CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Hospice Rules Pursuant to Five-Year Review

Rule Number(s): 5160-56-03 (amend); 5160-56-03.3 (amend); and 5160-56-04 (amend).

Date: October 30, 2014

Rule Type:

- ☐ New
- X Amended
- X 5-Year Review
- ☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.** ***Please include the key provisions of the regulation as well as any proposed amendments.***

Rules in Chapter 5160-56 of the Administrative Code are being updated to change or clarify policy relating to the administration of hospice, that is end-of-life care which focuses on the palliation of a terminally ill individual's symptoms as covered by Medicaid. Proposed changes

reflect updates to OAC cites, ODM references, and CFR effective dates. In addition, the term "consumer" was replaced with "individual" throughout each rule.

OAC 5160-56-03, entitled "Hospice services; discharge requirements" details circumstances in which an individual would no longer receive Medicaid hospice benefits through discharge from care, revocation of the election of care, or transfer to another hospice provider. Amendments proposed to this rule are being made to clarify that the written statement of discharge must state the reason for discharge except when the individual expires, to change the name of the agency from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM), and to change the term "consumer" to "individual." Language in paragraph (B)(1) was changed such that, after revocation of the Medicaid hospice benefit, an individual may choose to re-elect the hospice benefit at any time rather than forfeiting any rights to re-elect hospice for the remaining days in the revoked benefit period.

OAC 5160-56-03.3, entitled "Hospice services; reporting requirements" describes the requirements for recording hospice spans and certification information using the telephone-based, Interactive Voice Response (IVR) System. This rule is being amended to update Ohio Administrative Code references which have been renumbered due to the creation of the Ohio Department of Medicaid, and to change the term "consumer" to "individual" throughout the rule.

OAC 5160-56-04, entitled "Hospice services; provider requirements" specifies eligibility requirements for hospice providers in Ohio. It is proposed for revisions to amend cited rule references, from Chapter 5101:3-56 to 5160-56 of the Administrative Code, to update date references to relevant federal law, and to change the term "consumer" to "individual" throughout the rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

- RC 5164.02.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
If yes, please briefly explain the source and substance of the federal requirement.

Yes. To be eligible for Medicaid Hospice, all individuals and providers must meet federal eligibility requirements as prescribed in Section 1861(dd) of the Social Security Act and 42 C.F.R. Part 418. The Act specifies services covered under hospice care and the conditions which a hospice program must meet in order to participate in the state's administered and/or supervised hospice program. 42 C.F.R. Part 418 amplifies section 1861(dd) of the Social Security Act and serves as the basis for OAC rules 5160-56-03, 5160-56-03.3, and 5160-56-04 which detail

hospice related discharge, reporting, and provider eligibility requirements. 42 C.F.R. §418.310 requires hospice providers to complete reports and keep records as the Secretary determines necessary to administer the program.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   The regulations amplify hospice provisions in the C.F.R. and do not extend beyond these federally imposed requirements.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   OAC 5160-56-03 through 5160-56-04 exist to comply with federal and state law. They deter the involuntary discontinuance of hospice service with respect to an individual because of the inability of the individual to pay for such care, and require hospices to maintain core standards for safety when providing care to eligible individuals deemed terminally ill by a qualified professional.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   The success of these regulations may be determined to the extent that hospice providers furnish safe and effective hospice services to Ohio Medicaid recipients, according to the provisions in these rules.

Development of the Regulations

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** ***If applicable, please include the date and medium by which the stakeholders were initially contacted.***

   - Academy of Senior Health Sciences
   - Leading Age
   - Midwest Care Alliance
   - Ohio Council for Home Care & Hospice
   - Ohio Department of Developmental Disabilities
   - Ohio Department of Mental Health and Addiction Services

- Ohio Department on Aging
- Ohio Health Care Association
- Ohio Olmstead Task Force

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

On July 14, 2014, representatives of the Ohio Council for Home Care and Hospice and the MidWest Care Alliance provided informal written responses to the changes to OAC 5160-56-03 through 5160-56-04 as proposed. Both provided minimal comments as they recognized the amendments to be of "no significant change," "technical," and "minimal" in nature.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data was not applicable to the development of these rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

None. The tenets proposed in OAC 5160-56-03 through 5160-56-04 are based on provisions prescribed by the Centers for Medicaid and Medicare Services (CMS). No alternative regulations were considered by the Agency as the requirements of these rules were dictated by federal law.

11. Did the Agency specifically consider a performance-based regulation? Please explain. ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Performance-based regulations were not considered appropriate for these rules as they are dictated by federal law. Performance-based regulations pertaining to hospice are not authorized by statute, and deemed inapplicable restrictions to impose in the amendments.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The proposed rules were reviewed by policy development staff in consultation with the Ohio Department of Medicaid, Office of Legal Services and the Office of Legislation. Although rules in ODM and other parts of the OAC compliment and work in tandem with these rules, none were found to be duplicative in scope.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Letters will be sent to providers and other stakeholders, including but not limited to all county departments of job and family services explaining the changes that have been made to these rules. Additionally, the final rules as adopted by the Department of Medicaid will be made available to stakeholders and the general public on the Department's website.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a) Identify the scope of the impacted business community;

OAC 5160-56-03, 5160-56-03.3, and 5160-56-04 impact the 130 certified hospice providers in Ohio which care for individuals who choose to participate in the Ohio Medicaid program.

b) Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);

5160-56-03

When an individual is discharged from hospice care, the hospice provider must complete a written statement of discharge that clearly states the reason for discharge, and furnish the individual or individual's representative with a copy. In cases of an individual's death, the statement of discharge is provided to the individual's representative only if it is requested by the representative. When an individual voluntarily revokes the hospice benefit, the hospice provider must complete a written statement of revocation that clearly states the reason for the revocation, and must furnish the individual with a copy.

5160-56-03.3

This rule specifies the information that hospice providers must enter into the Interactive Voice Response (IVR) system, and the timeframes during which the information must be entered into the IVR system. The types of information that providers must enter include hospice provider number, the individual's Medicaid billing number, beginning date of hospice services, physician certification dates, individual election date, diagnosis codes for the individual, and ending date of service.

5160-56-04

This rule requires that hospice providers be licensed by the Ohio Department of Health according to ORC Chapter 3712. In addition, this rule requires hospice providers to have a Medicaid provider agreement according to OAC rule 5160-1-17.2 to be eligible to provide Medicaid hospice services.

This rule requires Medicaid hospice providers to inform the County Department of Job and Family Services (CDJFS) in writing of any change in an individual's address, and to provide a copy of the individual's hospice election form and advance directives to other Medicaid providers. It also requires providers to establish a written plan of care for each individual, and update the plan at intervals specified in the plan.

c) **Quantify the expected adverse impact from the regulation.** ***The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.***

5160-56-03

The estimated cost for a hospice provider to complete a written statement of discharge is approximately $23.44. The estimated cost for a hospice provider to obtain a written statement of revocation is approximately $21.00.

5160-56-03.3

The estimated cost of entering information into the Interactive Voice Response (IVR) system is approximately $11.44 to $12.50 per instance.

5160-56-04

There should be no cost of compliance for providers to be licensed by the Ohio Department of Health in order to be Medicaid hospice providers, as licensure is a requirement for all hospice providers in Ohio regardless of whether they serve Medicaid or non-Medicaid individuals.

The estimated cost for a hospice provider to complete a hospice election form is approximately $11.06 to $12.50 per form. The estimated cost for a hospice provider to furnish a copy of an individual's advance directive to another Medicaid provider is approximately $3.69 to $6.25 per copy. The estimated cost for a hospice provider to complete a signed agreement with a nursing facility, ICF-IID, or inpatient facility is approximately $76.92 per agreement. The estimated cost for a hospice provider to obtain a written certification of terminal illness is approximately $53.34 per certification. The estimated cost to establish a written plan of care for an individual is approximately $106.68 per plan, and the estimated cost to update the plan of care is approximately $26.67 per plan.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Hospice regulations are required by federal statute and as such, are required for Medicaid to reimburse for hospice services.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The provisions in these rules are the same for all hospice providers, and are based on federal law.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ORC section 119.14 is not applicable to these rules as these rules do not impose any fines or penalties for paperwork violations as defined in ORC section 119.14.

18. What resources are available to assist small businesses with compliance of the regulation?

Providers in need of assistance may contact the Bureau of Long Term Care Services and Supports, through the Provider Relations Hotline at (800) 686-1516.