

**MEMORANDUM**

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

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

**DATE:** October 15, 2018

**RE:** **CSI Review – Home and Community-Based Services Waiver Alignment: Phase 1 – Home-Delivered Meals and Personal Emergency Response Systems (OAC 5160-31-07, 5160-44-11, and 5160-44-16)**

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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 new rules and one amended rule proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on September 11, 2018 and the public comment period was held open through September 18, 2018.

This rule package is a part of the joint effort between ODM and the Ohio Department of Aging (ODA) to align multiple rules that regulate home and community-based services (HCBS) under one set of standards. The rules in this package address home-delivered meals and personal emergency response systems (PERS), as well as the rate setting methodology for the Preadmission Screening System Providing Options and Resources Today (PASSPORT) Program. Ohio Administrative Code (OAC) 5160-31-07 establishes the rate setting methodology for the program and is being amended to update rule language and remove homemaker services from the list of regional unit rate services. OAC 5160-44-11 and 5160-44-16 are new rules that address home-delivered meals and PERS and are being proposed to replace portions of OAC 5160-46-04, which

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is included in a concurrent rule package for rescission.

During early stakeholder outreach, ODM conducted meetings with industry stakeholders through the Home and Community-Based Services (HCBS) Rules Workgroup and emailed the rules to interested parties. During this time, stakeholders submitted feedback regarding amendments to the rules that ODM largely added to the proposed rules.

During the CSI public comment period, ODM received comments from several stakeholders. Several comments suggested that reducing the maximum reimbursement rate for home-delivered meals would have a negative impact on providers. ODM responded to these concerns by noting that the adoption of the rate methodology and maximum allowable rates would create a more consistent environment for individuals enrolled in waivers and providers. Additionally, ODM provided examples where the average reimbursement for home-delivered meals was significantly lower than the maximum allowable rate. Several stakeholders submitted comments that suggested including language in the rules that provide guidance on snack foods or desserts included with home-delivered meals. ODM responded to these comments, stating that extra food items included with meals are permissible, as long as the extra food items are not charged for reimbursement and all nutritional requirements are met. By doing this, ODM is allowing businesses to make the decision of whether or not they want to offer extras at a cost to them, not the Department. One stakeholder suggested increasing the seven day increments in which meals could be delivered. ODM accepted the suggestions and changed the rule, allowing 14 meals to be delivered at one time. Another stakeholder suggested increasing the maximum reimbursement rate for PERS in order to reflect the cost of emerging technology within the field. ODM responded to the suggestion and stated that the methodology had been determined to accommodate the continually evolving PERS technology. Finally, there were some comments related to verification of delivery and the use of common carriers. Some stakeholders were concerned about drivers only having to attest to the delivery in the event they cannot get a signature from the individual or their authorized representative. However, the method of delivery must be specified in the person-centered services plan and individuals will know how their meals are going to be delivered. Additionally, if a business would like to use a common carrier, ODM wants to accommodate that business model as long as all food safety procedures are followed.

The business community impacted by these rules includes certain care providers in the state. Specifically, ODM states that 106 home-delivered meal providers and 83 PERS providers are currently regulated within these rules. The adverse costs created by these rules include license fees, certification and training costs, delivery costs, and the time necessary to maintain records. ODM reached out to several stakeholders to help calculate the costs of compliance with the rules. Providers of home-delivered meals stated that maintaining certification with ODA bears no direct

cost, but necessitates administrative work on behalf of provider staff. Licensing requirements for meal providers carry several fees, including \$290 for a food service license through the Ohio Department of Health, \$100 fees for both frozen food and meat inspection through the Ohio Department of Agriculture, \$800 for kosher meals, \$250 for a vendor license, \$900 for ServSafe certification, and \$900 for dietician licenses. ODM states in the BIA that these adverse costs protect consumers by ensuring safe and adequate food and PERS service delivery. Additionally, ODM states that the rules were crafted to be consistent with federal Medicaid requirements. 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.