CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Medicaid

Regulation/Package Title: NF Chart of Accounts and Cost Report

Rule Number(s): 5160-3-42 and 5160-3-42.1

Date: August 14, 2013

Rule Type:

XNew

XAmended

X5-Year Review

XRescinded

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.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   These rules set forth requirements for the completion and filing of the annual Medicaid cost report for nursing facilities. These rules are being filed to make various changes due to five-year review. They are also being filed to implement recent legislation, specifically ORC section

5165.01 adopted under Am. Sub. HB 59, which excludes oxygen, custom wheelchairs, and resident transportation from direct care and ancillary/support costs reimbursable through the nursing facility per diem rate. A BIA is being completed due to the requirement for nursing facilities to submit annual cost reports, which involves the report of information as a condition of compliance.

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

   Section 5165.02 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?**
   If yes, please briefly explain the source and substance of the federal requirement.

   These rules do not implement any federal requirement, and the provisions being implemented with the amendment of these rules are not required by federal law for participation in the Medicaid program or any other federal program.

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

   These rules implement ORC section 5165.10, which requires that nursing facilities file annual Medicaid cost reports.

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 cost report contains provider information such as facility characteristics, utilization data, and costs and charges by account code that is used by the Department for administration of the Medicaid program. For example, the employee retention rate is used to implement a Medicaid payment policy that rewards nursing homes for achieving quality incentive measures, which are intended to promote high-quality, resident-centered care. Additionally, the occupancy rate is used to pay providers for resident leave days, and costs are used to establish the pricing to be used in rebasing nursing facility rates, which is required by ORC section 5165.16. ODM must modify account codes and make certain other changes in these regulations regarding oxygen, custom wheelchairs, and resident transportation in order to comply with provisions of ORC section 5165.01 adopted under Am. Sub. HB 59 as an amendment from the legislature.

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

   These regulations are considered successful when completed cost reports have been submitted by all nursing facilities and desk reviewed to ensure accuracy.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   If applicable, please include the date and medium by which the stakeholders were initially contacted.

   The nursing facility provider associations were involved in review of the draft rules in July 2013 prior to the Department of Medicaid's formal policy clearance process. The rules were made available to stakeholders and the general public for public comment during the two-week clearance period in July/August 2013. The nursing facility provider associations in Ohio are the Ohio Health Care Association, The Academy of Senior Health Sciences Inc., and LeadingAge Ohio.

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

   No comments were received when the draft rules were shared with the nursing facility provider associations prior to ODM's formal clearance process. Comments were received from one stakeholder due to the clearance process, and resulted in the Department making an account code change to the nursing facility chart of accounts, and a modification in the draft chart of accounts rule in order to clarify language regarding sub-accounts. The same stakeholder requested an opportunity to comment on the proposed changes to the nursing facility cost report, which is being removed from the OAC and being made available on the Department's website. ODM responded that the proposed changes would be available for review at the August 22, 2013 nursing facility provider association meeting, and let the stakeholder know that the proposed changes had also been made available at the July 2013 provider association meeting, which was held prior to the ODM formal policy clearance process. No comments were received from stakeholders subsequent to the August 22nd provider association meeting.

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?**

   The use of scientific data was not applicable to the development of these rules.

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?**

    No alternative regulations were considered. Specific provisions within the regulations are being updated to implement provisions of ORC section 5165.01 adopted under Am. Sub. HB 59 regarding oxygen, custom wheelchairs, and resident transportation, which were adopted into the bill as an amendment from the legislature.

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.***

    No. A performance-based regulation would not be appropriate as it is necessary to have a standard cost report format and uniform reporting requirements for effective and efficient administrative and auditing purposes.

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

    These rules were reviewed by the Department of Medicaid's staff, including legal and legislative staff, to ensure there is no duplication within ODM rules or any others in the OAC.

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.**

    ODM will make the updated cost report software that all providers must use available on the ODM website on or shortly after January 1, 2014. Providers must submit their 2013 annual cost reports by March 31, 2014. Audits may be performed on cost reports submitted by selected providers to ensure that the regulations are consistently applied.

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 impacts only Ohio nursing facilities choosing to participate in the Ohio Medicaid program. There are approximately 950 nursing facilities participating in the Medicaid program in Ohio.

    b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
       Nursing facility administrators will expend the same amount of time to compile and report the information necessary to file annual Medicaid cost reports as they currently do. The requirement that providers use cost report software available on the Department of Medicaid's website codifies an established business practice that is currently in place, and will not impose a new requirement on providers. Providers or their business partners may have to modify internal accounting software slightly to accommodate the account code changes regarding oxygen, custom wheelchairs, and resident transportation.

However, modifying internal accounting software to accommodate account code changes is not a new practice for nursing facilities, and is a standard part of business practices.

c. **Quantify the expected adverse impact from the regulation.**
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The Department estimates not more than 10 hours of staff time will be necessary for a provider who must modify internal accounting software to accommodate account code changes.

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

The account code changes regarding oxygen, custom wheelchairs, and resident transportation are being made to implement provisions of section 5165.01 of the Revised Code adopted under Am. Sub. HB 59, which excludes these items from direct care and ancillary/support costs reimbursable through the nursing facility per diem rate beginning January 1, 2014, a change supported and requested by the legislature.

Regulatory Flexibility

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

No. All nursing facilities are required by the Revised Code to file cost reports, and the reporting requirements are the same for all providers.

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?**

ORC section 119.14 is not applicable to these regulations as these regulations do not impose any fines or penalties.

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

Providers in need of assistance may contact the Bureau of Long Term Care Services and Supports at (614) 466-6742, or the Rate Setting and Cost Settling Unit at (614) 752-4389.