

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: August 31, 2017

RE: **CSI Review – DODD Authorization and Administrative Appeal Rules – (OAC 5160-3-01.1, 5160-3-04, 5160-3-04.1 and 5160-3-90)**

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This rule package contains one rescinded rule, one new rule, and two amended rules proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on July 14, 2017 and the public comment period was held open through July 21, 2017.

Ohio Administrative Code (OAC) 5160-3-01.1 provides authorization for the Ohio Department of Developmental Disabilities (DODD) to administer the Medicaid program provided by intermediate care facilities. The rule is being rescinded and replaced by OAC 5160-3-90 in order to replace the Ohio Department of Job and Family Services (ODJFS) with ODM as the authorizing agency, replace the term "intermediate care facility for the mentally retarded" with "intermediate care facility for individuals with intellectual disabilities" (ICF-IID), and fix typographical errors.

OAC 5160-3-04 and 5160-3-04.1 establish payment provisions for nursing facilities during the ODM administrative appeals process and the state survey administrative appeals process, respectively. These rules are being amended to update the language to reflect changes in

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terminology and to replace mention of ODJFS with ODM as the authorizing agency.

During early stakeholder analysis, ODM distributed the proposed rules to the primary stakeholders, Ohio's three nursing facility provider associations, for feedback. There were no comments received during this time or during the CSI public comment period.

The business communities impacted include all Ohio ICF-IID providers and approximately 960 nursing facilities that participate in the Medicaid program. The adverse costs created by these rules include the time needed to collect and provide records related to ICF-IID services. A facility involved in the administrative appeals process due to termination, non-renewal, or non-revalidation of its certification or provider agreement must transfer its residents to other facilities in order to receive payment during the process. ODM states in the BIA that the costs of resident transfer are difficult to quantify, since transfer costs and the length of the appeal can vary by facility. After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendations

For the reasons described above, the CSI Office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Medicaid should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.