MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Paula Steele, Regulatory Policy Advocate

DATE: June 5, 2013

RE: **CSI Review – Adult Day Services (**OAC 173-3-06.1 and 173-39-02.1)

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

This rule package contains two amended proposed rules and was reviewed by the Ohio Department of Aging (ODA) as part of the five-year review process required by ORC 119.032. The rules address the requirements of adult day service (ADS) providers seeking reimbursement from ODA programs. The proposed rule package was filed with the CSI Office on April 25, 2013, and the comment period for the rule closed on May 12, 2013. Eight comments were received during the public comment period.

The rules establish requirements of ADS providers who do business with ODA program enrollees. While Ohio does not require ADS facilities' licensure, ODA does require provider certification or a service agreement, depending on the type of program for which a client is enrolled. For providers serving Choices or PASSPORT program enrollees, ODA requires certification; and for providers serving Alzheimer Respite or Older Americans Act program enrollees, ODA requires agreements with providers that include mandatory clauses. Frequently, a provider must be both certified and have agreements with ODA. The proposed OAC 173-3-06.1

outlines the compliance requirements for provider certification and addresses service levels, center requirements, staffing levels, provider qualifications, and service verification. The proposed OAC 173-39-02.1 outlines the mandatory clauses that must be included in the provider agreement with ODA. Both rules address the same topics. The rules are being amended for uniformity, to align with ORC changes and federal provisions, to allow electronic record keeping, and to clarify verbiage.

The BIA describes a comprehensive stakeholder outreach program. The majority of feedback was positive and in favor of the changes. Other feedback primarily addressed concerns over a proposed change in staff qualifications for ADS activity directors. Most of the comments received during the public comment period reiterated the concern over the staff qualification change. As a result, the Department has determined that a change in qualifications is not appropriate until it is addressed on a national level and therefore the existing activity director requirements will remain in place without the changes initially proposed in the rules. On May 30, 2013, the Department provided revisions to the draft rules and the BIA to comport with this change.

ODA identified and justified areas in which the proposed rules adversely impact business. The CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule justifies the adverse impact identified in the BIA.

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 Department 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