

**MEMORANDUM**

TO: Tom Simmons, Ohio Department of Aging

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: May 1, 2017

RE: **CSI Review – ODA Provider Certification: Independent Living Assistance (OAC 173-39-02.15)**

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 one amended¹ proposed by the Ohio Department of Aging (ODA) pertaining to independent living assistance as part of the statutory five year rule review requirement. The rule package was submitted to the CSI Office on April 3, 2017 and the public comment period was held open through April 16, 2017. One comment was received during this time and a response to the comment was provided by ODA on April 10, 2017.

The amended rule covers providers who administer independent living assistance (ILA) services to individuals enrolled in the PASSPORT program. ILA services include in person support, telephone support, and travel assistance activities. Specifically, the amendments add clarity to the rule, update terminology, but do not add any additional requirements for providers. Clarity and terminology updates include the addition of subheadings to paragraphs, language changes, and the

¹ Ohio Administrative Code (OAC) 173-39-02.15 is amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

movement of provisions to different sections of the rule. In addition, the rule operates to ensure compliance with ORC 173.391 and implementation of the PASSPORT waiver as authorized by the Center for Medicare and Medicaid Services.

ODA explained in the BIA that it contacted numerous independent living associations, corporations, and other providers as part of its early stakeholder outreach process. During this time, ODA received suggestions regarding the amendments to the rules as part of the five year review. One suggestion mentioned expanding the tasks that would allow a travel attendant to accompany an individual and provide any assistance with mobility. The Department responded that the current rule does not prohibit mobility assistance to individuals while they are at appointments, errands, or other activities and as written, allows the provider to offer assistance. In regards to other comments submitted, ODA stated they would take the comments into consideration in future rule discussions.

One comment was received during the CSI public comment period. The commenter mentioned the same mobility assistance concern raised during the early stakeholder outreach process. ODA responded similarly and again indicated that minor assistance is allowed but not required.

The rule impacts 86 certified ILA providers in Ohio. Impacts include 11 requirements on the providers including periodic evaluations, payment caps, and costs of training and continuing education. Costs for initial training and continuing education will vary because vendors are not required to charge a standard rate for their courses. ODA maintains in the BIA that the rule is justified because they are not creating any additional burdens that do not already exist in the ordinary course of business. Further, ODA believes that ensuring the health and safety of individuals who receive such services outweighs any burden imposed by the rule.

Recommendation

For the reasons explained above, the CSI 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 Aging should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.