



Common Sense Initiative

Mike DeWine, *Governor*
Jim Tressel, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Caleb White, Business Advocate

DATE: July 15, 2025

RE: **CSI Review – ODM Administered Waiver Service Rules (OAC 5160-45-06, 5160-45-07, 5160-45-08, and 5160-45-09)**

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 four amended rules proposed by the Ohio Department of Medicaid (ODM) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 30, 2025, and the public comment period was held open through July 7, 2025. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 30, 2025.

The rules in this package pertain to the ODM administered waiver program. Ohio Administrative Code (OAC) 5160-45-06 establishes requirements for the structural reviews of providers, investigation of provider occurrences, and plans of correction. This rule is amended to update and streamline language. OAC 5160-45-07 establishes requirements for criminal records checks related to agency providers. This rule is amended to update references, incorporate subcontractors into the requirements of this rule, add definitions for "anniversary date" and "subcontractor," update the

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definition for “disqualifying offense,” eliminate unnecessary language, and update and streamline language. OAC 5160-45-08 establishes requirements for criminal records checks related to independent providers. This rule is amended to update references, eliminate the definition for “anniversary date,” update the definition for “disqualifying offense,” and update and streamline language. OAC 5160-45-09 establishes the requirements for compliance monitoring and oversight of ODM-administered waiver service providers and contractors. This rule is amended to update and streamline language. OAC 5160-45-11 establishes the exclusionary periods for disqualifying offenses. This rule is amended to make subcontractors subject to requirements in this rule, update references, update the descriptions of disqualifying offenses, and update and streamline language.

During early stakeholder outreach, ODM sent the proposed rule changes to stakeholders to solicit feedback and held discussions with representatives from the Ohio Council for Home Care & Hospice (OCHCH). During this period, it was requested that an additional requirement be added to the rules. ODM did not make any changes in response to this feedback as the requested change was already included in the rules. No comments were received during the CSI public comment period.

The business community impacted by the rules includes all nursing facility-based waiver service providers of the Ohio Home Care and MyCare Waiver Programs and providers of behavioral health respite services within the Ohio Resilience through Integrated Systems and Excellence (OhioRISE) program. The adverse impacts created by the rules include costs related to providing information for structural reviews and any corrective action associated with the results of such reviews, the time spent conducting database checks, reporting requirements, potential sanctions which could result in an inability to participate in the Medicaid waiver program, administrative costs to the provider/contractor, and/or the suspension or termination of a provider’s Medicaid provider agreement or a contractor’s Medicaid contract, criminal background check fees, as well as the costs associated with developing and adhering to a plan of correction. ODM states that the costs associated with criminal checks include a records check fee range from \$27 to \$90, require approximately thirty minutes of administrative time per applicant/employee, and are estimated by OCHCH to cost \$24 per hour of staff time with an estimated cost of approximately \$120 per applicant/employee. ODM also notes that independent providers also require a \$5 annual RAPBACK fee which is paid for by ODM. ODM further notes that participation in the HCBS waiver is optional and at the provider’s discretion. ODM states that the adverse impacts to business are justified to ensure the health of HCBS 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 rules with the Joint Committee on Agency Rule Review.