MEMORANDUM

TO: Tommi Potter, Ohio Department of Medicaid

FROM: Sydney King, Regulatory Policy Advocate

DATE: May 27, 2016

RE: **CSI Review – Ohio Home Care Waiver (OAC 5160-46-04)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (O.R.C.) 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 Agency as provided for in ORC 107.54.

Analysis

This rule package consists of one no-change rule being proposed by the Ohio Department of Medicaid (ODM). The rule package was submitted to the CSI Office on March 10, 2016 and the public comment period was held open through March 17, 2016. No comments were received during the CSI public comment period.

Rule 5160-46-04 establishes the provider requirements for the services available through the Ohio Home Care Waiver program. The services include adult day health, emergency response, home-delivered meals, home modifications, out-of-home respite, supplemental adaptive and assistive device services, supplemental transportation, waiver nursing services, and personal care aides.

According to ODM, the rule is being filed as a no-change rule to meet the statutory five-year rule review deadline. ODM communicated to the CSI Office that extensive stakeholder outreach is necessary to amend the rule but is not complete, and therefore ODM did not amend the language. ODM staff indicated that its stakeholder group recently had to shift focus to develop two new rules in order to comply with the state's Home and Community Based Services State Transition

Plan now pending before the federal government. As a result, the stakeholder group began its review of Rule 5160-46-04 in February and will be devoting monthly meetings to completing the rule review.

The purpose of a five-year rule review is to amend and update language that is outdated, no longer applicable or necessary, and develop better or alternative regulations. The CSI Office expressed concerns with ODM's desire to meet the five-year rule review deadline without completing a comprehensive review of the regulations. ODM anticipates the stakeholder review process will be completed within three years. In order to accomplish the purpose of the five-year rule review while allowing ODM to appropriately engage its stakeholders, the CSI Office recommends that ODM proceed with this no-change filing, but establish a review deadline that is within three years of filing. ODM has agreed to the recommendation.

Recommendation

The CSI Office recommends that ODM set the next rule review deadline for a date that is within three years of filing this no-change rule.

Conclusion

Based on the above comments and contingent on complying with the recommendation regarding the next review date, the CSI Office concludes that the Ohio Department of Medicaid should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.