FROM: Maureen M. Corcoran, Director
To: Ohio Department of Medicaid Clearance Reviewers
SUBJECT: Medicaid Managed Care No Change Five Year Rule Review

Summary
Attached for your review and comment are two Ohio Administrative Code (OAC) rules in Chapter 5160-26 that will be proposed as no change rules for five year rule review (FYRR).

Individual Rule Changes

OAC rule 5160-26-08.3, entitled "Managed care: member rights", sets forth the rights of a managed care enrollee. This rule is applicable to MCOs, the SPBM, MCOPs, and the OhioRISE plan. The rule has no changes and is being proposed for five year review.

OAC rule 5160-26-11, entitled “Managed care: non-contracting providers”, sets forth the requirements for payment to non-contracting providers for services provided to members. This rule is applicable to MCOs, the SPBM, MCOPs, and the OhioRISE plan. The rule has no changes and is being proposed for five year review.

Questions pertaining to this clearance should be sent to Rules@Medicaid.Ohio.gov.

To receive notification when ODM posts draft rules for public comment please register via the Common Sense Initiative eNotifications Sign-up: eNotifications Sign Up | Governor Mike DeWine (ohio.gov). The Ohio Department of Medicaid will use this list to notify subscribers when draft rules are posted for public comment.

To receive notification when ODM original, revise, refile, or final files a rule package please register for Joint Committee on Agency Rules Review’s (JCARR) RuleWatch at www.rulewatchohio.gov where an account can be created to be notified of rule actions by the rule number or department.

The main Ohio Department of Medicaid (ODM) web page includes links to valuable information about its services, programs, and rules; the address is http://www.medicaid.ohio.gov.
(A) A managed care entity (MCE) must develop and implement written policies in accordance with 42 C.F.R. 438.100 (October 1, 2021), as applicable, to ensure each member has and is informed of his or her right to:

1. Receive all services the MCE is required to provide pursuant to the terms of the MCE provider agreement or contract, as applicable, with the Ohio department of medicaid (ODM).

2. Be treated with respect and with due consideration for their dignity and privacy.

3. Be ensured of confidential handling of information concerning their diagnoses, treatments, prognoses, and medical and social history.

4. Be provided information about their health. Such information should also be made available to the individual legally authorized by the member to have such information or the person to be notified in the event of an emergency when concern for a member's health makes it inadvisable to give him/her such information.

5. Be given the opportunity to participate in decisions involving their health care.

6. Receive information on available treatment options and alternatives, presented in a manner appropriate to the member's condition and ability to understand.

7. Maintain auditory and visual privacy during all health care examinations or treatment visits.

8. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.

9. Request and receive a copy of their medical records, and to be able to request that their medical records be amended or corrected.

10. Be afforded the opportunity to approve or refuse the release of information except when release is required by law.

11. Be afforded the opportunity to refuse treatment or therapy. Members who refuse treatment or therapy will be counseled relative to the consequences of their decision and documentation will be entered into the medical record accordingly.

12. Be afforded the opportunity to file grievances, appeals, or state hearings pursuant to the provisions of rule 5160-26-08.4 of the Administrative Code.

13. Be provided written member information from the MCE:
   (a) At no cost to the member,
   (b) In the prevalent non-English languages of members specified by ODM, and
   (c) In alternative formats and in an appropriate manner that takes into consideration the special needs of members.

14. Receive necessary oral interpretation and oral translation services at no cost.

15. Receive necessary services of sign language assistance at no cost.
(16) Be informed of specific student practitioner roles and the right to refuse student care.

(17) Refuse to participate in experimental research.

(18) Formulate advance directives and to file any complaints concerning noncompliance with advance directives with the Ohio department of health.

(19) Change primary care providers (PCPs) no less often than monthly. The MCO must mail written confirmation to the member of his or her new PCP selection prior to or on the effective date of the change.

(20) Appeal to or file directly with the United States department of health and human services office of civil rights any complaints of discrimination on the basis of race, color, national origin, age or disability in the receipt of health services.

(21) Appeal to or file directly with the ODM office of civil rights any complaints of discrimination on the basis of race, color, religion, gender, gender identity, sexual orientation, age, disability, national origin, military status, genetic information, ancestry, health status or need for health services in the receipt of health services.

(22) Be free to exercise their rights and to be assured that exercising their rights does not adversely affect the way the MCE, the MCE's providers, or ODM treats the member.

(23) Be assured the MCE must comply with all applicable federal and state laws and other laws regarding privacy and confidentiality.

(24) Choose his or her health professional to the extent possible and appropriate.

(25) For female members, to obtain direct access to a woman's health specialist within the network for covered care necessary to provide women's routine and preventive health care services. This is in addition to a member's designated PCP if the PCP is not a woman's health specialist.

(26) Be provided a second opinion from a qualified health care professional within the MCO's network. If such a qualified health care professional is not available within the MCO's network, the MCO must arrange for a second opinion outside the network, at no cost to the member.

(27) Receive information on their MCE.

(B) The MCE must advise members via the member handbook of the member rights specified in paragraph (A) of this rule.
5160-26-11 Managed care: non-contracting providers.

(A) Non-contracting providers of emergency services must accept as payment in full from a managed care organization (MCO) the lesser of billed charges or one hundred per cent of the Ohio medicaid program reimbursement rate (less any payments for indirect costs of medical education and direct costs of graduate medical education that is included in the Ohio medicaid program reimbursement rate) in effect for the date of service. Pursuant to section 5167.101 of the Revised Code, the MCO shall not compensate a hospital for inpatient capital costs in an amount that exceeds the maximum rate established by ODM.

(B) When ODM has approved the MCO's members to be referred to a non-contracting hospital pursuant to rule 5160-26-03 of the Administrative Code, the non-contracting hospital must provide the service for which the referral was authorized and must accept as payment in full from the MCO one hundred per cent of the current Ohio medicaid program reimbursement rate in effect for the date of service. Pursuant to section 5167.101 of the Revised Code, the MCO shall not compensate a hospital for inpatient capital costs in an amount that exceeds the maximum rate established by ODM. Non-contracting hospitals are exempted from this provision when:

1. The hospital is located in a county in which eligible individuals were required to enroll in an MCO prior to January 1, 2006;
2. The hospital is contracted with at least one MCO serving the eligible individuals specified in paragraph (B)(1) of this rule prior to January 1, 2006; and
3. The hospital remains contracted with at least one MCO serving eligible individuals who are required to enroll in an MCO in the service area where the hospital is located.

(C) Non-contracting qualified family planning providers (QFPPs) must accept as payment in full from the MCO the lesser of one hundred per cent of the Ohio medicaid program reimbursement rate or billed charges, in effect for the date of service.

(D) A managed care entity (MCE) non-contracting provider may not bill the MCE member unless:

1. The conditions described in rule 5160-1-13.1 of the Administrative Code are met; and
2. The reason the service is not covered by the MCE is specified and is one of the following:
   
   a. The service is a benefit exclusion;
   
   b. The provider is not contracted with the MCE and the MCE has denied approval for the provider to provide the service because the service is available from a contracted provider, at no cost to the member; or
   
   c. The provider is not contracted with the MCE and has not requested approval to provide the service.

(E) An MCE non-contracting provider may not bill a member for a missed appointment.

(F) Non-contracting providers, including non-contracting providers of emergency services, must contact the twenty-four hour post-stabilization services phone line designated by the MCO to request authorization to provide post-stabilization services in accordance with rule 5160-26-03 of the Administrative Code.

(G) Non-contracting providers, including non-contracting providers of emergency services, must allow the MCE, ODM, and ODM's designee access to all member medical records for a period not less than ten years from...
the date of service or until any audit initiated within the ten year period is completed. Access must include
copies of the medical records at no cost for the purpose of activities related to the annual external quality
review specified by 42 C.F.R. 438.358 (October 1, 2021).

(H) If the MCE elects to impose member co-payments in accordance with rule 5160-26-12 of the Administrative
Code, applicable co-payments shall also apply to services rendered by non-contracting providers. If the
MCE has not elected to impose co-payments, non-contracting providers are not permitted to impose
co-payments on MCE members.