



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Lisa Musielewicz, Ohio Department of Mental Health and Addiction Services

FROM: Joseph Baker, Business Advocate

DATE: June 9, 2022

RE: **Residential State Supplement (RSS) Rules (OAC 5122-36-01, 5122-36-02, 5122-36-03, 5122-36-04, and 5122-36-05)**

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 five amended rules proposed by the Ohio Department of Mental Health and Addiction Services (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on April 15, 2022, and the public comment period was held open through May 6, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on April 15, 2022.

Ohio Administrative Code (OAC) 5122-36-01 specifies the purposes and scope of the Residential State Supplement (RSS) program, which is to provide cash assistance to Medicaid-eligible individuals with increased needs related to medical or behavioral health conditions that are not so severe as to require institutionalization. The rule is amended to clarify the Department's role in administering the program and to make certain definitional updates. OAC 5122-36-02 sets forth non-financial eligibility criteria for the RSS program, including that the individual does not require more than 120 days of skilled nursing care, have a cognitive impairment that requires twenty-four hour supervision, is not related to the owner or caregiver, is not a participant in a federal waiver program, and others. The rule is amended to require an individual seeking assistance through the

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RSS program to meet certain Medicaid criteria to be eligible for payments, to state that the Department will first determine non-financial eligibility before the relevant County Department of Job and Family Services (CDJFS) office makes a final determination, and to specifically authorize the Department to require repayment of RSS support in certain situations. OAC 5122-36-03 sets forth the application process for the RSS program, including information that the Department records regarding the individual, the Department's responsibility to determine non-financial eligibility within ten business days, and the Department's authority to deny an application for various reasons, as well as the individual's right to request a hearing. The rule is amended to update cross references and streamline language.

OAC 5122-36-04 specifies requirements for living arrangements, including that the living arrangement entity provides the Department with access to RSS records, notifies the Department of any changes to the individual's residential status, maintains appropriate licensure status, returns any RSS payments that are made following an individual leaving or disenrolling from the program, and others. The rule is amended to remove situational limitations on circumstances upon which a living arrangement entity may be required to offer a pro-rated refund to an individual who is leaving the living arrangement. The rule is also amended to adopt various language updates and streamlining, and to permit the Department to require an RSS payment to be repaid if the payment is made after the individual becomes ineligible for the program or after the individual is no longer present at the eligible living arrangement. Finally, OAC 5122-36-05 sets forth the means for determining RSS payment amounts and has been amended to update a cross-reference and to streamline and clarify language.

During early stakeholder outreach, the Department shared the proposed rules with stakeholders electronically. In response to the request for feedback, the Department received comments from NAMI Ohio and the Adult Care Facility Association, Ohio Association of Area Agencies on Aging, Ohio Council of Behavioral Health and Family Services Providers, and the Ohio Association of County Behavioral Health Authorities. The Department reports that feedback from stakeholders addressed two primary concerns – the Department's original proposal to include a requirement that a living arrangement entity that applies for Supplemental Nutrition Assistance Program benefits on behalf of an individual receiving RSS payments submits an affidavit to the Department attesting that it meets federal requirements to do so, and to increase the allowable fee from \$1,100 per month to \$1,400 per month. The Department determined to remove the attestation requirement in response to the comment, but states that increasing the fee amount can only take place during separate budgetary deliberations. One comment was received during the CSI public comment period suggesting that the Department define certain terms, provide a timeframe for returning funds, prohibit living arrangements from accepting additional payments, reference legal representatives of individuals, and include a cross reference to a related rule. The Department responded to the comment by

agreeing to include a timeframe for returning funds but did not adopt the definitional recommendations as it determined the existing language provided the necessary guidance or a definition was already provided elsewhere. The Department determined not to amend the rules to prohibit living arrangements from accepting additional funds as providers are permitted to assess additional charges for services outside of the scope of the minimum requirements of the RSS program.

The business community impacted by the rules includes living arrangement entities with RSS program participants. The adverse impacts to business include the costs of licensure as a residential facility, which range from \$75 to \$1,920 annually, depending on the classification of the facility and the number of beds at the facility, as well as staff time to comply with the living arrangement standards prescribed in the rules. RSS living arrangement entities are also required to complete quarterly surveys verifying which individuals are living at facilities. The Department notes that there is no additional licensure fee for such licensed residential facilities to participate in the RSS program and that the adverse impact to business created by the rules is justified to ensure that adults with behavioral health conditions receive quality accommodations, supervisions, and personal care services, as well as responsible management of taxpayer dollars purposed toward that end.

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.