Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: June 12, 2019

RE: **CSI Review – Electronic Visit Verification (OAC 5160-1-40)**

On behalf of Lt. Governor Jon Husted, 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This rule package consists of one rescinded rule, and one new rule submitted by the Ohio Department of Medicaid (Department). The rule package was submitted to the CSI Office on May 5, 2019 and the public comment period was held open through May 3, 2019. Three comments were received during this time and the response was provided on May 16, 2019.

The proposed rule will replace the rescinded rule, which governs the Department's Electronic Visit Verification system. Specifically, the rule provides definitions, specifies services subject to system requirements, establishes operational requirements for providers, and outlines provider training requirements. The proposed rule will include updates to incorporate additional data collection software, eliminate the ninety-day exception to system requirements, define additional terminology, and remove unnecessary language.

As part of early stakeholder outreach, the Department distributed the draft rules to twenty-eight stakeholder groups, and over 150 individuals representing Ohioans using home and community-based services and their families. The Department held over twenty stakeholder meetings and made revisions and clarifications as necessary to reflect the rule package as submitted to CSI.

Three comments were received during the CSI public comment period. Most of the concerns required additional clarification from the Department rather than revision to the rules. Commenters asked for changes to the rules to clarify provisions regarding data collection, opting out, billing units, and tampering of devices. The Department did not feel that additional or revised language was necessary and explained why. It did, however, make changes to provide an exception for providers to avoid requesting a device for an individual when the individual already has one from a different provider. It also revised the definition for "IO waiver nursing" to clarify that the service is provided in accordance with other another provision in the Administrative Code.

The rule impacts State Plan Medicaid providers of home health nursing and aide services, private duty nursing, and nurse assessments. Ohio Home Care Waiver nursing services, personal care services, and attendant services are also impacted. Providers must report demographic information about the individuals served and, for agency providers, the direct-care workers they employ. Impacted providers must use Electronic Visit Verification to record the start and end of the visit, the individual receiving the service, and the service provided. In addition, the provider must capture verification of the recorded information from the individual receiving services at the time the service is provided. Finally, providers are required to use the Electronic Visit Verification system to clear data integrity errors (exceptions) in order to ensure that the system accurately reflects the services provided.

Providers must complete mandatory training, and report to the Department known or suspected tampering of devices or falsification of data. If use of an alternate data collection component is requested by a provider, the provider must satisfy all the technical and business requirements of the Department. Administrative costs incurred by impacted providers will vary widely by provider, based on the number of individuals served, average duration of service, and existing business practices. Providers who fail to comply may be subject to termination of the provider agreement. The Department justifies the rule because use of Electronic Visit Verification technology creates transparency in a new and innovative way while allowing individuals who use home and community-based services to maintain their independence. Additionally, the Department must implement Electronic Visit Verification to maintain the current level of federal funding for the Medicaid program.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.