



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Tommi Potter, Ohio Department of Medicaid

**FROM:** Ethan Wittkorn, Regulatory Policy Advocate

**DATE:** September 12, 2019

**RE:** CSI Review – Behavioral Health Services (5160-8-05, 5160-27-01, 5160-27-03, 5160-27-04 and 5160-27-08)

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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 Agency as provided for in ORC 107.54.

#### Analysis

This Ohio Department of Medicaid (Department) rule package consists of five amended rules. This rule package was submitted to the CSI office on August 20, 2019 with the public comment period open through August 27, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on August 20, 2019.

The proposed rules address behavioral health services by community mental health and substance use disorder treatment providers and outline services and their requirements. The draft rules propose updates that reflect stakeholder comments and codify the Department's policies. Amendments make behavioral health services performed in an inpatient or outpatient hospital a hospital service, clarify reimbursement provisions, provide exceptions for a registered nurse to perform a nursing regimen without an order, and increase reimbursement rates for specified services. Additional amendments include changes to the third-party billing policy for behavioral health providers to allow providers to submit Medicaid reimbursement claims if the provider has concerns over patients access to care due to unpaid claims by the third party, permission for licensed mental health practitioners to render therapeutic behavioral services, and technical updates and clarifications.

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During the period of early stakeholder outreach, the Department posted the draft rules and solicited comments via an automatic notification system to registered stakeholders. The Department received one comment in support of the rules from the Ohio Council of Behavioral Health & Family Service Providers. During the CSI public comment period, the Department received one comment from the Ohio Council of Behavioral Health and Family Service Providers. That comment led to additional updates in rule 5160-27-03 to allow for an exception to the stated policy regarding third party billing mentioned above, and to clarify information required of the provider.

The proposed rules impact approximately 820 Medicaid provider agencies of mental health and substance use disorder treatment and may affect Medicaid managed care plans. Adverse impacts include the requirement that participating Ohio Medicaid provider agencies update their claims payment systems to submit service claims for patients with third-party coverage before billing Medicaid. To satisfy federal requirements, provider agencies must register with Ohio Medicaid and enroll employees and contractors who are permitted to provide behavioral health services. Provider agencies must also ensure those employees and contractors are appropriately affiliated in the Medicaid Information Technology System (MITS). The adverse impact costs will vary due to the complexity of third-party and in-house billing systems. Costs associated with employee registration vary due to the administrative costs of each provider and the time associated with compliance.

The Department states that the rules are necessary to make Ohio compliant with federal requirements, codify policy, improve access to behavioral health services, and stabilize the behavioral healthcare system in Ohio.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.