

**Department of Medicaid****John R. Kasich**, Governor**Barbara R. Sears**, Director

TO: Emily Kaylor, Director of Regulatory Policy
Ohio Lieutenant Governor's Office

FROM: Jim Tassie, Assistant Director ST
Ohio Department of Medicaid

SUBJECT: CSI Review – Provider Screening and Application Fee (OAC 5160-1-17.8)

DATE: August 10, 2018

Thank you for your review of the Provider Screening and Application Fee rule 5160-1-17.8 of the Administrative Code that establishes screening requirements for Medicaid providers.

The Ohio Department of Medicaid (ODM) understands the concerns raised by the Ohio Council of Behavioral Health and Family Service Providers and other stakeholders that certain behavioral health providers are already screened by their respective licensing boards. However, ODM respectfully does not agree with the conclusion that licensing board review should stand in the place of the responsibility ODM has under federal and state law to responsibly operate the Medicaid program. (See, e.g., 42 U.S.C. 1396a(kk) (requiring ODM to have a provider screening mechanism in place, including a licensure check, and may include fingerprinting, background checks, site visits, and other activities.) ODM regulates its provider community not only to protect against fraud, waste, and abuse, as the recommendation memo suggests, but also to ensure the safety and security of some of Ohio's most vulnerable citizens. Balanced against those considerations is the effect that a blanket exclusion—which is what will exist absent this rule—would mean to the pool of potential and existing Medicaid providers. Taking those factors into account, within this rule package ODM adopted the same tiered exclusionary period structure that has applied to home and community-based providers—including licensed providers such as nurses—since January 1, 2013. In over five years, no licensing board suggested to ODM that the tiered approach is inappropriate or that it usurps licensing authority.

Additionally, the draft rule already provides an exception for licensed (and unlicensed) individuals who would otherwise face an exclusionary period by allowing them to be a Medicaid provider if they have obtained a certificate for qualification of employment by a court of common pleas. ODM has been working with specific providers and with stakeholders to more widely inform potentially affected individuals of this option.

For these reasons, ODM respectfully disagrees with simply issuing a blanket exception for all licensed providers, or for all licensed behavioral health providers. No analytical data or other evidence has been presented to ODM that the offenses and exclusionary periods established in the draft rule are any less appropriate for behavioral health providers than they are for licensed home and community-based providers. To the contrary, Medicaid beneficiaries who access behavioral health care are among the most at risk, and many

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behavioral health clients receive care in their home environment, so the same vulnerabilities apply. Accordingly, ODM believes it should apply the same vigilance it does for recipients under home care programs.

To ensure that there is no delay in being able to enroll the many potential providers who would qualify for the first time under the draft rule, ODM is compelled to proceed with the rule filing. ODM will continue to work with stakeholders to consider appropriately tailored exceptions or modifications to the rule that will help alleviate the Council's concerns without unnecessarily increasing risk to the often-vulnerable Ohioans served by the Medicaid program.