

**MEMORANDUM**

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

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** March 2, 2018

**RE:** **CSI Review – Long-Term Care Consumer Guide (OAC 173-45-09)**

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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<sup>1</sup> 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 November 6, 2017 and the public comment period was held open through November 19, 2017. No comments were received during this time.

Ohio Administrative Code (OAC) 173-45-09 establishes the requirements for the annual fees collected by ODA for the operation of the Long-Term Care Consumer Guide. The rule sets forth the fees, invoice process, and penalties for nursing homes and residential care facilities that fail to pay the fees. OAC 173-45-09 is being amended to comply with statutory changes that implement new language regarding penalties. Nursing homes and residential care facilities that fail to pay fees within 90 days of the fee deadline will be required to pay twice the invoiced amount.

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<sup>1</sup> OAC 173-45-09 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.

During early stakeholder outreach, the rules were sent to service providers, provider associations, and relevant industry stakeholders. During this time, ODA received comments from two stakeholders. One comment suggested including a grace period for paying fees, as well as encouraging ODA to match the language between similar codes. ODA stated that the rules include a 90 day period after the fee deadline that serves as a grace period. No comments were received during the CSI public comment period.

The business communities impacted by this rule include approximately 1,000 nursing homes and 600 residential care facilities in Ohio. The rules create an adverse cost for these businesses in the form of the fee collected from these businesses, as well as the potential penalty for not completing payment within 90 days of the fee deadline. The annual fee is \$650 for nursing homes and \$350 for residential care facilities. The cost doubles to \$1,300 for nursing homes and \$700 for residential care facilities if the business does not complete payment within 120 days. ODA states that the rule is being amended to accurately implement changes made to Ohio statute. After reviewing the proposed rule and the BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule package is justified.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Aging should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.