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Hearing Date: 8/16/2021

Today's Date: 8/24/2021

Agency: Ohio Department of Medicaid

Rule Number(s): 5160-36-04, 5160-44-31, 5160-45-03, 5160-45-04, 5160-45-06, 5160-46-06

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

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

1. CareSource

2. Legal Aid Society

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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).

CareSource:

OAC 5160-45-04: ODM-administered waiver program: provider enrollment process.

This rule changes the wording of MITS to a provider network management system web portal. CareSource requests a consideration to allow those executing on these systems to have access to these provider network management systems.

Legal Aid:

The proposed change to OAC 5160-44-31(F)(1) needs to be rewritten. As written, the rule does not make sense; it is unclear which providers may serve as guardians. If the intent is to allow non-family attorney and agency providers to be guardians, the current language does not make that clear. We recommend that the new clause be a separate sentence, with more information to provide clarity.

The proposed change to OAC 5160-45-03(D) eliminates the ability of the consumer to change Case Management Agencies (CMA) without “just cause” approval by ODM. This change would move away from the consumer-driven model of care that is meant to empower individuals to take the lead in their own care. We believe the consumer-driven model is essential, and it should not be weakened. There is no indication in the rule, or in the narrative summary, why this change is being proposed, and what problem it is meant to solve. We know of no large-scale, frivolous requests for CMA changes that a rule change like this would seem to address. ODM does not currently have a process for reviewing requests for CMA changes. It is unclear how consumers could change CMAs under this proposed rule and what standards ODM would use to determine if a requested change is with “just cause.” We hope that there will be more discussion about this proposed change before it is officially a draft change.

Hearing Summary Report

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.

CareSource:

Comment regarding OAC rule 5160-45-04 was not incorporated into the rule. The comment made was not related to proposed rule changes but rather requesting technical assistance.

Legal Aid:

Comment regarding OAC rule 5160-44-31 was incorporated into the rule. The rule currently in effect allows someone's guardian to also serve as that individual's waiver provider if they are a family member. The intent behind the proposed change is to temporarily (through the end of the public health emergency) open it up to allow other persons named as guardian to also serve as waiver providers. The only exception will be attorneys and agencies who are guardians. These "attorney-guardians" and "agency-guardians" for individuals remain prohibited from serving as an individual's paid waiver provider. The rule was updated with the following proposed language to make the intent clearer:

(1) A provider may be appointed by the court to serve as legal guardian for the individual pursuant to Chapter 2111. of the Revised Code if the provider is a family member with the following exceptions:

- (a) An attorney serving in the role of guardian may not be a provider.
- (b) An agency serving in the role of guardian may not be a provider.

Comment regarding OAC rule 5160-45-03 was incorporated into the rule. The Ohio Department of Medicaid (ODM) does not wish to limit an individual's ability to choose but provide further clarification and guidance regarding the desire to change Case Management Agencies. Based on the comment for this rule, ODM decided to remove the "just cause" language and instead simply add clarifying language indicating that ODM approval is needed before individuals can change case management agencies. The rule was updated with the following proposed language:

(6) Choose his or her case management agency (CMA) and case managers, and

- (a) Have the case manager explain what the ODM-administered waiver is, how it will assist the individual and what the individual's rights and responsibilities are;
- (b) Participate with the case manager and the team in the person-centered all services plan development process, and when possible, lead the process;
- (c) Request assistance with recruitment of providers;
- (d) Be able to effectively communicate with the case manager and team and receive information in a manner that is easy to understand;
- (e) Be able to meet privately with the case manager;
- (f) Receive ongoing assistance from the case manager; and
- (g) Be able to request changes in CMA case management agency and/or case manager, as necessary, subject to ODM's approval.