



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: September 19, 2023

RE: **CSI Review – Medicaid Durable Medical Equipment, Prostheses, Orthoses, and Supplies (DMEPOS) Rule 5160-10-01 (OAC 5160-10-01)**

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This rule package consists of one rescinded rule proposed by the Ohio Department of Medicaid (ODM). This rule package was submitted to the CSI Office on August 22, 2023, and the public comment period was held open through August 29, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on August 22, 2023.

Ohio Administrative Code (OAC) 5160-10-1 establishes the general coverage and payment policy for durable medical equipment, prostheses, orthotics, and supplies (DMEPOS) by an enrolled provider. The rule is to be rescinded as ODM plans to replace it with a newly restructured rule which has the same number, addresses the same topic, and contains numerous other revisions. According to ODM, the new rule will remove references to licensure as well as the requirement to notify a recipient that a condition has been met or an event has occurred.

During early stakeholder outreach, ODM made a presentation to the Ohio Association of Medical

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Equipment (OAMES) in September 2020. ODM reviewed the rule at a subsequent OAMES conference and discussed it over email. ODM also shared information with the Ohio Orthotics and Prosthetics Association in March 2022 via meetings and email conversations. Individual providers and Medicaid managed care organizations contacted ODM over email as well. Starting in April 2021, ODM held around two dozen meetings with OAMES representatives and other DMEPOS stakeholders to discuss various issues of concern. In late 2022, discussion focused on changes to the rule. Based on proposals made in the course of discussion, ODM and OAMES agreed to incorporate modifications to the payment schedule. ODM realized the need to restructure the rule in response to recommendations concerning prescriptions and certificates of medical necessity. During the CSI public comment period, ODM received one comment from an individual inquiring about the new version of the rule. ODM replied that the new version of the rule would be posted for public comment in the near future via its clearance process.

The business community impacted by the rule includes Medicaid providers of DMEPOS. The adverse impacts created by the rule include requiring providers of DMEPOS to possess appropriate licensure and notify a recipient when an item has been purchased through rental. ODM points out these adverse impacts will be eliminated in the planned new version of the rule. ODM also notes many of the future changes to the rule stem from efforts to minimize the number of items and services for which prior authorization is needed. ODM states that the adverse impacts to business are justified to reflect statutory requirements and ensure that individuals have complete information about the equipment they use.

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 rule with the Joint Committee on Agency Rule Review.