CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Office of Medical Assistance

Regulation/Package Title: BMC – BIA 03.1 Rule

Rule Number(s): 5101:3-26-03.1

Date: 6/4/2013

Rule Type:

- ☐ New
- X Amended
- X 5-Year Review
- ☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   This rule sets forth utilization management and care coordination requirements for Medicaid managed care plans (MCPs). The amendment changes a reference from "care treatment

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plan" to "care plan." Additionally, language was added to change the department's name from the "Ohio Department of Job and Family Services (ODJFS)" to the "Ohio Department of Medicaid (ODM)." A BIA is being completed due to the five year rule review provision related to the language that requires MCPs to submit a record of all prior authorizations.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   Sections 5111.02, 5111.16, 5111.17 and 5111.085 of the Ohio Revised Code.

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

   Yes. 42 CFR 438.66 requires the state to " have in effect procedures for monitoring" the operations of MCPs. Furthermore, pursuant to 42 CFR 438.202(a) and (c), each state contracting with a MCP must "have a written strategy for assessing and improving the quality of managed care services" offered by all MCPs, and ensure that the MCPs "comply with standards established by the state" that are consistent with federal regulations. The state must also "conduct periodic reviews to evaluate the effectiveness of the strategy and update the strategy periodically, as needed." 42 CFR 438.202(d). State quality strategies must include procedures that "assess the quality and appropriateness of care and services furnished to all Medicaid enrollees." 42 CFR 438.204(b). Pursuant to 42 CFR 438.204(b)(3), state strategies for assessing and improving the quality of managed care services must include procedures that "regularly monitor and evaluate" an MCP's compliance with standards set forth in 42 CFR Part 438, Subpart D. This subpart includes standards relating to coverage and authorization of services, as described in 42 CFR 438.210(b).

   ODM must comply with these and other federal Medicaid regulations as a condition for receiving federal funding to operate Ohio's Medicaid program.

   This proposed regulation allows the State to monitor the performance of MCPs. The requirement that an MCP maintain and submit a record of all authorization requests is part of the State's strategy for monitoring and evaluating an MCP's compliance with 42 CFR 438.210(b), governing the authorization of services.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Although the federal regulations do not impose requirements directly on MCPs, they do require state Medicaid agencies to ensure MCP compliance with federal standards. 42 CFR 438.202(c) requires each state contracting with an MCP to ensure that the MCP comply with standards established by the State, consistent with 42 CFR Part 438, Part D. One of those standards is set forth in 42 CFR 438.242(a), which requires a state to ensure that each MCP "maintains a health information system that collects, analyzes, integrates, and reports data." The State must also require, at a minimum, that each MCP "make all collected data available to the State and upon request to CMS, as required[.]"42 CFR 438.242(b)(3).

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of this regulation is to comply with federal regulations that require the State Medicaid agency to ensure that MCPs maintain data information that is readily available for the State, and if requested, for the Centers for Medicare and Medicaid Services (CMS).

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Through the review of reports, the Agency verifies that MCPs are complying with federal standards. With five MCPs in the state, all will be expected to provide similar information, making missing information more obvious, measuring the success of the regulation.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

The Medicaid managed care plans were involved in the review of the regulation when the regulation was initially drafted in 2006. The rule was made available for public comment to stakeholders and the general public during the OMA policy clearance process in 2006. In 2012, Ohio Medicaid issued a request for applications (RFA) for MCPs to contract with the state beginning July 1, 2013. The applying MCPs were aware of the expectations and requirements they would be held to if they were to become a Medicaid MCP for the state of

Ohio. Since this regulation was in place prior to the RFA process last year, these plans were already aware of the reporting requirements. The MCPs under contract with the state in 2006 were Amerigroup, Anthem, Buckeye, CareSource, Molina, Paramount, Unison and WellCare. The MCPs selected for the current procurement are Buckeye, CareSource, Molina, Paramount and UnitedHealthCare.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

   The stakeholders provided comments when the regulation was initially drafted in 2006 and the Agency responded during the public comment period. Additionally, stakeholders had an opportunity to provide input when the rule was recently distributed to stakeholders during the department's clearance process from March 12 – March 26, 2013. No comments were received during the clearance process.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

   No scientific data was used; however, the requirements in this rule are based on federal regulations as mentioned above.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    The Agency considered performing periodic audits; however, reports provide more real-time feedback to assure timely access to needed services for Medicaid beneficiaries. MCPs were already submitting some of the data via a hardcopy mechanism. Reporting of the data was determined as a more appropriate and feasible alternative that would be less of an administrative burden for the MCPs. Additionally, per 42 CFR 438.242(a), the MCPs are already federally required to "maintain a health information system that collects, analyzes, integrates, and reports data."

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

A performance-based regulation would not comply with 42 CFR 438.242(a), which requires the state to ensure that an MCP "maintains a health information system that collects, analyzes, integrates, and reports data." However, through the submission of the requested data, the Agency is able to determine whether the MCPs are meeting the performance-based standards for prior authorization specified in 42 CFR438.210.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    All Medicaid regulations governing MCPs are promulgated and implemented by ODM only. No other state agencies impose requirements that are specific to the Medicaid program. Furthermore, this regulation was reviewed by ODM's legal and legislative staff to ensure that there is no duplication within ODM rules.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

    All MCPs are required to submit a report and were aware of this requirement prior to joining the procurement process to become one of the five new MCPs in Ohio.

Adverse Impact to Business

14. **Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
    a. **Identify the scope of the impacted business community;**
       This rule only impacts MCPs in the State. The MCPs that will be impacted are Buckeye, CareSource, Molina, Paramount and UnitedHealthCare.
    b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
       Administrators of MCPs will be required to maintain and submit required reports concerning initial and continuing authorization of services to Medicaid beneficiaries.
    c. **Quantify the expected adverse impact from the regulation.**
       Through the administrative component of the capitation rate paid to the MCPs by the Department of Medicaid, MCPs will be compensated for the cost of the time required in maintaining and submitting required reports. Furthermore, the MCPs were aware of the need to report prior to deciding to do business with the State.

15. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The MCPs were aware of the federal requirements for the reporting of information prior to seeking contracts with the state, as well as before signing their contracts with the state. More importantly, without these reports the State would be out of compliance with federal regulations.

Regulatory Flexibility

16. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No, as none of the five MCPs qualifies as a small business.

17. **How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The Agency will not apply this section of the ORC as the waiving of penalties would render Ohio's Medicaid agency out of compliance with federal regulations.

18. **What resources are available to assist small businesses with compliance of the regulation?**

None, as none of the five MCPs qualifies as a small business.