



## Common Sense Initiative

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

**Sean McCullough**, Director

### MEMORANDUM

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

**FROM:** Jacob Ritzenthaler, Business Advocate

**DATE:** April 6, 2022

**RE:** **CSI Review – Nursing Facility Budget Bill Rules (OAC 5160-3-50, 5160-3-58, and 5160-3-70)**

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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 Department as provided for in ORC 107.54.

#### Analysis

This rule package consists of two new rules and one rescinded rule proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on February 28, 2022, and the public comment period was held open through February March 7, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 28, 2022.

Ohio Administrative Code (OAC) Chapter 5160-3 establishes requirements for nursing and other long-term care facilities. OAC 5160-3-58 describes criteria for the quality indicators nursing facilities must meet to earn quality points and the method for determining per Medicaid day quality payment rate. The rule is proposed due to statutory changes. OAC 5160-3-50 is a new rule that establishes guidelines for the use of additional dollars that result from rebasing rates, including provisions for direct care spending, submitting cost center reports, reviewing report data, and reimbursing funds to ODM. OAC 5160-3-70 is a new rule that sets forth the appeal procedure for special focus facilities that have been proposed for termination from the Medicaid program.

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During early stakeholder outreach, ODM reviewed the rules with industry stakeholders, including boards of alcohol, drug addiction, and mental health services, provider agencies, and families. Comments received during that time were incorporated into the rules. No stakeholder comments were received during the CSI public comment period.

The business community impacted by the rules includes approximately 970 nursing facilities that participate in the Medicaid program. The adverse impacts created by the rules include the cost of preparing cost reports, appealing a termination order, and potentially reimbursing ODM the funding used without the authorization of the rules. Cost reports that are submitted late are assessed a fee of \$100 per day. ODM states that the adverse impacts created by the rules are necessary to create a due process system for appealing facility termination and encourage the provision of direct care to individual nursing facilities.

### **Recommendations**

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

### **Conclusion**

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