

**MEMORANDUM**

**TO:** Howard Henry, Ohio Department of Mental Health and Addiction Services

**FROM:** Emily Kaylor, Director of Regulatory Policy

**DATE:** April 13, 2017

**RE:** **CSI Review – Residential State Supplement Program (OAC 5122-36-02 and 5122-36-04)**

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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**

This rule package consists of two amended rules submitted by the Ohio Department of Mental Health and Addiction Services (MHAS) regarding the Residential State Supplement (RSS) program. Only Ohio Administrative Code (OAC) 5122-36-04 is submitted for five-year review. The rule package was submitted to the CSI Office on February 2, 2017 and the public comment period was held open through February 24. No comments were received during this time.

OAC 5122-36-02 updates the types of appropriate living arrangements and includes a preference for MHAS licensed class two residential facilities but provides an exception for other living arrangements when no Department-regulated beds are available in the individual's area. OAC 5122-36-04 removes outdated definitions and makes two major additions. The first change prohibits the living arrangement operator from acting as a representative payee for RSS benefits, which the Department contends is a conflict of interest. The second establishes a RSS resident verification survey that must be completed each quarter to ensure that RSS participants are in appropriate living arrangements and Medicaid payments are made accordingly.

MHAS met with the Ohio Adult Care Facilities Association (OACFA) to both seek input on the rules and ask for their help in distributing the changes to its members. According to the BIA, OACFA had no objections to the draft rules. The quarterly surveys in OAC 5122-36-04 will be an added burden on the residential facilities in Ohio that have residents in the RSS program. Medicaid requested monthly surveys to ensure they are making payments to the appropriate facilities, but MHAS decided that quarterly surveys would be the least intrusive way to collect this information so Medicaid can verify the expenditures of RSS funds. The BIA states that the surveys should only take a few minutes of a facility's employee time to confirm which individuals in the RSS program are residing in the facility and to mail or fax that information back to MHAS. There are also other requirements in OAC 5122-36-04 for the facilities including reporting to the Department, maintaining licensure, returning payments for residents who disenroll from RSS, and providing transportation options to residents. These will take some time and money but are necessary for the RSS program. Additionally, no comments were received during the CSI process.

OAC 5122-36-02 has one provision that is tied to current proposed language in House Bill 49 of the 132nd General Assembly. After follow-up with the Department, it has been determined it is necessary to move forward as the legislation would delete language regarding living arrangements that could lead to an interruption in RSS payments.

Therefore, after reviewing the proposed rules and BIA, the CSI Office has determined the purpose of the rules is justified and the Department may continue filing the rules so long as the statutory language passes regarding OAC 5122-36-02.

### **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 Ohio Department of Mental Health and Addiction Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.