



## Common Sense Initiative

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

**Joseph Baker**, Director

### MEMORANDUM

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

**FROM:** Joseph Baker, Director

**DATE:** October 13, 2022

**RE:** **CSI Review – Chapter 26 Managed Care Rule Revisions (OAC 5160-26-02.1, 5160-26-08.4, and 5160-26-12)**

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 three amended rules from the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on September 6, 2022, and the public comment period was held open through September 13, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 6, 2022.

Ohio Administrative Code (OAC) 5160-26-02.1 sets forth causes for the Department to terminate a member's enrollment in a managed care organization (MCO), opportunities and limitations on members seeking to terminate their own enrollment or choose another MCO, and processes and causes for a member to terminate the enrollment of a member. The rule is amended to remove a requirement that a member contact an MCO to identify service providers before seeking a determination of just cause from the Department.

OAC 5160-26-08.4 sets forth appeal and grievance procedures for MCO or single pharmacy benefit manager (SPBM) members. Under the rule, and MCO or SPBM must meet various deadlines for resolving grievances or appeals, provide members a reasonable opportunity to present evidence in

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appeal cases, and comply with various notice responsibilities and requirements to provide information to the member, among other requirements. The rule is amended to update a calendar reference to reflect the most recent editions of four forms produced by the Department.

OAC 5160-26-12 authorizes MCOs to implement a member copayment program for certain types of services with prior approval from the Department and sets forth requirements for MCOs that determine to implement such a program, such as excluding certain populations and services, limiting copayment amounts at certain thresholds, and other related requirements. The rule is amended to extend post-partum periods from sixty days following pregnancy to twelve months following pregnancy.

During early stakeholder outreach, ODM shared the proposed rule with stakeholders including UnitedHealthcare Community Plan of Ohio, Humana Health Plan of Ohio, Molina Healthcare of Ohio, AmeriHealth Caritas Ohio, Anthem Blue Cross and Blue Shield, CareSource Ohio, Buckeye Community Health Plan, Gainwell Technologies, and the Ohio Association of Health Plans. No comments were received in response to the request for early stakeholder feedback. One comment was received during the CSI public comment period indicating that the stakeholder had reviewed the information and had no feedback to share.

The business community impacted by the rules includes the SPBM (Gainwell Technologies), Ohio MCOs and Aetna Better Health Ohio. The adverse impacts to business include costs associated with providing notices, reports and related information as required by the rules, costs associated with complying with records maintenance and retention responsibilities, as well as additional administrative costs to comply with requirements that accompany the decision to require member copayments. The Department notes that MCOs are compensated for the additional costs of the requirements in the rules based on the administrative component of the per member rate paid by the Department, which ranges from 4-6.5%, while the SPBM receives a monthly administrative fee to compensate that entity for the added administrative costs necessitated by the rules. The Department states that the adverse impact to business is justified to ensure that MCOs and the SPBM are aware of and in compliance with federal regulations and to ensure the protection of members' rights.

### **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.