



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

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

**FROM:** Jacob Ritzenthaler, Common Sense Initiative

**DATE:** November 13, 2019

**RE:** **CSI Review – Home and Community-Based Service (HCBS) Waiver Rules (OAC 5160-44-26, 5160-44-27, 5160-44-31, 5160-45-06, 5160-45-10 and 5160-46-04)**

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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This rule package consists of one rescinded and five amended rules proposed by the Ohio Department of Medicaid (ODM) pursuant to statutory five-year review requirements. This rule package was submitted to the CSI Office on October 8, 2019, and the public comment period was held open through October 15, 2019. No comments were received during the comment period. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on October 8, 2019.

Home and Community-Based Service (HCBS) waivers enable individuals with chronic conditions and disabilities receive care in their homes and communities. To enroll in a waiver, individuals must need a specific level of care and meet financial criteria. The proposed rules establish waiver service provider requirements, provide for structural reviews of providers to ensure compliance, and require investigations of providers occurrences as defined in OAC 5160-45-06.

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Nursing facility level of care waivers are administered by the Ohio Department of Aging (ODA) and ODM. MyCare Ohio and Ohio Home Care waivers are administered by ODM and PASSPORT and Assisted Living waivers are administered by ODA. The services across waivers are similar but not uniform therefore, the two agencies have been working to align rules governing the waivers programs. Two rules, OAC 5160-44-26 and 5160-44-27, of this rule package are being amended as part of that effort in order to provide consistency in the waiver programs.

OAC 5160-44-31 is serving as a replacement of the rescinded rule OAC 5160-45-10 for providers of personal care aide services, adult day health center services, supplemental adaptive and assistive device services, and supplemental transportation services in an ODM administered HCBS waiver. In addition, the draft rule is adding a requirement that new Medicaid providers complete “new provider” training within 90 days of receiving their Medicaid provider number.

OAC 5160-45-06 prescribes the requirements for conducting and reporting structural reviews of service providers and the process for examining and correcting noncompliance issues. Amendments include a possible exemption from a regularly scheduled structural review by ODM for Medicare-certified and accredited agencies that are already subject to reviews by their certification/accreditation entities. The proposed rule also includes amendments pertaining to structural reviews for all other agency providers and non-agency providers.

OAC 5160-46-04 defines services, provider requirements and specifications for delivery of Ohio Home Care waiver services. Amendments include the removal of duplicative requirements that are articulated in OAC 5160-44-31, updated references, and the specification that providers meet the conditions of participation prescribed in OAC 5160-44-31.

Since 2013, ODM has been working with a set of stakeholders, the HCBS workgroup, to draft and review rules governing ODM waiver programs. The workgroup includes approximately 900 members of at least dozen organizations who receive emails of the proposed rules and later was invited to meet on August 21, 2019 to review the rules. As a result of early stakeholder input, ODM made changes to the timeframe for the plan of correction in OAC 5160-45-06 and conditions of participation citations in OAC 5160-46-04.

Approximately 3,750 non-agency personal care aides, 1,680 nurses, and 56 home care attendants are serving those enrolled in an ODM-administered waiver program and are impacted by the proposed rules. In addition, there are 730 Medicare-certified home health agencies, 63 accredited agencies, 493 ancillary service providers serving individuals; and 23 agency providers and 380 assisted living providers certified by ODA and providing community transition services. Provisions in the proposed rules meet all four statutory definitions of adverse impact defined in ORC 107.52.

Adverse impacts are listed and quantified in the BIA. For example, community transition service providers must comply with requirements to become an ODM-approved provider or an ODA-certified provider. OAC 5160-44-27 requires home care attendant providers secure a State of Ohio licensed nurse and submit specific information as part of the provider application process. The proposed rules require records be maintained and retained. There are requirements for first aid training is estimated to cost approximately \$70 and home care attendants must take 12 hours of continuing education each year. Every five years, providers must pay \$569 for a revalidation fee.

ODM justifies the impact of the proposed rules because the Centers for Medicare and Medicaid Services (CMS), requires states to meet certain assurances about the waiver program including the assurance that the necessary safeguards are taken to protect the health and welfare of the beneficiaries. The proposed rules assist the State in making these assurances by ensuring providers meet certain qualifications and requirements.

### **Recommendations**

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

### **Conclusion**

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