

**MEMORANDUM**

**TO:** Bryan Stout, Ohio Department of Medicaid

**FROM:** Tess Eckstein, Regulatory Policy Advocate

**DATE:** February 8, 2017

**RE:** **CSI Review – Managed Care - Subcontracting (OAC 5160-26-05)**

---

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 December 15, 2016, and the comment period remained open until December 22, 2016.

Rule 5160-26-05 sets forth requirements for managed health care programs, including Managed Care Plans (MCP) and MyCare Ohio Plans (MCOP), provider panels and subcontracting. The rule is being amended to align managed care language with terminology found in federal regulation 42 C.F.R. 438.2. This regulation outlines the difference between a subcontractor and a health care provider. Language related to subcontractors, which are administrative service providers, has been removed from the rule and incorporated into managed care provider agreements, allowing for flexibility to adapt to MCP business needs. Finally, the term “subcontractor” has been replaced with “provider” or “contracted provider” to clarify that the rule pertains to health care providers only.

The rule impacts Ohio's six MCPs and MCOPs. Potential adverse impacts of the rule include a requirement for MCPs to notify ODM, providers, and/or members of the addition or removal of health care providers from their provider panels, including expiration, nonrenewal, or termination of provider subcontracts. Requirements to evaluate subcontracted providers of administrative services and provide evaluation summaries to ODM, and for plans to furnish to the providers information and documentation to meet program requirements, have been moved to individual managed care provider

agreements. The BIA prepared by ODM states that the rule is justified because it helps ensure the health and welfare of individuals enrolled in Medicaid managed care through the provision of medically necessary services by qualified providers. Proposed amendments also allow the state to remain in compliance with federal regulations. Finally, MCPs and MCOPs were aware of these federal requirements for covered services prior to seeking and signing their contracts with the state.

In October 2016, ODM engaged Ohio's six MCPs and MCOPs in conversations about the draft, as well as a subsequent meeting to discuss proposed changes to the rule. The MCPs and MCOPs agreed that the language should be updated to align with the terminology in federal regulations. The changes benefit the plans by moving subcontractor language to managed care provider agreements. No concerns were expressed, and no feedback was submitted. Similarly, no comments were submitted during the CSI public comment period. Therefore, the CSI Office has determined the purpose of the rule 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