MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: July 17, 2017

RE: **CSI Review – Hospice Chapter Rules (OAC 5160-56-02, 5160-56-03, 5160-56-03.3, and 5160-56-04)**

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 contains four amended rules[1] proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on June 19, 2017 and the comment period was held open through June 26, 2017. One public comment was received during this time and the Department responded to the comment on July 10 with an additional response on July 17.

Ohio Administrative Code (OAC) 5160-56-02 sets forth the eligibility criteria necessary for an individual to receive hospice benefits through Ohio Medicaid. The rule is being amended in order to provide clarity for providers. OAC 5160-56-03 describes the criteria for hospice providers to discharge, transfer and revoke an individual from Ohio Medicaid hospice care. The rule is being amended to offer hospice providers instruction in greater detail. OAC 5160-56-03.3 sets forth the

[1] OAC 5160-56-02, 5160-56-03, 5160-56-03.3, and 5160-56-04 are being amended to the extent that the Legislative Service Commission requires the Ohio Department of Medicaid to rescind the rules and replace them with new rules of the same rule number.

requirements for reporting hospice spans and certification information. The rule is being amended to reflect that hospice enrollment information reporting is to be reported through the new Medicaid Information Technology System (MITS) and remove references to the prior reporting system. The amended rule gives instructions on usage of the new system and the types of information to be recorded. OAC 5160-56-04 sets forth responsibilities and requirements for hospice providers. The rule has been amended to remove certain requirements, including Medicaid card labeling, and clarify the rules.

During early stakeholder outreach, ODM held meetings with industry stakeholders through the Ohio Hospice Sub Workgroup to review changes to the rules. ODM reports that the majority of amendments to the rules were a result of the workgroup sessions. During the CSI public comment period, one comment was received. The comment requested clarification as to why some of their input was not included in the BIA. ODM responded that it included information that estimated an adverse impact on representative populations, which would be more applicable to hospices within the state. This comment also pointed out the potentially large administrative cost that will result from having to enter information regarding patient care back to January 1, 2016 and requested the Department consider paying hospice agencies interest on outstanding reimbursements. The Department responded to this comment on July 17 explaining that due to budgetary restraints they will not be considering interest payments, but explains in the BIA that it will work with hospice agencies through August training sessions to ensure accurate reimbursement for services.

The business communities impacted by the rule package include the 140 certified hospice providers in Ohio. The adverse impacts of these rules primarily take the form of administrative time needed to report information, provide election or discharge forms, or apply for licensure, estimated with assistance from sources included in the Ohio Hospice Sub Workgroup. The cost of completing the election form for hospice care is estimated as $44 per case. The estimated cost for completing a statement and summary of discharge is $75 per individual. Entering and uploading information into MITS is a new cost associated with these rules and is estimated to cost $18.50 per individual. Application and renewal for licensure as a hospice provider is $600 and the cost of reaching an agreement with a nursing facility, intermediate care facility, or inpatient facility is estimated to be approximately $300 per agreement. ODM estimates that a written certification of terminal illness can cost $145 per case and a written plan of care for an individual can cost $141.

The Department contends that the costs associated with these rules are necessary to comply with federal requirements from the Centers for Medicare and Medicaid Services, which take effect on October 1, 2017

Recommendations

For the reasons described above, the CSI Office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Medicaid should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.