

**MEMORANDUM**

TO: Jenelle Donovan-Lyle, Ohio Department of Medicaid
FROM: Mark Hamlin, Director of Regulatory Policy
DATE: December 31, 2013
RE: **CSI Review – Incident Management & Provider Oversight (OAC 5160-45-05 and 5160-45-09)**

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

This rule package consists of two existing rules being proposed with amendments¹ by the Ohio Department of Medicaid (ODM). The two rules relate to waiver programs administered by ODM and establish standards for managing incidents and alerts within the system, and for quality assurance oversight of waiver service providers by ODM. The rules have been reviewed by ODM as part of the five-year review required by ORC 119.032.

Rule 5160-45-05 describes in detail the manner in which incidents and alerts are managed within the various waiver programs administered by Medicaid (including Ohio Home Care, Transitions DD, Transitions Carve-Out, and Integrated Care Delivery Systems). The rule requires implementation of an incident management system and outlines the specific responsibilities of various parties for reporting, responding to, investigating, and remediating incidents involving Medicaid recipients. Incidents include events such as physical and emotional abuse, neglect, theft, injury or death. The BIA submitted by ODM identifies the adverse impacts primarily as the

¹ Because the existing rules are being amended by more than 50 percent, the Legislative Service Commission requires that each existing rule be rescinded and replaced by a new rule that has the same rule number.

potential for sanctions if a provider fails to comply, but there are also specific actions required of providers when an incident does occur. However, the BIA notes that these requirements are necessary to ensure that the safety and health of waiver participants are protected, and such provisions are required under the waivers approved by the federal Centers for Medicare and Medicaid Services (CMS).

Rule 5160-45-09 outlines ODM's role in the oversight of waiver services and waiver contractors. The rule requires cooperation of providers – including providing work space, administrative time, and records – when ODM is conducting a quality assurance review. In addition, the rule outlines remedial and enforcement action that can be taken against a provider as a result of these reviews, up to and including suspension or termination of the provider's Medicaid agreement. However, the oversight established in this rule is also a requirement of the state's waiver agreements with CMS and is necessary to ensure that the waiver programs are functioning as they were intended to.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

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