



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Tommi Potter, Ohio Department of Medicaid

**FROM:** Ethan Wittkorn Regulatory Policy Advocate

**DATE:** April 8, 2019

**RE:** **CSI Review – NF-Based LOC Waiver Alignment: Incident Management (5160-43-06, 5160-44-05, 5160-45-05, 5160-58-05.3)**

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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 Agency as provided for in ORC 107.54.

#### Analysis

This Ohio Department of Medicaid (ODM) rule package consists of four rules. Of the rules submitted, one rule is new and three are proposed for rescission. ODM submitted the rules to the CSI Office on February 21, 2019 and the public comment period was open through February 28, 2019.

The new rule (5160-44-05) serves to implement incident reporting requirements. The rule sets the definitions, standards, and procedures related to incident reporting for ODM, Ohio Department of Aging (ODA), their designees, service providers and individuals. This new rule replaces the three rules ODM proposes for rescission (5160-43-06, 5160-45-05, 5160-58-05.3) and covers all the same material found in those rules. Both ODM and ODA administer home and community based services (HCBS) waivers. This rule package moves to align ODM and ODA rules regarding these waiver programs as it is common for individuals to move from one waiver program to another as their circumstances change. This rule package helps to bring consistency to the HCBS programs to alleviate confusion among individuals and providers.

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During early stakeholder outreach, ODM worked closely with the ODA and ODM waiver care management entities as well as the HCBS rules workgroup. The HCBS rule workgroup email list includes over 900 members including individuals enrolled on ODM-administered waivers, MyCare Ohio Plans, Area Agencies on Aging (AAAs), agency and independent providers, the investigative entity conducting investigations for ODM waivers, behavioral health provider associations, among others. Due to feedback from the ODM and ODA waiver care management entities, ODM made edits that include the type of incidents that are considered critical and reportable; the addition of specific protective agencies as examples of entities to be notified; aligned timeframe requirements for entering incidents and notifying the State; and adding the care management entities to the entities included in receipt of the investigation summary. Following those edits, the HCBS workgroup had no further suggestions.

During the CSI period of public comment from February 21, 2019 to February 28, 2019 the ODM received and responded to two comments, both of which led to changes in the draft rule. One comment, received from the Ohio Health Care Association and the Ohio Assisted Living Association, identified potential confusion due to conflicting definitions in the proposed rule and an existing rule pertaining to assisted living facilities. The associations believed that assisted living facilities should be carved out of the rules, and that the definitions in the rules were too broad. As a result of that input, ODM made several changes to the draft rules. These changes include a deletion of portions of the definition of abuse, the removal of “wandering” from the incident type, adding clarity to the definition of a health and safety plan, and a to include a reference to specific language on incidents that must be reported. The second comment came from the Ohio Association of Advanced Practice Nurses, who expressed a concern over the definition of a primary provider being limited to a physician. The association noted that nurse practitioners and clinical nurse specialists often serve as a primary provider. ODM changed the draft rules to include advanced practice registered nurses as potential primary providers.

The impact of this rule package falls on providers of ODA and ODM HCBS waivers and Specialized Recovery Services (SRS), as well as MyCare Ohio plans. The proposed rules require service providers to report all incidents related to individuals enrolled on a HCBS or SRS program, a change made to comply with federal regulation. This report of information is a federal requirement and is necessary to ensure the health and safety of individuals enrolled in an HCBS program. As a federal requirement by the Centers for Medicare and Medicaid Services (CMS), these reporting changes are necessary to gain CMS approval for state HCBS programs. ODM notes that the cost of compliance will vary depending on the number of incidents that occur but notes that the rules maintain a similar level of reporting requirements, so the related costs of doing business will not change.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Ohio Department of Medicaid should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.