MEMORANDUM

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

FROM: Sydney King, Regulatory Policy Advocate

DATE: April 15, 2016

RE: **CSI Review – Nutrition Rules (OAC 173-3-06.1, 173-39-02.1, 173-39-02.2, 173-39-02.10, 173-39-02.14.1, and Chapter 173-4)**

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

This rule package consists of two new, three rescinded, and sixteen amended[1] rules submitted by the Ohio Department of Aging (ODA) submitted to the CSI Office addressing nutrition regulations. Initially over the course of 2014 and 2015, ODA submitted three separate rule packages, but subsequently communicated that it wanted to combine the rule packages; resulting in one recommendation. The three rule packages – titled "Senior Dining Rules," "Provider Certification Nutrition" and "Older Americans Act" – were submitted July 3, 2014; July 6, 2015; and October 19, 2015, respectively. The revised BIA, combining the rule packages, was submitted to the CSI Office on January 7, 2016. Minor amendments have been made to the rules since the final revised BIA was submitted.

[1] Rules 173-4-01, 173-4-02, 173-4-03, 173-4-04, 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-06, 173-4-07, 173-4-08, 173-4-09, 173-39-02.10, and 173-39-02.14 are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

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ODA submitted the rule packages with the intent to overhaul the regulations addressing nutrition for individuals receiving meals under the federal Older Americans Act and Ohio's PASSPORT Program. The goals of the draft regulations are to tailor the services to the needs and wants of the consumer, and increase the input of the consumer in the meal selection. This goal is referenced in the revised BIA and accompanying BIA appendices as "person directed" services. In addition to achieving person directed services, ODA worked to reduce outdated and unnecessary regulations. According to ODA, the draft rules eliminate 210 unnecessary regulations and reduce the impact of 26 other regulations.[2] The BIA identifies the impacted industry as meal providers that are paid, in whole or in part, with Older Americans Act funds. ODA provided a detailed description of the adverse impacts and associated costs in the revised BIA and accompanying appendices.

Among the three rule packages initially submitted by ODA, a total of 22 comments were submitted. The majority were concerned with the requirements to verify the delivery of the meals, to provide more menu options, and to provide the menu items and ingredients to the consumers. The draft regulations require per-delivery verification on home-delivered meals and per-meal verification on congregate meals. Currently, providers may require verification from the consumer on a weekly or monthly basis and ODA does not have the ability to verify if the meals were received. The BIA states that federal regulations require costs to be documented and similar Medicaid meal services also require verification at the time the meal is delivered. ODA worked from 2014 to 2015 to understand the concerns of the businesses and provide information about innovative technological options to assist the businesses in achieving the new requirements.

Stakeholders expressed concern that it would be problematic to achieve the menu options that were required in the initial drafts of the rules. Since the initial public comment period, ODA moved to a model that requires Area Agencies on Aging (AAA) to use the procurement process to contract with providers who will offer person directed services, either to the degree the AAA believes their planning and service areas can handle or according to the best bid that comes in if the AAA uses competitive-proposal bidding. ODA hosted a webinar with stakeholders, which the CSI Office participated in, on November 4, 2015 to communicate changes and understand additional concerns. The draft rules previously required a state minimum standard and the current version allows for more flexibility while accomplishing the person directed objectives. Stakeholders also expressed concern about the requirement to provide menus, either electronically or in writing, to the consumer. ODA again worked with the stakeholders to understand the concerns and present options that will assist in complying with the requirements. ODA states the requirement is necessary to accomplish person directed services, which gives consumers a better quality of life and can lower costs of care by reducing unnecessary services. ODA cited several studies in the BIA Appendix B to demonstrate the necessity of the requirement.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules

[2] Revised BIA submitted January 7, 2016

satisfactorily meet 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