



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 15, 2020

RE: **CSI Review – Behavioral Health Emergency Rule Amendments (OAC 5160-8-05 and 5160-27-04)**

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 amended rules proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on August 31, 2020, and the public comment period was held open through September 7, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 31, 2020.

Ohio Administrative Code (OAC) 5160-8-05 establishes requirements for the provision of behavioral health services for certain providers, including licensed psychologists and independent practitioners. The rule is being amended to remove language that requires face-to-face service. OAC 5160-27-04 sets forth requirements for assertive community treatment (ACT) model service delivery and is amended to relax the requirements for fidelity reviews for the ACT provider team and remove requirements for in-person provision. The amendments to the rules make permanent changes based on those made through emergency rules in response to the COVID-19 pandemic.

During early stakeholder outreach, ODM sent the rules to stakeholders and requested feedback

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through a survey about the use of telehealth services. ODM received responses that supported including telehealth measures. ODM also received feedback from Case Western Reserve University, which was incorporated into the rules, regarding relaxing requirements for fidelity reviews to ease the burden on providers during the COVID-19 pandemic. No comments were received during the CSI public comment period.

The business community impacted by the rules are behavioral health providers, including licensed psychologists and independent practitioners. The adverse impacts created by the rules include the time and effort spent requesting prior authorization, applying for and maintaining a Medicaid provider agreement, and adhering to the requirements for service provision and fidelity reviews. ODM may suspend or terminate payments for ACT services if the provider's performance is not demonstrated satisfactorily. ODM states that the rules are necessary to hold providers to an explicit set of requirements for the provision of Medicaid services. The amendments to the rules ease the burden on providers during the current pandemic by easing fidelity standards and allowing for reviews to be conducted remotely.

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.