



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

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

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

**DATE:** March 11, 2019

**RE:** **CSI Review – ODA Provider Certification: Structural Compliance Reviews (OAC 173-39-04)**

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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This rule package consists of one new rule and one rescinded rule proposed by the Ohio Department of Aging (ODA) for its statutorily-required five-year review. The rule package was submitted to the CSI Office on October 15, 2018 and the public comment period was held open through October 28, 2018.

Ohio Administrative Code (OAC) 173-39-04 sets forth the requirements for structural compliance reviews for ODA-certified providers. The rule establishes the requirements for timeframe and content of a review of providers. The rule is being amended to clarify portions of the rule, including annual review requirements, desk and on-site reviews, and record samples. The rule also includes amendments which require reviews of participant-directed providers to be conducted at the individual's home.

During early stakeholder outreach, ODA sent the rule to ODA-certified providers and industry associations. During this time, ODA received comments from stakeholders that addressed heightened federal scrutiny and the role of individuals in structural compliance reviews. ODA

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addressed comments appropriately and amended the rule to clarify the requirement to conduct reviews of participant-directed providers at the homes of individuals. During the CSI public comment period, ODA received comments from five regional administrators of the Pre-Admission Screening System Providing Options & Resources Today (PASSPORT) Program. The comments addressed a variety of topics, including review timelines, employee record sampling, and other compliance review components. ODA made changes to the rule that clarify the timeframe of reviews and methods of record sampling, as well as to correct errors.

The business community impacted by this rule includes all ODA-certified providers within the state. The adverse cost created by the rule includes the time and effort to maintain records and allow the Department's designee access to those records during an established timeframe. 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.