FROM: Maureen M. Corcoran, Director

TO: Ohio Department of Medicaid Clearance Reviewers

SUBJECT: Behavioral Health Peer Support Service Rule

The following rule will be proposed for adoption as a new rule:

Rule 5160-27-14 "Behavioral health peer support service."

The following rules will be proposed for amendment:

Rule 5160-43-01 "Specialized recovery services program definitions."
Rule 5160-43-03 "Specialized recovery services program individual rights and responsibilities."
Rule 5160-43-04 "Specialized recovery services program covered services and provider requirements."
Rule 5160-43-05 "Specialized recovery services program provider conditions of participation."
Rule 5160-43-08 "Specialized recovery services billing procedures and payment rates for recovery management."
Rule 5160-43-09 "Specialized recovery services program criminal records checks for providers."

The new rule that will be proposed addresses a newly covered Medicaid service which includes the provision of peer support service for both mental health and substance use disorder conditions. The rule states the coverage, limitation, and reimbursement policies as well as the eligible provider requirements.

The four rules that will be proposed for amendment will remove references to peer support service as it is currently a component of the specialized recovery services program. Peer support service needs to be removed from the specialized recovery services program as it will become, upon the effective date of these rules, a general Medicaid state plan service. Two rules are being proposed for amendment to update Code of Federal Regulations citations.

Questions pertaining to this clearance should be sent to Rules@Medicaid.Ohio.gov.

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register for Joint Committee on Agency Rules Review's (JCARR) RuleWatch at www.rulewatchohio.gov where an account can be created to be notified of rule actions by the rule number or department.

The main Ohio Department of Medicaid (ODM) web page includes links to valuable information about its services, programs and rules; the address is http://www.medicaid.ohio.gov.

DRAFT - NOT FOR FILING

5160-27-14 Behavioral health peer support service.

(A) For the purposes of this rule, behavioral health peer support service is the service as set forth by the Ohio department of mental health and addiction services (OhioMHAS) in rule 5122-29-15 of the Administrative Code.

(B) Eligible providers.

(1) An eligible rendering provider of peer support services is:

(a) A person who is eligible to provide peer support services in accordance with rule 5122-29-15.1 of the Administrative Code; and

(b) An eligible provider of behavioral health services in accordance with rule 5160-27-01 of the Administrative Code.

(2) An eligible billing provider is:

(a) An eligible behavioral health provider that meets the conditions in paragraph (A)(1) or (A)(2) of rule 5160-27-01 of the Administrative Code; and

(b) Employs or contracts with an eligible rendering provider of peer support services as described in this rule.

(C) Coverage.

(1) The peer support service is covered when:

(a) Provided in accordance with the activities as described in rule 5122-29-15 of the Administrative Code.

(b) Rendered as a component of behavioral health treatment for the purpose of addressing the individual's behavioral health care needs relating to a mental health or substance use disorder.

(c) Intended to achieve goals or objectives based on and documented in a current individualized treatment plan meeting the requirements in rule 5122-27-03 of the Administrative Code..

(D) Limitations.

(1) The peer recovery service must be prior authorized when rendered for more than four hours to the same individual on the same date of service.

(2) Transportation activities that do not include the provision of a peer support service are not covered.

(3) Provision of a peer support service is reimbursed in accordance with this rule and may not be reimbursed as another covered medicaid service, including, but not limited to, the following:

(a) Community psychiatric supportive treatment.

(b) Therapeutic behavioral services.

(c) Psychosocial rehabilitation.

(d) Substance use disorder target case management.

(4) Payment is not allowable when a peer support service is provided in a group setting and the certified peer supporter to client ratio exceeds one to twelve.

(5) When peer support service is delivered to caregivers or family members of the individual, it is reimburseable when the purpose of the service is to address the behavioral health needs, goals, and objectives as documented in the individual's treatment plan.

(E) Reimbursement.

(1) The medicaid reimbursement rate for the peer support service is stated in the appendix to rule 5160-27-03 of the Administrative Code. The peer support service is not reimbursable when covered as part of another medicaid reimbursable service. Reimbursement will not be made for peer support services when an individual is:

(a) Receiving intensive home-based treatment as described in rule 5122-29-28 of the Administrative Code.

(b) Receiving assertive community treatment as described in rule 5160-27-04 of the Administrative Code.

(c) Receiving mobile response and stabilization service as described in rule 5160-27-13 of the Administrative Code.

(d) Receiving substance use disorder residential treatment services as described in rule 5160-27-09 of the Administrative Code, except when the peer support service is necessary to support admission to and discharge from the substance use disorder residential treatment. Payment for the services provided during a substance use disorder residential treatment stay is made in accordance with rule 5160-27-09 of the Administrative Code.

(e) Receiving inpatient hospital psychiatric services as described in Chapter 5160-2 of the Administrative Code, except when the peer support service is necessary to support admission to and discharge from the hospital. Payment for the services provided during an inpatient hospital stay is made in accordance with Chapter 5160-2 of the Administrative Code.

(f) Receiving psychiatric residential treatment facility (PRTF) services as described in Chapter 5122-41 of the Administrative Code and rule 5160-59-03.6 of the Administrative Code, except when the peer support service is necessary to support admission to and discharge from the PRTF. Payment for the services provided during a PRTF stay is made in accordance with rule 5160-59-03.6 of the Administrative Code.

DRAFT - NOT FOR FILING

5160-43-01 Specialized recovery services program definitions.

~~(A)~~ (A) ~~This rule contains the definitions used in Chapter 5160-43 of the Administrative Code applicable to the specialized recovery services program.~~

~~(B)~~ (A) ~~Definitions.~~The following definitions apply to Chapter 5160-43 of the Administrative Code:

(1) "Adult Needs and Strengths Assessment (ANSA)" (8/2021) is an integration information assessment tool for use in the development of individualized person-centered care plans, to monitor outcomes, and to help design and plan systems of care for adults with behavioral health challenges.

(2) "Authorized representative" means a person the individual appoints to act on his or her behalf in accordance with rule 5160-1-33 of the Administrative Code.

(3) "Clinical record" is a record containing written documentation that must be maintained by a service provider.

(4) "Health and safety action plan" means the document created between the Ohio department of medicaid (ODM) or its designee and an individual enrolled in the program that identifies the interventions recommended by the recovery manager to remedy risks to the health and welfare of the individual.

(5) "Home and community-based services (HCBS) setting" has the same meaning as set forth in rule 5160-44-01 of the Administrative Code.

(6) "Incident" means an alleged, suspected or actual event that is not consistent with the routine care of and/or service delivery to an individual as set forth in rule 5160-44-05 of the Administrative Code. Incidents include, but are not limited to abuse, neglect, exploitation, misappropriation, and inappropriate service delivery.

(7) "Individual" means a person who is pending enrollment or who is enrolled in the specialized recovery services program and therefore is directed to adhere to the rules in Chapter 5160-43 of the Administrative Code.

(8) "Individualized placement and support - supported employment (IPS-SE)" means the implementation of evidence-based practices allowing individuals to obtain and maintain meaningful employment by providing training, ongoing individualized support, and skill development to promote recovery. IPS-SE is an evidence based practice which is integrated and coordinated with mental health treatment and rehabilitation designed to provide individualized placement and support to assist individuals with a severe and persistent mental illness to obtain, maintain, and advance within competitive community integrated employment positions.

(9) "Legally responsible family member" means an individual's spouse, or in the case of a minor, the individual's birth or adoptive parent.

~~(10)~~ (10) ~~"Peer recovery support" means a service that provides community-based supports to an individual with a mental illness with individualized activities that promote recovery, self-determination, self-advocacy, well-being and independence through a relationship that supports the person's ability to promote his or her own recovery. Peer recovery supporters use their own experiences with mental illness to help individuals reach their recovery goals.~~

~~(11)~~ (10) "Person-centered service plan" means a document that identifies goals, objectives, and interventions

selected by the individual. The plan identifies and addresses the assessed needs, services, and supports of the individual and is developed in accordance with 42 CFR 441.725(a) (~~as in effect on October 1, 2020~~October 1,2023).

~~(12)~~ (11) "Provider" means a person or entity who has a provider agreement with ODM and who delivers a specialized recovery services program service, any other service provider that is directed to adhere to this rule, and all of their respective staff who have direct contact with individuals.

~~(13)~~ (12) "Provider occurrence" means any alleged, suspected or actual performance or operational issue by a provider furnishing program services that does not meet the definition of an incident as set forth in this rule. Provider occurrences include, but are not limited to, alleged violations of provider eligibility and/or service specification requirements, and billing issues including overpayments and medicaid fraud.

~~(14)~~ (13) "Recovery management" means the coordination of all specialized recovery services program services received by an individual and assisting him or her in gaining access to needed medicaid services, as well as medical, social, educational, and other resources, regardless of funding source.

~~(15)~~ (14) "Recovery manager" means the person responsible for performing the needs-based assessment and monitoring the provision of services included in the person-centered service plan to ensure the individual's needs, preferences, health and welfare are supported as described in rule 5160-43-04 of the Administrative Code.

~~(16)~~ (15) "Significant change" means a variation in the health, care or needs of an individual that warrants further evaluation to determine if changes to the type, amount or scope of services are needed.

~~(17)~~ (16) "Specialized recovery services" means recovery management~~, peer recovery support~~ and IPS-SE.

~~(18)~~ (17) "Specialized recovery services program" means the home and community-based services (HCBS) program jointly administered by ODM and the Ohio department of mental health and addiction services (OhioMHAS) or only administered by ODM to provide services to individuals with qualifying diagnoses of severe and persistent mental illness or diagnosed chronic conditions.

~~(19)~~ (18) "Trans-disciplinary care team" or "care team" means the group of persons freely chosen by the individual to assist and support him or her in the collaboration of creating and implementing a person-centered service plan. The team is led by the individual where possible and must include a recovery manager. It may also include, but is not limited to, the individual's friends, family and natural supports, the physician(s) and other professionals and providers.

DRAFT - NOT FOR FILING

5160-43-03 Specialized recovery services program individual rights and responsibilities.

(A) Enrollment in the specialized recovery services program is voluntary. Individuals enrolled in the program in accordance with rule 5160-43-02 of the Administrative Code shall be informed of their rights and responsibilities. Individuals also have choice and control over the arrangement and provision of home and community-based services (HCBS), and the selection and control over the direction of approved services.

(B) An individual enrolled in a specialized recovery services program has the right to:

(1) Be treated with dignity and respect.

(2) Be protected from abuse, neglect, exploitation and other threats to personal health, safety and well-being.

(3) Appoint an authorized representative to act on his or her behalf in accordance with rule 5160-1-33 of the Administrative Code.

(4) Receive program services in a person-centered manner that is in accordance with an approved person-centered service plan, that is attentive to the individual's needs and maximizes personal independence.

(5) Choose his or her recovery management agency and recovery managers from among qualified and available providers; and

(a) Have the recovery manager explain the program, how it will assist the individual, and his or her rights and responsibilities;

(b) Participate with the recovery manager and the care team in the person-centered service plan development process, and when possible, lead the process;

(c) Request assistance from the recovery manager with recruitment of providers;

(d) Effectively communicate with the recovery manager and care team and receive information in a manner that is easy to understand;

(e) Be able to meet privately with the recovery manager;

(f) Receive ongoing assistance from the recovery manager; and

(g) Be able to request a change of recovery management agency or recovery manager.

(6) Make informed choices regarding the HCBS and supports he or she receives and from whom those services are received.

(7) Obtain the results of criminal records checks for current agency providers or provider applicants pursuant to section 5164.34 of the Revised Code. All personal identifying information such as home address, social security number, and home phone number may be redacted to ensure the safety and security of the provider.

(8) Access files, records or other information related to his or her health care.

(9) Be assured of confidentiality of protected health information pursuant to relevant confidentiality and information disclosure laws.

(10) Request assistance with problems, concerns, and issues, and suggest changes without fear of

repercussion.

(11) Be fully informed about how to contact the recovery manager and the Ohio department of medicaid (ODM) or its designee, with problems, concerns, issues, or inquiries.

(12) Be informed of the right to appeal decisions made by ODM or its designee about program eligibility or services pursuant to division 5101:6 of the Administrative Code.

(C) Upon enrollment in the program, the individual must accept responsibility to:

(1) Participate in, and cooperate during assessments to determine ongoing program eligibility and service needs.

(2) Decide who, in addition to the recovery manager, will participate in the service planning process.

(3) Participate in, and cooperate with, the recovery manager and care team in the development and implementation of the person-centered service plan.

(4) Participate in the recruitment, selection and dismissal of his or her provider(s).

(5) Not direct any HCBS provider to act in a manner that is contrary to relevant ODM-administered HCBS program requirements, medicaid rules, regulations and all other applicable laws, rules and regulations.

(6) Work with the recovery manager when he or she wants to make a change in provider. Notification to the recovery manager shall include the end date of the former provider and the start date of the new provider.

(7) Authorize the exchange of information for development of the person-centered service plan between the care team and his or her service providers, and in compliance with the "Health Insurance Portability and Accountability Act of 1996" (HIPAA) regulations set forth in 45 C.F.R. parts 160 and 164 (~~as in effect on October 1, 2020~~October 1, 2023), confidentiality of alcohol and drug abuse patient records as set forth in 42 C.F.R part 2 (~~as in effect on October 1, 2020~~October 1, 2023) and the medicaid safeguarding information requirements set forth in 42 C.F.R. parts 431.300 to 431.307 (~~as in effect on October 1, 2020~~October 1, 2023) along with sections 5160.45 to 5160.481 of the Revised Code.

(8) Provide accurate and complete information including up-to-date contact information and medical history.

(9) Utilize services in accordance with the approved person-centered service plan.

(10) Report to the recovery manager any service delivery issue(s) including, but not limited to, service disruption, complaints, and concerns about the provider and/or health and safety issues.

(11) Keep and attend scheduled appointments and notify the provider and recovery manager if he or she is going to miss a scheduled visit or service.

(12) Treat the recovery manager, care team and providers with respect.

(13) Report to the recovery manager any significant change as defined in rule 5160-43-01 of the Administrative Code that may affect the provision of services;

(14) Report to the recovery manager and when applicable, the managed care plan care manager, in

accordance with rule 5160-44-05 of the Administrative Code, incidents that may impact his or her health and welfare.

(15) Refuse to participate in dishonest or illegal activities involving providers, caregivers and care team members.

DRAFT - NOT FOR FILING

5160-43-04 Specialized recovery services program covered services and provider requirements.

(A) This rule sets forth the covered services available to an individual enrolled in the specialized recovery services program (SRSP) and the requirements for providers of those services.

(B) Individualized placement and support - supported employment (IPS-SE) is the implementation of evidence-based practices allowing individuals to obtain and maintain meaningful employment by providing training, ongoing individualized support, and skill development to promote recovery. IPS-SE is an evidence based practice which is integrated and coordinated with mental health treatment and rehabilitation designed to provide individualized placement and support to assist individuals with a severe and persistent mental illness obtain, maintain, and advance within competitive community integrated employment positions.

(1) IPS-SE activities include:

(a) Benefits planning;

(b) Development of a vocational plan;

(c) General consultation, including advocacy and building and maintaining relationships with employers;

(d) Individualized job supports, including regular contact with the individual's employer(s), family members, guardians, advocates, treatment providers, and other community supports;

(e) Job coaching;

(f) Job development and placement;

(g) Job seeking skills training;

(h) On-the-job training and skill development;

(i) Vocational rehabilitation guidance and counseling;

(j) Time unlimited vocational support; and

(k) Vocational assessment.

(2) IPS-SE activities may include the following when provided in conjunction with an IPS-SE activity listed in paragraph (B)(1) of this rule:

(a) Facilitation of natural supports; and/or

~~(b)~~ (b) ~~Peer services; and/or~~

~~(c)~~ (b) Transportation.

(3) The following activities are not payable under IPS-SE:

(a) Adaptations, assistance and training used to meet the employer's responsibility to fulfill requirements for reasonable accommodations under the Americans with Disabilities Act, 42 U.S.C. 12101 et. seq. (~~as in effect on January 1, 2021~~January 1, 2024);

(b) Job placements paying below minimum wage;

(c) Supervision, training, support and adaptations typically available to the general workforce filling similar positions in the business;

(d) Supervisory activities rendered as the normal part of business setting;

(e) Unpaid internships, unless they are considered crucial for job placement and such experience is vital to the individual achieving his or her vocational goal(s);

(f) Services which are not provided in integrated settings including sheltered work or other types of vocational services in specialized facilities, or incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(i) Incentive payments made to an employer to encourage hiring the individual;

(ii) Payments that are passed through to the individual; or

(iii) Payments for supervision, training, support and adaptations typically available to other workers without disabilities filling similar positions in the business; or payments used to defray the expenses associated with starting up or operating a business.

(4) To be a provider and submit a claim for payment of IPS-SE services, the provider delivering the service must meet all of the following requirements:

(a) Comply with all rules set forth in this chapter and Chapter 5160-27 of the Administrative Code;

(b) Request payment for the provision of services in accordance with rule 5160-27-03 of the Administrative Code;

(c) Be certified by the Ohio department of mental health and addiction services (OhioMHAS) under section 5119.36 of the Revised Code;

(d) Not be the individual's legally responsible family member, as defined in rule 5160-43-01 of the Administrative Code;

(e) Be identified as the provider and have specified on the individual's person-centered service plan, that is prior approved by the Ohio department of medicaid (ODM) or its designee, the number of hours the provider is authorized to furnish program services to the individual;

(f) Provide services that are supported by an identified need or recovery goal in a manner that supports and respects the individual's communication needs including translation services, and/or assistance with communication devices; and

(g) Not provide IPS-SE services simultaneously with other rehabilitation services available under the medicaid state plan.

(5) IPS-SE providers must maintain a record for each individual served in a manner that protects the confidentiality of those records. At a minimum, the record must contain:

(a) A copy of the current person-centered service plan;

(b) Documentation of each service interaction including the duration IPS-SE was provided; and

(c) Documentation that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 701 et. seq. (~~July 1, 2017~~July 1, 2023), relating to vocational rehabilitation services, or the Individuals with Disabilities Education Act (1990), set forth in 20 U.S.C. section 1400 et. seq. (~~as in effect on January 1,2021~~January 1, 2024), relating to special education.

~~(C)~~ (C) ~~Peer recovery support provides community-based supports to an individual with a mental illness with individualized activities that promote recovery, self-determination, self-advocacy, well-being and independence through a relationship that supports the person's ability to promote his or her own recovery. Peer recovery supporters use their own experiences with mental illness to help individuals reach their recovery goals.~~

~~(1)~~ (1) ~~Peer recovery support activities include:~~

~~(a)~~ (a) ~~Assisting the individual with accessing and developing natural support systems in the community;~~

~~(b)~~ (b) ~~Attending and participating in care team meetings;~~

~~(c)~~ (c) ~~Conducting outreach to connect individuals with resources;~~

~~(d)~~ (d) ~~Coordinating and/or assisting in crisis interventions and stabilization as needed;~~

~~(e)~~ (e) ~~Developing and working toward achievement of the individual's personal recovery goals;~~

~~(f)~~ (f) ~~Facilitating development of daily living skills;~~

~~(g)~~ (g) ~~Modeling personal responsibility for recovery;~~

~~(h)~~ (h) ~~Promoting coordination among similar providers;~~

~~(i)~~ (i) ~~Providing group facilitation that addresses symptoms, behaviors, and thought processes to assist an individual in eliminating barriers to seeking and maintaining recovery, employment, education, and housing;~~

~~(j)~~ (j) ~~Supporting individuals in achieving personal independence as identified by the individual; and~~

~~(k)~~ (k) ~~Teaching skills to effectively navigate the health care delivery system to utilize services.~~

~~(2)~~ (2) ~~The following activities are not payable under peer recovery support:~~

~~(a)~~ (a) ~~Assistance with activities of daily living as defined in rule 5160-3-05 of the Administrative Code;~~

~~(b)~~ (b) ~~Management of medications; and~~

~~(c)~~ (c) ~~Performance of activities covered under other services.~~

~~(3)~~ (3) ~~To be a provider and submit a claim for payment of peer recovery support services, the provider delivering the service must meet all of the following requirements:~~

~~(a)~~ (a) ~~Comply with all rules set forth in this chapter and Chapter 5160-27 of the Administrative Code;~~

~~(b)~~ (b) ~~Request payment for the provision of services in accordance with rule 5160-27-03 of the~~

~~Administrative Code;~~

~~(c)~~ (c) ~~Be certified by OhioMHAS under section 5119.36 of the Revised Code;~~

~~(d)~~ (d) ~~Not be the individual's legally responsible family member, as defined in rule 5160-43-01 of the Administrative Code;~~

~~(e)~~ (e) ~~Be identified as the provider and have specified on the individual's person-centered service plan, that is prior approved by ODM or its designee, the number of hours the provider is authorized to furnish services to the individual;~~

~~(f)~~ (f) ~~Provide services that are supported by an identified need or recovery goal in a manner that supports and respects the individual's communication needs including translation services, and/or assistance with communication devices;~~

~~(g)~~ (g) ~~Not provide peer recovery support activities simultaneously with other rehabilitation services available under the state plan; and~~

~~(h)~~ (h) ~~Be supervised by other senior peers or non-peer staff that have been certified to supervise peers and receive regularly scheduled clinical supervision from a person meeting the qualifications of a behavioral health professional with experience regarding this specialized behavioral health service.~~

~~(4)~~ (4) ~~All peer recovery support providers must maintain a record for each individual served in a manner that protects the confidentiality of those records. At a minimum, the record must contain:~~

~~(a)~~ (a) ~~A copy of the current person-centered service plan;~~

~~(b)~~ (b) ~~Documentation of each service interaction including the duration peer recovery support was provided; and~~

~~(c)~~ (c) ~~Documentation that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973, relating to vocational rehabilitation services, or the Individuals with Disabilities Education Act (1990) set forth in 20 U.S.C. section 1400 et. seq. (as in effect on February 1, 2016), relating to special education.~~

~~(D)~~ (C) Recovery management is the coordination of all SRSP services received by an individual and assisting him or her in gaining access to needed medicaid services, as well as medical, social, educational, and other resources, regardless of funding source.

(1) Recovery managers shall:

(a) Be a registered nurse, or hold at least a bachelor's degree in social work, counseling, psychology, or related field;

(b) Have a minimum of three years post degree experience working with individuals with severe and persistent mental illness or have a minimum of one year post degree experience working with individuals with diagnosed chronic conditions;

(c) Possess an active medicaid provider agreement or be employed by an entity that has an active medicaid provider agreement;

(d) Demonstrate knowledge of issues affecting people with severe and persistent mental illness (SPMI) or

diagnosed chronic conditions (DCC) and community-based interventions/resources for those individuals;

(e) Attend training activities including, but not limited to:

(i) Person-centered service planning;

(ii) Administering the "Adult Needs and Strengths Assessment (ANSA)" (8/2021);

(iii) Home and community-based services (HCBS) settings;

(iv) "Health Insurance Portability and Accountability Act of 1996" (HIPAA) regulations set forth in 45 C.F.R. parts 160 and 164 (~~as in effect on October 1, 2020~~October 1, 2023);

(v) 42 C.F.R. part 2 (~~as in effect on October 1, 2020~~October 1, 2023), confidentiality of alcohol and drug abuse patient records; and

(vi) Incident management as described in rule 5160-44-05 of the Administrative Code.

(f) Be supervised by clinical staff who possess a current, valid and unrestricted license with the appropriate licensure board from the fields of nursing, social work, psychology, or psychiatry.

(2) Recovery management activities include:

(a) Face-to-face eligibility evaluation, including:

(i) Administration of the "ANSA" (8/2021);

(ii) Verification of the individual's residence in an HCBS setting;

(iii) Verification of the individual's qualifying behavioral health diagnoses or diagnosed chronic conditions as described in the qualifying diagnosis appendix which is available on the ODM website at https://medicaid.ohio.gov/resources-for-providers/special-programs-and-initiatives/srs; and

(iv) Evaluation of all other eligibility criteria as described in paragraph (A) of rule 5160-43-02 of the Administrative Code.

(v) At the discretion of ODM or its designee, evaluations may be conducted by video conference or telephonically ~~in lieu of face-to-face~~ at the request of the individual, unless the individual's needs require a face-to-face visit.

(b) Person-centered care planning and updating the individual's service plan;

(c) Facilitation of transitioning to the community for individuals who receive medicaid-funded institutional services. Recovery management activities for individuals leaving institutions shall be coordinated with, and shall not duplicate, institutional, mycare and managed care plan discharge planning, and other community resources.

(d) Informing the individual about SRSP services, person centered planning, resources for recovery, and individual rights and responsibilities;

(e) Supporting the review and approval of the individual's person-centered service plan in accordance with rule 5160-44-02 of the Administrative Code;

(f) Monitoring the individual's service plan;

(g) Identifying and resolving issues that impede access to needed SRSP services;

(h) Identifying resources in the person-centered service plan to support the individual's recovery goals, including non-HCBS medicaid, medicare, private insurance, and community resources;

(i) Coordinating with other service providers and systems;

(j) Assisting with accessing resources necessary to complete medicaid redetermination and retain HCBS and medicaid eligibility;

(k) Responding to and assessing emergency situations and incidents and assuring that appropriate actions are taken to protect the health, welfare, wellness, and safety of the individual in accordance with rule 5160-44-05 of the Administrative Code and assist in meeting the needs of the individual in those situations;

(l) Evaluating the individual's progress in meeting his or her goals;

(m) Participating in quality oversight activities and reporting activities as described in rule 5160-43-07 of the Administrative Code;

(n) Participating in case consultations regarding an individual's progress with a trans-disciplinary care team, as defined in rule 5160-43-01 of the Administrative Code. When an individual is assigned to or enrolled in a comprehensive care management program operated by an accountable entity (e.g. patient centered medical home or managed care plan), the recovery manager will support access to the individual’s full set of medicaid and medicare benefits and community resources across the continuum of care, including behavioral, medical, LTSS and social services;

(o) Updating the assessment at least annually, making revisions to the individual's service plan, and making recommendations to the accountable care management entity, as appropriate;

(p) Educating the individual about hearing and appeal rights; and

(q) Assisting the individual with preparing and submitting a hearing request, as needed.

(3) Recovery management activities do not include:

(a) Travel time incurred by the recovery manager billed as a discrete unit of service;

(b) Services that constitute the administration of another program such as child welfare, child protective services, foster care, parole and probation functions, legal services, public guardianship, and special education;

(c) Representative payee functions; and

(d) Other activities identified by ODM.

(4) To be a provider and submit a claim for payment of recovery management services, the provider

delivering the service shall meet all of the following requirements:

(a) Comply with all rules set forth in this chapter of the Administrative Code;

(b) Request payment for the provision of services in accordance with rule 5160-43-08 of the Administrative Code;

(c) Not be the individual's legally responsible family member;

(d) Be identified as the provider and have specified on the individual's person-centered service plan, that is prior approved by ODM or its designee, the number of hours the provider is authorized to furnish services to the individual;

(e) Provide services that are supported by an identified need or recovery goal in a manner that supports and respects the individual's communication needs including translation services, and/or assistance with communication devices.

(5) All recovery management activities shall be documented in a record using the process prescribed by ODM for each individual served in a manner that protects the confidentiality of these records. At a minimum, the record shall contain:

(a) A copy of the current person-centered service plan;

(b) Documentation of each service interaction including the duration recovery management was provided; and

(c) Documentation that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 701 et. seq. (~~as in effect on January 1, 2021~~January 1, 2024) relating to vocational rehabilitation services, or the Individuals with Disabilities Education Act, of 1990 set forth in 20 U.S.C. 1400 et. seq. (~~as in effect on January 1, 2021~~January 1, 2024), relating to special education.

DRAFT - NOT FOR FILING

5160-43-05 Specialized recovery services program provider conditions of participation.

(A) Specialized recovery service program providers shall maintain professional relationships with the individuals they serve. Providers shall furnish services in a person-centered manner that is in accordance with the individual's approved person-centered service plan, is attentive to the individual's needs and maximizes the individual's independence. Providers shall refrain from any behavior that may detract from the goals, objectives and services outlined in the individual's approved person-centered service plan and/or that may jeopardize the individual's health and welfare.

(B) Specialized recovery services program providers shall:

(1) Maintain an active, valid medicaid provider agreement as set forth in rule 5160-1-17.2 of the Administrative Code.

(2) Comply with all applicable provider requirements set forth in this chapter of the Administrative Code, including but not limited to:

(a) Provider requirements as set forth in rule 5160-43-04 of the Administrative Code;

(b) Incident reporting as set forth in rule 5160-44-05 of the Administrative Code;

(c) Provider monitoring, oversight, reviews and investigations as set forth in rule 5160-43-07 of the Administrative Code; and

(d) Criminal records checks for providers of home and community-based services (HCBS) as set forth in rule 5160-43-09 of the Administrative Code.

(3) Deliver services in a person-centered manner, professionally, respectfully and legally.

(4) Ensure that individuals to whom the provider is furnishing services are protected from abuse, neglect, exploitation and other threats to their health, safety and well-being. Upon entering into a medicaid provider agreement, and annually thereafter, all providers including all employees who have direct contact with individuals enrolled in the program must acknowledge in writing they have reviewed rule 5160-44-05 of the Administrative Code regarding incident management procedures.

(5) Work with the individual and his or her trans-disciplinary care team to coordinate service delivery, including, but not limited to:

(a) Agreeing to provide and providing services in the amount, scope, location and duration they have capacity to provide, and as specified on the individual's approved person-centered service plan.

(b) Contacting the individual, the recovery manager and/or his or her supervisor, as applicable, when the provider is unable to render services on the appointed date and time, and verify their receipt of information about the absence.

(6) To the extent not otherwise required by rule 5160-44-05 of the Administrative Code, notify the Ohio department of medicaid (ODM) or its designee within twenty-four hours when the provider is aware of issues that may affect the individual and/or provider's ability to render services as directed in the individual's person-centered service plan. Issues may include, but are not limited to:

(a) The individual consistently declines services,

(b) The individual plans to or has moved to another residential address,

(c) There are significant changes in the physical, mental and/or emotional status of the individual,

(d) There are changes in the individual's environmental conditions,

(e) The individual's caregiver status has changed causing service delivery to be impacted or interrupted,

(f) The individual no longer requires medically necessary services as defined in rule 5160-1-01 of the Administrative Code,

(g) The individual's actions toward the provider are threatening or the provider feels unsafe in the individual's environment,

(h) The individual's requests conflict with his or her person-centered service plan and may jeopardize his or her health and welfare, and

(i) Any other situation that affects the individual's health and welfare.

(7) Upon request and within the time frame prescribed in the request, provide information and documentation to ODM, its designee and the centers for medicare and medicaid services (CMS).

(8) Cooperate with ODM and its designee during all provider monitoring and oversight activities by being available to answer questions during reviews, and by ensuring the availability and confidentiality of documentation that may be requested regarding service delivery to individuals.

(9) Participate in all provider trainings mandated or sponsored by ODM or its designees, including but not limited to those set forth in rule 5160-43-04 of the Administrative Code.

(10) Be knowledgeable about and comply with all applicable federal and state laws, including the "Health Insurance Portability and Accountability Act of 1996" (HIPAA) regulations set forth in 45 C.F.R. parts 160 and 164 (~~as in effect on October 1, 2020~~October 1, 2023), confidentiality of alcohol and drug abuse patient records set forth in 42 C.F.R part 2 (~~as in effect on October 1, 2020~~October 1, 2023), and the medicaid safeguarding information requirements set forth in 42 C.F.R. parts 431.300 to 431.307 (~~as in effect on October 1, 2020~~October 1, 2023), along with sections 5160.45 to 5160.481 of the Revised Code.

(11) Ensure that the provider's contact information, including but not limited to address, telephone number, fax number and email address, is current. When contact information changes, the provider shall notify ODM via the medicaid information technology system (MITS) and its designee, no later than seven calendar days after such changes have occurred.

(12) Make arrangements to accept all correspondence sent by ODM or its designee, including certified mail.

(13) Maintain and retain all required documentation related to the services delivered during a visit including but not limited to: an individual-specific description and details of the services provided or not provided in accordance with the person-centered service plan.

(a) Validation of service delivery shall include, but not be limited to, the date and location of service delivery, arrival and departure times and the dated signature of the provider.

(b) Retain all records of service delivery and billing for a period of six years after the date of receipt of the payment based upon those records, or until any initiated audit is completed, whichever is longer.

(14) Submit written notification to the individual and ODM or its designee at least thirty calendar days before the anticipated last date of service if the provider is terminating the provision of program services to the individual. Exceptions to the thirty-day advance notification requirement include:

(a) A verbal and written notification to the individual and ODM or its designee at least ten days before the anticipated last date of services when the individual:

(i) Has been admitted to a hospital;

(ii) Has entered into an institutional setting; or

(iii) Has been incarcerated.

(b) ODM may waive advance notification for a provider upon request and on a case-by-case basis.

(C) Specialized recovery services program providers shall not:

(1) Engage in any behavior that causes or may cause physical, verbal, mental or emotional abuse or distress to the individual.

(2) Engage in any behavior that may compromise the health and welfare of the individual.

(3) Engage in any behavior that may take advantage of the individual, his or her family, household members or authorized representative, or that may result in a conflict of interest, exploitation or any other advantage for personal gain. This includes but is not limited to:

(a) Misrepresentation;

(b) Accepting, obtaining, attempting to obtain, borrowing, or receiving money or anything of value including but not limited to gifts, tips, credit cards or other items;

(c) Being designated on any financial account including, but not limited to bank accounts and credit cards;

(d) Using real or personal property of another;

(e) Using information of another;

(f) Lending or giving money or anything of value;

(g) Engaging in the sale or purchase of products, services or personal items;

(h) Engaging in any activity that takes advantage of or manipulates specialized recovery services program rules.

(4) Falsify the individual's signature, including copies of the signature.

(5) Make fraudulent, deceptive or misleading statements in the advertising, solicitation, administration or billing of services.

(6) Submit a claim for program services rendered while the individual is hospitalized, institutionalized, incarcerated, or otherwise residing in a setting that does not meet the HCBS setting requirements set forth in rule 5160-44-01 of the Administrative Code.

(D) While rendering services, specialized recovery services providers shall not:

(1) Take the individual to the provider's place of residence;

(2) Bring animals which are not service animals, children, friends, relatives, or any others to the individual's place of residence;

(3) Provide care to persons other than the individual;

(4) Smoke without consent of the individual;

(5) Sleep;

(6) Engage in any distracting activity that is not related to the provision of services which may interfere with service delivery. Such activities include, but are not limited to:

(a) Using electronic devices for personal or entertainment purposes including, but not limited to watching television, using a computer or playing games;

(b) Making or receiving personal communications; and

(c) Engaging in socialization with persons other than the individual.

(7) Deliver services when the provider is medically, physically or emotionally unfit;

(8) Use or be under the influence of the following while providing services:

(a) Alcohol,

(b) Illegal drugs,

(c) Chemical substances, or

(d) Controlled substances that may adversely affect the provider's ability to furnish services.

(9) Engage in any activity that may reasonably be interpreted as sexual in nature, regardless of whether it is consensual;

(10) Engage in any behavior that may reasonably be interpreted as inappropriate involvement in the individual's personal beliefs or relationships including, but not limited to discussing religion, politics or personal issues; or

(11) Consume the individual's food and/or drink without his or her offer and consent.

(E) Program service providers shall not be designated to serve or make decisions for the individual in any capacity involving a declaration for mental health treatment, general power of attorney, health care power of attorney, financial power of attorney, guardianship pursuant to court order, as an authorized representative, or as a representative payee.

(F) Providers shall pay applicable federal, state and local income and employment taxes in compliance with federal, state and local requirements. Federal employment taxes include medicare and social security.

(G) Failure to meet the requirements set forth in this rule may result in any of the actions set forth in rules 5160-44-05 and 5160-43-07 of the Administrative Code including, but not limited to, termination of the medicaid provider agreement in accordance with rule 5160-1-17.6 of the Administrative Code. When ODM proposes termination of the medicaid provider agreement, the provider shall be entitled to a hearing under Chapter 119. of the Revised Code in accordance with Chapter 5160-70 of the Administrative Code.

DRAFT - NOT FOR FILING

5160-43-08 Specialized recovery services program billing procedures and payment rates for recovery management.

(A) Definitions of terms used for billing and calculating rates.

(1) "Billing unit" as used in column 4 of paragraph (C) of this rule, means a single fixed item, amount of time or measurement.

(2) "Unit rate" as used in column 3 of paragraph (C) of this rule, means the amount reimbursed by the Ohio department of medicaid (ODM) for each fifteen minutes of service delivered.

(B) Payment rates for individualized placement and support - supported employment ~~and peer recovery support services~~ may be found in rule 5160-27-03 and rule 5160-1-60 of the Administrative Code.

(C) Recovery management billing code table.

Column 1	Column 2	Column 3	Column 4
Billing code	Service	Unit rate	Billing unit
T1016	Recovery management	$19.00	15 minutes

(D) Claims ~~shall~~will be submitted to ODM ~~via the medicaid information technology system (MITS),~~ and ~~paid~~reimbursed in accordance with Chapter 5160-1 of the Administrative Code.

DRAFT - NOT FOR FILING

5160-43-09 Specialized recovery services program criminal records checks for providers.

(A) This rule sets forth the process and requirements for the criminal records checks of providers of home and community-based services (HCBS) to individuals enrolled in the specialized recovery services program. HCBS include recovery management~~, peer recovery support~~ and individualized placement and support-supported employment (IPS-SE). This rule only applies to all persons under final consideration for employment with an agency and existing employees in a full-time, part-time or temporary position who are providing HCBS and billing medicaid for these services.

(B) For the purposes of this rule:

(1) "Agency" means an entity certified by the Ohio department of mental health and addiction services under section 5119.36 of the Revised Code.

(2) "Chief administrator" means the head of an agency, or his or her designee.

(3) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(4) "Disqualifying offense" means any of the following:

(a) A violation of one or more Revised Code section(s) set forth in the appendix to this rule;

(b) A violation of section 2923.01, 2923.02, or 2923.03 of the Revised Code when the underlying offense that is the object of the conspiracy, attempt, or complicity is a violation of one of the sections set forth in the appendix to this rule; or

(c) A violation of an existing or former municipal ordinance or law of the state of Ohio, any other state or the United States that is substantially equivalent to any of the disqualifying offenses as set forth in paragraphs (B)(4)(a) and (B)(4)(b) of this rule.

(5) "Employ" means to hire a provider applicant to be an employee as defined in paragraph (B)(6) of this rule.

(6) "Employee" means a person employed by an agency in a full-time, part-time or temporary position, including conditional employment as described in paragraph (D)(4) of this rule, that involves providing HCBS ~~including peer recovery support and~~ IPS-SE when medicaid is billed for ~~these services~~this service.

(7) "Provider applicant" means a person who is under final consideration for employment with an agency in a full-time, part-time or temporary position, when the position provides HCBS when medicaid is billed for these services.

(C) No agency shall employ a provider applicant or continue to employ an employee in a position that involves providing HCBS if the provider applicant or employee:

(1) Is included in one or more of the following databases:

(a) The system for award management (SAM) maintained by the United States general services administration;

(b) The list of excluded individuals and entities maintained by the office of inspector general in the

United States department of health and human services pursuant to 42 U.S.C. part 1320a-7 (as in effect on January 1, 2021) and 42 U.S.C. part 1320c-5 (as in effect on January 1, 2021).

(c) The Ohio department of developmental disabilities (DODD) online abuser registry established under section 5123.52 of the Revised Code;

(d) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(e) The internet-based database of inmates established under section 5120.66 of the Revised Code; or

(f) The state nurse aide registry established under section 3721.32 of the Revised Code, and there is a statement detailing findings by the director of health that the provider applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident.

(2) Fails to:

(a) Submit to a criminal records check conducted by the bureau of criminal identification and investigation (BCII), including failing to access, complete and forward to the superintendent the form or the standard fingerprint impression sheet; or

(b) Instruct the superintendent of BCII to submit the completed report of the criminal records check directly to the chief administrator of the agency.

(3) Except as provided for in paragraphs (F) and (G) of this rule, the provider applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense, regardless of the date of the conviction or data of entry of the guilty plea.

(D) Process for conducting criminal records checks.

(1) At the time of each provider applicant's initial application for employment in a position that involves providing HCBS for an individual enrolled in the specialized recovery services program, the chief administrator of the agency shall conduct a review of the databases listed in paragraph (C)(1) of this rule to determine whether the agency is prohibited from employing the provider applicant in that position. The chief administrator of the agency shall provide the provider applicant with a copy of any disqualifying information disclosed in the review of the databases.

(2) Except as otherwise noted in paragraph (C)(1) of this rule, the chief administrator of an agency shall require each provider applicant to request that the BCII superintendent conduct a criminal records check with respect to the provider applicant, and pursuant to section 109.572 of the Revised Code. The provider applicant must provide a set of fingerprint impressions as part of the criminal records check.

(a) If a provider applicant does not present proof of having been a resident of the state of Ohio for the five-year period immediately prior to the date the criminal records check is requested, or provide evidence that within that five-year period the superintendent has requested information about the provider applicant from the federal bureau of investigation (FBI) in a criminal records check, the chief administrator shall require the provider applicant to request that the superintendent obtain information from the FBI as part of the criminal records check.

(b) Even if a provider applicant presents proof of having been a resident of the state of Ohio for the five-

year period, the chief administrator may require the provider applicant to request that the superintendent obtain information from the FBI in the criminal records check.

(3) The chief administrator of an agency shall provide the following to each provider applicant for whom a criminal records check is required by this rule:

(a) Information about accessing, completing and forwarding to the superintendent the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet presented pursuant to division (C)(2) of that section; and

(b) Written notification that the provider applicant is to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator of the agency.

(4) Conditional employment.

(a) An agency may conditionally employ a provider applicant for whom a criminal records check is required by this rule prior to obtaining the results of that check, provided that the agency has conducted a review of the databases listed in paragraph (C)(1) of this rule and has determined the agency is not prohibited from employing the provider applicant in that position. The chief administrator must require the provider applicant to request a criminal records check no later than five business days after he or she begins conditional employment.

(b) The agency shall terminate conditional employment if the results of the criminal records check, other than the results of any request for information from the FBI, are not obtained within sixty days of the criminal records check request.

(5) If the results of the criminal records check indicate that the provider applicant has been convicted of, or has pleaded guilty to any of the disqualifying offenses set forth in paragraph (B)(4) of this rule, and regardless of the date of conviction or the date of entry of the guilty plea, then the agency shall either:

(a) Terminate his or her employment; or

(b) Choose to employ the provider applicant because he or she meets the conditions set forth in paragraph (F) of this rule.

(6) If the agency determines that two or more convictions or guilty pleas result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction or guilty plea.

(7) Termination of employment shall be considered just cause for discharge for the purposes of division (D)(2) of section 4141.29 of the Revised Code if the employee makes any attempt to deceive the agency about his or her criminal record.

(8) An agency shall pay to BCII the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for any criminal records check required by this rule. However, an agency may require a provider applicant to pay to BCII the fee for a criminal records check for the applicant. If the agency pays the fee for a provider applicant, it may charge the provider applicant a fee not exceeding the amount the agency pays to BCII if the agency notifies the provider applicant at the time of application for employment of the amount of the fee and that, unless the fee is paid, he or she will not be considered for employment.

(9) Reports of any criminal records checks conducted by BCII in accordance with this rule are not public records for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(a) The person who is the subject of the criminal records check or their representative;

(b) The chief administrator of the agency that requires the provider applicant or employee to request the criminal records check or the administrator's representative;

(c) The director and staff of the Ohio department of medicaid (ODM) who are involved in the administration of the Ohio medicaid program;

(d) An individual enrolled in the specialized recovery services program who receives, or may receive, HCBS from the person who is the subject of the criminal records check provided that the social security number, address and telephone number have been redacted from the record; and

(e) Any court, hearing officer or other necessary individual involved in a case dealing with a denial of employment of the provider applicant or termination of the employee; employment or unemployment benefits of the provider applicant or employee; or a civil or criminal action regarding the Ohio medicaid program.

(E) As a condition of continuing to employ an employee in a position that involves providing HCBS, the chief administrator of the agency shall follow the same process set forth in paragraphs (D)(1) to (D)(9) of this rule. The chief administrator:

(1) Shall conduct a criminal records check of an employee who does not currently have a criminal records check on file with the agency no later than ninety days after August 1, 2021;

(2) Shall conduct a criminal records check no later than thirty days after each employee anniversary date every five years;

(3) May conduct a criminal records check on any employee more frequently than every five years without any need to conduct a criminal records check according to the schedules set forth in paragraphs (E)(1) and (E)(2) of this rule.

(F) An agency may choose to employ a provider applicant or continue to employ an employee who has been convicted of, or has pleaded guilty to, a disqualifying offense set forth in paragraph (B)(4) of this rule when the provider applicant or employee has:

(1) Satisfied the conditions associated with the exclusionary periods set forth in paragraph (G) of this rule; or

(2) Obtained a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code, except when the provider applicant or employee has been convicted of or pleaded guilty to a tier I offense as described in paragraph (G)(1) of this rule; or

(3) Obtained a certificate of achievement and employability in an HCBS-related field, issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code, except when the provider applicant or employee has been convicted of or pleaded guilty to a tier I offense as described in paragraph (G)(1) of this rule; and

(4) Agreed, in writing, to have the agency inform each individual enrolled in the specialized recovery services program who may receive services from the provider applicant or employee of the disqualifying offense, and has acknowledged, in writing, that the individual has the right to select or reject to receive services from the provider applicant or employee, prior to commencing service delivery.

(G) An agency may employ a provider applicant or continue to employ an employee who has been convicted of or pleaded guilty to an offense listed in paragraph (B)(4) of this rule in a position providing HCBS to an individual enrolled in the specialized recovery services program pursuant to the following timeframes:

(1) Tier I, permanent exclusion.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that involves providing HCBS to an individual enrolled in the specialized recovery services program, when any of the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier I offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier I offense; or

(iii) The provider applicant or employee has a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the tier I offenses or violations as described in the appendix to this rule.

(b) Tier I permanent exclusion applies when the provider applicant or employee has a conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses set forth in section 2913.46 of the Revised Code (illegal use of supplemental nutrition assistance program (SNAP) or women, infants, and children (WIC) program benefits) and paragraph (G)(2) of this rule.

(2) Tier II, ten-year exclusionary period.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that provides HCBS to an individual enrolled in the specialized recovery services program for a period of ten years from the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole, when the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier II offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier II offense; or

(iii) The provider applicant or employee has a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the tier II offenses or violations as described in the appendix to this rule.

(b) If a provider applicant or employee has been convicted of multiple disqualifying offenses, including a

tier II offense, and another tier II, tier III or tier IV offense or offenses, the provider applicant or employee is subject to a fifteen-year exclusionary period beginning on the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole for the most recent offense.

(3) Tier III, seven-year exclusionary period.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that provides HCBS to an individual enrolled in the specialized recovery services program for a period of seven years from the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole, when the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier III offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier III offense; or

(iii) The provider applicant or employee has a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the tier III offenses or violations as described in the appendix to this rule.

(b) If a provider applicant or employee has been convicted of multiple disqualifying offenses, including a tier III offense, and another tier III or tier IV offense or offenses, the provider applicant or employee is subject to a ten-year exclusionary period beginning on the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole for the most recent offense.

(4) Tier IV, five-year exclusionary period.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that provides HCBS to an individual enrolled in the specialized recovery services program for a period of five years from the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole, when the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier IV offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier IV offense;

(iii) The provider applicant or employee has a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the tier IV offenses or violations as described in the appendix to this rule.

(b) If a provider applicant or employee has been convicted of multiple disqualifying tier IV offenses, the provider applicant or employee is subject to a seven-year exclusionary period beginning on the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole for the most recent offense.

(5) Tier V, no exclusionary period.

(a) An agency may employ a provider applicant or continue to employ an employee in in a position that provides HCBS to an individual enrolled in the specialized recovery services program if the provider applicant or employee has been convicted of or pleaded guilty to any tier V offense as listed in the appendix to this rule.

(b) No exclusionary period applies when the provider applicant or employee has a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the tier V offenses or violations as described in the appendix to this rule.

(H) Pardons.

(1) A conviction of, or a plea of guilty to an offense as set forth in paragraph (B)(4) of this rule shall not prevent any agency from considering a provider applicant for employment or an employee for continued employment if the provider applicant or employee has been granted any of the following:

(a) An unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

(b) An unconditional pardon for the offense pursuant to an existing or former law of the state of Ohio, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or

(c) A conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the condition(s) under which the pardon was granted have been satisfied.

(2) A conviction of, or plea of guilty to an offense as set forth in paragraph (B)(4) of this rule shall not prevent any agency from considering a provider applicant for employment or an employee for continued employment if the provider applicant's or employee's conviction or guilty plea has been set aside pursuant to law.

(I) Documentation of compliance. Each agency shall maintain a roster of provider applicants and employees, accessible by the ODM director or designee, which includes but is not limited to:

(1) The name of each provider applicant and employee;

(2) The date the employee started work;

(3) The date the criminal records check request is submitted to BCII;

(4) The date the criminal records check is received by the agency; and

(5) A determination of whether the results of the check revealed that the provider applicant or employee committed a disqualifying offense(s).

Appendix

ODM Rule 5160-43-09

Specialized Recovery Services Program Disqualifying Offenses and Exclusion List for Providers on and
after August 1, 2024.

Tier I: Permanent Exclusion
2903.01 Aggravated murder
2903.02 Murder
2903.03 Voluntary manslaughter
2903.11 Felonious assault
2903.15 Permitting child abuse
2903.16 Failing to provide for a functionally-impaired person
2903.34 Patient abuse or neglect
2903.341 Patient endangerment
2905.01 Kidnapping
2905.02 Abduction
2905.32 Human trafficking
2905.33 Unlawful conduct with respect to documents
2907.02 Rape
2907.03 Sexual battery
2907.04 Unlawful sexual conduct with a minor, formerly corruption of a minor
2907.05 Gross sexual imposition
2907.06 Sexual imposition
2907.07 Importuning
2907.08 Voyeurism
2907.12 Felonious sexual penetration, as that offense existed prior to September 3, 1996
2907.31 Disseminating matter harmful to juveniles
2907.32 Pandering obscenity
2907.321 Pandering obscenity involving a minor
2907.322 Pandering sexually-oriented matter involving a minor
2907.323 Illegal use of a minor in nudity-oriented material or performance
2909.22 Soliciting or providing support for act of terrorism
2909.23 Making terroristic threats
2909.24 Terrorism
2913.40 Medicaid fraud

Tier II: Ten-year Exclusionary Period
2903.04 Involuntary manslaughter

2903.041 Reckless homicide
2905.04 Child stealing
2905.05 Child enticement
2905.11 Extortion
ACTION: Final ENACTED DATE: 07/15/2016 9:34 AM Appendix
5160-43-09
APPENDIX p(161938) pa(300147) d(639896) ra(500552) print date: 07/15/2016 8:00 PM
2907.21 Compelling prostitution
2907.22 Promoting prostitution
2907.23 Enticement or solicitation to patronize a prostitute; procurement of a prostitute for another
2909.02 Aggravated arson
2909.03 Arson
2911.01 Aggravated robbery
2911.11 Aggravated burglary
2913.46 Illegal use of food stamps or WIC program benefits
2913.48 Workers' Compensation fraud
2913.49 Identity fraud
2917.02 Aggravated riot
2923.12 Carrying concealed weapons
2923.122 Illegal conveyance or possession of deadly weapon or danger ordnance in a school safety zone,
illegal possession of an object indistinguishable from a firearm in a school safety zone
2923.123 Illegal conveyance, possession, or control of deadly weapon or ordnance into courthouse
2923.13 Having weapons while under a disability
2923.161 Improperly discharging a firearm at or into a habitation or school
2923.162 Discharge of firearm on or near prohibited premises
2923.21 Improperly furnishing firearms to minor
2923.32 Engaging in a pattern of corrupt activity
2923.42 Participating in a criminal gang
2925.02 Corrupting another with drugs
2925.03 Trafficking in drugs
2925.04 Illegal manufacture of drugs or cultivation of marijuana
2925.041 Illegal assembly or possession of chemicals for the manufacture of drugs
3716.11 Placing harmful or hazardous objects in food or confection

Tier III: Seven-year Exclusionary Period
959.13 Cruelty to animals
959.131 Prohibitions concerning companion animals
2903.12 Aggravated assault
2903.21 Aggravated menacing

2903.211 Menacing by stalking
2905.12 Coercion
2909.04 Disrupting public services
2911.02 Robbery
2911.12 Burglary
2913.47 Insurance fraud
2917.01 Inciting to violence
2917.03 Riot
2917.31 Inducing panic
2919.22 Endangering children
2919.25 Domestic violence
2921.03 Intimidation
2921.11 Perjury
2921.13 Falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to
obtain a concealed handgun license
2921.34 Escape
2921.35 Aiding escape or resistance to lawful authority
2921.36 Illegal conveyance of weapons, drugs or other prohibited items onto the grounds of a detention
facility or institution
2925.05 Funding drug trafficking
2925.06 Illegal administration of distribution of anabolic steroids
2925.24 Tampering with drugs
2927.12 Ethnic intimidation

Tier IV: Five-year Exclusionary Period
2903.13 Assault
2903.22 Menacing
2907.09 Public indecency
2907.24 Soliciting
2907.25 Prostitution
2907.33 Deception to obtain matter harmful to juveniles
2911.13 Breaking and entering
2913.02 Theft
2913.03 Unauthorized use of a vehicle
2913.04 Unauthorized use of computer, cable or telecommunication property
2913.05 Telecommunications fraud
2913.11 Passing bad checks
2913.21 Misuse of credit cards
2913.31 Forgery, forging identification cards or selling or distributing forged identification cards

2913.32 Criminal simulation
2913.41 Defrauding a rental agency or hostelry
2913.42 Tampering with records
2913.43 Securing writings by deception
2913.44 Personating an officer
2913.441 Unlawful display of law enforcement emblem
2913.45 Defrauding creditors
2913.51 Receiving stolen property
2919.12 Unlawful abortion
2919.121 Unlawful abortion upon minor
2919.123 Unlawful distribution of an abortion-inducing drug
2919.23 Interference with custody
2919.24 Contributing to the unruliness or delinquency of a child
2921.12 Tampering with evidence
2921.21 Compounding a crime
2921.24 Disclosure of confidential information
2921.32 Obstructing justice
2921.321 Assaulting or harassing a police dog, horse, or service animal
2921.51 Impersonation of peace officer
2925.09 Illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any
dangerous veterinary drug
2925.11 Drug possession, other than a minor drug possession offense
2925.13 Permitting drug abuse
2925.22 Deception to obtain a dangerous drug
2925.23 Illegal processing of drug documents
2925.36 Illegal dispensing of drug samples
2925.55 Unlawful purchase of pseudoephedrine product
2925.56 Unlawful sale of pseudoephedrine product

Tier V: No Exclusionary Period
2919.21 Non-support, contributing to non-support of dependents
2925.11 Drug possession that is a minor drug possession offense
2925.14 Drug paraphernalia
2925.141 Illegal use or possession of marijuana drug paraphernalia