



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 – Five-Year Review Hospice Rules (OAC 5160-56-02, 5160-56-03, 5160-56-03.3, 5160-56-04, and 5160-56-06)**

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 five amended rules proposed by the Ohio Department of Medicaid (ODM) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 21, 2024, and the public comment period was held open through June 28, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 21, 2024.

Ohio Administrative Code (OAC) 5160-56-02 establishes the criteria that must be met for an individual to receive the Ohio Medicaid hospice benefit. The rule is amended to update language, citations, and typography, update the effective date for a federal regulation, remove unnecessary language, and reflect the new manner in which enrollment data is reported to ODM. OAC 5160-56-03 sets forth the requirements for discharging an individual from a designated hospice's care and/or hospice benefit. The rule is amended to update language and a citation, add clarifying language, remove unnecessary language, and reflect the new manner in which enrollment data is reported to ODM. OAC 5160-56-03.3 provides for the reporting of hospice enrollment data to ODM for

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individuals receiving Medicaid hospice care, including those who may be covered by third-party insurance, such as Medicare, for which the hospice seeks reimbursement. The rule is amended to update language, no longer specify particular dates of service with respect to reporting enrollment information for individuals with fee-for-service claims, reflect the new manner in which enrollment data is reported to ODM, and clarify where supporting documentation should be submitted.

OAC 5160-56-04 describes the responsibilities for a hospice engaged in the provision of Medicaid hospice services. The rule is amended to update language, remove unnecessary language and citations, and update the effective dates for federal regulations. OAC 5160-56-06 provides for ODM payments for hospice services and care. The rule is amended to update language and a citation, remove unnecessary language and citations, update the effective dates for federal regulations, account for the ending of the two percentage point payment reduction penalty at the completion of federal Fiscal Year 2024 for non-compliant hospices, account for the change of the payment reduction penalty to four percentage points beginning with federal Fiscal Year 2025 for non-compliant hospices, remove provisions allowing telehealth services to be provided when in-person visits are required to align with federal flexibilities that ended with the public health emergency, and clarify when a hospice can bill for room and board when an individual is in a nursing facility or an intermediate care facility for individuals with intellectual disabilities.

During early stakeholder outreach, ODM emailed the draft rules and a summary of the proposed changes to hospice provider associations on April 11, 2023. The associations involved in the review of the draft rules included LeadingAge Ohio, the Ohio Council for Home Care & Hospice, Ohio's Hospice, the Ohio Health Care Association (OHCA), the Ohio Department of Developmental Disabilities, and the Ohio Department of Aging. Based on feedback provided by the OHCA, ODM made two revisions to the rules. The first identified referenced fiscal years as federal fiscal years, while the second modified updated language. The OHCA also requested an increase in hospice room and board reimbursement from 95% to 100% of the nursing facility per diem rate for individuals receiving hospice care in a nursing facility. ODM acknowledged the OHCA's request but declined to make this change. No comments were received during the CSI public comment period, although ODM made a couple of technical corrections to the rules.

The business community impacted by the rules includes more than 160 hospice providers in Ohio that choose to participate in the Medicaid program. The adverse impacts created by the rules include meeting the criteria to furnish hospice care, notifying ODM of an individual's discharge from hospice, reporting hospice enrollment information to ODM, maintaining hospice licensure, and reductions in Medicaid payments for failure to comply with the federally-mandated Hospice Quality Reporting Program (HQRP). ODM estimates that it would take an hour and a half at a cost of \$34 per hour for a registered nurse or a Master of Social Work to submit a hospice election through the provider web portal and provide hospice individuals with copies of grievance procedures and

information on advance directives. Furthermore, it may take up to one hour at approximately \$22 per hour for an employee to enter hospice enrollment information into the provider web portal. The initial and renewal application fee for hospice licensure is \$600 per provider. The \$631 Medicaid application fee is waived for licensed hospices that are Medicare-certified. The cost for renewing Ohio Department of Health (ODH) licensure every three years is \$600, and ODH also completes a Medicare recertification survey at least every thirty-six months at a cost of \$1,625. For designated hospices that fail to comply with the HQRP for federal Fiscal Years 2014 through 2024, there is a two percentage point reduction penalty in Medicaid reimbursement, but this reduction penalty will increase to four percentage points beginning federal Fiscal Year 2025. ODM states that the adverse impacts to business are justified to comply with federal law and regulations as well as ensure uniform standards whereby certified providers may participate in hospice.

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.