

**MEMORANDUM**

**TO:** Sallie Debolt, State Medical Board of Ohio

**FROM:** Emily Kaylor, Regulatory Policy Advocate

**DATE:** October 28, 2016

**RE:** **CSI Review – Prescribing to Persons not Seen by the Physician (OAC 4731-11-01 and 4731-11-09)**

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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 two amended<sup>1</sup> rules submitted by the State Medical Board of Ohio for their statutorily required five-year review. House Bill 188 of the 131st General Assembly directed the Medical Board to adopt rules establishing standards for a physician to prescribe a drug to an individual that they have not performed an exam on before and is at a location remote from the physician. The package was submitted to the CSI Office on July 5, 2016 and the comment period closed on July 25. Twelve comments were received during this time. The Board considered the comments and approved further amendments to the rules at their meeting on September 14. Because of the multiple changes, CSI requested a second comment period which the Board held open from September 19 until September 26. During this period, five comments were received.

One rule establishes the definitions used throughout Ohio Administrative Code (OAC) Chapter

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<sup>1</sup> OAC 4731-11-09 is being amended to the extent that the Legislative Service Commission requires the Board to rescind the rule and replace it with a new rule of the same number.

4731-11. The Board has added definitions for cross-coverage and active patient to address changes in the other rule of this package. Stakeholders pointed out that consult and opioid treatment program are not used in OAC Chapter 4731-11 so the Board removed definitions for those terms. OAC 4731-11-09 describes the process and requirements for prescribing or otherwise providing drugs to patients who are at a location remote from the physician, more commonly known as telemedicine. It lists the steps for a physician to do this, which include establishing the patient's identity and location, receiving consent from the patient, and thorough documentation.

The Board describes its extensive stakeholder outreach in the BIA. According to the BIA, development of the proposed language for OAC 4731-11-09 began in 2011 and included many stakeholders presenting to the Board, providing input on the draft language, and meeting with the Board. The BIA also details where they did and did not make changes based on stakeholder feedback.

The BIA states that the impacted community includes physicians wishing to provide medical services through telemedicine, health systems that have physicians delivering services through telemedicine, telemedicine companies, and insurance companies and employers who wish to offer telemedicine services to their customers or employees. The adverse impacts include any time the physician or qualified health care provider must spend doing additional tasks like determining the patient's physical location, additional documentation of the examination, and the technology employed to interact with the patient. These costs are necessary to ensure patient safety while delivering a convenient medical treatment.

The Board considered the twelve comments that came in during the first comment period. These considerations led to multiple amendments to the rules that the Board approved on September 14 and sent out for a second comment period. The second comment period received five comments, two in support of the changes and three that still had concerns. CSI followed up with the Board about the remaining concerns on October 4 to which the Board responded on October 13. CSI determined from this response that the stakeholders who still had concerns were generally satisfied with the Board's clarifications and encouraged that the rules move forward.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

### **Recommendation**

For the reasons explained 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 State Medical Board of Ohio 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