



## Common Sense Initiative

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

**Sean McCullough**, Director

### MEMORANDUM

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

**FROM:** Emily Groseclose, Senior Policy and Business Advocate

**DATE:** July 23, 2021

**RE:** **CSI Review – ODA-Administered Programs During the Federal COVID-19 Public Health Emergency (OAC 173-1-04)**

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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 contains one new rule submitted by the Ohio Department of Aging (Department). The rule package was submitted to the CSI office on July 6, 2021, and the public comment period was held open through July 20, 2021. Two comments were received during that time. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with CSI on July 6, 2021.

This rule extends regulatory relief and flexibility for providers of programs administered by the Department, area agencies on aging (AAA), and PASSPORT administrative agencies (PAA), that was granted through an emergency rule and Executive Order 2021-09D in response to the COVID-19 state of emergency. The flexibility, such as video conference in lieu of in-person visits, will remain in effect until the federal public health emergency is lifted. The new rule also extends relief from disenrollment for individuals who are enrolled in the state-funded components of the PASSPORT or assisted living programs but who no longer meet the requirements of the programs.

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As part of early stakeholder outreach, the Department solicited feedback from The Academy of Senior Health Sciences, Inc., Catholic Social Services of the Miami Valley, LeadingAge Ohio, the Ohio Assisted Living Association, Ohio Area Agencies on Aging, the Ohio Association of Medical Equipment Services, the Ohio Association of Senior Centers, the Ohio Council for Home Care and Hospice, Ohio Jewish Communities, and the state long-term care ombudsman. Two commenters were supportive of the extension, while the state long-term care ombudsman recommended resuming requirements for in-person visits. In response, the Department noted that the proposed rule allows providers to conduct in-person visits but also continues to give them flexibility to conduct those activities by telephone or video conference. The Department received two comments during the CSI public comment period. Both were supportive of the rule, with one suggesting that the rule should affect limits on the number of hours the PASSPORT program would pay a participant-directed provider for more than 40 hours per week. The Department responded explaining that another rule allows flexibility in emergency circumstances.

The rule impacts providers of programs administered by the Department, AAAs, and PAAs. This rule applies to OAC Chapters 173-3, 173-4, and 173-39. The rules in those chapters require providers to make specific expenditures or report certain information as a condition of compliance. However, the Department noted that the rule in this package will extend relief of certain regulations contained in those chapters for the impacted entities and continue to provide flexibility, enabling measures to be taken to limit the spread of COVID-19 to vulnerable older Ohioans.

### **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 proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.