MEMORANDUM

TO: Tom Simmons, Policy Manager and Regulatory Ombudsman, Ohio Department of Aging

FROM: Sydney King, Regulatory Policy Advocate

DATE: April 14, 2014

RE: **CSI Review – Certification of Community-Based Long-Term Care Service Providers (173-39-01, 173-39-02, 173-39-02.3, 173-39-02.4, 173-39-02.5, 173-39-02.21, 173-39-02.22, 173-39- 02.23, 173-39-02.24)**

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 to the CSI Office nine amended[1] rules being reviewed under the five-year review process required by ORC 119.032. The rule package was filed with the CSI Office on March 25, 2014, and the comment period for the rules closed on April 6, 2013. ODA submitted a revised BIA on April 8, 2014.

The rules regulate provider agreements through provider certification. In order for a provider to serve consumers enrolled in a Medicaid waiver program, the provider must become certified by ODA. Several amendments are being proposed to the rules in this package to update and provide clarity on requirements, to ensure compliance with recently-enacted House Bill 59, and to create reciprocity for the Medicaid waiver programs. The rules also allow three new services (waiver

[1] Two of the existing rules are being amended by more than 50 percent; therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule number.

nursing, out-of-home respite, and home care attendant services) to be provided through the PASSPORT program. PASSPORT is a Medicaid waiver program that helps Medicaid-eligible older Ohioans get the long-term care and support needed to stay in their homes.

The rules contain certification requirements for agency, non-agency, consumer-directed, and assisted living providers. An agency provider is a provider that employs more than one person. A non-agency provider is a one-person business. A consumer-directed provider is employed by the consumer. An assisted living provider is similar to an agency provider but requires residential care facility licensure. The revised BIA identifies these providers as the impacted business community.

According to ODA, the rules contain new training requirements for consumer-directed providers to demonstrate competency. Eight hours of continued education are also required. ODA states the trainings will be available online and require the completion of a test following the training videos. ODA estimates the training costs will range from $0 to $25. The proposed new training requirements implement recommendations from the Direct Care Worker Advisory Workgroup, created by House Bill 59, to allow consumer-directed providers to meet the core competencies. ODA amended the rules after the public comment period to allow currently-certified consumer-directed providers until September 1, 2014 to meet the training requirements.

Certification requirements for providers include notifying ODA of significant changes to a consumer's service, adopting and implementing ethical standards, written procedures for consumer safety, development of written policies, and records retention. The rules also provide a list of provider qualifications needed in order to become certified. This requires a provider to submit business operation information including an organizational table; a written statement defining the purpose of the organization; compliance with local, state, and federal taxes; disclosure of all entities that own at least five percent of the business; and registration with the Ohio Secretary of State. A provider must go online to apply for certification. ODA estimates the application takes approximately thirty minutes to complete. Once a provider applies, it can take up to two months to become a certified provider.

ODA performed significant stakeholder outreach during the drafting of the rules. The Direct Care Worker Advisory Workgroup included representatives from the Ohio Council for Home Care and Hospice, the Ohio Health Care Association, the Ohio Provider Resource Association, the Ohio Nurses Association, the Midwest Care Alliance, the Ohio Assisted Living Association, and LeadingAge Ohio. ODA reached out to several PASSPORT administrative agencies and providers to receive additional feedback. ODA also developed a survey in order to gather more consumer-directed provider comments during the public comment period. Two comments were received during the public comment period and twenty-one individuals responded to the survey. ODA further amended the rules based on stakeholder input.

ODA also hosted a stakeholder meeting to address the two comments received during the public comment period and invited the CSI Office to attend. The comments and discussions in the meeting focused on issues that were not applicable to the rule package. However, ODA remained committed to working with the stakeholders to resolve the issues. The Midwest Care Alliance did comment and ask for clarification on the ethics policy requirements contained in the rule package. ODA provided an explanation and Midwest Care Alliance communicated to CSI that the association had no objections to the rule package moving forward.

ODA states in the revised BIA that certification "continues to be necessary in order for ODA to meet state and federal requirements for oversight of its providers, including monitoring, disciplining, and suspension." After reviewing the proposed rules and the revised BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules is justified.

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