



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### MEMORANDUM

**TO:** Tommi Potter, Ohio Department of Medicaid

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** June 2, 2021

**RE:** **CSI Review – HCBS Policy Administered Waivers (OAC 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 four amended rules proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on April 28, 2021, and the public comment period was held open through May 5, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on April 28, 2021.

Ohio Administrative Code (OAC) 5160-44-31 sets forth the conditions for provider participation in ODM-administered home and community-based services (HCBS) waiver programs, including obtaining a provider agreement with ODM, maintaining applicable records and information, and completing training. The rule also prohibits dangerous and fraudulent activities. The rule is amended to update the term "Ohio home care waiver" to "ODM-administered waiver program" and prohibit providers that serve as attorneys to act as legal guardian. OAC 5160-45-04 establishes requirements for provider enrollment and includes amendments that reference additional rules, update the terms for the provider application system, and allow for reconsideration of enrollment denial. OAC 5160-45-06 sets forth requirements for structural reviews of providers, including the

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number and timeframe of yearly reviews, processes for the review, and exit interviews. The rule also includes requirements related to ODM investigation of provider occurrences. The rule is amended to state that ODM may suspend a provider's structural review at its discretion. OAC 5160-46-04 lists the definitions of covered services and provider requirements for the Ohio Home Care Waiver. The rule is amended to correct a typographical error related to internet-based first aid certification courses.

During early stakeholder outreach, ODM reviewed the rules during meetings of the HCBS Rules Workgroup, which includes service providers, individuals enrolled in ODM-administered waivers, and industry businesses and associations. ODM states that the rules were amended to include stakeholder suggestions. During the CSI public comment period, ODM received one comment related to rules that are not part of this package.

The business community impacted by these rules includes providers of services through ODM-administered waivers. This includes approximately 3,994 non-agency personal care aides, 1,871 registered nurses and licensed practical nurses, 74 home care attendants, 766 Medicare-certified home health agencies, 72 otherwise-accredited agencies, and 374 ancillary service providers. The adverse impacts created by the rules include the cost of completing training and continuing education, maintaining Medicare-certification and ODM provider agreements, and complying with survey and structural review requirements. Home health competency training can range in cost from \$200 to \$500 and first aid training can vary based on the program and location. The Medicare certification process can take a provider facility up to nine months and, depending on number of employees supporting the process, can cost up to \$250,000. Provider agreements must be renewed every five years and includes a \$569 renewal fee. ODM states that the rules are necessary to ensure the health and welfare of individuals receiving services through ODM-administered waiver programs.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review