

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: May 31, 2017

RE: **CSI Review – Nursing Facility IMD and Leave Day Rules (OAC 5160-3-06.1 and 5160-3-16.4)**

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 rules proposed by the Ohio Department of Medicaid (ODM) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on April 12, 2017 and the public comment period was held open through April 19, 2017. No comments were received during this time.

The amended rules cover the process by which nursing facilities may become institutions of mental disease (IMD) and leave day rules for individuals who reside in a nursing facility but may be physically absent from the facility for a period of time. Specifically, ODM wishes to modify terms, update cross references, and offer clarification language to ensure compliance with the state and federal law. The BIA states that the purpose of the rules is to ensure compliance with the Center for Medicare and Medicaid Services so that Ohio receives all available federal matching Medicaid funds, and that proper payment is made to IMDs according to the rule specifications. In addition, the rules ensure that nursing facility residents who are temporarily absent from the facility, and have the intent to return, are able to do so.

As part of the early stakeholder outreach process, ODM engaged three nursing facility provider associations including Ohio Health Care Association, The Academy of Senior Health Sciences, and LeadingAge Ohio. During the outreach process, the aforementioned organizations provided feedback on the draft rules and offered suggestions. Specifically, the Ohio Health Care Association requested a definition change which was incorporated into the final version of the rules. No public comments were received during the public comment period.

The rules impact 960 Medicaid-enrolled providers across the state. Compliance with the Medicaid program rule requirements is mandatory for providers and may result in an adverse impact in the form of administrative costs. As explained in the BIA, the estimated time for document preparation should be approximately 1.5 hours at the rate of approximately \$20.00 per hour for a nurse and \$12.50 for an administrative staff person. In total, ODM approximates the cost of \$36.25 for a provider to make arrangements for one resident to receive required care and services while using leave days and complete the requisite documentation. ODM maintains that the purpose of the rules outweighs any adverse impact because the program would not be able to function without federal financial participation. Further, the BIA emphasizes that the impact to the nursing facilities themselves is justified because the rules help ODM ensure the facilities administer the program in a uniform manner which provides efficiency and ensures the effective administration of the program.

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 Ohio Department of Medicaid should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.