

**MEMORANDUM**

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

**FROM:** Danielle Dillard, Regulatory Policy Advocate

**DATE:** November 27, 2018

**RE:** **CSI Review – Provider Certification Applications (OAC 173-39-03, 173-39-03.1, 173-39-03.2, 173-39-03.3, 173-39-03.4)**

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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 rule and four new 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. Five comments were received during this time, and responses to those comments were received on November 8, 2018.

Ohio Administrative Code (OAC) 173-39-03 previously set forth the requirements to apply to become a certified provider, obtain certification to provide additional services, and obtain certification in additional regions. Under the new version of this rule and its four new subsections, the Department will regulate the same three topics, as well as require providers to complete online applications, "time out" rather than deny applications that are initiated but not completed in ninety days, require background checks on owners of providers of home and community-based services, and determine whether a provider should be subject to a heightened-scrutiny review by the United States Department of Health and Human Services.

As part of early stakeholder outreach, the Department notified twelve entities representing providers, provider associations, and other associations related to aging. It also conducted two

rounds of meetings with provider associations to develop the rules on heightened scrutiny and change of ownership. The Department received additional feedback supporting the draft rules, as well as commentary on the application process for participant-directed providers. Stakeholders noted that the application process is confusing to individuals, and participant-directed providers should complete the online application just like any other provider type. They also requested that the Department update its terminology regarding participant-directed providers, and make the deadline to complete pre-certification reviews the same for all provider types. The Department made the application and terminology changes, and noted that the draft rules require a forty-five day deadline for pre-certification reviews, regardless of provider type. The rule package as submitted to CSI reflects all stakeholder input from early outreach.

Five comments were received during the CSI public comment period. Several issues were addressed, including a number a clarification questions on topics like time period for application review, deadlines for notification of rejection, whether an online application is required, and whether the Department is responsible for processing all changes in ownership interest. The Department answered all clarification questions, and responded to a few suggestions. Only two of the comments resulted in revisions to the rules.

One commenter stated that the requirement to conduct pre-certification reviews in the individual's home is unreasonable. The Department noted that because the individual is the employer of record for participant-directed providers, it is important that they be included. However, the Department revised the rules to allow the review to be conducted at an alternate location if the individual provides written permission to do so. Commenters also noted that the rule allots more time to become certified in additional regions, than for the pre-certification process for a new provider applicant. The Department decided to revise the rules, so that there is a ninety-day deadline for both processes. Lastly, one commenter suggested creating a form for changes of ownership interest. The Department noted that each change in ownership varies significantly, so a standard form would be too difficult to develop and implement.

The rules impact providers who are seeking certification from the Department, and certified providers who undergo a change in ownership or organizational structure, or want to become certified in additional regions or services. The Department estimates that applications will take less than an hour for providers to complete. If a provider applies for certification, and its business site has institutional characteristics, they may be required to remediate in order to avoid disqualification.

Completing the requested remediation involves the cost to remediate and provide the Department with evidence of compliance. For example, assume a provider operates a residential care facility adjacent to a nursing home, requires assisted-living residents to use the provider's transportation, and places restrictions on when the resident may have guests in their living units. The Department may ask the provider to revise its resident policies to clearly indicate that residents in the facility

have free choice of transportation providers and freedom to have guests visit their living units. The cost incurred would be the effort to change the resident policies and to provide the Department with evidence that the policies were changed. 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.