



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 – Medicaid Incident Management Rule Revisions (OAC 5160-44-05)**

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This rule package consists of one new rule and one rescinded rule proposed by the Ohio Department of Medicaid (ODM).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 rules filed with the CSI Office on June 13, 2024.

Ohio Administrative Code (OAC) 5160-44-05 is rescinded and replaced by a new rule with the same number. The new rule establishes the standards and procedures regarding the reporting of incidents for multiple programs administered by ODM and the Ohio Department of Aging (ODA). Requirements pertain to initial reporting, documentation, investigation, and closure of incidents. The rule applies to the MyCare Ohio waiver program, the Ohio Home Care waiver program, the Specialized Recovery Services (SRS) program, the OhioRISE program, Medicaid managed care organizations (MCOs), the Preadmission Screening System Providing Options and Resources Today (PASSPORT) waiver program, and the Assisted Living waiver program. Compared to the rescinded version of the rule, the new version is revised to define the programs earlier, update reporting requirements for members enrolled in the OhioRISE program to include youth receiving treatment

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in psychiatric residential treatment facilities (PRTF), shorten the list of appropriate entities with investigative or protective authority that should be notified of an incident, update timeframe requirements, remove the section pertaining to uniformity, and remove the requirement for ODA waiver case management agencies to notify ODA upon the discovery of public media stories about an event directly impacting individual health, safety, or welfare or when an employee is the alleged violator in an incident.

During early stakeholder outreach, ODM shared the draft proposed rule in December 2023 and January 2024 with ODM's Quality Steering Committee, home and community-based services (HCBS) policy staff at both ODM and ODA, the front door policy, integrated policy, OhioRISE, and PRTF policy teams at ODM, ODM's Health, Safety, and Welfare meeting, the Aetna OhioRISE team, and various ODM and ODA stakeholders. On February 1, 2024, ODM sent out the proposed rule via email to seek input from its HCBS Rules Workgroup list, which contains over 9,000 stakeholders including individuals enrolled on ODM-administered waivers, MyCare Ohio plans, area agencies on aging, agency and independent providers, Medicaid MCOs, the investigative entity conducting investigations for ODM waivers, behavioral health associations, and others. As a result of the feedback received during this time, ODM revised the rule to change the timeframe for investigating critical incidents from forty-five calendar days to forty-five business days, align the timeframe for investigating and closing reportable incidents with that for critical incidents, remove language regarding the inapplicability of the rule to individuals who are enrolled in the SRS program and MyCare Ohio, and add the requirement for the reporting of risk to the health and welfare of an individual due to the individual being lost or missing for members enrolled on OhioRISE who are receiving treatment in a PRTF. No comments were received during the CSI public comment period, although ODM made some grammatical and technical corrections to the rule.

The business community impacted by the rule includes MCOs, providers of waiver services, providers of services under the SRS program, OhioRISE care management entities, providers serving individuals in the OhioRISE program, and providers that furnish services under contract with an MCO. The adverse impacts created by the rule include the standards and procedures associated with the requirement to report incidents involving enrolled individuals as well as the administrative costs of compliance with the rule such as training and oversight. ODM emphasizes the participation in the HCBS programs is optional. Furthermore, ODM notes that the changes to the rule will reduce the burden on businesses by improving clarity, removing the requirement for PASSPORT and Assisted Living waiver case management agencies to notify ODA when an employee is the alleged violator in an incident or upon the discovery of public media stories about an event directly impacting individual health, safety, or welfare, and streamlining the incident reporting process. ODM states that the adverse impacts to business are justified to comply with federal requirements and ensure the health and safety of individuals enrolled in the applicable programs.

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.