

**MEMORANDUM**

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

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

**DATE:** June 19, 2018

**RE:** **CSI Review – Nursing Facility Budget (OAC 5160-3-01, 5160-3-17, and 5160-3-57)**

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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 two amended rules<sup>1</sup> and one rescinded rule proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on February 20, 2018 and the public comment period was held open through March 9, 2018.

The rules in this package set forth the requirements for nursing facility programs that participate in Ohio's Medicaid program. Ohio Administrative Code (OAC) 5160-3-01 establishes definitions for the chapter and is being amended to remove the definition for "Cost per case mix unit" and make updates to citations. OAC 5160-3-57 establishes the rate at which ODM pays a provider for tax costs and is amended to implement the requirements in House Bill 49 of the 132nd General Assembly, which states that ODM shall determine the day payment rate for tax costs for all new nursing facilities in accordance to ORC 5165.151. The rule is also being amended to provide

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<sup>1</sup> OAC 5160-3-57 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

greater specificity and clarity in regards to documentation and effective dates for provider agreements. OAC 5160-3-17 is being rescinded since the types of services the rule necessitates payment for have not been furnished by providers since 2008.

During early stakeholder outreach, ODM sent the rules to Ohio's three nursing facility provider associations for feedback. ODM received several comments from the Ohio Health Care Association suggesting changes to OAC 5160-3-57, including specifying types of tax cost, submission of projected tax costs, provider agreement submission timelines, and initial tax rate implementation date. ODM accepted the suggested change to tax rate implementation date and incorporated clarifying language into the rule. ODM did not make further changes to the rule, stating that other rules account for stakeholder concerns and that current timelines already give providers considerable time to submit documentation. No comments were received during the CSI public comment period.

The business community impacted by these rules includes approximately 950 nursing facilities in Ohio. The adverse costs created by these rules include the cost and effort required to maintain the requirements of the rules. OAC 5160-3-01 requires a certified real estate appraisal to be presented to ODM in the event that a nursing facility is leased. ODM estimates that obtaining an appraisal would cost approximately \$1,120. Additionally, if a nursing facility does not have proper documentation submitted to ODM regarding projected tax costs, the facility's tax rate will be set according to the statewide median tax rate. This may result in the facility's tax cost rate being either higher or lower than would otherwise be accurate. ODM states in the BIA that the costs created by these rules help ensure efficient administration of the Medicaid program and offer clarity and specificity for stakeholders. 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.