MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: August 10, 2017

RE: **CSI Review – Level of Care (OAC 5160-3-10 and 5160-3-14)**

On behalf of Lt. Governor Mary Taylor, 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 one amended[1] and one new rule proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on July 17, 2017 and the public comment period was held open through July 24, 2017. Six comments were received during this time. Responses to comments were provided to the CSI Office on August 9, 2017.

Ohio Administrative Code (OAC) 5160-3-14 establishes a process for determining the level of care as required under Medicaid home and community based services waivers or nursing facility stays. ODM proposes to amend the rule to update agency names, references, make term clarifications, remove duplicative provisions, require the use of an ODM approved assessment instrument to determine the need for less than 24-hour support, and add the need for a face-to-face level of care assessment when an individual is seeking a nursing facility-based level of care. The new rule establishes an age-specific process for determining the level of care for a child

[1] Ohio Administrative Code (OAC) 5160-3-14 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

under Medicaid and requires the use of a specific level of care assessment for children, as they were previously assessed using the criteria and process designed for the adult population. The purpose of the rules is to ensure that individuals who reside in a nursing facility or their homes, have their needs met in the least restrictive setting possible and for ODM to ensure that they are properly administering Medicaid services as efficiently as possible.

As part of the early stakeholder outreach process, ODM contacted numerous healthcare, aging, and long-term care organizations throughout the state. During this process, ODM distributed the new and amended rule to solicit feedback from stakeholders regarding any concerns or suggestions they may have. As a result of the comments and feedback, ODM chose to make some revisions, which include specifying the credentials of a "qualified assessor," adding the requirement that upon the issuance of an adverse determination regarding a patient's level of care, the subsequent face-to-face visit must be performed by a registered nurse, and other minor phrasing and language changes.

Six comments were received during the CSI public comment period. One commenter, in reference to OAC 5160-3-14, requested clarification on who determines the need for 24/7 support for an individual and whether additional documentation be required along with the level of care request. ODM responded that in cases where a face-to-face assessment of an individual occurs, the assessor will determine whether 24/7 care is needed based upon the results of the Brief Cognitive Assessment Too. The remaining commenters primarily had clarification questions regarding the provisions in both rules. In addition, they expressed concern with the specificity of some of the levels of care pertaining to individuals with developmental disabilities. ODM replied and made changes to the rule to ensure that those with such disabilities are able to meet the intermediate level of care when certain criteria are met and thereby can remain in their homes and communities while obtaining care under the home and community based services waiver.

The rules primarily affect hospitals, nursing facilities, Ohio Department of Aging contracted PASSPORT administrative agencies and Ohio Home Care waiver contracted case management agencies. OAC 5160-3-10 requires any hospital discharging a child to a nursing facility must comply with new form requirements that must be completed by a licensed social worker or registered nurse. In addition, OAC 5160-3-14 has additional form requirements, which include the completion of the Adult Level of Care Questionnaire and the Adult Comprehensive Assessment Tool. ODM contends in the BIA that the form requirements will likely take two hours and thirty minutes to complete and cost roughly $26.11 per hour by a hospital employee. The average cost for nursing facilities to complete the required forms will be $16.52 per form and PASSPORT and Case Management Agencies will incur costs of $250 to $300 for each required assessment. Lastly, ODM states in the BIA that compliance with the rules will also require license fees for social workers and registered nurses who must complete the assessments. The respective license fees will range from $65 for nurses and $60 to $75 for social workers depending on whether they are a licensed social worker or a licensed independent social worker.
ODM contends that the regulatory intent of the rules outweighs the adverse impact to business

because the level of care determination process ensures that individual needs can be met in a nursing facility or in their home and community. ODM is required to implement a process to determine the level of care protocols via Medicaid and these rules are consistent with other Ohio Medicaid provider practices related to ensure the safety and well-being of those individuals who use the home and community based waiver service.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Medicaid should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.