

**MEMORANDUM**

**TO:** Tommi Potter, Ohio Department of Medicaid

**FROM:** Emily Kaylor, Director of Regulatory Policy

**DATE:** October 17, 2017

**RE:** **CSI Review – Long Term Care Home Health Rules (OAC 5160-1-40, 5160-12-08, and 5160-45-10)**

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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) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC § 107.54.

**Analysis**

This rule package consists of one new and two amended rules submitted by the Ohio Department of Medicaid. The rules were submitted on September 15, 2017 and the CSI public comment period closed on September 22 with one comment received.

The new rule provides the regulatory framework for Electronic Visit Verification (EVV) implementation, which is a federal requirement from the 21st Century Cures Act. EVV will utilize technology to verify the location of delivery of Medicaid-covered services. The two amended rules are being updated to incorporate the EVV system and make some clarifying language changes.

The rules impact Medicaid providers of home health nursing and aide services, private duty nursing, and registered nurse assessments. As explained in the BIA, providers will incur expenses related to training staff, data entry for the electronic system, recordkeeping, salaries, and ongoing EVV system maintenance. The Department estimated total costs to implement and maintain EVV systems for small, medium, and large providers. Recognizing these are substantial costs, the Department justifies the need for these rules based on federal requirements to maintain funding and the goal to create transparency while continuing to protect patient and provider

information.

The rules were shared via email with relevant stakeholders listed in the BIA and eight stakeholders meetings were held. From this, the Department received feedback and included it in the formation of the rules.

During the CSI public comment period, one comment was received from the Ohio Council for Home Care & Hospice. Medicaid responded to this comment on October 10, but CSI requested more information which the Department provided on October 13. Three main concerns were identified in the comment: costs of EVV implementation, entering social security numbers for direct care workers, and references to Medicaid's website found in the rules. To these, Medicaid responded with supports they have set up to help with some of the costs, data security systems that are in place, revised references, and other justifications.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for 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.