



## Common Sense Initiative

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

**Sean McCullough**, Director

### MEMORANDUM

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

**FROM:** Jacob Ritzenthaler, Business Advocate

**DATE:** December 6, 2021

**RE:** **CSI Review – Provider Certification (OAC 173-39-01, 173-39-02, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.13, 173-39-02.20, 173-39-03, 173-39-03.1 through 173-39-03.4, and 173-39-04)**

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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 consists of 16 amended rules proposed by the Ohio Department of Aging (Department) as part of the statutory five-year review requirement. This rule package was submitted to the CSI Office on November 1, 2021, and the public comment period was held open through November 14, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 1, 2021.

Ohio Administrative Code (OAC) Chapter 173-39 establishes requirements for the certification of community-based long-term care service providers, including the application process, requirements necessary to become a certified provider of various services, and structural compliance reviews. OAC 173-39-01 lists the definitions used throughout the chapter and includes updates to the definitions. OAC 173-39-02 establishes the requirements necessary for a provider to become certified and is amended to update language. OAC 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, and 173-39-02.20 establish provider certification requirements for various services, including adult day services,

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home medical equipment, nutritional consultants, and enhanced community living. The rules include amendments that replace outdated modes of communication and update and clarify rule requirements. OAC 173-39-03 provides the procedures to apply for certification and is amended to list federal public health emergencies as a reason to conduct a desk pre-certification review and to specify the form used to determine if a setting is presumed to have the qualities of an institution. OAC 173-39-03.1 through 173-39-03.4 concern federal heightened scrutiny of provider settings, changes of ownership interest or organizational structure, applying to be certified to provide additional services, and applying to be certified in additional regions or to certify additional business sites. These rules include amendments that update language and allow for desk reviews during a federal public health emergency. OAC 173-39-04 determines the procedure for structural compliance reviews and is amended to include federal public health emergencies, allow for electronic reports, and to require the provider to submit a request to miss a deadline for a review.

During early stakeholder outreach, the Department sent the proposed rules to industry stakeholder for feedback. Several stakeholders expressed support of the increased flexibility provided by remote reviews. The Department did not make changes to the rule in response to stakeholder suggestions that would remove necessary in-person visits. No comments were received during the CSI public comment period.

The business community impacted by these rules include all service providers certified through the Department. The adverse impacts created by the rules include the requirements to become a certified provider and to comply during structural compliance reviews. Providers are required to pass criminal records checks and database reviews, maintain business sites and commercial liability insurance, and maintain standards for training, records, and payment. The Department states that the rules are necessary to ensure the health and safety of individuals that received services from certified providers.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review