

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: October 15, 2018

RE: **CSI Review – Nursing Facilities: Ventilator Program (OAC 5160-3-18)**

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 one amended rule proposed by the Ohio Department of Medicaid (ODM) as part of the statutorily required five-year review. The rule package was submitted to the CSI Office on September 20, 2018 and the public comment period was held open through September 27, 2018. No comments were received during this time.

The rule sets forth an alternate purchasing model for the provision of services to ventilator-dependent Medicaid individuals. The program is designed to increase access to care for ventilator-dependent Medicaid individuals in a nursing facility. The rule outlines program and staffing criteria, definitions, a description of the application and approval process, an explanation of the reimbursement criteria, provisions regarding termination or withdrawal of services, and reporting and compliance requirements. The Department plans to amend the rule to explain the process for nursing facilities to request and be approved to provide ventilator weaning services, add program and staffing criteria for providers to receive an enhanced payment rate, adjust the reimbursement methodology, add an enhanced payment for ventilator weaning services, and modify the change of ownership process to permit new providers to receive the previous

provider's enhanced payment rates.

The Department notified Ohio's three nursing facility provider associations, Ohio Health Care Association; The Academy of Senior Health Science, Inc.; and LeadingAge Ohio, of the draft rule and asked for feedback. Based on feedback, the Department made changes to the registered nurse requirement, revised the payment methodology to use payment data for individuals receiving ventilator services in a long-term acute care hospital, and adjusted the payment methodology to provide a higher reimbursement for ventilator weaning services that have additional staffing requirements.

The Department received requests to limit the number of nursing facilities that can participate in the ventilator weaning program; to pay facilities the enhanced weaning rate only if the individual is successfully weaned off of a ventilator; and to either increase, decrease, or eliminate the amount of required time delivered by a respiratory care professional when residents are receiving ventilator weaning services. It declined to adopt any of these suggestions because they would either deter facilities from providing weaning services, decrease access to the ventilator weaning services, or eliminate the use of respiratory care professionals. No comments were received during the CSI comment period.

The rule impacts all nursing facilities who decide to participate in the program. The Department estimates 100-130 of the 960 nursing facilities will participate. To participate in the ventilator program a nursing facility must be licensed, certified by Medicaid, and compliant with the federal statutory authority. A nursing facility must pay an initial license fee of \$320 per fifty beds. The average nursing size in Ohio is 100 beds, so the initial fee will be \$640 for most facilities. The Department estimates a cost of \$3,328 for a nursing facility provider to review and prepare an application for licensure to operate as a nursing home under ORC Chapter 3721. The ongoing annual license fee is \$640 for a 100 bed facility. The Department estimates it will cost a nursing facility \$54,649 to review, prepare, and apply for Medicare certification to participate as a skilled nursing facility in the Medicare program pursuant to ORC section 5165.082 and OAC 5160-3-02.4. Facilities must pay a revalidation fee of \$569 at least once every five years.

Facilities will also incur a number of administrative costs, but the amount of those costs will vary based on facility size and staff. Nursing facilities must notify the Department of any changes to the size or location of ventilator units, submit quarterly reports, and comply with monitoring and recordkeeping requirements. Facilities are also required to have a backup generator, which is estimated to cost \$300,000 for purchase and installation. The Department justifies any adverse impact by noting that the rule is necessary for the efficient and effective administration of the ventilator program. The program improves access to care for nursing facility ventilator-dependent individuals, and access to adequate payment for providers of ventilator-related services.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this

rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Medicaid should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.