



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: May 1, 2020

RE: **CSI Review – Managed Care Plan (OAC 5160-26-01, 5160-26-02.1, 5160-26-05, 5160-26-05.1, 5160-26-09, 5160-26-10, and 5160-26-12)**

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This rule package consists of five amended rules and one rescinded rule proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on March 3, 2020, and the public comment period was held open through March 10, 2020. ODM provided the CSI Office with its response to stakeholder comments on April 8, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 3, 2020.

Ohio Administrative Code (OAC) Chapter 5160-26 establishes requirements for the Medicaid Managed Care Program. OAC 5160-26-01 lists the definitions used throughout the Chapter. This rule, along with the rest of the amended rules in this package, is being amended to adopt the term "Managed Care Organizations" (MCO) to replace instances of the term "Managed Care Plan." OAC 5160-26-02.1 sets forth the procedure for terminating a program, as well as the qualifications for termination. OAC 5160-26-05 establishes requirements for subcontracts and provider panels and is being amended to include single case agreements, clarify provider notification requirements, and update referenced rules and definitions. OAC 5160-26-05.1 lists the information that MCOs

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must provide to contracting providers. OAC 5160-26-09 establishes procedures for payments and fiscal responsibility and is proposed for rescission. OAC 5160-26-10 lists the sanctions and actions that can be taken if an MCO fails to fulfill its duties, which can include suspension, disenrollment, or the retention of premium payments. The rule includes amendments that update referenced rules and terms. OAC 5160-26-12 establishes requirements for member co-payment programs for dental services, vision services, non-emergency emergency department services, or prescription drugs.

During early stakeholder outreach, ODM sent the rules to relevant stakeholders participating in the Medicaid Managed Care Program, including Buckeye Health Plan, CareSource, Molina Healthcare, Paramount Advantage, and UnitedHealthcare Community Plan of Ohio. No comments were received during this time. During the CSI public comment period, ODM received a comment from the Ohio Council for Home Care and Hospice that suggested changes to the rule language regarding additional definitions, retroactive disenrollment, recoupment of payment, and payment of non-contract providers. ODM responded, stating that some of the suggested changes, including allowing providers to be reimbursed for terminated or ineligible individuals and the removal of ODM's ability to recover capitation payments, are required by federal statute. Other suggested changes, including the definition for "clean claim," are already present in rule appendices or provider agreements.

The business community impacted by these rules includes the five MCOs currently operating in Ohio. The adverse impacts created by the rules are primarily administrative in nature, including providing notification and records to ODM, distributing guidelines to contracted providers, and administering a co-payment system for members. MCOs may also incur penalties for violations of the rules, including corrective action plans, suspension of member enrollment, suspension or termination of provider agreements, and monetary fines. ODM states in the BIA that the rules are necessary to maintain compliance with federal standards for Medicaid programs. Additionally, the rules provide guidelines that ensure providers are paid appropriately, which is necessary for the continued benefit to businesses.

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.