

**MEMORANDUM**

**TO:** Tommi Potter, Ohio Department of Medicaid

**FROM:** Sarah JanTausch, Regulatory Policy Advocate

**DATE:** December 30, 2016

**RE:** **CSI Review – Nursing Facilities Ventilator Program (OAC 5160-3-18)**

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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 one new rule, Ohio Administrative Code (OAC) 5160-3-18, that will create an alternative purchasing model for ventilator services for Medicaid recipients in nursing facilities. This payment method will increase access to care for ventilator-dependent Medicaid individuals. The Ohio Department of Medicaid (ODM) submitted the rule package to the CSI Office on December 12, 2016 and the public comment period was held open through December 19, 2016 with no comments received.

The rule package includes criteria for eligible providers to receive an enhanced per-day Medicaid rate to cover the cost associated with caring for ventilator-dependent individuals, a description of the nursing facility (NF) provider application, and approval process to participate in the ODM NF ventilator program. A provision for termination of a provider by ODM and voluntary withdrawal from the program for a provider are also included. It includes compliance requirements, definitions of terminology, and an explanation of the payment methodology.

According to the BIA, for early stakeholder outreach ODM sent the draft rule to the three NF

provider associations: Ohio Health Care Association, The Academy of Senior Health Sciences, Inc., and LeadingAge Ohio. The NF provider associations represent and advocate for small and large nursing facilities with both individual and group ownership, publically-traded and government-owned properties, and for-profit and non-profit facilities. The BIA states that ODM received eight comments and revised the rule based on six of the stakeholder comments. The comments not incorporated are provided for in ORC and will not have an impact on this rule.

Compliance costs have been identified as the impact on the business community. Participating entities will have mandatory Medicaid program compliance requirements that may result in administrative costs in the form of administrator time. ODM estimates the costs at \$120 to initially become a provider in the NF ventilator program, \$15 to sign and return a provider agreement addendum every five years, \$480 annually to maintain the information required for quarterly reporting, \$480 annually to submit quarterly reports, and \$15 to notify if the provider intends to stop participating as well as \$26 per hour per resident for discharge. Providers will be required to submit a plan of action if their ventilator-associated pneumonia (VAP) rate exceeds the VAP baseline set by ODM. ODM is unable to estimate costs associated with submitting plan of action forms and reconsideration requests due to variability. The ODM Bureau of Long Term Services and Supports is available to assist with regulation compliance.

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

### **Recommendation**

For the reasons explained above this office does not have any recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.