

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: June 15, 2017

RE: **CSI Review – Nursing Facility Reimbursement Rules (5160-3-22, 5160-3-30.1, and 5160-3-64)**

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This rule package consists of two amended rules and one rescinded rule proposed by the Ohio Department of Medicaid (ODM) as part of the statutory five-year rule review requirement.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 28, 2017 and the public comment period was held open through May 5, 2017. No public comments were received during this time.

The rescinded rule contains provisions for rate recalculations, overpayments, and associated penalties for nursing facilities and is being proposed for rescission because it is now redundant as portions of the rule are contained in the ORC. The two amended rules establish processes for appealing a franchise permit fee determination and provisions for Medicare Part A cost sharing for nursing facilities. Specifically, the amendments contain term modifications, title edits, and updates to ORC citations. ODM outlines in the BIA that the purpose of the amended rules is to ensure accuracy and integrity of the franchise permit fee payments made by hospitals and long term care facilities to ODM.

ODM explained in the BIA that it reached out to Ohio's three nursing facility provider associations, Ohio Health Care Association, the Academy of Senior Health Sciences, and LeadingAge Ohio as part of its early stakeholder outreach process. The aforementioned organizations were involved in review of the draft rules throughout the rulemaking process and were provided with summaries of changes to the rules on March 30, 2017. During the outreach process, the stakeholders did not provide any substantive input or feedback on the draft rules. No public comments were received during the CSI public comment period.

The rules primarily impact hospital long term care units and the 960 nursing facilities who choose to participate in the Medicaid program. The BIA notes that the adverse impact exists in the form of compliance with the Medicaid program requirements which are mandatory for providers who wish to participate in the program. Such compliance manifests itself in the form of administrative burdens including submission of appeal documents for a franchise permit fee determination or re-determination, drafting of applicable documents detailing the errors in initial determination prior to the appeal, and submission of documents and information to ODM for Medicare Part A crossover claims. ODM estimates that it will take a facility's attorney approximately 4 hours at the rate of approximately \$250 per hour to write and submit appeal documents and it will take administrative staff approximately 15 minutes at a rate of \$12.50 per hour to draft applicable documents for crossover claims. The BIA emphasizes that the impact on business is justified by the regulatory intent of the rules because the rules help ensure compliance with federal Medicaid law and the accuracy and integrity of franchise permit fee payments.

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.