

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: July 24, 2018

RE: **CSI Review – Hospital Disproportionate Share (OAC 5160-2-09)**

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). The rule package was submitted to the CSI Office on June 19, 2018 and the public comment period was held open through June 26, 2018. No comments were received during this time. A revised rule was sent on June 26.

The rule sets forth the conditions, requirements, and operation of the Hospital Care Assurance Program (HCAP). It also details the distribution formula and payment policies for disproportionate share hospitals. The proposed amendments are largely nonsubstantive. Several references were updated or corrected, unnecessary definitions were removed, and clauses detailing definitions and formulas for programs that are no longer in existence have been removed. In addition to these updates, the Department would like to change the definition of a rural hospital. It would like to define "rural hospital" as a hospital geographically located in an Ohio county, that is not classified into a Core Based Statistical Area.

The Department worked closely with the Ohio Hospital Association (OHA) to revise the rule. The

two groups met during monthly policy meetings to discuss the proposed amendments, specifically the proposed definition for a rural hospital. The OHA informed the Department that they are in agreement of amending the definition in order to maintain the distribution of the rural pool to those hospitals it was originally designed to benefit; hospitals that are smaller and located in rural areas that serve underserved populations. The rule package as submitted to CSI was drafted with all stakeholder concerns taken into account. No comments were received during the CSI public comment period.

The rule impacts all Ohio hospitals that are Medicaid providers. These hospitals must report charges and payments for services rendered during their hospital fiscal year, and pay HCAP assessments. A penalty of \$1,000 per day is imposed on all hospitals that do not file reports or pay assessments on time. Critical Access Hospitals (CAH) must report their certification as a CAH each year in order to be considered for disproportionate share payment purposes. If a CAH does not report to the Department each October 1st their certification, or any change in CAH status, they will lose consideration as a CAH for disproportionate share payment purposes. The Department emphasizes that any adverse impact is outweighed by the need to comply with the federal Medicaid program to maintain funding, as these regulations provide approximately \$654 million in federal funds to Ohio hospitals to help mitigate some of their uncompensated care costs. The Department also notes that the Director has the flexibility to establish an alternate schedule for hospitals to pay HCAP assessments in order to reduce cashflow difficulties. It may also waive penalties if good cause is shown by the hospital.

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.