

**MEMORANDUM**

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

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** April 13, 2018

**RE:** **CSI Review – Durable Medical Equipment, Prostheses, Orthoses, and Supplies (OAC 5160-10-01, 5160-10-02, 5160-10-03, 5160-10-04, 5160-10-09, 5160-10-11, 5160-10-14, 5160-10-15, 5160-10-20, 5160-10-21, 5160-10-22, 5160-10-24, 5160-10-27, 5160-10-28, 5160-10-31, 5160-10-32, 5160-10-33, 5160-10-34, and 5160-10-35)**

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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 eight amended<sup>1</sup> rules and eleven rescinded rules proposed by the Ohio Department of Medicaid (ODM) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on March 21, 2018 and the public comment period was held open through March 28, 2018.

The rules in this package set forth regulations as applied to certain types of medical equipment, specifically durable medical equipment, prostheses, orthoses, and supplies. The rules in this package are largely being rescinded and either replaced by new rules of the same rule number or

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<sup>1</sup> OAC 5160-10-01, 5160-10-09, 5160-10-14, 5160-10-21, 5160-10-22, 5160-10-31, 5160-10-34, and 5160-10-35 are being amended to the extent that the Legislative Service Commission requires the Department to rescind the rules and replace them with new rules of the same rule numbers.

incorporated into other rules as a means of streamlining and clarifying the content of the rules. Ohio Administrative Code (OAC) 5160-10-01 is being amended to contain general provisions for medical equipment and now includes much of the information that was previously contained in OAC 5160-10-02, 5160-10-03, and 5160-10-20. OAC 5160-10-14 is being amended to remove burn compression garment language and certain payment requirements. OAC 5160-10-21 is amended to include new required information for providers and clarify language. OAC 5160-10-22 is being amended to include and clarify language exclusive to ventilators, with the portions of the rule regarding positive airway pressure devices moved to OAC 5160-10-19, which is not included in this package. OAC 5160-10-31 is being amended to remove language that allows payment to a prescriber of therapeutic footwear only if they practice in a defined rural or health professional shortage area, as well as include a provision to allow payment for orthopedic footwear for children. OAC 5160-10-34 is proposed as amended to collect clinical indications, contraindications, and application guidelines for certain types of wound dressings into an appendix to the rule, as well as remove several provisions. OAC 5160-10-09 and 5160-10-35 are being amended to offer clarification and streamline the substance of the rule.

During early stakeholder outreach, the rules were sent to the Ohio Association of Medical Equipment Services (OAMES), as well as medical service providers. ODM and OAMES met numerous times to discuss changes to the rules, the majority of which ODM accepted and incorporated into the rules. No comments were received during the CSI public comment period.

The business community impacted by these rules includes any Medicaid provider of durable medical equipment, prostheses, orthoses, and supplies. The adverse costs created by these rules are primarily created through the effort and money needed to comply with the requirements, which include authorizing payments based on completed licensure and maintaining licensed staff to perform certain duties, as described in detail in the BIA. 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.