



MEMORANDUM

TO: Bryan Stout, Ohio Department of Medicaid

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: September 30, 2016

RE: **CSI Review – Nursing Facility Cost Report (OAC 5160-3-20, 5160-3-42.1)**

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This rule package consists of two rules—one amended and one rescinded—being proposed by the Ohio Department of Medicaid (ODM) for review under the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on September 19, 2016, and the comment period remained open until September 26, 2016.

Rule 5160-3-20, which establishes Medicaid cost report filing, record retention, and disclosure provisions for nursing facilities and state-operated intermediate care facilities for individuals with intellectual disabilities, is being proposed with changes. Specifically, amendments to the rule being proposed by ODM include modifying the rule title; deleting unnecessary references and obsolete provisions; adding, or deleting, language to ensure consistency with statute and current practices (e.g. language requiring nursing facilities to file the Medicaid cost report via the Medicaid Information Technology System (MITS) web portal or other electronic means designated by ODM); increasing the depreciation value of depreciable equipment; eliminating language that duplicates provisions in the ORC; adding required dates; and updating Ohio Administrative Code (OAC) references, ORC citations, and the Department's name from the Ohio Department of Job and Family Services (ODJFS) to ODM. Rule 5160-3-42.1, which sets forth provisions regarding the Medicaid nursing facility cost report, is being proposed for rescission because the provisions contained within it are already reflected in other rules in Chapter 3 of the OAC.

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Rule 5160-3-20 impacts providers who choose to participate in the Medicaid program, a total of approximately 960 nursing facilities and 10 state-operated intermediate care facilities for individuals with intellectual disabilities. The BIA listed potential adverse impacts of the rule as filing, and potentially amending, annual Medicaid cost reports; submitting written requests (if a provider wanted a filing extension); paying late filing penalties; providing documentation requested by ODM; requesting rate reconsiderations; and providing requested contracts. In completing its review process, the CSI Office also noted in the rule that failure to retain required records renders a provider liable for monetary damages.

ODM indicated in the BIA that these adverse impacts are justified because the rule ensures the integrity of information contained in Medicaid nursing facility cost reports, allowing nursing facility rates to be accurately set and paid. This rule amplifies ORC section 5165.10 by setting forth filing deadlines and extensions, late filing penalties, and submission of revised and amended cost reports, which are collectively important for the efficient and effective administration of the Medicaid program, and the business operations of nursing facility providers.

ODM contacted its primary stakeholders, Ohio's three nursing facility provider associations, regarding the proposed rules. Each participated in a review of the drafted rules in July 2016. During the review, ODM received several comments on rule 5160-3-20. While thorough responses to comments were provided to the CSI Office reflecting ODM's rationale for changing or maintaining the rule's language in relation to each comment, only one formal change was made. Two stakeholders suggested that language regarding equipment costs acquired by an operating lease executed prior to December 1, 1992 be removed because any lease from that time should now be paid off. ODM agreed and amended the rule as such. Regarding comments that did not lead to rule changes, one included an argument that costs reported on the disputed costs addendum should no longer be considered in establishing a facility's prospective rate. ODM contended that disputed costs on the addendum could be relevant for rebasing purposes. No comments were submitted during the CSI public comment period indicating that the rules are overly burdensome. Therefore, the CSI Office has determined the purpose of the rules to be justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for 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.

cc: Mark Hamlin, Lt. Governor's Office