



RULE COMMITTEE REPORT

The Ohio Department of Medicaid has engaged in amendment to several rules that will take effect 1/1/2024. This report was prepared by members of the OCHCH Rule Committee to provide a summary of rule changes and potential impact for providers. This report is provided for informational purposes only and is not intended to serve as legal or regulatory advice.

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5160-44-01

Nursing Facility-based level of care HCBS Programs: Settings

Scope:

- State Plan
- MyCare Services
- PASSPORT
- Home Care Waiver

Substantive Changes:

1. Added psychiatric residential treatment facility to exclusion list of settings for HCBS services to be rendered. (5160-44-01 (A)(2)(e))
2. Added requirements that the individual is able to have visitors of their choosing at any time in a controlled residential setting. (5160-44-01 (C)(5))



5160-44-16

Nursing Facility-based level of care HCBS Programs: Personal Emergency Response System

Scope:

- State Plan
- MyCare Services
- PASSPORT
- Home Care Waiver

Substantive Changes:

- Language removed
- ODM and ODA are authorized to deem any provider approved by ODM or certified by ODA or the Ohio department of developmental disabilities (DODD) to provide waiver services as having satisfied the requirements for approval by ODM or certification by ODA for the same or similar services. (5160-44-16 (F))



RULE COMMITTEE REPORT



5160-44-22

Nursing Facility-based level of care HCBS Programs: Waiver Nursing Services

Scope:

- MyCare Waivers
- PASSPORT
- Home Care Waiver

Substantive Changes:

1. Added language to preclude Waiver nursing services to be used in place of similar services available through third party insurers, State Plan services and community supports. (5160-44-22 (B)(1))
2. Added language to permit parent of minor child, spouses and relatives appointed legal decisions-making authority to serve as direct care worker in accordance with 5160-44-32. (5160-44-22 (C)(1)(a))
3. Exempts parents of minor children from maximum direct care hours identified in 5160-44-32. (5160-44-22 (C)(1)(a))
4. Added language to requires RN assessment visit to be billed through the state plan nursing assessment code. (5160-44-22 (E)(3))
5. Removes allowance for required face-to-face visits to be completed electronically or via telephone. (5160-44-22(H))



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5160-44-27

Nursing Facility-based level of care HCBS Programs: Home Care Attendant Services

Scope:

- MyCare Waivers
- PASSPORT

Substantive Changes:

1. Two registered nurse visits/year must be completed in person. The remainder may be completed via telehealth.
2. First Aid and CPR certification class can no longer be solely internet-based.
3. Maintaining CPR certification no longer counts towards continuing education requirement.
4. Re-organized the ability to provide services in a group setting as authorized in the individuals' PCSP (5160-44-27(H)).
5. ODM 02389 "Home Care Attendant Medication Authorization" form and/or the ODM 02390 "Home Care Attendant Skilled Task Authorization" form will be updated and reflected in the clinical record should any changes in home care attendant service provisions be needed.
6. Home Care attendant will maintain clinical record accessible in the home for other providers for 60 days.



5160-44-31

Nursing Facility-based level of care HCBS Programs: Provider Conditions of Participation

Scope:

- MyCare Waivers
- PASSPORT
- Home Care Waiver

Substantive Changes:

1. If an individual does not to sign to verify services at the time of the visit, signature is required within three business days. This is a change from the previous requirement of the next scheduled visit.
2. Restricts waiver service providers from being designated or serving in decision making capacity for individuals unless otherwise specified in Rule 5160-44-32.



RULE COMMITTEE REPORT



5160-44-32

Home and community based Medicaid waiver program provider and direct care worker relationships.

Scope:

- MyCare Services
- PASSPORT
- Home Care Waiver

Substantive Changes:

This is a new rule that was created as a result of the Appendix K unwinding. The rule expands who can serve as a direct care worker in certain waiver programs. Key provisions are outlined below.

Who is eligible to serve as a direct care worker?

Parent of a minor child, spouse of an adult, and relatives of an individual above the age of 17 with legal representative designation (i.e. authorized representative, power of attorney, representative payee). Details regarding eligible individuals are cited at 5160-44-32(E)(1), 5160-44-32(F)(1) and 5160-44-32(F)(2).

Can anyone serve as a direct care worker if they meet the relationship requirements?

No. Parents, spouses and relatives detailed in the rule may *only* serve as a direct care worker if there is no other willing and able provider or direct care worker and ODM, ODA, DODD or their designee has determined the health and safety needs of the individual can be met.

How will ODM, ODA, DODD or their designee determine if someone can serve as a direct care worker?

Services provided by parents of a minor child or spouse must meet “extraordinary care requirements” as determined through ODM 10372 “Ohio Extraordinary Care Instrument”.

How many hours of service can an individual receive from a parent, spouse or other responsible individual?

An individual may not receive more hours than they are assessed to need. They may also not receive more than 40 hours per week from a parent, spouse or other responsible individual. For parents providing services to a minor child, the limit of forty hours per week is applied to a combination of both parents.



RULE COMMITTEE REPORT



5160-44-32

Home and community based Medicaid waiver program provider and direct care worker relationships, continued

Are there any new requirements for individuals receiving services from a parent, spouse or other responsible party?

Yes. The individual must agree to and cooperate with monthly care management contacts. These will be a combination of telephonic and in-person with no more than sixty calendar days between in-person visits. The parent, spouse or other responsible party must participate in visit requirements as detailed in the individual's PCSP.

What limits are detailed in the rule?

The direct care worker may not verify service provision on behalf of the individual. A direct care worker may not receive payment from any other source for activity other than direct care for the individual during the time authorized to provider services. The direct care worker may not provide care to other persons while billing Medicaid services.

If ODM, ODA, DODD or their designee determine that a parent, spouse or other responsible individual does not qualify under this rule, does the individual have appeal rights?

No. The decision is not subject to appeal rights under division 5106:6 of the Administrative Code.



RULE COMMITTEE REPORT



5160-45-01

Ohio Department of Medicaid (ODM) - Administered Waiver Program: Definitions.

Scope:

- MyCare Waivers
- PASSPORT
- Home Care Waiver

Substantive Changes:

1. Case manager visits are only to be in-person
2. Comprehensive assessments are to be in-person only



5160-46-04

Ohio home care waiver: definitions of the covered services and provider requirements and specifications.

Scope:

- Home Care Waiver

Substantive Changes:

1. Requires At least twice per year, the RN will conduct RN assessment visits in-person. All other RN assessment service visits may be conducted via telehealth, unless the individual's needs necessitate an in-person visit.
2. When the RN performs an RN assessment visit, the RN will bill the state plan nursing assessment code set forth in appendix A to rule 5160-12-08 of the Administrative Code.
3. Adds parent of minor children, spouse, and relatives appointed legal decision making authority may only serve as direct care worker in accordance with 5160-44-32
4. First Aid and CPR certification class can no longer be solely internet-based.
5. Requires summary about progress made towards goals in discharge summary.

