



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: October 21, 2019

RE: **CSI Review – Nursing Facilities: Resident Protection Fund and Resource Assessment Notice Rules (OAC 5160-3-03.2 and 5160-3-16.1)**

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This rule package consists of two rescinded rules and one new rule proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on September 17, 2019 and the public comment period was held open through September 24, 2019. No comments were received during this time. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 17, 2019.

Ohio Administrative Code (OAC) Chapter 5160-3 sets forth requirements for long term care facilities, nursing facilities, and intermediate care facilities for individuals with intellectual disabilities. The rules in this package specifically relate to nursing facilities, including the Resident Protection Fund (Fund) and resource assessment. OAC 5160-3-03.2 currently establishes the provisions of the Fund, including disbursement and management of funds, reporting requirements, and the purposes for which the funding may be used. The rule is proposed to be rescinded and replaced with a new rule of the same rule number. The new rule will include amendments that address the payment of fines and remove obsolete language. OAC 5160-3-16.1 establishes requirements for notifying individuals of the availability of resource assessment services. The rule

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is proposed for rescission, as the rule is duplicative of federal regulations.

During early stakeholder outreach, ODM sent the rules to relevant industry stakeholders for feedback, including the Ohio Health Care Association, the Academy of Senior Health Sciences, Inc., and LeadingAge Ohio. During this time, stakeholders provided feedback that resulted in some of the amendments found in the rules. No comments were received during the CSI public comment period.

The business community impacted by these rules includes approximately 970 nursing facilities that participate in Ohio's Medicaid program. The adverse costs created by the rules include the collection of fines from nursing facilities and the administrative costs of complying with the rules, including the time and effort to report on and manage funds. The rescission of OAC 5160-3-16.1 results in an easing of regulatory burden on nursing facilities by removing notification 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.