MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: May 31, 2017

RE: **CSI Review – Home Medical Equipment and Supplies (OAC 173-39-02.7)**

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[1] 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 March 29, 2017 and the public comment period was held open through April 16, 2017. Six comments were received during this time. Responses to the comments, an updated version of the rule, and a revised BIA were submitted on April 25, 2017.

Ohio Administrative Code (OAC) 173-39-02.7 regulates providers who provide home medical equipment and supplies to individuals enrolled in ODA's PASSPORT program. As part of their five-year rule review, ODA wishes to amend the rule to add clarity and update terms. Since the PASSPORT program is authorized by the Centers for Medicare and Medicaid Services (CMS) and includes provisions regarding home medical equipment and supplies, it is the responsibility of the State and ODA to maintain OAC 173-39-02.7 so that the rule complies with federal law.

[1] OAC 173-39-02.7 is 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.

ODA explained in the BIA that it reached out to 13 aging and home medical equipment entities as part of its early stakeholder outreach process. During that time, ODA sent an email to the organizations asking for feedback on the draft rule. All responses expressed support and indicated no concerns with the rule as amended. Six comments were received during the CSI public comment period. Four commenters requested clarification of the accepted delivery methods of the supplies and electronic delivery verification. Their main concern was that if a signature was required for delivery, a lack therof would not constitute a sufficient electronic delivery and suggested ODA define electronic delivery in the rule to provide clarification. This inquiry was rooted in a memo issued by ODA in 2013 that required a signature for verification of all deliveries. ODA replied that electronic verfification, which indicates delivery occurred, would be sufficient documentation under the amended rule. This office reached out to ODA on May 9, 2017 regarding the aforementioned concerns and inquired why the accepted standard for electronic verficiation was not adopted in the final draft of the rules. ODA replied on May 23, 2017 and stated they would issue a formal notice to providers, rather than amend the rules, indicating that proof of electronic delivery is sufficient and no signature will be needed.

One of the four commenters also requested that ODA follow CMS requirements for delivery and define "ship date" as the time that the product was dispensed. ODA responded that it would take those suggestions into consideration in future discussions. Lastly, two Area Agencies on Aging requested term changes which were rejected by ODA because the existing terms are analogus to those in the federally-approved PASSPORT waiver language.

The rule impacts 169 providers of home medical equipment and supplies who operate under the PASSPORT program. The nature of the adverse impact includes retention of records, documentation of services, purchasing, delivering, and installing home medical equipment. Costs of the impact vary but are quantifiable through appendicies in the OAC, which provide the maximum payments that may be reimbursed for medical equipment and supplies. ODA contends that the intent of the rule justifies the adverse impact because the rule does not impose any further burden on providers that they would not face in the normal course of business. In addition, the BIA notes that the regulatory burden of providing home medical equipment and supplies, replacing defective equipment, retaining records, and training individuals is minimal and helps ensure the health and safety of Ohioans who receive long term care services.

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.