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: October 15, 2020

RE: **CSI Review – Older Americans Act Supportive Services and Nutrition Program (OAC 173-3-01, 173-3-06, 173-3-06.1, 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, 173-3-06.6, 173-4-03, 173-4-04, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-07, and 173-4-09)**

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 package contains 15 amended rules submitted by the Ohio Department of Aging (Department). The rule package was submitted to CSI on September 14, 2020 as part of the statutorily required five-year review process, and the public comment period was held open through September 27, 2020. No comments were received during that time. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 14, 2020.

Providers of home and community-based services voluntarily bid for agreements with Area Agencies on Aging (AAAs) in which services are paid with Older Americans Act funds. These rules define key terms used throughout OAC Chapters 173-3 and 173-4, establish general requirements for AAA-provider agreements, and establish requirements specific to agreements for adult day service (ADS), home maintenance and chores, home modification, homemaker service, personal care, transportation, congregate dining, home-delivered meals, nutrition counseling, and

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nutrition health screening.

Amendments include the addition of a definition for "unique identifier" and several other updates to adopt changes originally made through emergency rules in response to the COVID-19 pandemic as permanent. Those changes include, during a state of emergency declared by the governor, allowing providers to decide whether to collect a consumer's unique identifier to verify services provided, allowing ADS to provide activities in consumer's homes, allowing providers to conduct supervisory visits, eligibility verification, nutrition counseling, and nutrition health screening via telephone or video conference, requiring drivers to provide their signatures to attest to the completion of a trip, limiting the requirement for AAAs to incorporate certain aspects of person direction into procurement for nutrition projects, removing a requirement for providers to keep at least one congregate dining location to provide meals, adding the ability for the Department to pay occasionally for carry-out meals, limiting the requirement that providers give reasonable notice before the closure of a dining location, and encouraging providers to develop and implement written contingency procedures for emergency closures due to a state of emergency. Additionally, the Department proposes to require providers to subscribe to rule change notifications.

As part of early stakeholder outreach, the Department posted the rules on its website and solicited feedback from providers, AAAs, and others during a webinar. The Department explained to stakeholders that it proposes to adopt some of the emergency rule amendments as permanent and did not receive any comments. Additionally, no comments were received during the CSI public comment period.

The rules impact Ohio's 12 AAAs and providers. The Department noted in the BIA that adverse impacts related to AAA-provider agreements include requirements to comply with general agreement standards as well as those detailed for each specific service. Providers incur costs related to the project or service, including administrative services, training, and reporting requirements. The Department noted that most of the proposed amendments give providers flexibility during declared states of emergency.

The Department stated that the rules put necessary safeguards in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds. The Department also noted that providers voluntarily bid for AAA agreements and that they may provide the same services without entering into an agreement, when paid by other funds. Additionally, the amount a provider is paid is an all-inclusive rate intended to cover all costs incurred providing the project or service.

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