

**MEMORANDUM**

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

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** November 30, 2017

**RE:** **CSI Review – ODM Waiver Programs: Criminal Record Checks (OAC 5160-45-07, 5160-45-08, and 5160-45-11)**

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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 three amended rules proposed by the Ohio Department of Medicaid (ODM) for their statutorily-required five-year review. The rule package was submitted to the CSI Office on October 26, 2017 and the public comment period was held open through November 2, 2017. One comment was received during that time and a comprehensive response was received November 9th.

The three rules in this package relate to the criminal record check requirements for job applicants and employees in positions that provide home based community services (HCBS) to individuals enrolled in an ODM-administered waiver program. The rules mandate an initial database check, as well as criminal records checks from the Bureau of Criminal Investigation (BCI) and an additional background check from the Federal Bureau of Investigation (FBI) if the individual cannot prove five years of continuous residency in Ohio prior to the check. In addition, the rules set exclusionary periods on employment for individuals convicted of certain crimes that are deemed to be disqualifying offenses. Proposed changes include updates to rule citations and

terminology. The draft rules also incorporate the Retained Applicant Fingerprint Database (RAPBACK), permitting agency providers to enroll in RAPBACK in lieu of the criminal records recheck requirement. Independent providers would be required to submit their fingerprints to RAPBACK, due to legislative changes in House Bill 49 of the 132nd General Assembly.

ODM conducted early stakeholder outreach through its HCBS Rules Workgroup, distributing the draft rules to more than 900 stakeholders, which included individuals, advocates, independent providers, and agency providers. The BIA notes that stakeholders were supportive of the rules. One comment was received during the CSI public comment period from a representative of the Ohio Association of Area Agencies on Aging. The commenter expressed support for the rules and asked for clarification regarding the applicability to MyCare Ohio waivers and Ohio Department of Aging certified providers; ODM appropriately responded to the commenter's questions via email.

The BIA identifies the impacted business community as the more than 700 agencies and approximately 6,000 independent providers that provide HCBS under an ODM-administered waiver program. The BIA cites an estimate by the Ohio Council for Home Care and Hospice (OCHCH) and LeadingAge Ohio to quantify the impact of the rules. The rules entail the cost of administrative time to check the seven required databases and to request the BCI and FBI background checks, which is estimated at \$24 per hour. Monetary fees include \$22 for BCI and \$24 for FBI background checks; each fee may vary based on the county where it is requested. Ultimately, OCHCH and Leading Age Ohio estimate that the average agency will spend approximately \$1,432 annually to maintain compliance (based on the number of providers) and independent providers are responsible for the monetary fees for the criminal background checks but ODM pays the \$5 RAPBACK fee.

The BIA justifies the impacts by citing the need to ensure the health and safety of individuals enrolled to receive HCBS by properly vetting agency and independent providers. Proposed amendments to the rules are also necessary to bring them in line with statutory changes. 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 rule package is justified.

### **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.

CC: Emily Kaylor, Lt. Governor's Office