

**MEMORANDUM**

TO: Tom Simmons, Ohio Department of Aging

FROM: Whitney Sullinger, Regulatory Policy Advocate

DATE: October 15, 2012

RE: CSI Review – H.B. 487: Criminal Records Checks

On behalf of Lt. Governor Mary Taylor, 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

The Ohio Department of Aging (ODA) submitted a rule package to the CSI Office for review consisting of Chapter 173-9 of the Ohio Administrative Code (OAC) plus collateral amendments to nine other rules. (As of October 11, 2012, there are now only eight collateral amendments). This package implements the criminal records check requirements set forth in recently enacted House Bill 487, as discussed below. ODA decided to break up a larger existing rule into smaller one-topic rules to make them more accessible to the impacted stakeholders. Therefore, the criminal records check requirements that were previously contained in OAC 173-9-01 will now be in 173-9-01 to 173-9-10.

The amendments to the collateral rules deal with changing references, using consistent language throughout the background check rules and amending paragraphs to better organize content among the rules.

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The Governor's Office of Health Transformation (OHT) – in conjunction with the Departments of Aging, Health, Developmental Disabilities, and Job and Family Service – undertook a process to standardize criminal records check requirements across providers of home and community-based services. This process arose from statutory changes contained in HB 487.

OHT established a workgroup to resolve the gaps and inconsistencies in statutes and regulations governing criminal background checks and disqualifying offenses of workers providing Medicaid home and community-based services. The workgroup conducted three stakeholder meetings from July to August 2012 that included various interested parties and agency representatives. Numerous issues were addressed, including frequency of post-employment background checks, costs to providers, and the tiered proposals for disqualifying convictions.

ODA included a significant number of stakeholders both before and after the passage of HB 487. This outreach included presentations, teleconference meetings, and surveys sent to providers to solicit input on impacts.

After the public comment periods for the four agencies were completed, an additional change was made to reduce the burden on providers. Initially, providers had to keep a detailed administrative log on each applicant/employee. Now, the rules allow a provider to keep a roster with more limited information and in any format they wish to use.

ODA submitted a revised, final BIA to the CSI Office October 11, 2012 to indicate it would not be filing OAC 173-39-03 (one of the initial collateral amendments) as part of this rule package. ODA staff identified a number of changes not germane to criminal records checks which require additional provider feedback on adverse impacts.

The CSI Office is not suggesting any changes with respect to the rules or the BIA for the following reasons:

- Numerous comments were received from the public during the public comment period.
 - ODA staff responded to each commenter and clarified answers where they could.
 - Some comments were supportive while many others focused on the costs to providers. Where it was possible, ODA and the other agencies involved in this process attempted to minimize the costs, but the statutory language mandates the background checks.
- The revised BIA submitted by ODA is accurate and complete and does not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office.

Recommendation

For the reasons explained above this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office