

**MEMORANDUM**

**TO:** Lyndsay Nash, Ohio State Dental Board

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** June 16, 2017

**RE:** **CSI Review – 2017 Acute Prescribing of Opioids (OAC 4715-3-01 and 4715-6-02)**

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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 amended and one new rule proposed by the Ohio State Dental Board pertaining to the acute prescribing of opioids. The rule package was submitted to the CSI Office on May 11, 2017 and the public comment period was held open through May 26, 2017. No public comments were received during the CSI comment period

The amended rule defines terms and creates categories for prescribing terms while the new rule sets forth specific requirements for dentists to prescribe opioid analgesics for acute pain. Specifically, Ohio Administrative Code (OAC) 4715-6-02 requires that a dentist adhere to an average of no more than 30 morphine equivalent dose (MED) per day for the duration of a seven day prescription. Prior to prescribing an opiate, the dentist is required to consider non-opioid treatment options and if they decide that an opioid is necessary, they must not prescribe more than a seven-day supply for adults and not more than a five day supply for minors. The purpose of the rules is to help implement a directive issued by Governor Kasich to help improve public health across the state and combat the ongoing opioid epidemic. In addition, the rules will reduce the frequency that opioids are prescribed for acute pain but also allow providers to use their

professional discretion when treating patients.

The Board explained in the BIA that as part of the early stakeholder process, two board meetings were held to discuss the rules and public notices were distributed to the Board mailing list announcing the meeting. During that time, the Board requested feedback and comment from those in attendance. At the meeting, three stakeholders expressed concerns about the 210 MED average, specifically the limitation that providers would only be allowed prescribe an average of 30 MED, each day, over the first 72 after a procedure. Commenters noted that limiting prescriptions to thirty MED each day for the first 72 hour period greatly restricts the ability for the provider to determine the patient's needs based upon the type of oral surgery that took place. The Board agreed with the commenters and decided to amend the rules and authorize providers to determine the amount of MED they deem appropriate as long as it does not exceed 90 MED per day, in the first 72 hours. The change will allow providers to prescribe higher doses immediately after a procedure and taper off accordingly. No public comments were received during the CSI public comment period.

The rules impact providers, patients, and insurers throughout the state. The nature of the adverse impact on business will primarily exist in the form of licensure of providers because they will now need to comply with the new prescribing limits to maintain licensure. If a provider does not meet the minimal standards of care as required by the Board, they will be subject to discipline in the form of fines, suspension, or revocation of their license to practice dentistry. The BIA notes that the quantifiable impact is difficult to anticipate and likely would be nonexistent for the majority of providers because the changes to the rules involve limitations on prescribing and are not expected to require any additional administrative support. However, CSI recognizes that additional impacts include administrative time to search for diagnosis codes, time to examine patients again to refill a prescription, and costs affiliated with updating a controlled substance electronic prescribing system. The Board believes the regulatory intent of the rules outweigh any adverse impact due to the ongoing opioid epidemic in Ohio.

### **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 State Dental Board should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.