

**MEMORANDUM**

TO: Jenelle Donovan-Lyle, Ohio Department of Medicaid

FROM: Paula Steele, Regulatory Policy Advocate

DATE: October 8, 2013

RE: **CSI Review – Respite and Third Party Rule Revisions 2013** (OAC 5101:3-26-03 and 5101:3-26-09.1)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The Ohio Department of Medicaid (ODM) submitted to the CSI Office two amended rules being reviewed under the five-year rule review as required by ORC 119.032. The proposed rules relate to Medicaid managed care plans (MCPs). The rule package was filed with the CSI Office on September 20, 2013, and the comment period for the rules closed on September 25, 2013. One comment was received during the public comment period.

Proposed rule 5101:3-26-03 *Managed Health Care Programs: Covered Services* prescribes the obligations of MCPs to members for medically necessary services covered by Medicaid. The rule addresses appropriate limits of service, treatment of second opinions, and MCP obligations to assure emergency care services. Finally, the rule requires MCPs to establish processes and procedures for claims delivered by non-contracting providers and to ensure post-stabilization care services. The proposed rule is being amended to add respite services for certain individuals under the age of 21 and who are enrolled in a Medicaid MCP. The public comment pertained to this proposed rule and resulted in the Department removing verbiage that seemed to conflict with

federal Medicare Conditions of Participation (CoP) for home health aide services, which require supervisory visits be performed by Registered Nurses.

The CSI Office inquired as to why respite services had to be provided by Medicare-certified or otherwise accredited providers. According to the Department, the Centers for Medicare & Medicaid Services (CMS) requires that the State Plan for home health services be provided by Medicaid providers that are Medicare-certified home health agencies. The Department allows waiver personal care aide services to be provided by Medicaid providers who meet those requirements, and they have an additional provider category called “otherwise accredited,” that includes other Medicaid provider agencies that meet the requirements of national accrediting bodies. By allowing both Medicare-certified home health aides and otherwise accredited agencies, the pool of eligible respite service providers is expanded.

Proposed rule 5101:23-26-09.1 *Managed Health Care Programs: Third Party Recovery* addresses the Department’s rights of recovery against any third party payer (TPP) for the cost of medical services arising out of any accident/incident related to an injury of a member. The rule prescribes the MCPs’ obligations and reporting requirements of all requests for financial and medical information pursuant to the filing of a tort action, and the manner in which the Department and MCPs handle the coordination of benefits. The rule is being amended to address fraud and abuse recovery and requires MCPs to promptly report any suspected fraud or abuse to the Department.

According to the BIA, industry (MCPs) stakeholders were involved with the initial development of the rules in 2006. For this rule review process, the rules were sent to stakeholders through the Department’s Clearance process. Comments were incorporated into the proposed rules. Specifically, the Department cites a change from weekly to monthly respite limits.

After reviewing the revised proposed rule and the associated BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule is justified.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office