



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 – Laboratory, X-Ray, and IDTF Services (OAC 5160-11-02, 5160-11-03.1, 5160-11-11, and 5160-11-31)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of two new rules and two rescinded rules proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on September 10, 2020, and the public comment period was held open through September 17, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 10, 2020.

Ohio Administrative Code (OAC) Chapter 5160-11 sets forth requirements for independent laboratory and x-ray services. OAC 5160-11-02 and 5160-11-03.1 establish general and specific provisions for laboratory-related services, including standards for service provision and payment qualifications. These rules are proposed for rescission. OAC 5160-11-11 and 5160-11-31 are new rules that incorporate the provisions found in the rescinded rules, including definitions, coverage requirements, and claim payment.

During early stakeholder outreach, ODM sent the rules to relevant industry stakeholders, including the Ohio Hospital Association, behavioral health providers, and Medicaid managed care providers.

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During this time, stakeholders suggested that the maximum payment of laboratory services be increased from 75% of the cost. ODM states in the BIA that increasing the payment rate would not be possible due to budgetary constraints. In response to stakeholder comments, ODM amended the rules to include two other sources that define which constituent procedures are included in a panel. No comments were received during the CSI public comment period.

The business community impacted by these rules include all laboratories, portable X-ray suppliers, independent diagnostic testing facilities, and mammography suppliers participating in the Ohio Medicaid program. The adverse impacts created by the rules include the requirements to maintain certification through the Clinical Laboratory Improvement Amendments of 1988 and enrollment in Medicare. ODM notes that adherence to these standards is already required for facilities and these rules are not singularly responsible for the burden. ODM states that the rules are necessary for laboratories to receive payment for provided services.

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.