

**MEMORANDUM**

**TO:** Tom Simmons, Ohio Department of Aging

**FROM:** Paula Steele, Regulatory Policy Advocate

**DATE:** August 9, 2013

**RE:** **CSI Review – Choices Program** (OAC 173-39-02.21 and 173-39-02.4)

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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 proposed amended 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 proposed rules address specific provisions for providers of consumer-directed services to participants enrolled in the Choices or PASSPORT programs. Both programs are administered by ODA. The proposed rule package was filed with the CSI Office on June 12, 2013, and the comment period for the rule closed on June 30, 2013. There were no comments received during the public comment period.

According to the Department's website, most older individuals prefer to live independently in their own homes and many need some help doing so. Ohio's PASSPORT and Choices programs help Medicaid-eligible older Ohioans get the long-term services and support they need to stay in their homes. OAC 173-39-02.4 *Home Care Attendant Service* defines consumer-directed home care attendant services as certified by ODA's Choices program. The proposed rule also outlines requirements of the services, provider qualifications, and rates. The primary amendment includes

an oversight provision which reiterates OAC 173-39-01 A (24) (c) and states that the consumer is the employer of record and is responsible for payment of payroll taxes, unemployment, and workers' compensation premiums. ODA works with a Financial Management Services (FMS) company that can assist consumers in paying appropriate payroll taxes including unemployment and workers' compensation.

OAC 173-39-02.21 *Scheduling Home Care Attendant and Personal Care Services*, requires providers to have the staff capacity to provide services prior to accepting referrals, limits providers in terms of the number of consumers and hours they can provide services, and it permits service providers to perform non-authorized services but clarifies that those services will not be reimbursed. The primary amendment to the rule adds scheduling limitations for home care attendants (Choices) to the existing limitations for personal care services (PASSPORT). According to the BIA, the intent of the amendment in the rule was to create uniform scheduling regulations for consumer-directed services since many providers serve populations in both programs.

In follow-up with the Department, CSI questioned the reasoning for limiting the number of hours of a personal care services or home care attendant provider. It was explained that at the time the proposed expansion of PASSPORT consumer-directed services was being discussed, stakeholders reached an agreement that the rule would include a limitation of hours in order to make it possible to move forward with implementation of the expanded program. For both administrative purposes and for the sake of providers who work with consumers in both programs, the Department determined it is important to have consistent requirements in both PASSPORT and Choices.

### **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