

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Managed health care programs: covered services.

Rule Number(s): 5160-26-03

Date: October 6, 2016

Rule Type:

☐ New

☒ Amended

☐ 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☐ Rescinded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.

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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.

In Ohio, approximately 86% of Medicaid recipients receive their Medicaid services through a Managed Care Plan (MCP). MCPs are health insurance companies that are licensed by the Ohio Department of Insurance and have a provider agreement with the Ohio Department of Medicaid (ODM) to provide coordinated health care to Medicaid beneficiaries. There are five MCPs in Ohio each with a network of health care professionals.

OAC rule 5160-26-03, entitled Managed health care programs: covered services, describes the services which must be covered by MCPs and addresses any exclusions or limitations for those services. Respite is a covered service set forth in this rule, to provide short-term, temporary relief to the unpaid caregiver of a child under the age of twenty-one. This rule is being proposed for amendment to update the eligibility criteria for children with long-term care service and support needs who receive respite and to include respite services for children who have been diagnosed with serious emotional disturbance resulting in a functional impairment. Respite provider qualifications and the maximum amount of hours of respite allowed annually per child have been modified. Additional edits were made for clarification and organization of the rule.

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

Ohio Revised Code Section 5167.02

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. 42 C.F.R. Part 438 imposes comprehensive requirements on the state regarding Medicaid managed care programs. Subpart D of the regulations sets forth requirements regarding quality and availability of services for Medicaid recipients. However, rule 5160-26-03 is not being proposed for amendment due to federal regulation.

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

This rule is consistent with federal requirements for participation in the Medicaid managed care program.

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)?

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The public purpose of this regulation is to ensure the provision of medically necessary services, preventative care, emergency services, post stabilization services and respite to promote the best outcomes for individuals enrolled in the Medicaid managed care program. In addition, this rule ensures compliance with federal regulations governing Medicaid managed care.

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

Successful outcomes are measured through a finding of compliance with these standards as determined by monitoring and oversight.

Development of the Regulation

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.

Various stakeholders were included when drafting the new respite requirements. On September 26, 2016 the draft rule was sent via email to the stakeholders listed below for their review and comment.

- Public Children Services Association of Ohio
- Ohio Association of Health Plans
- National Alliance on Mental Illness Ohio
- Ohio Psychological Association
- Ohio Community Corrections Association
- The Ohio Council of Behavioral Health & Family Service Providers
- The Ohio Association of County Behavioral Health Authorities
- Case Western Reserve University - Center for Evidence Based Practices
- Beech Brook, CEO
- Mental Health & Addiction Advocacy Coalition
- Ohio Citizen Advocates for Addiction Recovery
- Paramount
- CareSource
- Ohio Empowerment Coalition, Inc.
- United Healthcare
- Ohio Department of Job and Family Services
- Zeph Center
- Ohio Alliance of Recovery Providers
- Aetna
- Buckeye Health Plan

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- Molina
- BASIC
- Ohio Association of Child Caring Agencies
- United Methodist Children's Home
- Common Ground Family Services
- Youth Advocate Services
- Stark County Mental Health and Recovery Services Board
- Mental Health and Recovery Services Board serving Coshocton, Guernsey, Morgan, Muskingum, Noble and Perry Counties
- Summit County Alcohol, Drug Addiction, and Mental Health Services Board
- Ohio Department of Mental Health and Addiction Services

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

ODM received feedback from several stakeholders regarding the changes to the respite service. Stakeholders who submitted comments include: ProMedica, UnitedHealthcare Community Plan, Ohio Association of Child Caring Agencies (OACCA), Nationwide Children's Hospital, Public Children Services Association of Ohio (PCSAO), Butler County Family & Children First Council, The Ohio Council of Behavioral Health & Family Services Providers (The Ohio Council), and Harbor Behavioral Health. Based upon this feedback, the following changes were made to the rule language:

Updates to the qualifying respite diagnoses appendix. Several stakeholders noted that the substance use disorder (SUD) diagnoses originally included in the appendix would not likely rise to the level of requiring respite. Conversely, there were several serious emotional disturbance (SED) related diagnoses that were not included, that stakeholders felt should be added to the appendix. At the request of stakeholders, the SUD diagnoses were removed from the appendix and several new diagnoses were added. Additions include Major Depressive Disorder, Generalized Anxiety Disorder, Oppositional Defiant Disorder, Anorexia Nervosa, Conduct Disorder and others.

Updates to the training, supervision and accreditation requirements. Stakeholders commented on the original training requirement and supervision language which was based on the current long-term care service and supports respite providers. Because of this feedback, the training and supervision requirements have been updated to be specific to behavioral health respite providers. Also, the name of the Council on Accreditation has been corrected.

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?

No scientific data was used to develop these rules or the measureable outcomes of the rules.

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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?

ODM, with input from OhioMHAS and stakeholders, considered alternative rule language as part of the rule development process and settled upon language which was mutually agreed upon and best suited to accomplish the intent of the rule. Such language had to meet the federal and state guidelines under which ODM is required to operate, and is consistent with other ODM respite provider regulations.

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.*

Not applicable for this rule.

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

All Medicaid regulations governing MCPs are promulgated and implemented by ODM only. No other state agencies impose requirements that are specific to the Medicaid program.

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.

ODM will notify MCPs and stakeholders of the final rule changes via email notification and by posting the revised rules on the ODM website <http://medicaid.ohio.gov/>

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;

This rule will impact MCPs in the State including: Buckeye, CareSource, Molina, Paramount and UnitedHealthCare.

Additionally, this rule will impact respite providers by allowing additional nationally accredited behavioral health providers to deliver respite services to this population of children. Participation as a provider of respite services is voluntary and at the provider's discretion.

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

OAC rule 5160-26-03 holds MCPs financially responsible for payment of certain services including respite for children. Requirements in addition to the payment for covered services as outlined in this rule include:

- Establishing, in writing, a process for the submission of claims for services delivered by non-contracting providers;
- Designating a telephone line to receive provider requests for coverage of certain services; and
- Submitting written requests or notifications to ODM, contracting providers and members.

Respite provider agencies are required to:

- Be accredited by at least one of several national accreditation entities;
- Hold a Medicaid provider agreement;
- Comply with applicable background check requirements; and
- Behavioral health provider agencies must be OhioMHAS certified.

Agency employees:

- Long-term care providers must obtain a certificate of completion from the Ohio Department of Health or a Medicare competency evaluation program;
- All providers must obtain first aid certification; and
- Long-term care providers must obtain evidence of completion of twelve hours of in-services continuing education each year.

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.

Managed care plans are paid per member per month. ODM must pay MCPs rates that are actuarially sound, as determined by an outside actuary in accordance with 42 CFR 438.6(c) and CMS’s “2016 Managed Care Rate Setting Consultation Guide.” Ohio Medicaid capitation rates are “actuarially sound” for the period covered by the certification, projected capitation rates and other revenue sources provide for all reasonable, appropriate and attainable costs. Costs include but are not limited to expected health benefits, health benefit

settlement expenses, administrative expenses, the cost of capital and government mandated assessments, fees, and taxes.

All rates and actuarial methods can be found on the ODM website in Appendix E of the Medicaid Managed Care provider agreement. Through the administrative component of the capitation rate paid to the MCPs by ODM, MCPs will be compensated for the cost of the time required in maintaining and submitting required documents and reports. For CY 2016, the administrative component of capitation rate varies by program/population and ranges from 3.5% to 6.85% for MCPs.

Respite providers must hold a Medicaid provider agreement. The cost associated with obtaining a Medicaid provider agreement is currently \$554. This fee may be paid to Ohio Medicaid, their designated agency or to Medicare. It is paid at initial application and then at revalidation every five years.

Fees for the BCII criminal records check for all applicants considered for employment may vary depending on the location or agency providing the service, but on average cost approximately \$22.00. The fee for criminal records check from the FBI for each applicant considered for employment, who has not resided in Ohio for five years is currently \$24.00 which may vary depending on the location or agency providing the service. BCII accepts and processes FBI background checks. Fees associated with criminal records checks to be passed to the applicant/employee resulting in no impact to the agency.

Respite provider agencies must be certified through OhioMHAS. The cost of certification through OhioMHAS is based upon the budget of the agency that is applying for certification. The fee schedule showing the correlation between the agency's budget and the certification cost is located in OhioMHAS OAC rule 5122-25-08. A provider already certified by OhioMHAS, requesting to add an additional service(s) pays a fee based only upon their budget for the new service(s), not their entire budget. When the agency has appropriate accreditation from The Joint Commission, CARF, or COA there is no certification fee owed to OhioMHAS.

Respite provider agencies are required to be accredited by at least one of several accreditation entities. The average cost of accreditation is between \$1,295 and \$2,300 annually. Costs vary depending on the size of the facility, the number of employees, facility type, the average daily population being served and whether there are satellite offices.

Individual respite providers working for an agency must be first aid certified. The City of Columbus Division of Fire offers a certification course for \$30.00 per person. Individual providers also must obtain a certificate of completion of a competency evaluation program approved by the Ohio Department of Health (ODH) or a Medicare competency evaluation program for home health aides. Per ODH, the cost of this certification can range from approximately \$200 to \$500 depending on where they take the course and who is presenting the materials.

Additionally, individual providers must maintain evidence of completion of twelve hours of in-service continuing education per year. On average, the cost for continuing education courses can range from free of charge to \$12 per course.

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

The MCPs were aware of the federal requirements for covered services prior to seeking contracts with the state, as well as before signing their contracts with the state. More importantly, without the requirement of certain medically-necessary services, the State would be out of compliance with federal regulations.

Regulatory Flexibility

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

Not applicable for this program.

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?

Not applicable for this program.

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

Not applicable for this program.