

**MEMORANDUM**

**TO:** Tom Simmons, Policy Development Manager, Ohio Department of Aging

**FROM:** Christopher Smyke, Executive Assistant

**DATE:** November 30, 2016

**RE:** **CSI Review – Miscellaneous Updates (OAC 173-4-06, 173-39-01, 173-39-02.1, 173-40-04)**

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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 (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 submitted to the CSI Office four amended rules for their statutorily-required-five year review on November 4, 2016. The comment period for the rules closed on November 20, 2016 with no comments received.

The four rules in the package 1) regulate the handling of diet orders and define terms in Ohio Administrative Code (OAC) Chapter 173-39, 2) regulate adult day services under the PASSPORT program and 3) require providers enrolled in the PASSPORT program to be an ODA-certified provider. The proposed amendments to the rules include non-substantive language and definition updates. OAC 173-4-06 replaces “regime” with “regimen,” and clarifies that providers shall carry out dysphagia nutritive regimen specifically when indicated on the diet order. OAC 173-39-01 revises the definition to match elsewhere in the Administrative Code and defines “ODA-certified provider,” a term that is used throughout the chapter. OAC 173-39-02.1 replaces the occurrence “meal delivery” with “ADS session” and replaces an occurrence of “ODA” with “ODA and its designee.” OAC 173-40-04 proposes to include the name of the PASSPORT program in the chapter's title to assist the public when searching for the rule on the internet.

Aging conducted early stakeholder outreach by offering a two-day opportunity on November 3, 2016 for stakeholders to provide input on these non-substantive amendments. The outreach for OAC 173-4-06 was targeted to Wesley Community Services and Senior Resource Connection. Aging offered a similar outreach to a list of four provider associations regarding amendments to 173-39-01, 173-39.02.1, and 173-40-04. Aside from a statement of support from the Senior Resource Connection, Aging had not received any outside stakeholder feedback from the November 3 outreach. In addition, Aging received an inquiry in August 2016 from Mobile Meals Inc. for clarification to OAC 173-4-06 for “meals” that requires thickening agents. As a result, Aging amended the language to specify “drinks, soup, etc.”

The BIA identifies the impacted business community as providers under Aging-administered programs. Under OAC 173-4-06, Aging notes that a poll of Area Agencies on Aging indicates that nutrition providers furnish very few diet order meals under the Older Americans Act. In addition, the BIA notes that Aging already monitors providers for compliance under all four rules through its regular activities. On the whole, the BIA describes the impact of the amendments as relatively small: under OAC 173-4-06, the rule only applies if the provider chooses to serve therapeutic diets under the Older Americans Act. OAC 173-39-01 has no impact since it merely sets forth definitions for OAC chapter 173-39. The BIA notes that under OAC 173-39-02.1, the cost of the requisite certification is covered by Medicaid funds and can be completed online; the BIA also includes the monetary costs of these certification programs. The impact of OAC 173-40-04 is likewise vested in the cost of becoming a certified provider and completing an application.

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 are 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