CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Managed Care – MyCare Ohio

Rule Number(s): 5160-58-01.1 Rules 5160-58-01 and 5160-58-04 are not subject to the CSIO review, but are included for reference.

Date: March 15, 2017

Rule Type:

New	5-Year Review
X Amended	Rescinded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.

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) or MyCare Ohio Plan (MCOP). MCPs/MCOPs are health insurance companies that are licensed by the Ohio Department of Insurance and have a provider agreement (contract) with the Ohio Department of Medicaid (ODM) to provide coordinated health care to Medicaid beneficiaries. There are six MCPs/MCOPs (referred to as plans) in Ohio, each with a

network of health care professionals. MyCare Ohio is a managed care program aimed at providing integrated care for individuals who are dual eligible (both Medicaid and Medicare recipients.)

5160-58-01.1 "MyCare Ohio plans: application of general managed care rules" is being proposed for amendment to update policy related to the administration of the Medicaid managed care program. This rule sets forth the requirements for the MyCare Ohio program to follow the Medicaid managed care program rules outlined in OAC Chapter 5160-26. OAC rule references were updated or removed to reflect current Agency 5160 rules. U.S.C and C.F.R references were also updated. General edits were made for grammar and formatting.

The MCOP provider agreement may be found online at:
http://medicaid.ohio.gov/PROVIDERS/ManagedCare/IntegratingMedicareandMedicaidBenefits.aspx

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

   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. Additionally, ODM has entered into a three-way contract with the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services and each MCP to implement the MyCare Ohio demonstration program. This rule sets forth requirements outlined in the three-way contract.

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

   The rule is consistent with federal managed care requirements outlined in 42 C.F.R Part 438 and the three-way contract.

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)?**

   The public purpose of this regulation is to help ODM ensure MCOP members' rights, protections, and health and safety by requiring plans to follow established guidelines.

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

Through reporting requirements established within the managed care provider agreements, ODM is able to monitor compliance with the regulation. Successful outcomes are measured through a finding of compliance with established 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.

   The Medicaid Managed Care and MyCare Ohio Plans listed below were provided with a draft of the rule on February 6, 2017. The plans given until February 15, 2017 to comment.

   - Aetna
   - Buckeye Health Plan
   - CareSource
   - Molina Healthcare of Ohio
   - Paramount Advantage
   - UnitedHealthcare Community Plan of Ohio

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

   No concerns or comments were received as the changes were general updates, not resulting in significant changes to plan requirements.

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 the rule or the measureable outcomes of the rule.

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?**

    The changes to the rule are general updates to keep the rule current. There are no new requirements being implemented through this rule. No alternative regulations were discussed during the rule process for this reason.

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.

A performance-based regulation would not be appropriate because ODM is required to comply with detailed federal requirements set forth in 42 C.F.R. Part 438 and the three-way contract with CMS.

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

All Medicaid regulations governing MCP/MCOPs are promulgated and implemented by ODM only. No other state agencies impose requirements that are specific to the Medicaid managed care 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 MCOPs of the final rule changes via email notification. The changes to the rule will not impact the plans' current business processes.

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 impacts MCOPs in the State including: Aetna, Buckeye, CareSource, Molina, and UnitedHealthcare.

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

Paragraph (B)(4) of rule 5160-58-01.1 requires the MCOP to give notice to a MyCare Ohio member when the plan is unable to obtain the information needed to make a prior authorization decision on a covered outpatient drug within 72 hours of receiving the request.

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.

Plans are paid per member per month. ODM must pay MCPs and MCOPs 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 both the Medicaid Managed Care and MyCare Ohio provider agreements. Through the administrative component of the capitation rate paid to the MCPs and MCOPs by ODM, MCPs and MCOPs will be compensated for the cost of the reporting requirements found in rule 5160-58-01.1 of the Administrative Code. For CY 2017, the administrative component of the capitation rate varies by program/population and ranges from 3.5% to 8.48% for MCPs and from 2.0% to 8.5% for MCOPs.

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

The MCOPs were aware of the federal requirements for covered services prior to seeking and signing their contracts with the State. More importantly, without the requirement of certain covered health care 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.

The requirements of this rule must be applied uniformly and no exception is made based on an MCOP's size.

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?

This rule imposes no sanctions.

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

While there are no small businesses impacted by this rule, the MCOPs may contact ODM directly through their assigned Contract Administrator.