

**MEMORANDUM**

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

**FROM:** Christopher Smyke, Lt. Governor's Office

**DATE:** August 31, 2017

**RE:** **CSI Review – ODA Provider Certification: Minor Home Modification, Maintenance, and Repair (OAC 173-39-02.9)**

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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 one amended rule proposed as part of a five-year review by the Ohio Department of Aging (ODA) pertaining to certification for minor home modification, maintenance, and repair. The rule package was submitted to the CSI Office on June 19, 2017 and the public comment period was held open through July 9, 2017. No public comments were received during this time. On August 23, the Department sent an updated rule to CSI with grammatical and terminology changes.

Ohio Administrative Code (OAC) 173-39-02.9 regulates ODA-certified providers that provide home modification, maintenance, and repair services to individuals enrolled in the PASSPORT program. ODA is proposing a significant number of amendments, heavily reorganizing the rule to provide more clarity and a more coherent format for readers. Changes to the format include rearranging the order of topics in the rule to reflect the order presented in other rules in the same chapter; ODA is also proposing updates to the rule's terminology. Proposed amendments meant to provide clarity include consolidating the definition of "minor home modification, maintenance,

and repair”, requiring compliance with existing homeowners’ association rules and laws pertaining to required permits and inspections, acknowledging the Department of Medicaid’s rate-setting authority, a general requirement to comply with the existing rules for ODA-certified providers in OAC 173-39-02, and a more detailed explication of the responsibilities of the property owner. Each of these changes are intended to provide clarity for potential readers and do not affect the scope or intent of the rule. The only substantive amendment is an addition to the existing warranty requirement that the warranty must last one year, but is only necessary if generally-accepted industry standards indicate that a warranty is reasonable for the specific job.

During the CSI review, ODA staff identified a number of additional rule changes and provided CSI with a detailed list of these additional amendments on August 23, 2017. The majority of these changes are minor corrections to grammar and terminology and do not have a substantial effect on the adverse impact to businesses. Two of the proposed rule changes are deemed to have a net reduction in business impact: in (B)(5) ODA proposes to require the provider to notify ODA and the individual only if there are health and/or safety risks anticipated to the individual. The second substantial change would amend language in (B)(9) to clarify how a provider may modify a job authorization to address unforeseen issues during a specific project, resulting in a higher compensation rate for the provider.

ODA engaged multiple stakeholders during the rulemaking process including People Working Cooperatively, the Ohio Association of Senior Centers, and the Ohio Association of Area Agencies on Aging (O4A). The only feedback resulting from stakeholder outreach, was from O4A, which noted the difficulty in recruiting providers for home modification services and speculated that the application fee or process deter potential providers from ODA certification. ODA acknowledged receipt of the comment and thanked the stakeholder but took no action on the feedback, as the recruitment of providers falls outside the scope of this rule package. No stakeholder input was received during the CSI public comment period.

The impacted business community includes providers that are certified with ODA to provide minor home modification, maintenance, and repair services. A total of 126 providers are currently certified with ODA. The provider must follow all applicable laws and homeowners’ association rules regarding permits, inspections, and licensure requirements. In addition, the provider must complete the job and obtain the individual’s signature to verify completion of the project. The provider would also be required to provide a one-year warranty if the generally-accepted industry standard is to offer a warranty. ODA certification is voluntary and is only necessary for providers who wish to participate in a program that requires the ODA certification, such as the PASSPORT program.

### **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.

CC: Emily Kaylor, Lt. Governor's Office