

**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 – Community-Based Settings and Person Centered Planning (OAC 173-38-01, 173-39-01, 173-39-02, 173-40-01, 173-42-01, and 173-51-01)**

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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 six amended<sup>1</sup> rules being reviewed under the five-year review process required by statute. The rule package was submitted to the CSI Office on March 25, 2016, and the comment period for the rules closed on April 10, 2016. ODA submitted a revised BIA on April 14, 2016.

The rule package regulates the Medicaid-funded component of the assisted living program which includes the home and community-based Medicaid waiver program. The program can provide a variety of services to consumers with the goal of avoiding residency in a nursing home facility. The rules are updated to include recent requirements from Medicaid to allow for a person-centered planning process, to amend requirements for providers' ethics policies with regards to the use of social media, to clarify criminal record check requirements, to allow for ODA's free

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<sup>1</sup> Rules 173-38-01, 173-40-01, 173-42-01, and 173-51-01 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 Therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

training provider sessions, and to update references to other regulations.

The BIA describes a comprehensive stakeholder outreach process that included a legislative workgroup and several stakeholder meetings hosted by the Governor's Office of Health Transformation. Stakeholders included assisted living providers and associations representing provider associations. The BIA details the comments received during the early stakeholder outreach. In response to comments from the Ohio Assisted Living Association, the rules were amended to provide clarity and highlight statutory requirements. Two comments were received during the CSI public comment period. Although the comments were submitted by non-providers, they did address concerns related to provider requirements. ODA responded with clarification and determined that it is necessary for ODA to provide technical assistance to its designees regarding the determination of which providers are agency providers and which are non-agency providers.

The BIA identifies ODA-certified providers as the impacted industry. ODA provided a detailed description of the adverse impacts in the BIA. The costs include reporting and documentation requirements, adopting policies and procedures, training requirements, qualification requirements, and criminal record check requirements. Because the rules also require compliance with Medicaid programs, the requirements found in those programs are also considered adverse impacts. These regulations are not included in the review but the person-centered planning process was also reviewed by the CSI Office on April 15, 2016. ODA states the rules are necessary to comply with statutory requirements but also to ensure consumers are receiving care from quality providers.

After reviewing the proposed rules and the 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