



## 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:** June 10, 2022

**RE:** **CSI Review – Provider Conditions for The Assisted Living Home and Community-Based Services Waiver Program (OAC 5160-33-05)**

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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 one amended rule proposed by the Ohio Department of Medicaid (ODM) as part of the statutory five-year review requirements. This rule package was submitted to the CSI Office on May 4, 2022, and the public comment period was held open through May 11, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on May 4, 2022.

Ohio Administrative Code (OAC) 5160-33-05 establishes conditions for provider participation in the Assisted Living Home and Community-Based Services (HCBS) waiver program. The rule requires certification as an assisted living provider through the Ohio Department of Aging (ODA) to obtain a Medicaid provider agreement and states that individuals enrolled in the Assisted Living HCBS waiver are given free choice of qualified providers. The rule is amended to update language, referenced rules, and effective dates.

During early stakeholder outreach, ODM sent the rule to stakeholders for feedback, including providers and HCBS professional associations. One comment was received during that time which

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suggested including waiver services for Assisted Living waiver recipients in OAC 5160-33-06. ODM did not make changes in response to this comment, stating that the addition of waiver services is not reflected in the current budget and that further stakeholder feedback would be necessary before introducing new services. One comment was received during the CSI public comment period, which suggested allowing the purchase of home medical equipment and additional services. ODM did not make changes based on these comments, citing budget limitations, and directed the stakeholder towards rules in which the requirements and general provisions for medical equipment are found.

The business community impacted by the rule includes residential care facilities seeking Medicaid reimbursement for services provided to individuals through the Assisted Living HCBS waiver. The adverse impact created by the rule is primarily the requirement to obtain certification through ODA, which requires providers to submit applications, conduct an on-site pre-certification visit, and pay an enrollment fee. ODM states that the adverse impacts to business created by the rule are necessary to ensure transparent requirements for businesses looking to participate in the Assisted Living HCBS program, provide for quality outcomes for enrolled individuals, and monitor standards for federal program compliance.

### **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 rule with the Joint Committee on Agency Rule Review