



Common Sense Initiative

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

Joseph Baker, *Director*

MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Michael Bender, Business Advocate

DATE: July 15, 2024

RE: **CSI Review – Structured Family Caregiving (OAC 5160-44-33)**

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 new rule proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on June 13, 2024, and the public comment period was held open through June 20, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on June 13, 2024.

Ohio Administrative Code (OAC) 5160-44-33 provides for the Structured Family Caregiving (SFC) service, where an individual who is at least eighteen years old and enrolled on the MyCare Ohio, Ohio Home Care, or the Pre-Admission Screening System Providing Options and Resources Today (PASSPORT) waiver program resides with a caregiver who provides daily care and support to the individual. Requirements are set for waiver service providers of SFC regarding delivery of services, documentation, and payment standards. Furthermore, the rule establishes limitations and the authorization process for SFC.

During early stakeholder outreach, ODM met with staff at the Ohio Department of Aging to discuss drafting regulations regarding SFC. ODM also shared the draft proposed rule via email with nearly

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

10,000 stakeholders and requested their feedback. As a result of stakeholder feedback, ODM revised the rule to better define the role of a caregiver, clarify that provider requirements are specific to waiver program, and better define what is meant by a “full day” and “half day” of service. During the CSI public comment period, ODM received comments from Careforth, the Ohio Olmstead Task Force (OOTF), the Ohio Council for Home Care & Hospice (OCHCH), Molina Healthcare of Ohio (Molina), an area agency on aging (AAA), and a parent.

Careforth, OOTF, and the parent were concerned that the initial training requirements for family caregivers were extremely burdensome and would serve as a barrier to access. ODM updated the rule to only require eight hours of initial training for both PASSPORT and MyCare Ohio, while noting that the Ohio Home Care waiver only enrolls agencies who are either Medicare-certified or otherwise accredited. ODM further explained that Medicare sets the training requirements for Medicare-certified agencies even if they are not the payor, but otherwise accredited agencies providing care through the Ohio Home Care waiver will also only require eight hours of initial training for an SFC live-in caregiver. The AAA believed that it was unclear how the SFC service is differentiated from traditional Consumer Directed Personal Care Service (PCS) or Choice Home Care Attendant Service (CHCAS). ODM explained that a care manager would differentiate between an authorization for a full day of SFC compared to PCS or CHCAS based on which service would best meet the individual’s needs. The OCHCH inquired about the maximum allowable payment rates for caregivers. ODM replied that there will not be a mandated percentage pass through for caregiver pay at the rule’s effective date. The OCHCH also joined Molina in asking for more clarification on the differences between a full day and half day of service. ODM replied that a modifier will be added to the rule that will be used when a provider submits a claim when SFC is provided as a half day. Lastly, ODM made a few technical corrections to the rule.

The business community impacted by the rule includes all nursing facility-based waiver service providers with the MyCare, Ohio Home Care, and PASSPORT waiver programs. The adverse impacts created by the rule include the requirements for providers to be properly certified and staff to be properly licensed to provide SFC services. Additionally, to be considered for a license to provide skilled or non-medical home health service as a home health agency or nonagency provider, a provider must submit an application along with a nonrefundable \$250 application fee. ODM states that the adverse impacts to business are justified to comply with federal law and ensure the health and welfare of waiver participants.

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.