



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information: Tommi Potter, Rules Administrator,
Rules@medicaid.ohio.gov, 614-752-3877

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

Ohio Resilience through Integrated Systems and Excellence (OhioRISE) rules

Rule Number(s): 5160-59-03.4, 5160-59-03.5, 5160-59-05.1, 5160-59-05.2

Date of Submission for CSI Review: 10/26/23

Public Comment Period End Date: 11/2/23

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 4 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Rescinded/___ rules (FYR?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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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. The changes being proposed do not have a business impact; however, the original rules that were filed and approved included impacts to the provider community. The estimated effective date is January 2024.

OAC rule 5160-59-03.4, entitled “OhioRISE: behavioral health respite services,” defines the eligible providers able to render the service; settings where the service can be provided; and limitations to the service. This rule will be proposed for amendment to add language to clarify the meaning of “established relationship” and to clarify the circumstances when the service can be provided in a foster care setting.

OAC rule 5160-59-03.5, entitled “OhioRISE: primary flex funds,” defines primary flex funds as a service, sets yearly amount available, how it can be used to purchase services along with setting the limitations. It also establishes financial management services as the primary provider and the condition of participation as a provider. This rule will be proposed for amendment to align the rule language with the changes that the Ohio Department of Developmental Disabilities made to their similar Medicaid waiver service, Participant-Directed Goods and Services, in 2022.

OAC rule 5160-59-05.1, entitled “OhioRISE home and community-based services waiver: out-of-home respite,” defines the eligible providers able to render the out of home respite service included in the OhioRISE 1915(c) waiver along with the settings where the service can be provided,

and limitations to the service. This rule will be proposed for amendment to remove Psychiatric Residential Treatment Facilities (PRTFs) as an allowed provider of this service.

OAC rule 5160-59-05.2, entitled “OhioRISE home and community-based services waiver: transitional services and supports (TSS),” defines the eligible providers able to render the service, settings where the service can be provided, and limitations to the service. This rule will be proposed for amendment to make technical corrections.

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.

No; however, 42 CFR Part 438 imposes comprehensive requirements on the state regarding Medicaid managed care programs. The proposed rules are not related to changes to federal regulation.

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.

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 rules in OAC Chapter 5160-59 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 this regulation is to:

- o 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;
- o 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);
- o 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?

ODM monitors compliance with the regulation through reporting requirements established within the managed care provider agreement and the OhioRISE plan provider agreement. 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 has consistently involved 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 has held monthly meetings with stakeholders to discuss general program principles and system of care philosophy, federal authorities, and service concepts. The new and enhanced state plan, 1915(b), and 1915(c) waiver behavioral health services, service specifications and regulatory concepts, draft rule language, and service rate setting were 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 has also been working 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 were posted through the clearance process. These rules were in clearance from July 17 to July 31, 2023 for stakeholders to provide comments. ODM has provided responses to each 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 obtained feedback from stakeholders regarding suggested revisions to the rules via multiple opportunities prior to the clearance process. Additionally, stakeholders provided input on the draft rules via the clearance process.

Specifically, the changes to OAC 5160-59-03.4, the Behavioral Health Respite rule, were made at the request of OhioRISE stakeholder organizations who asked for increased flexibility and clarification on how to provide the service.

ODM also received positive feedback on aligning language in the OAC 5160-59-03.5, the Primary Flex Funds rule, with the similar 1915(c) waiver service that has been implemented by the Ohio Department of Developmental Disabilities known as Participant Directed Goods and Services.

The agency received 6 comments which went through an internal review process and revisions to the draft rules were made based on the stakeholder comments.

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.

OAC rules state and implement policies and regulations so it may enforce and, when necessary, conduct program integrity activities regarding the provision of services to Medicaid recipients. If ODM attempted to use alternative regulations, this may allow for inconsistencies across the Medicaid program and not enforce the necessary regulations. The amendments to the rules include general updates to keep the rules current and to implement minor changes to the OhioRISE program.

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 administering the Ohio Medicaid program, is the only entity authorized to enact the regulations in these rules. ODM staff reviews the rules with other ODM offices and works across the Medicaid OAC rules to use incorporation by references to minimize

duplicative regulations. Incorporation by references is used in the rules within Chapter 5160-59 to prevent duplication to of existing Ohio regulation.

All Medicaid regulations governing managed care programs are promulgated and implemented by ODM only. No other state agencies impose requirements that are specific to the Medicaid managed care program, and the rules included in Chapter 5160-59 are not duplicated elsewhere in Agency 5160.

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.

OhioRISE implementation plans include a robust provider training platform, which are offered online to assure statewide access. Provider training will cover broad OhioRISE system of care principles, covered services and their specifications, care coordination, and community engagement. The OhioRISE plan, ODM staff, including provider support staff, will be trained to assist with assisting individual provider queries. In addition to updating the OhioRISE web page, ODM will continue to work with the stakeholder groups and also provide communications to advocacy and association organizations to be shared with the provider community. The OhioRISE plan, as well as the state’s contracted Child and Adolescent Behavioral Health Center of Excellence (CABHCOE), will also be conducting outreach for provider training and education.

ODM will notify the OhioRISE Advisory Council, the OhioRISE plan and other MCOs 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

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 new OAC 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 OAC rules and provided to Medicaid recipients 20 years of age and under.

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.

- o OAC rule 5160-59-03.4 OhioRISE: behavioral health respite service requires behavioral health respite providers to be OhioMHAS certified and/or be DODD certified. Behavioral

health respite providers must 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. 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.

o **OAC rule 5160-59-03.5 OhioRISE: primary flex funds** requires care management entities to maintain records and service plans for primary flex funds/ goods and services and submit to the OhioRISE plan for approval. CME costs include the staff time to maintain and submit/ report information to the OhioRISE plan. The OhioRISE plan's processes for approving and distributing flex funds carries an additional administrative cost.

o **OAC rule 5160-59-05.1 OhioRISE home and community-based services waiver: out-of-home respite** requires providers to be licensed by OhioMHAS, be DODD certified, and for agency providers to hold a certification for community respite services. 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. 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.

o **OAC rule 5160-59-05.2 OhioRISE home and community-based services waiver: transitional services and supports** requires providers to be licensed 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. 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.

- 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*).** Changes were made to OAC rule 5160-59-03.4, entitled "OhioRISE: behavioral health respite services," to reduce regulatory burden. This rule will add language to clarify the meaning of "established relationship" and to clarify the circumstances when the service can be provided in a foster care setting to improve readability.

17. 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. The use of OAC is needed to implement and enforce program integrity along with safety of the Medicaid individuals. The use of OAC is also needed for the OhioRISE plan compliance with federal regulations.

Regulatory Flexibility

18. 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.

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 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/manac/managed-care/ohiorise/>.