

**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 (OAC 5160-44-13, 5160-44-17, 5160-44-22, 5160-44-27, 5160-44-31, 5160-46-04, and 5160-46-04.1)**

---

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This rule package consists of five new rules and two rescinded rules proposed by the Ohio Department of Medicaid (ODM).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.

The rules in this package set forth requirements for provided services through nursing facility-based level of care homes and community-based services. The types of services regulated by these rules include home modification, out-of-home respite care, waiver nursing, and home attendant care. The new rules are being proposed to provide consistency among services by developing one standard used across waivers. Ohio Administrative Code (OAC) 5160-44-13, 5160-44-17, 5160-44-22, 5160-44-27, and 5160-44-31 are new rules that are being proposed to replace OAC 5160-46-04 and 5160-46-04.1, which are proposed for rescission.

During early stakeholder outreach, ODM conducted meetings with industry stakeholders through

**77 South High Street | 30th Floor | Columbus, Ohio 43215-6117**  
**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

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. One comment was received during the CSI public comment period. Addressing OAC 5160-44-13, the stakeholder inquired about wording regarding evaluations. ODM responded that the language was designed to reflect that additional evaluations might not be necessary and that the extent of evaluations should be left up to the discretion of the case manager.

The business community impacted by these rules includes all certified providers of HCBS offering services through these types of Medicaid waivers, as well as the medical and home care staff regulated by the rules. The adverse impacts of the rules include license fees, training costs, and costs for compliance with the rules and local ordinances. Intermediate care facilities are required to pay a \$50 license fee for the first year of operation. After one year, care facilities have the option of purchasing a one-year license for \$50, a two-year license for \$75, or a three-year license for \$100. ODM states that contractors involved with home modification services can be subject to additional requirements outside of the rules to comply with general requirements for contracting work, including bonds, permits, licenses, and liability insurance. ODM states in the BIA that these rules ensure that providers maintain standards that benefit the health of individuals enrolled in Medicaid waivers. 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.