025

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? __)

Amended/ 2 rules (FYR? N)

Rescinded/___ rules (FYR?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.

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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.

5160-32-02 titled Electronic visit verification (EVV) data collection specifies services subject to EVV requirements and outlines the regulatory foundation for using an alternate data collection vendor from what is provided by the Department.

The to be proposed change is to remove the term “agency” as the single designation for type of provider the rule applies to. This proposed change will expand options for non-agency providers to choose an alternate vendor.

5160-32-03 titled Alternate electronic visit verification (EVV) vendor sets forth the operational requirements for utilizing an alternate vendor for EVV data collection.

The to be proposed change is to remove the term “agency” as the single designation for type of provider the rule applies to. This proposed change will expand options for non-agency providers to choose an alternate vendor.

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.**

Rules: 5160-32-02, 5160-32-03

Authorized by: Section 5164.02 of the Ohio Revised Code.

Amplifies: 5164.02

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, the rules implement federal requirements. Congress enacted the 21st Century Cures Act under Section 1903 of the Social Security Act (42 U.S.C. 1396b) which requires Medicaid programs to implement EVV for home and community-based services. The EVV system implemented must capture the type of service provided, the time the service is provided, the location of service delivery, and the person providing the service. Failure to implement a compliant EVV system will result in a reduction in the federal funding for Medicaid services.

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 and do 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)?**

These rules are key for ODM to be compliant with the 21st Century Cures Act under Section 1903 of the Social Security Act (42 U.S.C. 1396b). The rules establish state policy for the provision of electronic visit verification for personal care services as required by the Centers for Medicare and Medicaid (CMS). Rule 5160-32-02 addresses data collection requirements for providers to support service claims and federal standards for data collection through electronic visit verification (EVV). Rule 5160-32-03 contains regulations for alternate EVV vendors who may be used by providers for EVV data collection outside of the state offered data collection system. Once codified, ODM can monitor the provision of services and supports for transparency and payment.

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

ODM will measure the success of rules OAC 5160-32-02, 5160-32-03 through improved payment accuracy and a reduction in fraud, waste, and abuse. ODM will also measure the success by demonstrating continued compliance with federal requirements.

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.

The proposed changes stem from discussions with state agency partners Ohio Department of Developmental Disabilities and Ohio Department of Aging in addition to community providers utilizing the EVV system. EVV Stakeholder engagement remains an integral and intentional part of the Department's operating policy. EVV stakeholders were provided opportunity to review and discuss during a stakeholder engagement meeting held April 28, 2025. Also, input was requested during an informal public feedback request held May 2 through May 12, 2025. The proposed changes were announced to over 30,000 stakeholders who have subscribed to the Department's EVV listservs.

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

Feedback received indicates providing an additional option for non-agency (independent) providers to use an alternate EVV vendor would be helpful and supports freedom of choice for people to chose companies they want to do business with.

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.

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.*

Alternative regulations were not considered by the department. The program structure meets compliance with the 21st Century Cures Act under Section 1903 of the Social Security Act (42 U.S.C. 1396b), in the least administratively burdensome manner.

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

ODM is the only entity authorized to enact EVV regulations contained in the amended rules, the Department maintains interagency agreements with the Ohio Department of Aging and the Ohio Department of Developmental Disabilities who operate the programs requiring EVV for personal care services. Department staff work with both agencies to ensure the rules align and are not duplicative. The to be proposed amended rules were reviewed by Ohio Medicaid policy development staff, Office of Legal Services, and the Office of Legislation to ensure there was no duplication.

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 is using email and ODM's website to communicate rule updates to providers and other stakeholders. ODM has a strong partnership with stakeholder organizations to ensure providers are aware of the changes included in this amendment.

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 business community impacted by the proposed rules include Medicaid fee-for-service and managed care providers of personal care and home health services.

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.*

These rules govern data collection and alternate vendor requirements. The adverse impacts are difficult to quantify and are dependent on time required for compliance or obtaining equipment and materials needed for compliance.

Costs would vary by provider and include:

- General administrative expenses for training providers on the use of EVV program requirements.
- If the use of an alternate data collection component is requested by an independent provider, the alternate vendor must satisfy all the technical and business requirements of ODM.
- If the use of an alternate EVV vendor is requested, the provider will notify ODM.
- Obtaining a signed consent to use GPS.
- Failure to comply with EVV program requirements may result in denial of payment or post payment review penalty.

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*).

The to be proposed rules expand options for independent providers to choose an alternate EVV vendor outside of the state EVV solution and the Financial Management System (FMS) alternate vendors.

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

ODM is federally required to implement and operate an EVV program that is in compliance with the 21st Century Cures Act under Section 1903 of the Social Security Act (42 U.S.C. 1396b). Failure to comply with this federal statute will result in decreased federal program funding.

Regulatory Flexibility

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

No. The underlying federal requirement does not provide any exemptions or alternative means of compliance for small businesses. Reimbursement policies are applied uniformly, and no exceptions are made based on the provider's 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?

Not applicable.

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

ODM offers state issued devices at no cost to providers selecting this option.

- Training is available to providers through self-paced online modules.
- One-on-one technical assistance is offered to providers at the request of a provider.
- EVV contact information for technical or billing related questions and concerns, enrollment information, reporting Medicaid fraud can be found on ODM's website here:

<https://medicaid.ohio.gov/families-and-individuals/citizen-programs-and-initiatives/evv/contactinformation>

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5160-32-02 Electronic visit verification (EVV) data collection.

- (A) The Ohio department of medicaid (ODM) EVV system collects and maintains data for medicaid programs and services subject to participation in the EVV program.
- (B) Data collection method option:
- (1) Application installed on one of the following devices:
 - (a) An electronic device provided by ODM that is available at no cost to the service provider. ODM's contracted entity is responsible for electronic device distribution, collection, and ongoing maintenance activities.
 - (b) A mobile electronic device owned by the service provider or direct care worker.
 - (i) ODM is not responsible for any costs incurred.
 - (ii) Data services connected to the service provider or direct care worker owned device will be used to transmit visit data from the application to the data aggregator in near real time.
 - (iii) The device used with the application will comply with device qualifications found at <https://medicaid.ohio.gov/resources-for-providers/special-programs-and-initiatives/electronic-visit-verification>.
 - (2) Telephony: The use of a phone call to start or end a visit.
 - (3) Manual entry: Manual visit entry is only permissible in the event verification through a device with an application or telephony is not available or appropriate based on the immediate needs of the individual. It is not to be used for routine visit verification.
 - (4) Alternate vendor:
 - (a) ~~Agency providers~~ Providers may utilize an alternate EVV system, as described in rule 5160-32-03 of the Administrative Code.
 - (b) Financial management service vendors contracted with ODM, the Ohio department of aging, the Ohio department of developmental disabilities, or their designees will obtain and maintain certification as an alternate vendor.
- (C) Visit data elements captured in accordance with Section 1093 of the Social Security Act (42 U.S.C. 1396b) include:
- (1) The type of service performed;
 - (2) The individual receiving the service;
 - (3) The date of the service;
 - (4) The location of service delivery;
 - (5) The direct care worker providing the service; and
 - (6) The time the service begins and ends.

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(D) Data aggregator:

- (1) Collects and stores visit data, regardless of method of visit capture.
- (2) Confirms visit data present in the EVV system contains all necessary elements.
- (3) Confirms claims submitted to the payor are supported by the service provider's visit data.

- (E) Global positioning system (GPS) functionality of any application or device may be used only upon obtaining the signed consent of the individual receiving the service. Signed consent will be obtained annually, and GPS functionality cannot be activated if consent is not obtained for a respective annual period. The provider will maintain a copy of that signed consent. An individual who has provided consent for GPS functionality may revoke that consent at any time.
- (F) The location of service delivery for each visit will be recorded by some other means, such as drop-down menus indicating the location of service in the home or community of the individual.
- (G) It is the responsibility of the service provider to ensure accuracy of information entered into the EVV system. Missing visit data or details needing additional action by the service provider will result in a notification to the service provider, otherwise known as an exception.
- (H) Claims cannot be substantiated for payment until all exceptions are resolved by the service provider and EVV visit data supports the claim. Unsubstantiated claims may result in denial of payment or post payment review penalty. ODM will communicate with affected service providers at least three months prior to initiating the process of claims denial or post payment review penalty due to EVV as set forth in this paragraph.

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5160-32-03 Alternate electronic visit verification (EVV) vendor.

- (A) An alternate EVV vendor may be used for EVV data collection.
- (B) The state is not responsible for any costs related to the development, approval, testing, and utilization of a qualifying alternate EVV vendor.
- (C) To use an alternate EVV vendor, ~~agency~~ providers should:
 - (1) Notify the Ohio department of medicaid (ODM) or its contracted entity of the intent to seek ODM approval to utilize the selected alternate EVV vendor; and
 - (2) Complete alternate system aggregator training.
- (D) The ~~agency~~ provider is responsible to ensure:
 - (1) The visit data in the aggregator is correct and reflects the visit as it occurred; and
 - (2) Billing is supported by visit data.
- (E) System, technical, and business specifications to become an alternate EVV vendor are published on the ODM website <https://medicaid.ohio.gov/resources-for-providers/special-programs-and-initiatives/electronic-visit-verification/alternate-system/alternate-system>. Failure to meet the specifications at any time could result in Ohio certification revocation.
- (F) A financial management service vendor contracted with ODM, the Ohio department of aging, and the Ohio department of developmental disabilities will obtain and maintain the alternate EVV vendor certifications.
- (G) ODM may request re-approval of any alternate EVV system at any time.