



Common Sense Initiative

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

Joseph Baker, *Director*

MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Caleb White, Business Advocate

DATE: April 12, 2024

RE: **CSI Review – Electronic Visit Verification (OAC 5160-1-40, 5160-32-01, 5160-32-02, 5160-32-03, and 5160-32-04)**

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This rule package consists of four new rules and one rescinded rule proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on March 4, 2024, and the public comment period was held open through March 11, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 4, 2024.

This package rescinds ODM's current rule governing Electronic Visit Verification (EVV) for home and community-based services and replaces it with four new rules which establish an updated version of EVV. Ohio Administrative Code (OAC) 5160-1-40 is the current rule which is to be rescinded, OAC 5160-32-01 is a new rule which establishes the definitions for EVV, OAC 5160-32-02 is a new rule which outlines data collection requirements for EVV, OAC 5160-32-03 is a new rule which allows for the use of an alternate EVV vendor for data collection and establishes requirements for these alternative EVV vendors, and OAC 5160-32-04 is a new rule which establishes the requirements for EVV program providers. These new rules cover many of the same topics as the

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rescinded rule but modify the privacy considerations of Global Positioning System (GPS) technology by requiring permission from the person receiving services, change who the EVV devices are distributed to, require financial management service vendors contracted with ODM to obtain alternate EVV vendor certification, no longer requires the individual that receives services to validate the visit, add a new voluntary scheduling feature, exempts both telehealth services and live-in direct care workers from the rules, as well as clarifies, reformats and streamlines language.

During early stakeholder outreach, ODM developed the rules with input from the Ohio Department of Aging and Ohio Department of Developmental Disabilities. ODM implemented feedback they have been collecting regarding the program they have been collecting since the implementation of the program in 2018 and shared the proposed rules with stakeholders during a webinar in January of 2024. During the CSI public comment period, ODM received thirty-eight comments. These comments were largely positive, but some did ask for improvements or clarifications regarding accessibility materials, the privacy considerations of GPS technology, caregiver exemptions, the specification of data entry dates, and manual entry. ODM did not make changes to the rules but clarified that they are committed to providing access, inclusion, and reasonable accommodation in its services and provided information on how to obtain these accessibility materials. ODM also took the comments regarding the use of GPS, the live-in caregiver exemption, and data entry dates under consideration for future rulemaking, clarified that the changes related to GPS technology are to align the rules with federal requirements, and noted that manual entry is to be used only when technology is not available.

The business community impacted by the rules includes Medicare fee-for-service as well as managed care providers of personal care and home health services. The adverse impacts created by the rules include the training expenses for providers to meet the EVV program requirements, the requirements associated with the use of an alternate data collection component, the costs associated with requesting an exemption, the requirement to notify ODM when using an alternate EVV vendor, the requirement to obtain signed consent to use GPS technology, the requirement for financial management service vendors contracted with ODM to obtain alternate EVV vendor certification, and the potential denial of payment or penalties for violating the EVV program requirements. ODM notes that there are several changes that reduce the adverse impact to business which include removing a requirement for an individual receiving services to validate a visit, adding a voluntary scheduling feature for providers, and exempting both telehealth services and live-in direct care workers from the requirements in the rules. ODM states that the adverse impacts to business are justified to comply with federal requirements and provide transparency to service delivery as well as to ensure individuals receive the medically necessary services they need.

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.