



## Common Sense Initiative

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

**Sean McCullough**, Director

### MEMORANDUM

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

**FROM:** Jacob Ritzenthaler, Business Advocate

**DATE:** April 6, 2022

**RE:** **CSI Review – Managed Care Procurement and Single Pharmacy Benefit Manager Implementation (OAC 5160-26-02.1, 5160-26-03, 5160-26-03.1, 5160-26-05, 5160-26-05.1, 5160-26-06, 5160-26-08.4, 5160-26-09.1, 5160-26-10, and 5160-26-12)**

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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 Department as provided for in ORC 107.54.

#### Analysis

This rule package consists of 10 amended rules proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on March 1, 2022, and the public comment period was held open through March 8, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 1, 2022.

Ohio Administrative Code (OAC) Chapter 5160-26 establishes requirements for managed care plans. The rules in this package include amendments that update titles to reflect changes in terminology to "managed care." Likewise, many rules include amendments that include the Single Pharmacy Benefit Manager (SPBM) and Ohio Resilience through Integrated Systems and Excellence (OhioRISE) plan within the provisions of the rule. OAC 5160-26-02.1 sets forth requirements for terminating a member's enrollment in a Managed Care Organization (MCO) or the SPBM, including criteria for termination, and is amended to exempt the OhioRise plan, include the SPBM in termination requirements, and clarify language concerning mandatory and voluntary

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populations. OAC 5160-26-03 establishes requirements for covered services, including requirements for pharmacy and emergency services, physical examinations, maintaining processes for submitting claims, and access to health care facilities, among others. The rule is amended to require the MCO to provide two dental cleanings per year to certain pregnant members, streamline provisions for respite services, and removing certain definitions that are no longer necessary. OAC 5160-26-03.1 establishes requirements for MCOs to ensure each member has a primary care provider and that the MCO and SPBM maintain a utilization management program to maximize the effectiveness of care provision. The rule includes amendments that require utilization management programs to maintain compliance with Mental Health Parity and Addiction Equity Act and update SPBM prior authorization requirements.

OAC 5160-26-05 is amended to update the rule title to reflect the focus on provider network and contracting requirements and includes amendments throughout the rule that reflect those changes, as well as other amendments that update credentialing requirements for managed care entities. OAC 5160-26-05.1 concerns the provision of information and guidelines to providers and is amended to remove requirements for credential providers. OAC 5160-26-06 requires managed care entities to guard against fraud, waste, and abuse and is amended to include providers contracted with ODM. OAC 5160-26-08.4 concerns the appeals and grievance system and is amended to include the SPBM. OAC 5160-26-09.1 establishes requirements for third party liability and recovery and is amended to include benefit coordination requirements regarding children placed in custody of a public children's services agency. OAC 5160-26-10 provides the actions or sanctions ODM may impose following violations of the provider agreement and is amended to update terms and references. OAC 5160-26-12 allows for MCOs and the SPBM to implement a member co-payment system and includes amendments that the SPBM may only implement a member co-payment system for prescription drugs if directed by ODM.

During early stakeholder outreach, ODM provided the proposed rules to current MCOs during the request for proposal phase of SPBM implementation. No comments were received during that time. Two comments were received during the CSI public comment period. One stakeholder made multiple suggestions, including stricter language for making authorization policies and requests available, providing written information to providers and members, and resolving grievances. ODM did not make changes based on these suggestions, citing statutes and rules that achieve the purpose. One stakeholder approved of the proposed rules.

The business community impacted by the rules includes the SPBM, MCOs, MyCare Ohio plans, and the OhioRISE plan. The adverse impacts created by the rules include providing notification, documenting service provision and maintaining records, and paying for services in certain situations. ODM notes that MCOs are paid per member per month for services, as well as a monthly

administrative fee for the SPBM. ODM states that the adverse impacts are necessary to comply with federal requirements for Medicaid programs.

### **Recommendations**

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

### **Conclusion**

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