

**MEMORANDUM**

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

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

**DATE:** December 1, 2014

**RE:** **CSI Review – Nursing Facility Rule Amendments Pursuant to Five-Year Review (OAC 5160-3-03.2, 5160-3-16.5, 5160-3-24 and 5160-3-39.1)**

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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 four amended<sup>1</sup> rules being proposed by the Ohio Department of Medicaid (ODM) pertaining to nursing facilities, pursuant to the five-year review requirement in statute. The rule package was submitted to the CSI Office on November 3, 2014 and the public comment period was held open through November 10, 2014. No comments were received during this time.

Ohio Administrative Code (OAC) 5160-3-03.2 articulates the procedures necessary for ODM to collect fines from nursing facilities. Once a nursing facility is notified that a fine is due the nursing facility has ten days to submit in writing to ODM the chosen payment method. This rule is being amended to combine and revise the policy that that Centers for Medicare and Medicaid Services (CMS) and the Ohio Department of Health (ODH) are responsible for imposing and

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<sup>1</sup>Two of the rules in this package (OAC 5160-3-03.2 and 5160-3-39.1) are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

collecting the fines and, if they are unable to do so, ODM will be notified. OAC 5160-3-16.5 pertains to residents' personal needs allowance (PNA) accounts and other funds. The proposed rule explains the residents' personal needs allowance and the role of the nursing facility in assisting with and administering the allowance. A nursing facility is required to purchase a surety bond or provide a reasonable alternative in order to protect all resident funds deposited with and managed by the nursing facility. This rule is being amended to update references and federal requirements. OAC 5160-3-24 outlines the appropriate steps a nursing facility must take in order to request a rate reconsideration. The nursing facility must explain to ODM where it believes the error occurred and the suggested accurate calculation. Amendments are being made to update references and allow for minor language changes. OAC 5160-3-39.1 pertains to requirements for submitting claims, specifically the information necessary, time constraints, and any exceptions regarding timely filing. According to ODM, the rule is being restructured to better delineate the requirements for submitting claims for services included and not included in the nursing facility per diem rate, and to enhance readability and comprehension.

The adverse impacts described in the BIA are the time and money associated with submitting the information and being in compliance with the requirements. Depending on the situation the nursing facility is presented with, this can vary. No comments were received that the requirements are overly burdensome. After reviewing the BIA and associated rules, the CSI Office has determined the purpose of the rules 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.