



## 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:** August 27, 2020

**RE:** **CSI Review – BLTSS Home and Community-Based Services (OAC 5160-44-11, 5160-44-12, 5160-44-13, 5160-44-14, 5160-44-16, 5160-44-17, 5160-44-26, 5160-44-27, 5160-44-31, 5160-45-04, 5160-45-06, 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 twelve amended rules proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on August 10, 2020, and the public comment period was held open through August 17, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 10, 2020.

Ohio Administrative Code (OAC) Chapters 5160-44, 5160-45, and 5160-46 establish regulations for home and community-based services (HCBS) programs and waivers administered by ODM. The amendments to the rules make permanent changes based on those made through emergency rules (Executive Order 2020-23D) and other waiver updates made to respond to the Covid-19 pandemic. OAC 5160-44-11 through 5160-44-14 establish service definitions, provider requirements, and specifications for home-delivered meals, home maintenance and chores, home modification, and community integration services provided through HCBS programs. The rules are amended to permit ODM or the Ohio Department of Aging (ODA) to deem any ODM, ODA or

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Ohio Department of Developmental Disabilities waiver provider as having satisfied approval requirements for the same services. OAC 5160-44-16, 5160-44-17, 5160-44-26, and 5160-44-27 set forth similar requirements for personal emergency response systems, out-of-home respite, community transition, and home care attendant services. These rules are also amended to allow for expanded approval for providers and for services to be provided over telephone or electronic communication and to collect signatures electronically or by mail. OAC 5160-44-31 establishes the provider conditions of participation for services provided. The rule is being amended to clarify that required trainings are on-line or web-based and to update referenced rules and dates. OAC 5160-45-04 and 5160-45-06 establish the processes for provider enrollment, structural reviews, and investigations. The rules are being amended to allow for flexible timeframes and the ability to conduct desk reviews. OAC 5160-46-04 sets forth the definitions of covered services and provider requirements under the Ohio Home Care Waiver. The rule includes amendments that allow first aid training courses to be conducted on-line and without hands-on instruction, visits to be conducted via telephone or electronic communication, and reduce the ratio for staff providing adult day health center services.

During early stakeholder outreach, ODM reviewed the proposed amendments with the HCBS Rules Workgroup, which consists of providers, individuals enrolled in ODM waiver programs, and professional associations. ODM states in the BIA that the amendments were made based on suggestions from members of the HCBS Rules Workgroup. One comment was received during the CSI public comment period that supported the proposed amendments.

The business community impacted by these rules consists of 2,297 non-agency personal care aides, 1,428 registered nurses and licensed practical nurses, and 59 home care attendants serving individuals enrolled on an ODM-administered waiver. The business community also includes 700 Medicare-certified home health agencies, 65 otherwise-accredited agencies, and 374 ancillary service providers. The adverse impacts created by these rules include the cost of achieving Medicare certification and a provider agreement, as well as necessary training and continuing education to comply with the rules. ODM states that Medicare certification can take a provider between six and nine months and may cost up to \$250,000 in staff time depending on the provider. Provider agreements must be renewed every five years and include a fee of \$569. Training and continuing education can vary in cost and number of course hours depending on the type of service provider. ODM states that these rules are necessary to ensure that participants in ODM waiver programs are taken care of by qualified providers and that Ohio's programs meet federal 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.