

**MEMORANDUM**

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

FROM: Sydney King, Regulatory Policy Advocate

DATE: October 30, 2014

RE: **CSI Review – Criminal Records Checks (OAC 173-9-01, 173-9-02, 173-9-03, 173-9-03.1, 173-9-04, 173-9-04.1, 173-9-05, 173-9-06, 173-9-07, 173-9-07.1, 173-9-08, 173-9-09, and 173-9-10)**

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 a rule package to the CSI Office for review consisting of thirteen rules. The rule package contains one new and twelve amended¹ rules. The amended rules are being reviewed as part of the five-year review process required by statute. The rule package was filed with the CSI Office on September 8, 2014, and the comment period for the rules closed on September 21, 2014.

Chapter 173-9 requires employers to perform criminal records checks when hiring applicants and when reviewing the retention of employees for paid ombudsman positions and paid direct-care positions. The rules provide the list of databases employers must review, the type of applicant or employee criminal records checks must be performed on, when the criminal records check should be performed, and the disqualifying offenses for employment.

¹ Rules 173-9-03.1 and 173-9-04.1 are being amended by more than 50 percent; therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by a new rule that has the same rule number

According to ODA, the rules are amended to require “responsible parties” to conduct criminal records checks on self-employed providers. Rule 173-9-01 defines “responsible parties” for a self-employed applicant for ODA-certification as ODA or the PASSPORT administrative agency. Therefore, the rules now require ODA or the PASSPORT administrative agency to perform the criminal records checks on the self-employed providers. The amendments are a result of statutory changes that ODA requested. Prior to the statutory changes, self-employed providers would perform their own criminal records checks.

ODA performed significant outreach to stakeholders during the drafting process. ODA requested comments and suggestions from self-employed providers, consumer-directed providers, and PASSPORT administrative agencies. ODA amended the rules based on stakeholder suggestions. No comments were received during the public comment period.

ODA identified several adverse impacts to employers of “direct-care positions” and “ombudsman positions.” Direct-care positions include self-employed providers. The BIA states the direct adverse impacts are the fees and the indirect adverse impacts are the administrative expenses required for conducting the check. ODA and the PASSPORT agencies can pass the costs of the criminal records checks to the self-employed providers. ODA estimates that the criminal records check fees will cost providers \$32.00 per check. A potential adverse impact, depending on the circumstance, could be the job losses caused by disqualifying criminal records. ODA justifies the impacts as required by statute. ODA also states the rules are also necessary to end the practice of allowing self-employed providers to self-determine whether their criminal records prohibit direct-care employment.

Upon review of the proposed rules and the BIA, the CSI Office has determined that the rule package satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impacts 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