CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Choices Phase-Out 2 BIA Rule

Rule Number(s): 5160-31-06

Date: January 3, 2014

Rule Type:

- ☐ New
- X Amended
- Year Review
- Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

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The proposed rule establishes the requirement that providers seeking to furnish services in the PASSPORT waiver program must be certified by the Ohio Department of Aging (ODA) in order to obtain a Medicaid provider agreement.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   Ohio Revised Code Section 5166.02.

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   If yes, please briefly explain the source and substance of the federal requirement.

   Home and community based services (HCBS) waivers must comply with §1902(a)(23) of the Act and 42 CFR §431.51 which require that Medicaid beneficiaries must be allowed to obtain services from any willing and qualified provider of a service. A willing provider is a provider who agrees to accept a state's payment as payment in full for rendering a service and to abide by all other Medicaid provider requirements, including executing a provider agreement. A qualified waiver provider means an individual or entity that meets the qualifications that are specified in the approved waiver for the service that the provider renders.

   The proposed rule establishes that providers must first be certified by ODA to provide services in PASSPORT. This requirement ensures that providers meet a set of minimum criteria to qualify to furnish services. This process also includes consumer protections such as background and registry checks.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   The proposed rule is consistent with sections of 42 CFR §431.51 pertaining to freedom of choice of qualified providers.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of this regulation is to establish a requirement that all PASSPORT waiver service providers meet a minimum set of criteria to demonstrate they meet provider requirements. Elements of these criteria include, but are not limited to, protection from harm, financial integrity, and professional licensure/certification (if appropriate).

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The federally approved PASSPORT waiver contains several performance measures that gauge provider compliance with these conditions of participation. Evidence of the success of the rule may be an increase in the number of new providers that are furnishing services that were previously unavailable on a statewide basis.

It is the department's expectation that the successful implementation of this rule will result in improved service delivery and, ultimately, health outcomes for members.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   If applicable, please include the date and medium by which the stakeholders were initially contacted.

This rule is being proposed in conjunction with a significant redesign of the PASSPORT and Choices waiver programs (resulting in the consolidation of Choices into PASSPORT). ODA is developing a stakeholder outreach strategy for this change. Please note that the requirement that PASSPORT providers be certified by ODA is not new as statutory authority to certify providers was granted in 2005 (ORC 173.391).

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

This rule went through ODM's clearance process for public comment during the two week period beginning 12/4/2013 and ending on 12/18/2013. No comments or feedback were received during this period.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

   No scientific data was used to develop the rules or the measurable outcomes of the rules.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    This rule reflects current state requirements and is consistent with the federally approved waiver.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    No. A performance-based regulation is not deemed appropriate and is not authorized by statute.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    ODM, as the State Medicaid Agency, promulgates rules regulating the Medicaid program and authorizes other agencies to adopt rules governing the administration of certain programs. As such, ODM legal and policy staff verified this is the only rule establishing the State's policy around qualified providers of PASSPORT services by requiring they meet ODA's certification standards.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

This rule requirement around certification of providers is not a new practice in Ohio. The language around provider certification is existing policy and is designed to ensure the health and welfare of individuals enrolled in PASSPORT by verifying that providers are qualified to furnish hands on and other assistance/services. ODA certification is verified by ODM before issuing a Medicaid provider agreement to any applicant requesting to be a PASSPORT Medicaid waiver provider.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

A. This rule impacts any existing and perspective PASSPORT provider.

B. Paragraph (B) of the rule requires providers to be certified by the Ohio Department of Aging before obtaining and Medicaid provider agreement.

C. The ODA provider certification requirements are not dictated by this rule, but rather are established by ODA thus, ODM cannot estimate the business impact, if any, associated with obtaining this certification. ODM's requirement that a provider be certified by ODA prior to obtaining a Medicaid provider agreement is consistent with other rules related to the PASSPORT program, and ensures that providers are capable of furnishing services safely and effectively to individuals enrolled in the PASSPORT program.

Obtaining a Medicaid provider agreement is a fundamental requirement for a provider to participate in and be reimbursed through the Medicaid program. Federal law and regulations at Section 1902(a)(27) of the Social Security Act and 42 CFR 431.107 require each Medicaid provider to have a provider agreement. ODM's Medicaid provider agreement rule (5160-1-17.2) incorporates the federal requirements, and ODM will address those (and their impact) in more detail in its business impact analysis the next time that rule is up for review.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Provider participation in the PASSPORT Waiver is optional and at the provider's sole discretion. Compliance with program requirements for providers who choose to participate may include administrative costs associated with obtaining and retaining professional licensure or other certifications that are required by the ODA certification process. ODM cannot estimate the cost of compliance as costs will vary depending upon the circumstances, and providers' respective business models. The health and safety of enrollees in the PASSPORT program justify theses potential costs.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No, not applicable for this program.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable for this program.

18. What resources are available to assist small businesses with compliance of the regulation?

The Ohio Department of Medicaid provides technical assistance to providers seeking to furnish Medicaid services.

5160-31-06 **Provider conditions of participation for the PASSPORT HCBS waiver program.**

(A) The purpose of this rule is to establish the conditions under which providers are able to participate in the preadmission screening system providing options and resources today (PASSPORT) home and community based services (HCBS) waiver program.

(B) In order to obtain a medicaid provider agreement to be a PASSPORT provider furnishing services in rule 5160-31-05 of the Administrative Code~~,~~ the provider shall be certified by the Ohio department of aging (ODA) or its designee in accordance with the provisions of Chapter 173-39 of the Administrative Code.

~~(C) PASSPORT waiver providers may be certified as either:~~

~~(1) An ODA-certified long-term care agency provider in accordance with the provisions of rule 173-39-03 of the Administrative Code, or~~

~~(2) An ODA-certified long-term care non-agency provider in accordance with the provisions of rule 173-39-03 of the Administrative Code, or~~

~~(3) An ODA-certified long-term care consumer-directed personal care provider in accordance with the provisions of rule 173-39-03 of the Administrative Code.~~

~~(D)~~(C) Individuals enrolled in the PASSPORT HCBS waiver shall be given a free choice of qualified providers in accordance with rule 173-42-06 of the Administrative Code.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	5166.02
Rule Amplifies:	5166.02, 173.39, 173.52
Prior Effective Dates:	7/16/84, 12/22/86 (Emer.), 3/23/87, 7/1/90, 1/14/96, 9/1/98, 7/1/06, 03/17/2011