

**MEMORANDUM**

**TO:** Tommi Potter, Ohio Department of Medicaid

**FROM:** Sophia Papadimos, Regulatory Policy Assistant

**DATE:** June 30, 2014

**RE:** **CSI Review – Institutions for Mental Diseases (OAC 5160-3-06.1)**

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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 one amended rule being proposed by the Ohio Department of Medicaid (ODM) pursuant to the five-year review requirement of ORC 119.032. The rule pertains to nursing facilities that are at risk for becoming institutions for mental diseases (IMDs), which triggers the termination of most Medicaid expenditures. An IMD is a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. The rule package was submitted to the CSI Office on June 12, 2014 and the public comment period was held open through June 19, 2014. No comments were received during this time.

OAC 5160-3-06.1 sets forth the process by which ODM identifies nursing facilities that are at risk of becoming IMDs, the preventative measures to be taken by the Department when at risk facilities are identified, and the course of action to be taken by ODM if a nursing facility is determined to be an IMD. The rule implements provisions of the Social Security Act which stipulate federal financial participation (FFP), the federal share of Medicaid expenditures. Under

federal law, FFP is not available for any medical assistance for individuals who are in an IMD unless the payments are for inpatient hospital services or nursing facility services for individuals 65 years of age or older in an IMD, or for inpatient psychiatric hospital services for individuals under the age of 21 (in certain circumstances under 22). It is required by ORC 5162.06 that no component of the Medicaid program shall be implemented without FFP. The adverse impact identified in the BIA is that if a nursing facility is determined to be an IMD, Medicaid payments will be terminated for individuals residing in that facility who are under the age of 65. Additionally, ODM explains some time and effort are necessary on behalf of the nursing facility when the review process is taking place. Historically, the Department of Medicaid has never determined any Ohio nursing facility to be an IMD.

After reviewing the rules and the associated BIA, the CSI Office has determined that 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 Ohio Department of Medicaid 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