

**MEMORANDUM**

TO: Howard Henry, Ohio Department of Mental Health and Addition Services

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: January 10, 2014

RE: **CSI Review – Background Investigations for Employment (OAC 5122-30-04; 5122-30-31; 5122-33-03; 5122-33-04; 5122-33-05; 5122-33-12; 5122-33-28; 5122-35-03; 5122-35-04; and 5122-35-11)**

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.

I. ANALYSIS**A. INTRODUCTION**

The Ohio Department of Mental Health and Addiction Services (ODMHAS) submitted a rule package containing ten (10) rules on November 18, 2013. This package has been submitted by ODMHAS to update sections of the Ohio Administrative Code concerning Residential Facilities, Adult Care Facilities and Adult Foster Homes as they relate to (1) updating references of re-numbered and amended provisions of the ORC and OAC, (2) background checks for specific individuals and (3) a five-tiered classification system of exclusionary rules for certain individuals with criminal convictions. ODMHAS has cited R.C. § 5119.34(K) as authority to establish these rules. No stakeholder comments were submitted during the CSI review period.

B. ADVERSE IMPACT ON BUSINESS

The scope of the impacted business community includes owners, operators, managers, employees, inhabitants and volunteers of prospective and currently licensed residential care facilities, adult care facilities and adult foster homes, as defined by the ORC and OAC. ODMHAS involved stakeholders early by providing for an initial comment period and making changes to the draft rules to address concerns. Fees will be required to perform background checks enumerated in the rules. According to ODMHAS, the fee to run an individual through a Bureau of Criminal Identification and Investigation background check is currently \$22.00, and the fee to run an individual through an FBI background check is currently \$24.00. According to ODMHAS, local entities conducting such checks may require additional fees. Both of these background checks may be required to be performed under the rules depending on individual circumstances. Both are adverse impacts on the business community as defined in R.C. § 107.52.

Other adverse impacts to the business community include the administrative time and effort required to perform these checks and maintain additional records; the addition of certain criminal convictions which may prohibit existing or prospective individuals from maintaining employment in these facilities; and the requirement of current licensed facilities to apply these sections to all current owners, operators, managers, employees, inhabitants and volunteers in these facilities.

However, House Bill 59, effective on June 30, 2013, included statutory language requiring ODMHAS to adopt rules outlining the above described background checks. Further, ODMHAS states in the BIA that “[b]ackground investigations of people providing services to vulnerable populations are necessary to ensure the health and safety of individuals receiving services[.]”

After reviewing the BIA, the CSI Office has no specific recommendations regarding the rule package. ODMHAS incorporated changes into its draft in the development of the rules as a result of early comments and outreach. The adverse impact to adult care facilities is outweighed by the required health and safety protections of a vulnerable population, specifically, the residents of these facilities receiving services. Finally, ODMHAS is statutorily obligated to adopt rules outlining the above noted background check procedures.

II. RECOMMENDATIONS

For the reasons explained above, this office has no recommendations regarding this rule package.

III. CONCLUSION

Based on the above analysis and recommendations, the CSI Office concludes that the ODMHAS 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