

**MEMORANDUM**

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

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

**DATE:** February 7, 2018

**RE:** **CSI Review – Behavioral Health Services and Medications (OAC 5160-8-05, 5160-27-02, 5160-27-03, and 5160-27-05)**

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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 four amended rules proposed by the Ohio Department of Medicaid (ODM) for review. The rule package was submitted to the CSI Office on January 12, 2018 and the public comment period was held open through January 19, 2018. Two comments were received during that time and ODM provided responses on February 7.

The four rules in the package address coverage, limitations, reimbursement, and licensed professionals with regard to behavioral health services provided through Medicaid. The rules also outline the criteria and services under the Mental Health Intensive Home Based Service. The rules were initially adopted via an emergency filing with an effective date of January 2, 2018 as a component of the Behavioral Health Redesign. The BIA under review institutes a permanent codification of the rules. The rules are proposed with amendments that mirror the emergency rules to change practitioner information required on a claim, delay termination of health homes, restrict coverage for diagnostic psychiatric evaluation to once per year, add an appendix to Ohio Administrative Code (OAC) 5160-27-02 outlining the eligibility criteria for health homes, add a

list of services exempted from Medicaid reimbursement, and exempt home health services from reimbursement while an individual is enrolled in the intensive home based treatment program.

ODM initially contacted and sought input from a stakeholder advisory group, which includes the Medicaid managed care plans and numerous behavioral health organizations. The proposed amendments in the current rulemaking reflect the suggestions from stakeholders that ODM deemed appropriate to codify in the rules.

Two comments were received during the CSI public comment period. One asked for clarification on coverage for vaccinations, which ODM provided in its response. A second commenter expressed concern that coverage for crisis psychotherapy in emergency rooms conflicts with current ODM policy and suggested that ODM add language to affirm crisis services provided in an outpatient hospital. ODM responded that while crisis services may be provided in an outpatient hospital, it is ultimately the hospital's responsibility to determine the services provided in its facility.

These rules impact Ohio Medicaid behavioral health providers that render the services encompassed in the rules. The adverse impacts include information technology, billing system updates, coordination of health care benefits, third party liability, and federally-required program integrity. The BIA notes that the impact of the rules is not easily quantified due to the significant variance in business model, location, agency workforce, and client case load.

The BIA justifies the rules as necessary to permit impacted providers to render behavioral health services to Medicaid-eligible individuals. In addition, amendments to the rules are proposed in order to incorporate stakeholder feedback and ensure the emergency rules continue as needed. The BIA notes that the adverse impacts in the rules are largely federally mandated by the National Correct Coding Initiative, the Affordable Care Act, the Mental Health Parity and Addiction Equity Act, and the third-party liability and coordination required by Medicare.

After reviewing the proposed rule package 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