

**MEMORANDUM**

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

**FROM:** Sydney King, Regulatory Policy Advocate

**DATE:** September 30, 2014

**RE:** **CSI Review – Kosher Option (OAC 173-39-02.19)**

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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 (O.R.C) 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 one amended<sup>1</sup> rule being reviewed under the five-year review process required by ORC 119.032. The rule package was filed with the CSI Office on September 8, 2014, and the comment period for the rules closed on September 21, 2013.

Ohio Revised Code 173.524 requires ODA to furnish kosher meals to individuals participating in the PASSPORT program who have requested a home-delivered kosher meal. Rule 173-39-02.19 provides the requirements for the kosher meals and providers. The rule requires home-delivered kosher meals to be authorized by a case manager and comply "as much as possible" with the PASSPORT home-delivered meal requirements found in Rule 173-39-02.14. Additionally, the provider must furnish evidence that the meal is certified as kosher by a recognized kosher certification or a kosher establishment under orthodox rabbinic supervision.

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<sup>1</sup> The rule was initially submitted with no changes, but ODA subsequently identified technical corrections that will require minor amendments.

When the rule language was initially developed in 2009, the Ohio Jewish Communities assisted with the drafting. In August 2014, ODA performed stakeholder outreach to the Ohio Jewish Communities, Mobile Meals, Inc. and three providers of kosher home-delivered meals. ODA provided the feedback received during the outreach in the BIA. One comment was received during the CSI public comment period. The commenter requested the language be amended to state “kosher by a recognized orthodox kosher certification or a kosher establishment under orthodox rabbinic supervision.” ODA did not amend the rule because the rule as written allows a customer to select a meal certified either as kosher or as orthodox kosher, and the agency believes that it is important to provide that level of choice to the consumer if it is available in the marketplace.

The BIA identifies providers who furnish kosher home-delivered meals<sup>2</sup> to consumers enrolled in the PASSPORT program as the impacted business community. The BIA provides an analysis of the adverse impacts incurred by providers. ODA states the rule is necessary to comply with statutory law. Additionally, providers are reimbursed for the kosher meals at the maximum possible rate of \$9.33 per meal, the therapeutic diet rate. In comparison, the maximum possible rate for regular home-delivered meals is \$6.60 per meal.

After reviewing the proposed rule and the BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule 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

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<sup>2</sup> According to ODA, consumers are able to choose their own meal providers. So a consumer who chooses a kosher meal would choose a provider able to meet their requirements.