MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: January 10, 2018

RE: **CSI Review – Background Checks (OAC 173-9-03, 173-9-03.1, 173-9-10, and 173-14-14)**

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 four amended[1] rules proposed as part of a five-year review by the Ohio Department of Aging (ODA) pertaining to background checks for direct-care providers. The rule package was submitted to the CSI Office on November 8, 2017 and the public comment period was held open through November 29, 2017. No public comments were received during this time.

Ohio Administrative Code (OAC) Chapter 173-9 requires responsible parties to conduct criminal background checks for applicants and employees who serve in direct-care positions. The rules under consideration in this package address required database reviews that must be conducted prior to requesting criminal background checks, disciplinary procedures for non-compliance with

[1] Ohio Administrative Code (OAC) 173-9-10 is being amended to the extent that the Legislative Service Commission requires ODA to rescind the rule and replace it with a new rule of the same rule number.

the rules, as well as staffing requirements and qualifications for regional programs. OAC 173-9-03, 173-9-03.1, and 173-14-14 are being amended to update database URLs and to identify the state and federal laws establishing each of the six databases. OAC 173-9-10 is being heavily edited to change the title, format for clarity, update references and terminology, and add a paragraph to address the Program of All-Inclusive Care for the Elderly (PACE).

ODA engaged multiple stakeholders during the rulemaking process, including direct-care providers, provider associations, a PASSPORT administrative agency, and the Ohio Association of Area Agencies on Aging, an association that represents many PASSPORT administrative agencies. Two commenters expressed concern over the requirement to conduct the database searches prior to the formal criminal background checks. ODA justified this requirement, responding that all required searches are free to conduct online; the intent of the requirement is to identify any potential disqualifying offenses before committing agency time and money to criminal background checks. One commenter suggested that the rules should list ODA disciplinary actions in greater detail; ODA responded that the rules reference the general standards for providers, which detail disciplinary actions so the list would be redundant and unnecessary. The rest of the feedback received during early stakeholder engagement was supportive of the proposed rules. No comments were received during the CSI public comment period.

The impacted business community includes "responsible parties" who provide direct-care through ODA-administrated programs and are required to verify the status of applicants, employees and independent providers. Depending on the type of employment, "responsible parties" can refer to an area agency on aging, a PASSPORT administrative agency, provider, sub-contractor, or ODA. The BIA indicates that checking the prescribed databases would only cost administrative time of approximately 5 minutes per individual searched; a responsible party may use the Automated Registry Check System for previously hired employees. Provided that the applicant/employee is not disqualified by the database review, the rules mandate a criminal background check for new applicants and for employees every five years. The background checks $22 for BCI and $24 for FBI checks; each fee may vary based on the county where it is requested.

The BIA justifies the rules by insisting that ensuring consumer safety by properly vetting direct-care providers outweighs the cost of providing database searches and criminal background checks. In addition, ODA is statutorily required to maintain such rules under ORC 173.38 and 173.381.

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