

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: August 1, 2017

RE: **CSI Review – Healthchek: Early and Periodic Screening, Diagnostic, and Treatment Covered Services (OAC 5160-14-03 and 5160-1-14)**

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This rule package consists of one rescinded and one new rule proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on July 7, 2017 and the public comment period was held open through July 21, 2017. Five comments were received during this time and responses to comments were provided to the CSI Office on July 28, 2017.

ODM states in the BIA that Ohio Administrative Code (OAC) 5160-14-03 lists components of an early periodic screening, diagnostic and treatment (EPSDT) visit and requires providers to make appropriate referrals. In addition, providers are to inform individuals of all tests performed, the results, and provide education regarding sexually transmitted diseases along with health education, counseling, and guidance as part of the EPSDT visit. ODM wishes to rescind the rule and other rules in the Chapter, which are not subject to this office's review, and consolidate them into one new rule.

As part of the early stakeholder outreach process, ODM contacted numerous healthcare

organizations throughout the state and requested comments for rescission of OAC 5160-14-03 and implementation of the new rule, OAC 5160-1-14. During this process, no stakeholders expressed comment regarding the proposed rule actions.

Five comments were received during the CSI public comment period. Two commenters expressed concern regarding the lack of specificity about covered EPSDT services in the new rule. Specifically, there was concern about potentially harmful consequences that could occur because of the elimination of certain services including laboratory testing for anemia and pelvic exams for females. ODM replied that those services will continue to be covered and are spelled out in ODM's payment schedule referenced elsewhere in the OAC. ODM emphasized that it is not their role to dictate standards of practice for physicians who conduct the testing and should be flexible to allow for new tests and the evolution of the practice of medicine in the future. One commenter expressed concern about filing a specific form while another commented about a rule not under consideration for this rule package. Lastly, another commenter expressed a multitude of concerns regarding the proposed rule package including procedural processes regarding the public comment period length, substantive issues such as term definitions, cross references, and like previous commenters issues with services not included in the new rule. ODM chose to adopt one suggestion to change language in paragraph (D)(3) to include language that references guidance issued by the Center for Medicare and Medicaid Services (CMS), when a screening exam indicates the need for further evaluation. In addition, ODM responded to other concerns appropriately but chose not to make any changes to the rules.

The rules impact providers that render medically necessary services to children throughout the state. The nature of the adverse impact primarily exists in the form of employer time for compliance, reporting requirements, and notification requirements for providers to inform all adolescents of all tests performed, results of each test, and health education regarding sexually transmitted diseases. ODM indicates in the BIA, that the average cost to comply with the rules will be approximately \$79.38 per hour for physicians and \$30 to \$60 per hour for other practitioners providing the same services. As for reporting requirements, generation of results, and other administrative costs, ODM estimates approximately \$40 to \$90 per visit. As expressed in the BIA, ODM maintains that the regulatory intent of the rules outweighs any adverse impact because the regulations help ODM maintain compliance with federal law and standards set forth by CMS.

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.