MEMORANDUM

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

FROM: Mark Hamlin

DATE: January 6, 2017

RE: **CSI Review – Residential Facilities (OAC Chapters 5122-30, 5122-33, and 5122-35; and Rules 5122-31-01 and 5122-31-02)**

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This rule package consists of 73 rules – 28 amended,[1] three new, and 42 rescinded[2] – being submitted by the Ohio Department of Mental Health and Addiction Services (OMHAS). The rule package is being reviewed to comply with Ohio statute's five-year rule review requirement. The rule package was initially submitted November 4, 2015. Subsequent to filing, OMHAS informed CSI that the rule package was put on hold to address stakeholder concerns and would be re-filed with amendments at a later date. The rule package was amended and filed for review with CSI again on March 3, 2016. The CSI public comment period closed on March 30, 2016, after which additional work among OMHAS, CSI, and stakeholders occurred as described below, concluding

[1] Rules 5122-30-02, 5122-30-03, 5122-30-09, 5122-30-12, 5122-30-13, 5122-30-14, 5122-30-16, 5122-30-22, 5122-30-23, 5122-30-24, 5122-30-25, 5122-30-26, and 5122-30-28 are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers.

[2] In addition to rules 5122-30-08, 5122-31-01, and 5122-31-02 which are being rescinded; as part of the consolidation of residential facility rules into a single chapter of the Ohio Administrative Code, chapters 33 (28 rules) and 35 (11 rules) are being rescinded in their entirety.

on November 30. Three comments were submitted during the CSI review period.

The rule package represents a review and consolidation of regulations addressing residential care facilities, adult foster homes, and adult care facilities. According to OMHAS, the rules are being consolidated to standardize the language and requirements. Previously, these facilities were regulated under three separate Ohio Administrative Code (OAC) chapters, but this rule package consolidates all residential facility rules under Chapter 5122-30 and rescinds chapters 5122-33 and 5122-35. Residential care facilities provide care to adults who are dependent on the service of others by reason of age, physical, or mental impairment. The regulations include licensing and application requirements, inspection procedures, building and facility standards, provider services requirements, staffing and qualification requirements, incident reporting processes, health and safety requirements, and documentation requirements.

According to the BIA, several stakeholder meetings were held to receive input on the draft regulatory language. Stakeholders included Disability Rights Ohio, the Ohio Council of Behavioral Health and Family Services Providers, and the Ohio Association of County Behavioral Health Authorities. When the rules were initially submitted in November 2015, these stakeholders submitted several comments with concerns about substantive policy language. OMHAS worked to address the concerns, emphasizing to stakeholders that the goal of the rule package is to simplify the regulatory framework. The BIA lists the rules that were amended subsequent to the initial filing. During the CSI review period, Disability Rights Ohio, the Ohio Council of Behavioral and Family Service Providers, and an OMHAS employee submitted comments. The comments included grammatical and definition suggestions but also included substantive policy input. OMHAS tabled the rules after receiving the comments and worked with stakeholders to address the additional concerns. On July 7, 2016, OMHAS submitted to CSI a memo detailing the comments and the agency's responses. OMHAS made additional amendments to the rules but also provided clarification and justification for the draft language.

OMHAS identifies residential care facilities as the impacted industry. The adverse impacts include costs associated with licensing fees, administrative support, staffing and training requirements, facility requirements, and documentation requirements. The BIA states that although the rules will simplify the language and decrease the regulatory burden for some facilities, the consolidation of the different types of facilities under one regulatory framework could impose new requirements on facilities. In August, OMHAS provided CSI an overview of the language, the stakeholder process, the amendments to the language, and the agency response to comments. OMHAS provided the comment submitted by the Disability Rights Ohio to the CSI Office and additional information with regards to incident reporting on November 30, 2016. The CSI Office has received several comments regarding duplicative or different incident reporting requirements for similar services by different state agencies. The CSI Office continues to work with the agencies and stakeholders to understand the issue. OMHAS states the regulations are

necessary to comply with statutory requirements. Additionally, the rules ensure the safety and health of individuals receiving residential care services by requiring staff to obtain the appropriate qualifications and the facilities to provide quality care.

Recommendation

For the reasons explained above, the CSI office does not have any recommendations for 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.