MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: April 12, 2017

RE: CSI Review – Medicaid Managed Care Program (OAC 5160-26-02, 5160-26-02.1, 5160-26-3.1, 5160-26-06, and 5160-26-09.1)

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

The proposed rule package submitted by the Ohio Department of Medicaid (ODM) consists of five amended rules[1]. Of the five amended rules, two are being amended as part of their five-year review requirement in statute. The rule package was submitted to the CSI Office on March 21, 2017 and the comment period was held open through March 28, 2017. Two public comments were received during this time.

Ohio Administrative Code (OAC) 5160-26-02 sets forth the eligibility criteria for individuals who are then enrolled in a managed care program. It is being proposed for amendment to update policy related to the administration of the Medicaid managed care program.

OAC 5160-26-02.1 sets forth criteria for termination of enrollment and is being amended to include that ODM will provide a written approval of the termination request. Gender identity is

[1] OAC 5160-26-03.1 is being amended to the extent that the Legislative Service Commission requires the Ohio Department of Medicaid to rescind the rule and replace it with a new rule of the same rule number.

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also being added as a prohibited basis for discrimination.

OAC 5160-26-03.1 sets forth the requirements for Managed Care Plans (MCPs) related to members' primary care providers (PCPs). This rule is being rescinded and will be made new to update the policy and delete duplicative provisions.

OAC 5160-26-09.1 sets forth the MCPs' rights to recover third party liability in certain instances and establishes the requirement for MCPs to provide coordination of benefits when a Medicaid beneficiary has third party resources. The rule is being amended to add language allowing ODM to identify, pursue, and retain any recovery of third party resources assigned to the MCPs when not collected by the MCP one year after the date of claim payment.

ODM states that the purpose of the regulation is to ensure MCP members' rights and protections, require MCPs follow third party liability policy, and make sure they are implementing policies that prevent fraud and abuse. ODM contends they can achieve the aforementioned purposes by requiring MCPs to follow all established guidelines.

ODM engaged multiple applicable stakeholders during the rulemaking process including Aetna, Buckeye Health Plan, Caresource, Molina Healthcare of Ohio, Paramount Advantage, and UnitedHealthcare Community Plan of Ohio. As a result of the stakeholder outreach, changes were made to OAC 5160-26-03.1 that reinforced the ability of MCPs to uphold PCP compliance with the obligation to provide such services.

Two comments were received during the CSI review period. The first, asked ODM to require MCPs to communicate the status or change in eligibility of a Medicaid individual to providers. ODM replied that they would not adopt the proposed changes but wished to continue to work with providers and try to remedy any concerns. The second, requested that ODM include a provision in OAC 5160-26-02.1 providing that children in custody, foster care, or other out of home placement, would be permitted to switch from one Medicaid MCP to another Medicaid MCP at any time, per a decision by the Public Children's Services Agency or Juvenile Court that holds custody of the child. ODM adopted the requested provision.

The BIA states that the rules adversely impact MCPs as they are required to give certain notices to ODM and must comply with other reporting requirements including providing additional documentation upon member termination in MCP enrollment and implementing written policies and procedures. ODM states that these rules are justified because the State must remain in compliance with federal regulations. Therefore, the CSI Office has determined the purpose of the rule to be justified.

Recommendations

For the reasons explained above, the CSI 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.