

**MEMORANDUM**

TO: Bryan Stout, Ohio Department of Medicaid

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: October 7, 2016

RE: **CSI Review – PASSPORT: Covered Services and Rates (OAC 5160-31-07)**

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). The rule package was submitted to the CSI Office on September 19, 2016, and the comment period remained open until September 29, 2016.

Rule 5160-31-07 describes methods used to determine provider rates for services available through the pre-admission screening system providing options and resources today (PASSPORT) home- and community-based services (HCBS) Medicaid waiver program. Amendments are being proposed to remove personal care services from the list of services subject to a regional rate methodology, thereby applying a statewide rate methodology to all personal care services regardless of provider type; to add a statewide rate-setting methodology for shared living, a new service; and to streamline language, such as clarifying that service plans are "person-centered."

The rule impacts the Ohio Department of Aging's (ODA) designees: 13 PASSPORT Administrative Agencies (PAA), agency providers, and consumer-directed individual providers (CDIP) of personal care services. Potential adverse impacts of the rule include entering into contracts, which could result in administrative and legal costs for the provider; signing agreements, which could result in costs associated with time spent obtaining, reviewing, or submitting a signed agreement; and requesting enhancements for billing software changes within home health

agencies. During its review process, the CSI Office also identified additional adverse impacts. In some cases, a provider will negotiate with an individual regarding unit rates, or with a case manager regarding per job bid rates. Finally, there is an impact imposed on an individual's case manager, since the case manager must review all negotiated rates.

Time spent by a PAA to enter into contract with a new provider, as well as time required to negotiate unit rates of home medical equipment and to document on a person-centered service plan, is covered by administrative funding provided by ODM to the PAAs for these activities. ODM also supplies waiver case management funding to the PAAs. Both funding streams support provider quality assurance processes. In addition, the BIA claims that the rule is justified because it ensures transparency, program integrity, and accountability. Accessibility of information helps the regulated community make an informed decision about participation in the PASSPORT program, and allows them to remain current on rate methodologies. Furthermore, the regional rate contracting process documents billing maximums, and the signed agreement process outlines the relationship between employer and employee in the event that an individual elects self-direction.

ODM contacted the following stakeholders requesting review of the amended rule: Leading Age Ohio, Ohio Council for Home Care and Hospice, three Medicare-certified home health agencies which furnish PASSPORT personal care services, one non-profit organization representing non-skilled home care agencies furnishing these services, Ohio Association of Area Agencies on Aging (O4A), five PAAs, three CDIPs, and members of the ODM HCBS Rules Workgroup. From these distributions, ODM received feedback that resulted in several technical edits to the rule language. During the CSI public comment period, one comment, submitted by O4A, expressed support for an increase in the PASSPORT personal care aide rate, recommending use of a statewide rate. It also drew attention to a line in the rule that should have been deleted when the amendments were proposed, since it contradicts a revised section of the rule. In response, ODM deleted the referenced line of text. ODM did not make changes regarding the personal care aide rate, stating that it is working to develop a long-term solution for the adoption of a consistent rate methodology for PASSPORT and Ohio Home Care Waiver personal care services. This rigorous process will involve all affected stakeholders. The CSI Office also identified another inconsistency in the rule, which ODM addressed in a revised rule on October 6. A revised BIA was submitted on October 5. In light of these amendments, the CSI Office determines the purpose of the rules to be justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for 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