

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Medicaid (ODM)

Regulation/Package Title: BHPP Transportation, New

Rule Number(s): New: 5160-15-14

Date: November 28, 2016

**Rule Type:**

☒ New

☐ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

New rule 5160-15-14 sets forth requirements for a county department of job and family services (CDJFS) when it establishes or renews contracts with transportation vendors that provide direct service to Medicaid-eligible individuals. Under this rule, owners and managers of private transportation vendors (PTVs) will be required to disclose specified information and pass criminal background checks. This rule formalizes and standardizes what many counties have already put into practice.

**77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117**

**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

The Ohio Department of Medicaid (ODM) is promulgating this rule under section 5164.02 of the Ohio Revised Code.

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

The Centers for Medicare and Medicaid Services (CMS) has directed the Ohio Department of Medicaid to implement program integrity measures, which are set forth in the Code of Federal Regulations (CFR) at 42 CFR Part 455, Subpart B.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

These rules do not exceed federal requirements.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Medicaid rules perform several core business functions: They establish and update coverage and payment policies for medical goods and services. They set limits on the types of entities that can receive Medicaid payment for these goods and services. They publish payment formulas or schedules for the use of providers/suppliers and the general public.

This rule will formalize and standardize the requirements for contracts between transportation vendors and county JFS offices. It will require the county JFS offices to require disclosures and criminal background checks when establishing and renewing contracts with PTVs. The rule will benefit Medicaid-eligible individuals that utilize private transportation services by establishing a level of accountability that will protect them from criminals. It will also prevent fraud, waste and abuse.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The success of this rule will be measured by consumers being able to access non-emergency transportation services provided by a PTV that has undergone appropriate background screening. Another measure of success will be determined by instances in which fraud, waste, and abuse are detected and corrected.

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## **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

In mid-February, the draft rule was shared with the Director of the Ohio Department of Job and Family Services Directors' Association (OJFSDA). Subsequently, OJFSDA shared the draft rule with their policy committee and they informed the department that they had no concerns with the rule.

As it is not possible to contact every PTV in the state, the rule was placed in clearance as a way to reach out to stakeholders.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The stakeholders agreed with the rule as written; no concerns were submitted by stakeholders and no changes were necessary.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No data were needed in the development of this rule. This rule formalizes and standardizes an existing practice by counties with PTVs.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The development of this rule involved structuring and formalizing an already existing practice used by county agencies in contracting with transportation vendors. Where policy was initiated, there was no preferable regulatory alternative.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

The concept of performance-based rule-making does not apply to these requirements.

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**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Rules involving Medicaid providers are housed exclusively within agency 5160 of the Ohio Administrative Code. Within this division, rules are generally separated out by topic. It is clear which rules apply to which type of provider and item or service; in this instance, there was no duplication.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The rule is designed so that all CDJFS agencies will require the same disclosures and criminal background checks for private transportation vendors. Therefore, if a provider has contracts in multiple counties, the contracts and procedures will be the same from county to county.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

The impacted business community consists of private transportation vendors (PTVs) that enter into contracts with county departments of job and family services (CDJFS) to provide direct transportation services to Medicaid-eligible individuals.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Employees of PTVs that provide direct services to Medicaid recipients must pass criminal background checks. Additionally, the following must be disclosed for each PTV, each owner and manager of a PTV, and any related enterprise(s): name, Medicaid provider name if applicable, address, mailing address (if different), tax identification number, Medicaid provider number if applicable, and national provider identifier (NPI) if applicable.

The PTV will also be required to confirm through a statement on the contract that neither the PTV nor the PTV owner/manager has been excluded from participation as a provider in any state Medicaid program.

**c. Quantify the expected adverse impact from the regulation.**

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*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Completing a background check is considered to be part of the cost of doing business. However, for a PTV that was not previously conducting background checks, the cost for the Bureau of Criminal Investigation (BCI) to complete the background check is \$46.00 per individual.

Due to the disclosure requirement, an indirect, nominal monetary expenditure is expected with the enactment of this rule. Providing the disclosure information would cost a PTV roughly \$.86 to \$1.71 for clerical staff to complete. This is based on a completion time of approximately five to ten minutes at an average pay rate of \$10.41 an hour based on information found on the Ohio Labor Market Information website.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The requirements described in these rules will assist ODM in preventing fraud, waste and abuse, and in protecting Medicaid recipients from being transported by individuals who have been convicted of certain criminal offenses.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

These rules outline actions all PTVs must take in order to enter in to a contract with CDJFS agencies. No exception is made on the basis of an entity's size.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

This rule impose no sanctions on PTV providers.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Information sheets and instruction manuals on various claim-related topics are readily available on the ODM website.

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The Bureau of Provider Services renders technical assistance to providers through its hotline, (800) 686-1516.

Policy questions may be directed via e-mail to the Non-Institutional Benefit Management section of ODM's policy bureau, at *noninstitutional\_policy@medicaid.ohio.gov*.