

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Sophia Papadimos, Regulatory Policy Assistant

DATE: June 23, 2014

RE: **CSI Review – Nursing Facility Rule Changes Pursuant to Five Year Review
(OAC 5160-3-17, 5160-3-17.1, 5160-3-17.3)**

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 three rules being proposed by the Ohio Department of Medicaid (ODM) regarding outlier services in nursing facilities, pursuant to the five-year review requirement of ORC 119.032. Outlier services are clusters of services which have been determined by ODM to require staffing ratios, certain costs, and capital investments beyond the levels otherwise addressed in Chapter 5160-3 of the Administrative Code. One rule is being proposed with amendments and two rules are being proposed for rescission. The rule package was submitted to the CSI Office on May 21, 2014 and the public comment period was held open through May 28, 2014. No comments were received during this time.

OAC 5160-3-17 establishes the payment methods for outlier services in Ohio nursing facilities. It also sets forth the information providers are required to submit to ODM, including the timeframes for which the information needs to be submitted. This rule is being amended to eliminate the nursing facility franchise fee which has been removed from statute. OAC 5160-3-17.1 and OAC 5160-3-17.3 establish the criteria for individuals eligible for outlier services in nursing facilities

(in-state and out-of-state) with severe maladaptive behaviors due to traumatic brain injury (NF-TBI services). It also sets forth the conditions under which a nursing facility may be approved as an eligible provider of NF-TBI services and reimbursed for those services through Medicaid. The rules are being proposed for rescission because no Medicaid payments for the provision of NF-TBI in-state services have been made since July 1, 2008, and no Medicaid payments have been made for the provision of NF-TBI out-of-state services since August 20, 2000. Additionally, nursing facility providers have not expressed any interest in furnishing these services.

ODM provided the draft rules during a stakeholder meeting which included Ohio Health Care Association, The Academy of Senior Health Sciences, Inc., and LeadingAge Ohio. No substantive comments were submitted during this process.

The adverse impact described in the BIA for OAC 5160-3-17 is the cost to submit information. ODM estimates the financial cost to be between \$52.50 and \$72.50 to submit the information. While there are numerous reports, timesheets, and statements required for submission, the BIA notes that all of the information is already on file and no new documents need to be created for the purpose of this rule.

After reviewing the rules and the associated BIA, the CSI Office has determined that the rescission and the amendments of the rules are 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