

**MEMORANDUM**

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

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

**DATE:** November 13, 2018

**RE:** **CSI Review – Medicaid Managed Care Program (OAC 5160-26-02, 5160-26-03, 5160-26-05, and 5160-26-06)**

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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 four amended rules proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on August 21, 2018 and the public comment period was held open through August 28, 2018. No comments were received during this time.

The rules in this package set forth requirements for Medicaid Managed Care Plans (MCP), in which health insurers that have entered into agreements with the State provide medically necessary services to Medicaid beneficiaries. Ohio Administrative Code (OAC) 5160-26-02 sets forth criteria for eligibility and enrollment in the managed care program. The rule is being amended to remove language regarding Title IV-E foster care maintenance and adoption assistance agreements, as well as make changes to dates found within the rule. OAC 5160-26-03 details the services covered by MCPs, including respite care, payment of services, physical examinations, emergency services, and post-stabilization care, in addition to the limits and procedures MCPs must follow. The rule is being amended to change eligibility requirements for respite services to include any care

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management coordination arrangement and update the dates found within the rule. OAC 5160-26-05 establishes requirements for provider panel and subcontracting. The rule is being amended to include requirements for making subcontracts available to ODM upon request, credentialing providers using the standardized form provided by the Ohio Department of Insurance, and ensuring network providers are enrolled with ODM, as well as making changes which include gender identity on nondiscrimination lists and update certain dates within the rule. OAC 5160-26-06 sets forth requirements for MCPs to maintain administrative and management arrangements to guard against fraud and abuse. The rule is being amended to include wasteful practices in the scope of arrangements, as well as to remove language that is duplicative and allowed for records to be maintained for eight years until January 1, 2018.

During early stakeholder outreach, ODM sent the rules to Ohio's current MCPs for feedback. No comments were received during this time or during the CSI public comment period.

The business community impacted by these rules includes the six MCPs currently in agreements with the State, as well as providers operating through MCPs. The adverse costs created by the rules include time and effort spent complying with the requirements of the rules, fees for obtaining a provider agreement, background checks, certification, and accreditation. The fee for a provider agreement costs \$554 and must be revalidated every five years. Background checks are required for MCP employees, and ODM states that background checks can cost approximately \$22. The certification cost for respite provider agencies is determined through the agency's budget and range from \$100 for budgets of up to \$250,000, \$1,000 for up to \$500,000, \$2,000 for up to \$1,500,000, \$3,000 for up to \$3,000,000, and \$4,000 for budgets greater than \$3,000,000. The rules also require certification and continuing education standards for individual respite providers. Certification in first aid costs \$30 and competency evaluation certification can cost between \$200 and \$500. Additionally, the rules require MCPs to report certain activities to ODM and maintain internal procedures for fraud or abuse. ODM states in the BIA that these rules ensure compliance with federal statute by requiring the coverage of certain medical services and also provide guidelines for enrolled individuals and MCPs. 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.