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 23, 2020

RE: **CSI Review – ODA Provider Certification (OAC 173-39-01, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-03, 173-39-03.2, 173-39-03.3, and 173-39-03.4)**

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 11 amended rules submitted by the Ohio Department of Aging (Department). The rule package was submitted to CSI on September 28, 2020 as part of the statutorily required five-year review process, and the public comment period was held open through October 11, 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 28, 2020.

These rules establish requirements for providers who wish to be certified by the Department to receive payment for services from the Department that are provided to individuals enrolled in the PASSPORT Program or Assisted Living Program. Specifically, the rules define key terms used throughout the chapter and establish application and certification requirements for providers of adult day services (ADS), home medical equipment and supplies, homemaker and personal care services, choices home care attendant services, and nutritional consultations.

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to adopt changes originally made through emergency rules in response to the COVID-19 pandemic as permanent.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 allowing providers to decide whether to collect an individual's unique identifier to verify services provided, allowing ADS activities to be provided in individual's homes, via telephone or video conference, allowing providers to consider errands outside the presence of the individual as part of homemaker or personal care services, allowing providers to conduct supervisory visits and initial consultations via telephone or video conference, allowing the Department's designees to conduct a pre-certification review with or without the individual who directs the participant-directed provider, and allowing remote training for personal care providers.

Additionally, the Department proposes to deem any provider certified by the Ohio Departments of Medicaid or Development Disabilities to provide services through a Medicaid-waiver program as having satisfied the requirements for certification by the Department for the same or similar services, change staffing ratios for ADS from 1:6 to 1:10, modify nutritional consultation to not include instances when an individual receives similar services that are paid for by Medicare, Medicaid, or another third party, and add a statement to the rules that an initial application or change of ownership application will not be processed during a period in which the Department works with the Ohio Department of Medicaid to establish a new application system. Other updates are proposed to correct references, eliminate unnecessary words and duplications, and use uniform terminology.

As part of early stakeholder outreach, the Department posted the rules on its website and solicited feedback from providers, PASSPORT administrative agencies, and others during a webinar. The Department explained to stakeholders that it proposes to adopt some of the emergency rule amendments as permanent. No comments were received during either early stakeholder outreach or the CSI public comment period.

The rules impact providers in the PASSPORT Program and Assisted Living Program. The Department noted in the BIA that adverse impacts include the requirement for a provider to apply for certification if it wants to participate in the PASSPORT or Assisted Living Program, and notify the Department of a change of ownership or organizational structure. Additionally, the rules require providers to comply with general requirements for all providers as well as those detailed for each specific service. Providers incur costs related providing the service, including payroll expenses and costs resulting from retaining records and updating policies and procedures. The Department noted that most of the proposed amendments give providers flexibility during declared states of emergency.

The Department stated that the rules ensure the health and safety of older Ohioans enrolled in the PASSPORT and Assisted Living Programs. The Department also noted that there is no requirement

for a provider to apply for certification from the Department to provide these services, unless the provider wishes to be paid through one of the programs for serving individuals enrolled in those programs. Additionally, the amount a provider is paid is an all-inclusive rate intended to cover all costs incurred providing the 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.