



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: October 15, 2020

RE: **CSI Review – Nursing Facility Emergency Rule Amendments (OAC 5160-3-16.4, 5160-3-18, and 5160-3-43.3)**

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 rule package consists of three amended rules proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on August 24, 2020, and the public comment period was held open through August 31, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 24, 2020.

Ohio Administrative Code (OAC) Chapter 5160-3 sets forth requirements for services provided through long-term care facilities, nursing facilities, and intermediate care facilities for individuals with intellectual disabilities. The rules are being amended to make permanent changes based on expiring emergency rules enacted as a result of the COVID-19 pandemic. OAC 5160-3-16.4 sets forth provisions for facility bed reservations and hold days and is amended to allow payments to reserve a bed for more than 30 but not more than 60 days. OAC 5160-3-18 establishes an alternative purchasing model for the provision of services to patients who are dependent on ventilators. The rule is amended to include respiratory care professionals as eligible to fulfill staffing requirements and to relax reporting requirements. OAC 5160-3-43.3 sets forth

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requirements for calculating case mix scores and includes amendments that allow ODM to determine whether to assign a penalty score in response to late submission of resident assessment data.

During early stakeholder outreach, ODM reviewed the rules with professional organizations representing nursing facilities, including the Ohio Health Care Association, Academy of Senior Health Sciences, Inc., and LeadingAge Ohio. During this time, stakeholders expressed support for the proposed changes. No comments were received during the CSI public comment period.

The business community impacted by these rules includes approximately 960 nursing facilities participating in the Medicaid program. The adverse costs created by the rules include the time and effort spent to apply for and maintain facility certification and provider agreements, adhering to recordkeeping and oversight requirements, and additional facility-based requirements, such as maintaining backup power generators for keeping vital equipment functional. Facilities that are shown to be noncompliant with these rules may be required to submit and carry out a correction plan that establishes steps towards compliance. ODM states in the BIA that these rules are necessary to ensure safe and efficient administration of services through Medicaid.

Recommendations

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

Conclusion

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