

**MEMORANDUM**

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Sydney King, Regulatory Policy Advocate

DATE: April 15, 2016

RE: **CSI Review – Specialized Recovery Services Program (OAC 5160-43-01, 5160-43-02, 5160-43-03, 5160-43-04, 5160-43-05, 5160-43-06, 5160-43-07, 5160-43-08, and 5160-43-09)**

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 nine new rules and one appendix being proposed by the Ohio Department of Medicaid (ODM). ODM submitted Rules 5160-43-01, 5160-43-02, 5160-43-03 and 5160-43-08 for informational purposes only. However, stakeholders submitted comments on these rules and were considered in CSI's overall analysis of the regulations. The rule package was submitted to the CSI Office on March 10, 2016 and the public comment period was held open through March 17, 2016.

The rule package establishes the specialized recovery services program, which creates a mechanism to provide home and community-based services to individuals with mental health and/or substance use disorders in order to prevent potential institutionalization. Individuals who meet the financial, clinical needs, and risk eligibility criteria will have the opportunity to receive peer recovery support, individualized placement and supported employment, and recovery management. ODM is utilizing a federal program, 1915(i) Medicaid State Plan Amendment, to

offer home and community-based services to individuals who are no longer eligible for Ohio Medicaid and will receive health care through Medicare, private insurance, or insurance obtained through the federal health care exchange. These plans may not incorporate specialized recovery types of services through their insurance plans. The rules include requirements for consumer eligibility, provider agreements, provider reporting, provider services, provider qualifications, and provider operational policies.

The BIA provides a list of the stakeholders and details the input received during rule development from stakeholder meetings. Stakeholders included members of the provider industry, universities and colleges, mental health and addiction advocate associations, state agencies, and several hospital groups. ODM states the rules were drafted in collaboration with these stakeholders and also with the consultation of the Ohio Department of Mental Health and Addiction Services (OMHAS), which also regulates the providers impacted by these rules. ODM provided a description in the BIA of the adverse impacts to the stakeholders with the associated costs. The adverse impacts include administrative and legal fees associated with the provider agreement, reporting requirements, certification with OMHAS, background check fees, and training costs.

During the CSI public comment period, four comments were submitted by industry members and the Ohio Council of Behavioral Health & Family Services Providers (Council). ODM hosted a meeting to discuss the comments with stakeholders on April 11, 2016. ODM addressed a number of the concerns surrounding employer requirements and provided clarity to the regulations. Stakeholders continue to have concerns with “incident reporting” requirements and duplication with OMHAS regulations. ODM has communicated to the stakeholders and the CSI Office that it is committed to attempting to address these concerns but it is necessary for the rules to move forward in order to prevent roughly 6,000 individuals from losing coverage. On July 1, 2016, Ohio will replace its two disability determination systems with one system. Currently, according to the Ohio Office of Health Transformation, “Ohioans have to prove they are disabled twice, once to receive Supplemental Security Income (SSI) and again to receive Ohio Medicaid benefits. Under the new system, the definition of disability will stay the same, but income and asset limits for Medicaid will increase to match SSI.”¹ Due to the income and asset limit increases, many individuals will need to obtain coverage through Medicare, private insurance, or through the federal health care exchange. As previously stated, the Specialized Recovery Services Program is used to cover the gap in mental health and addiction services that will likely not be available through the individual’s new insurance options.

ODM also provided justification for the comments received regarding criminal background checks and disqualifying offenses. The Ohio Council stated that disclosing the background checks of the service providers to the individuals receiving the services is problematic. Additionally, the Council expressed concerns with precluding individuals from providing peer recovery services

¹ <http://www.healthtransformation.ohio.gov/LinkClick.aspx?fileticket=nwrdsnOoQqo%3d&tabid=117>

who have committed the disqualifying offenses listed in the regulation, stating peer recovery support services requires a service provider to utilize their experience during treatment and will limit the employer's ability to hire and retain qualified individuals. ODM clarified that the regulations only address the services that are paid for by Medicaid and does not impact services that are funded through other means. The requirements are necessary because employees will be entering the individual's home and community to provide the services and therefore, it is necessary to protect the health and safety of the individual and community.

ODM acknowledges the validity of the stakeholder concerns regarding incident reporting and duplication with other state agencies. However, it is necessary for the rules to move forward in order to cover the gap in mental health and addiction services that will likely not be available through the individual's new insurance options when Ohio replaces its two disability determination systems with one system. The CSI Office recommends ODM move forward with filing the rule package contingent on ODM developing a stakeholder plan, that includes participation from the CSI Office, to address these concerns.

Recommendation

The CSI Office recommends ODM move forward with filing the rule package contingent on ODM developing a stakeholder plan to address concerns related to incident reporting and duplication among state agencies.

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.