Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: November 13, 2019

RE: **CSI Review – Older Americans Act: Homemaker + Personal Care (OAC 173-3-01, 173-3-06.4, 173-3-06.5, and 173-3-07)**

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This rule package contains two amended and two new rules that are replacing two rescinded rules submitted by the Ohio Department of Aging (ODA). The rule package was submitted to the CSI Office on September 20, 2019 as part of the statutorily required five-year review process, and the public comment period was held open through October 3, 2019. One stakeholder provided comments during this time. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 20, 2019.

The rules establish the required content for agreements between area agencies on aging (AAAs) and providers of home and community based services. Providers voluntarily bid for the agreements when paid at least in part by Older American Act funds.

In general, the proposed rules address AAA-provider agreements and policies for homemaker and personal care services. Homemaker services provide routine activities to help a consumer achieve and maintain a clean and healthy environment. Personal care services are activities that help the

consumer achieve optimal functional with activities of daily living (ADL) such as bathing and dressing, and instrumental ADL such as paying bills.

The draft rules propose amendments to relieve the some of the burden on current providers by enabling a provider that meets any of the personal care aide (PCA) qualifications to also qualify as a homemaker. In addition, proposed OAC 173-3-06.5 seeks to ease qualification requirements for ODA-certified providers of personal care by requiring home health aides to meet Medicare's qualifications, which provide multiple options for qualification. The rules also contain amendments to reclassify provider services to home maintenance and chores and home modification which aligns with the Older Americans Act Program and ODA provider certification. The reclassification also aligns with the U.S. Department of Health and Human Services use in the National Aging Program Information System.

As part of early stakeholder outreach, ODA requested ideas from stakeholders to improve the rules. On March 29, 2019, ODA surveyed the AAAs to learn more about AAA-provider agreements with self-employed providers. The stakeholders provided input and suggested changes, but the Department made no changes to the proposed rules. During the CSI comment period, LifeCare Alliance clarified input it had given during the rule development phase. In general, for OAC 173-3-06.4, the stakeholder requested the rule be changed to have two face-to-face assessments per year vs. current requirements of four face-to-face assessments. ODA took a second look at the requirement and on October 29, 2019, ODA provided an amended OAC 173-3-06.4 that implemented the stakeholder's suggestion.

The rules impact the State's twelve AAAs (designees of ODA) and providers who have an AAA-provider agreement. The adverse impacts of the rules are enumerated and quantified in the BIA. The majority of amendments reduce the impacts to providers. ODA notes that the proposed rules establish AAA-provider agreement standards and ensures the health and safety of consumers receiving services paid with Older Americans Act funds.

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 that the Ohio Department of Aging should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.