



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 – Lactation Consulting Services (OAC 5160-8-42)**

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This rule package consists of one new rule and one rescinded rule proposed by the Ohio Department of Medicaid (ODM).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Ohio Administrative Code (OAC) 5160-8-42 is rescinded and replaced by a new rule with the same number. The new rule provides for the coverage and payment of lactation consulting services. Compared to the rescinded version of the rule, the new version is revised to update definitions, add and remove terms, clarify that physicians, physician assistants, and advanced practice registered nurses may only receive Medicaid payments for rendering a lactation service, allow rendering providers, professional dental group practices, and pharmacies to receive Medicaid payments for lactation services on behalf of rendering providers, and streamline the coverage provisions.

During early stakeholder outreach, ODM sent out the draft rule via email on September 8, 2023, for review and feedback from stakeholders. The contacted stakeholders included the Ohio Pharmacist

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Association, the Ohio Dental Association, the Ohio Association of Community Health Centers, the Ohio Association of Advanced Practice Nurses (OAAPN), the Ohio State Medical Association (OSMA), the Ohio Physical Therapy Association, the Ohio Occupational Therapy Association, and Medicaid managed care organizations. Based on comments provided by the OAAPN and OSMA, ODM modified the rule to update terminology based on industry standards. During the CSI public comment period, ODM received comments from the OSMA, the Ohio Lactation Consultant Association (OLCA), and Nestling Lactation and Postpartum Support (Nestling).

The OSMA and OLCA advocated for the restoration of certain proposed rescinded language, particularly the definitions for “lactation consultation” and “International Board Certified Lactation Consultant” (“IBCLC”), for clarity’s sake. Additionally, both organizations asked ODM to revise the proposed fee schedule to increase the fee for clinicians performing lactation care during office visits, explaining the clinicians can see more office visits than home visits. ODM made the requested changes with respect to the definitions but added that it was unable to raise rates for clinicians performing lactation care during office visits. Nestling asked for the rule to be amended to include coverage for all IBCLCs. ODM pointed out that the proposed rule would allow additional healthcare practitioners in the professional setting who have also obtained the OBCLC credential and that the rule waives the practitioner order that is specified in OAC 5160-1-17 for lactation services. Lastly, ODM made a technical correction to the rule.

The business community impacted by the rule includes Medicaid providers of lactating consulting services. The adverse impacts created by the rule include the requirement to possess the appropriate certification to engage in business as a lactation consultant, limitations on eligibility to receive Medicaid payments for rendering a lactation service or on behalf of a rendering provider, and compliance with coverage standards. According to ODM, it costs \$660 for initial candidates to obtain the IBCLC credential and \$470 for recertification. ODM states that the adverse impacts to business are justified to expand access for individuals on Medicaid to services that assist with low milk supply, breastfeeding pain, and conditions such as mastitis and plugged ducts.

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.