

**MEMORANDUM**

TO: Tom Simmons, Ohio Department of Aging

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: August 8, 2017

RE: **CSI Review – ODA Provider Certification: Enhanced Community Living (OAC 173-39-02.20)**

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 by the Ohio Department of Aging (ODA) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on May 8, 2017 and the public comment period was held open through May 21, 2017. Two comments were received during this time. Responses to comments with an updated BIA and rule were submitted to CSI on July 19, 2017.

The amended rule regulates providers when they provide enhanced community living to individuals enrolled in the PASSPORT program. Specifically, changes to the rule include terminology clarifications and updates, grammar edits, and overall organizational changes throughout the rule. ODA proposes to make the aforementioned changes because of the need to update the rule as part of the five-year rule review process.

As part of the early stakeholder outreach process, ODA sent a notice to providers with the draft rule to solicit comment and suggestions but received no response. Two comments were submitted

during the CSI public comment period. The first commenter suggested that the rule was too restrictive and only two to three providers in the state would meet all the qualifications to administer the program. As a result and after numerous discussions, ODA chose to amend the rule to ensure that providers from across the state will have the opportunity to provide the enhanced community living service in many different types of affordable housing. Another commenter expressed concern regarding the 7 day a week, 6 hour per day staffing requirement for the enhanced community living service. The commenter emphasized that it is harder for rural housing sites to accommodate appropriate staff levels to ensure compliance with the rule. ODA replied that staffing levels are determined by providers in multi-family housing sites and the minimum requirement for providers is to maintain at least one staff member on site to cover individuals' needs for 6 hours per day.

The rules affect those who provide the enhanced community living service in the state. Specifically, these providers will have to ensure they maintain adequate staffing levels; adjust to patient service plans, maintain certification with Medicare, Medicaid, and ODA; and retain records of service. ODA states in the BIA that the expected cost to comply with the rule will be approximately \$5 per 15-minute unit of time. In addition, ODA states that some minimal administrative costs may be incurred by providers, which includes the training of staff. The BIA states that the estimated cost to ensure providers maintain their requisite skills and training through education courses is \$7 per course but can be discounted if purchased in larger quantities. ODA has determined that the regulatory intent of the rule justifies the adverse impact because ODA is not increasing or creating any new burdens on providers that they would not already incur in the normal course of administering the enhanced community living service.

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.