



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### MEMORANDUM

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

**FROM:** Ethan Wittkorn, Regulatory Policy Advocate

**DATE:** **June 28, 2019**

**RE:** **CSI Review –Medicaid Consumer Liability (Rescind);  
Medicaid Recipient Liability (New) (5160-1-13.1/5160-1-13.1)**

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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This Ohio Department of Medicaid (Department) rule package consists of two (one new, rescinded) rules. This rule package was submitted to the CSI Office on June 3, 2019 as part of a statutory five-year review process, and the public comment period was open through June 10, 2019.

The rules cover what constitutes full payment to a provider for services rendered to a Medicaid recipient. The package includes a new rule proposed to replace the proposed rescinded rule. Differences between the two rules include changing references of "consumer" to "Medicaid recipient" to update language to current terms, the addition of citations to 42 CFR 447.15, showing the federal authority concerning the rule subject matter, additional language concerning patient liability, and the addition of requirements that providers cannot charge patients a fee for missed appointments. Additional differences include clarification regarding patients' responsibility for payment of services if the individual is not covered by Medicaid on the date of service (with exception), general language and organization changes, and a provision that prohibits a pharmacy from accepting payment from a Medicaid recipient for a controlled substance in lieu of submitting

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a claim.

During the period of early stakeholder outreach, the Department shared the rules with the Pharmacy Board and the Ohio Pharmacy Association. They then posted the drafts on the Department's website for all stakeholders to view for seven days and sent a notification to the ODM stakeholder list. During this period and the CSI public comment period, no concerns were raised with the Department.

The impacted business community is Ohio's Medicaid providers. The potential impact is the required time that the provider must take to explain that the recipient can receive the covered service at no cost from another Medicaid provider prior to giving service, to obtain consent from the Medicaid recipient, and to give a written explanation. The expected cost to providers is the necessary time to explain this liability and create the written form. The Department says that the rule is necessary in order to meet a federal requirement, and that the rule ensures that providers are not billing Medicaid recipients for services that could have otherwise been obtained at no cost.

### **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.