



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Medicaid (ODM)

Rule Contact Name and Contact Information:

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

Intensive home based treatment (IHBT)

Rule Number(s): 5160-27-05

Date of Submission for CSI Review: October 29, 2021

Public Comment Period End Date: November 5, 2021

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Rescinded/ ____ rules (FYR?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.

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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.

Rule 5160-27-05 entitled “Intensive home based service” sets forth Medicaid policy regarding the service, home based treatment service. Provider eligibility requirements are stated as well as Medicaid payment requirements. Service provision limitations are also stated. This is the new proposed rule to replace a rescinded rule with a different title but with the same number.

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.**

5162.02, 5162.03, 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**

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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.*

No.

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

This rule as well as the proposed changes in the rule, does not include provisions that are addressed in federal requirements; therefore, they do not exceed any federal requirements. ODM, to support the effective and efficient administration of the Medicaid program and for the safety of Medicaid recipients, places desired policy provisions and requirements in OAC rule so they may be enforceable.

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)?

This rule states requirements that support the effective, efficient operation of the Medicaid program by stating requirements practitioners must following to support the safe provision of the IHBT service.

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

The major information sources for reviewing outcome measures will be Medicaid claims and reports from key stakeholders. Some examples of outcome measures include changes in consumer utilization of IHBT and improved health outcomes of Medicaid consumers receiving the service.

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.

While developing the IHBT rule, ODM has consistently sought to involve interested parties. An Advisory Council was developed to obtain critical stakeholder feedback and expert

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clinical advice for this rule as well as other Medicaid rules. Since the Council's creation in January 2021, ODM has held several separate meetings with stakeholders to discuss this rule, other Medicaid service rules, and related service requirements and specifications.

In addition to the Advisory Council, ODM used workgroups to develop the draft IHBT rule. 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
The Buckeye Ranch
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
Cincinnati Children's Hospital Medical Center (CCHMC)

The rule (as 5160-59-03.3) was posted through the clearance process from June 9 to June 18, 2021 for stakeholders to provide comments. Additionally, the reimbursement rates for IHBT were posted through the clearance process from September 7 to September 21, 2021 as an appendix to rule 5160-59-03.9, which is now being proposed as an appendix to rule 5160-27-05.

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

In addition to the feedback received during OhioRISE Advisory Council meetings, ODM received several comments on IHBT during the rules clearance process. Comments were received from the Public Children Services Association of Ohio, Ohio Children's Alliance, Cincinnati Children's Hospital Medical Center, and Buckeye Ranch. Comments included concerns and questions related to eligibility for IHBT and OhioRISE program eligibility; billing for other services, including the Child and Adolescent Needs and Strengths (CANS) assessment, for youth receiving IHBT; and reimbursement rates.

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Based on feedback, ODM revised IHBT rule language, and will clarify in future OhioRISE rules, policies related to IHBT and OhioRISE eligibility. Additionally, ODM clarified language related to the provision of other services while receiving IHBT.

ODM received one comment requesting reconsideration of the payment rate for Functional Family Therapy (FFT). ODM used an independent rate model to develop the rate for FFT and other IHBT rates, taking into account components and assumptions specific to each type of IHBT. ODM intends to move forward with the proposed rate for FFT, and will continue to review and monitor rates on an ongoing basis.

ODM will respond to each comment received. Clarification will be provided, as needed, concerning specific rule requirements.

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 this rule. This data was used to determine the fiscal impact on ODM. Ohio Medicaid also used publicly available information, including but not limited to, wage information from the Bureau of Labor Statistics (BLS), specifically for Ohio in developing IHBT payment rates.

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 were not applicable. ODM makes use of OAC rules to state policies and regulations so it may enforce and, when necessary, conduct program integrity activities regarding the provision of services to Medicaid recipients.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

ODM did not consider a performance-based regulation, because the nature of the regulations described in these rules do not lend themselves to a performance-based standard.

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

ODM, as the agency charged with administering the Ohio Medicaid program, is the only entity authorized to enact the Medicaid regulations in these rules. ODM staff review the rules to check for the duplication of regulations. Also, as the services described in the rules

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are behavioral health in nature, OhioMHAS, Ohio's regulatory body for mental health and addiction treatment services, reviewed the rules.

15. 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 staff, including provider support staff, will be trained to assist providers when required. Providers will be notified through their advocacy organizations as well as via an ODM transmittal letter.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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

The rule will impact those behavioral health providers that choose to render the IHBT service to Medicaid recipients.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

The rule does not create an adverse impact.

c. Quantify the expected adverse impact from the regulation.

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.

As the rule does not create an adverse impact this question is not applicable.

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

This rule supports the effective and efficient operation of the Medicaid program and supports the safe and appropriate provision of the IHBT service to Medicaid recipients. It will help prevent the provision of unnecessary services to Medicaid recipients, and hold providers accountable to specific Medicaid requirements to support the safe and effective provision of services.

Regulatory Flexibility

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

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

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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?

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

20. 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 revisions in the proposed rules have a unique email address available to them, BH-Enroll@medicaid.ohio.gov.