

**MEMORANDUM**

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

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

**DATE:** October 17, 2017

**RE:** **CSI Review – Acupuncture Services (OAC 5160-8-51 and 5160-8-11)**

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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) § 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 one amended rule submitted by the Ohio Department of Medicaid. The rules were submitted on June 12, 2017 and, after requesting an extension for more time to comment, the CSI public comment period closed on June 23. Twenty-five comments were received during this time.

Ohio Administrative Code (OAC) 5160-8-51 is a new rule which will allow Medicaid to reimburse licensed acupuncturists for their services. Acupuncturists are licensed through the Medical Board and may include chiropractors, physicians, and other individuals who receive a certificate to practice acupuncture. The amended rule updates the spinal manipulation rule to include acupuncture as a service which can be paid for by Medicaid. Both rules affect acupuncturists certified by the Medical Board. To be an acupuncturist, it takes time, training, an application fee, and a background check. These providers must be enrolled in Medicaid and follow the regulations in order to receive Medicaid payment for their services.

Medicaid sent the draft rules to state agencies, state associations, and relevant stakeholders listed in the BIA. In response to early stakeholder outreach, Medicaid added acupuncture services with electrical stimulation and expanded the locations at which acupuncture services can be rendered.

During CSI review, 25 comments were received along with multiple petitions signed in support of Medicaid covering full access to and reimbursement for services provided by chiropractors. Medicaid provided a comprehensive response document to stakeholders on July 14. In August and September further conversations were held between CSI, Medicaid, and stakeholders. The two main concerns are chiropractors not being reimbursed for their full scope of practice and the limited conditions for which acupuncture can be performed.

From the ongoing discussions with stakeholders, it was determined that OAC 5160-8-11 prohibits chiropractors from being reimbursed for their full scope of practice found in ORC 4734.01 and 4734.15. Specifically, chiropractors are frustrated that they will not be reimbursed for the evaluation they perform on a patient prior to rendering acupuncture, while doctors and other medical professionals can be reimbursed for their evaluation services as long as they are not performed by the same practitioner to the same individual on the same day as acupuncture services. Medicaid responded that chiropractors would be reimbursed for a pretreatment assessment to determine acupuncture is appropriate but cannot be reimbursed for evaluation because that would be making a diagnosis in conflict with ORC 4762.10(D). This brought up a larger issue regarding a rule not in this package, evaluation and management services.

Additionally, OAC 5160-8-51 only allows acupuncture to be covered for low back pain or migraines. Many acupuncturists and chiropractors commented that acupuncture can be successfully utilized to treat a wider range of diagnoses such as post-operative pain, arthritis, chemotherapy-induced nausea, spinal discomfort, and other sources of chronic and acute pain. Medicaid responded that current scientific evidence best supports acupuncture for low back pain and migraine which is why they have limited the list of conditions.

As Ohio faces an unprecedented opiate epidemic, CSI is in full support of encouraging alternative forms of medicine that will help patients without the use of addictive substances. Because of this, the Office believes that these rules are an important step forward, but chiropractors should be able to practice within their allowed scope and the conditions for which Medicaid covers acupuncture should be constantly reviewed.

### **Recommendations**

For the reasons discussed above, the CSI Office recommends that Medicaid convene a meeting in the next four months with chiropractors, acupuncturists, and CSI to present the scientific evidence to support expanding acupuncture services and review all rules regarding chiropractic scope of practice.

### **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 and convene a stakeholder meeting as described above.