MEMORANDUM

TO: Tom Simmons, Policy Development Manager, Ohio Department of Aging

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: January 31, 2019

RE: **CSI Review – Provider Certification Requirements OAC 173-39-01 and 173-39-02**

On behalf of Lt. Governor Jon Husted, 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 two amended rules submitted by the Ohio Department of Aging (Department) as part of the statutorily required five-year review. The rule package was submitted to the CSI Office on October 19, 2018, and the comment period remained open until October 28, 2018. Four comments were received during this time, and responses to those comments were received on January 3, 2019.

Ohio Administrative Code (OAC) 173-39-01 defines the terms used throughout the chapter. The Department will be adding several terms as part of the amendments. OAC 173-39-02 sets forth the requirements for a provider to become and remain a certified provider. The Department is revising the rule to improve its organization, update references, and add new requirements for certification.

Many of the new requirements pertain to business sites, provider agreements, and reporting requirements. With regard to business sites, the Department will require all providers to maintain a designated, locked storage space for retaining records; require all providers other than participant-directed providers to maintain a business site; and, require all providers to meet home and community-based setting requirements. With regard to provider agreements, the Department will require providers to enter into provider agreements with the Department of Medicaid to become certified, and to enter into provider agreements with the Department's designee.

Lastly, the Department is adding new reporting requirements. It will require all providers to notify the Department or its designee when the provider did not provide an authorized service at the time, or for the period of time, authorized by the Department's designee. It will also require all providers to notify the Department or its designee when an individual has a change of address. The Department proposes to add exceptions to the reporting requirements surrounding notice of termination of service. The exceptions will allow for circumstances such as death, hospitalization, and placement in long-term care. Outside of the aforementioned requirements, the Department is amending the rules to add requirements on contact information, volunteers, compliance reviews, and revocation of certification.

As part of early stakeholder outreach, the Department notified twelve entities representing providers, provider associations, and other associations related to aging. It received several clarification questions that did not necessitate further amendments to the draft rules, and two recommendations for changes. One stakeholder requested the Department increase the required months of experience for agency providers form three to twelve. The Department declined to make a change, noting that the three month standard is consistent with other programs and expansion would risk making it too difficult for providers to become certified. Another stakeholder recommended allowing the Assisted Living Program to pay for the assisted living service during "reasonable absences, including cumulative absences." The current rule allows to the program to pay only for authorized services provided in the residential care facility. The Department stated that at this time it is not supportive of creating a mechanism to reimburse providers if the individual is not present in the setting.

Four comments were received during the CSI public comment period. The commenters asked clarification questions, and suggested language changes where they felt the rules were unclear. The Department answered all questions, and declined to make several of the recommended changes because it either felt the language was either sufficiently clear, or could not be clarified further due to the provision needing to allow for case-specific circumstances. The Department did make two additional amendments, one clarifying the notification timeline for providers and another clarifying the experience requirements for providers.

The rules impact providers that are currently certified by the Department, and providers who are seeking certification. In order to become certified providers must meet licensure and background check requirements, have a place of business that meets home and community-based setting requirements, have valid contact information, have adequate commercial liability insurance, have a provider agreement with Medicaid and the Department's designee, have a written procedure for documenting individual incidents, and have an approved electronic visit verification system. In order to remain certified the provider must comply with the requirements in OAC 173-39 for the specific services it provides, as well as comply with recordkeeping requirements, reporting requirements, and any other applicable local, state, or federal laws.

In addition to the general requirements for providers, participant-directed providers must be at least eighteen years of age and be able to read, write, and understand English at a level enabling the provider to comply with this rule. Assisted-living providers must have a residential care facility

license from the Ohio Department of Health. The Department justifies any adverse impact by noting that the rules are necessary to ensure the health and safety of individuals receiving services from Department-certified providers.

Recommendations

For the reasons discussed 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 Aging should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.