

**MEMORANDUM**

**TO:** Tom Simmons, Ohio Department of Aging

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** April 20, 2017

**RE:** **CSI Review – Background Checks (OAC 173-9-01 through 173-9-09 and 173-14-14)**

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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 twelve amended rules<sup>1</sup> proposed as part of a five year review by the Ohio Department of Aging (ODA) pertaining to background checks. The rule package was submitted to the CSI Office on March 24, 2017 and the public comment period was held open through April 9, 2017. No public comments were received during this time. A revised BIA was submitted on April 14, 2017.

Ohio Administrative Code (OAC) chapter 173-9 requires that potential hires for ombudsman and direct-care positions submit to a background check, pay associated fees, and lack any disqualifying offenses on their criminal record. ODA proposes that all references to ombudsman be removed from chapter 173-9 and moved into OAC 173-14-14. They also wish to add the title "Background checks for direct-care positions" to the beginning of each rule title in chapter 173-9

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<sup>1</sup> OAC 173-14-14 is being 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.

because internet users looking for the rules, do so primarily through search engines. By putting the above-mentioned phrase at the beginning of each title, ODA believes searching and finding its rules will be easier. ODA further notes that the purpose of the rule is to comply with state law as specified in ORC 109.572(A)(3) and subsequent provisions.

ODA engaged multiple stakeholders during the rulemaking process including Ohio Association of Senior Centers, Ohio Association of Area Agencies on Aging, and other aging organizations. As a result of stakeholder outreach, two entities requested term clarifications and additions.. ODA replied that current term usage was required in order to maintain compliance with other provisions of the OAC, so the suggestions were not adopted. Another suggestion proposed formatting changes but was not adopted due to software limitations. No comments regarding these suggestions or anything else pertaining to these rules were submitted during the CSI public comment period

The rules impact those who provide direct care to consumers through ODA-administered programs. Types of direct care include but are not limited to personal care, nutrition, social work/counseling, home medical equipment, and independent living assistance. The BIA states that the impact to providers is primarily fees paid to run background checks and fingerprinting services. ODA believes the rules are justified because the safety of consumers who receive services through ODA-administered programs, outweighs any minimal costs imposed by the rules. In addition, the BIA emphasizes that ODA is required to implement such rules in compliance with state statutes. Therefore, the CSI Office has determined the purpose of the rules to be 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 Ohio Department of Aging should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.