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Hearing Date: 8/16/2024

Today's Date: 9/3/2024

Agency: Ohio Department of Medicaid

Rule Number(s): **5160-1-06.1, 5160-31-05, 5160-31-07, 5160-44-33 and 5160-46-06**

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If no comments at the hearing, please check the box.

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List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Kelly Howard
2. Veronica Charles
3. Susan Gregg
4. Janemarie Sowers
5. Joe Russell
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## Hearing Summary Report

### **Consolidated Summary of Comments Received**

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

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#### **Summary of the comments received from Kelly Howard for Rule 5160-44-33:**

It remains unclear how a care manager would differentiate between an authorization between a full day of structured family caregiving services versus increased personal care services or choices home care attendant services. If a caregiver resides with the individual, would SFC be selected for those providers who hold this certification, rather than personal care? If section (A) of the Structured Family Caregiving rule could include activities covered under this service, such as heavy chores, assisting with ADL's/IADL's, transporting to medical appointments/escorting individuals, this would be helpful.

Caregiver Qualifications: Rule 5160-44-33 vs 173-39-02.25

Rule 173-39-02.25 notes "the provider may allow a person to serve as a caregiver only if the person meets at least one of the following qualifications, either eight hours of training or the PCS aide meets a qualification outlined in 173-39-02.11. Rule 5160-44-33 notes the caregiver may be qualified by eight hours of initial training. Should the ODA PCA qualifications be included in the ODM rule?

Coaching Staff: Rule 5160-44-33

Section B5 outlines that the provider's coaching and support professional staff will include an RN, LPN, and either an LSW or LISW. We find that personal care providers do not employ LSW's or LISW's and about half employee LPN's. Will this rule require three or one of those specific employees?

SFC Rate Reimbursement

Is there a rate of pay expectation for providers in paying these caregivers?

Unit of Service Verification

The SFC ODM/ODA rules do not specify what is to be included within the daily service verification documentation. In addition, will EVV be an expectation of SFC? Currently caregivers under personal care can seek approval to be exempt from utilizing EVV if living with an individual.

#### **Summary of the comments received from Veronica Charles for Rule 5160-44-33:**

In the proposed rule, ODM offers specific criteria under 5160-44-33(A) for which an individual may enroll and receive care through the newly established Structured Family Caregiving ("SFC") service. Out of concern that the provisions in this section may prevent non-independent individuals and individuals suffering from cognitive disabilities from being able to effectively enroll in the new Structured Family Caregiving service, we respectfully ask for ODM to clarify whether individuals who are not independent and have a different guardian other than themselves are eligible to participate in the program.

The provisions listed under 5160-44-33(5)(a) also require the employment of both a skilled nurse and social worker to be on the provider's support professional staff. We request that the state employ language that requires only one of the clinically appropriate professionals (RN, LPN, RSW, or LISW) to be included in the provider's support professional staff.

Maxim is also seeking additional clarification regarding what meets the definition of a "full day of service" and what meets the definition of a "half day of service."

#### **Summary of the comments received from Susan Gregg for Rules 5160-1-06.1, 5160-31-05, 5160-31-07, 5160-44-33 and 5160-46-06:**

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Careforth appreciates the opportunity to express our support for the finalization of the Structured Family Caregiving (SFC) service rule and associated rules in this packet. On behalf of family caregivers across Ohio, we extend our gratitude to the Ohio Department of Medicaid HCBS Policy Team and the Ohio Department of Aging for their efforts to develop the Structured Family Caregiving service and for the collaboration with, and responsiveness to, stakeholders during this effort.

**Summary of the comments received from Janemarie Sowers for Rules 5160-44-33 and 5160-46-06:** SFC rule has an excessive number of requirements on the agency for the reimbursement rate. Family providers should be excluded from the licensing and or certification requirements.

Rule 5160-46-06 - Ohio home care waiver program: reimbursement rates and billing procedures  
The reimbursement rate (\$102.68) for Structured family caregiving is appalling. It's also not the rate ODM listed in their 1915c waiver application to CMS for approval as that rate was \$116.48.

**Summary of Comments Received from Joe Russell for Rule 5160-44-33:**

Thank you to the Ohio Department of Medicaid for their consideration and changes made to the structured family caregiving rule. We appreciate that ODM was listening and made suggested changes to strengthen the rule.

The structured family caregiving rule is not clear if a family member would be allowed to be a provider via self-direction. If there's another rule that expressly outlines family caregiving, there probably is rationale there. It might make sense to allow both of those things to happen, but for the sake of the Medicaid program, there ought to be a little bit more detail in this rule as to what differentiates these rules and when it's appropriate and not appropriate for a person to be providing self-directed care within the structured family caregiving model.

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### **Incorporated Comments into Rule(s)**

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

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No changes were made to the rules. The Ohio Department of Medicaid appreciates and understands the context of the feedback received. Prior to filing 5160-44-33, ODM solicited and received significant feedback from a variety of stakeholders. Throughout the informal feedback period and subsequent clearance activities, many requested changes were made to the draft rule. The final version filed is consistent with federal and state regulations governing the waiver programs and supports the obligation of ODM to ensure the health and safety of individuals enrolled on the waiver programs.

In response to comments regarding how to differentiate between a full day of structured family caregiving services vs. other waiver services and what meets the definition of a half day of service vs. a full day of service, the care manager and the individual would review the service options and determine which service would best meet the specific individual's needs. Just like the other waiver services, structured family caregiving is optional, and it may not be the option that best meets the individual's and/or caregiver's needs. A half day is defined by the use of up to 2 hours of the other services listed in paragraph (C)(3) of rule 5160-44-33. Full day is defined when other services are not used for 2 hours or more.

In response to question regarding if the Ohio Department of Aging's Personal Care Aide service qualifications should be included in rule 5160-44-33; the rule does include these qualifications, specifically in paragraph (B)(3)(b).

In response to the comment regarding provider's coaching and support professional staff type, the staff may include any of the following: RN, LPN, LSW or LISW.

In response to comment regarding rate of pay expectation for providers, the Ohio Department of Medicaid does not dictate the minimum wage range. Rule 5160-46-06 sets the payment amount to the agency provider. The Ohio Department of Medicaid does not have a role in determining the amount the agency pays the caregiver.

In response to comment regarding service verification documentation, rule 5160-44-33 outlines the requirements in paragraph (B)(5).

In response to comment regarding EVV requirements, structured family caregiving is paid at a per diem rate and not subject to federal or OAC requirements to log visits for EVV purposes.

In response to comment regarding individuals not being able to effectively enroll in structured family caregiving service, the person or their representative manage selection of and access to this service, just like they do for other waiver services.

In response to comment regarding reimbursement rate listed in rule 5160-46-06, the rates proposed are based on the appropriation levels set as part of the budget. Any future rate changes will be based on additional funding appropriated through the legislative process.

In response to comment regarding the structured family caregiving rule not being clear if a family member would be allowed to be a provider via self-direction, structured family caregiving is not a self-directed service and the final version that was filed does not indicate that structured family caregiving is a

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self-directed service.