



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: January 8, 2021

RE: **CSI Review – Nursing Facility-Based Level of Care Process and Timelines and Preadmission and Resident Review Program (OAC 5160-3-14 and 5160-3-15.1)**

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 Department 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 December 3, 2020, and the public comment period was held open through December 10, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 3, 2020.

Ohio Administrative Code (OAC) 5160-3-14 establishes requirements for level of care determinations for nursing facility-based level of care programs. The rule establishes timelines and processes for determinations. ODM has made amendments to the rule to respond to the COVID-19 pandemic. Amendments include updates to the listed departments and referenced rules, allowing physician certification to be submitted electronically, including desk reviews and remote communication methods for use in level of care determinations, and removing requirements for delayed face-to-face visits. OAC 5160-3-15.1 establishes preadmission screening requirements for individuals seeking admission to nursing facilities, which include the screening of patients for evidence of serious mental illness or developmental disabilities, as well as further assessments to

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determine eligibility for placement. The rule is amended to allow preadmission screening evaluations and assessments to be conducted by telephone, desk review, or electronically.

During early stakeholder outreach, ODM sent the rules to relevant industry stakeholders, including the Ohio Healthcare Association, the Academy of Senior Health Sciences, Inc., and LeadingAge Ohio. ODM states in the BIA that suggestions from stakeholders during that time were included in the rules to help provide flexibility in screening patients. During the CSI public comment period, ODM received two comments from stakeholders. One stakeholder suggested that physician assistants and nurse practitioners be allowed to provide level of care certification. ODM replied that it would review current rules for potential amendment and noted that new electronic level of care assessment tools would no longer require a physician signature, which would remove a burden of submission. Another stakeholder suggested that face-to-face assessments be conducted via telephone call, as opposed to removing the requirement entirely. ODM responded that the removal of the requirement allows for greater flexibility and stated that they can still be conducted through desk review. The stakeholder also requested clarification regarding face-to-face visits in instances of adverse determinations, which ODM provided.

The business community impacted by these rules includes approximately 954 nursing facilities that participate in Ohio's Medicaid program. The adverse impact created by the rules is primarily the time and effort required by nursing facilities and their employees to conduct assessments and screenings for admission. Incomplete level of care requests can be denied and would result in a nursing facility not being able to receive payment from Medicaid for the patient. ODM notes in the BIA that the usage of electronic systems to the preadmission screening process has significantly reduced the time and effort spent managing patient screenings. ODM states that the requirements of the rules are necessary in order to maintain compliance with state and federal Medicaid statutes, as well as ensuring that individuals admitted to nursing facilities have their needs properly met.

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.