

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Sophia Papadimos, Regulatory Policy Assistant

DATE: October 28, 2014

RE: **CSI Review – Administered Waiver Provider Rules (OAC 5160-45-06 and 5160-45-10)**

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 amended¹ rules being proposed by the Ohio Department of Medicaid (ODM) pursuant to the five-year review requirement of ORC 119.032. The rule package was submitted to the CSI Office on September 17, 2014 and the public comment period was held open through September 24, 2014. One comment was received during this time from Pro Seniors, Inc.

This rule package pertains to ODM-administered waiver programs. Ohio Administrative Code (OAC) 5160-45-06 outlines the process for structural reviews of providers. Providers will initially be reviewed by ODM each year for the first three years of their contracts. Then the provider will be subject to reviews every two years. This process also allows ODM to investigate any provider occurrences. A "provider occurrence" is any alleged, suspected, or actual performance or

¹ These rules are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers.

operational issue such as a billing violation, medicaid fraud or substandard performance. During the review, if ODM finds any providers to be out of compliance, the provider will have to submit a plan of correction. Medicare-certified and other accredited agencies are exempt from structural reviews because they are subject to reviews in accordance with their certification and accreditation bodies. Such agencies shall submit copies of their updated certifications and/or accreditations to ODM. Draft rule 5160-45-10 addresses the core conditions of participation that a provider must meet in order to furnish ODM-administered waiver services. Those conditions include criminal records checks, consumer incident reporting, and documentation of services, among other things.

ODM held stakeholder meetings approximately every two weeks since August 2013 regarding administered waivers. The group included the Ohio Council for Home Care and Hospice, Midwest Care Alliance, CareSource, CareStar, Council on Aging, Public Consulting Group, Ohio Olmstead Task Force, Disability Rights Ohio, the Ohio Department of Aging and the Ohio Department of Developmental Disabilities. ODM also contacted non-agency providers (nurses and personal care aides) for the purpose of soliciting feedback regarding the draft rules. The conversations among these parties are reflected in the new rules.

The adverse impacts described in the BIA include the time to collect data and submit information, including correctional plans if necessary. Additionally, ODM explains that there will be administrative costs for already Medicare-certified or otherwise accredited providers to submit their reviews. After consulting with providers, ODM estimates this will cost roughly \$100. Pro Seniors, Inc. suggested that ODM include language in the rule to specifically state a consumer can pursue any legal remedy in the event a provider makes a fraudulent, misleading, or deceptive statement. ODM decided not to include this language in the rule; however, the current language does not prevent a consumer from pursuing legal action. No comments were received that the adverse impacts are overly burdensome. Also, the rules were drafted with stakeholder input. After reviewing the proposed rules and associated BIA, 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.