Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Joseph Baker, Director

DATE: October 13, 2022

RE: **CSI Review – Older Americans Act Programs (OAC 173-3-01, 173-3-04, 173-3-05, 173-3-05.1 (rescind), 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, and 173-3-09)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of eleven amended rules and one rescinded rule proposed by the Ohio Department of Aging (Department). This rule package was submitted to the CSI Office on August 11, 2022, and the public comment period was held open through August 24, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 11, 2022.

Ohio Administrative Code (OAC) 173-3-01 sets forth definitions and the purpose of chapter 173-3 of the OAC, which is to regulate provider agreements paid for with Older Americans Act (OAA) funds. The rule has been amended to update the definition of a unique identifier. OAC 173-3-04 sets forth general requirements for provider agreements and has been amended to remove regulatory restrictions and restructure the section for clarity. OAC 173-3-05 and 173-3-05.1 set forth procurement standards for securing services paid for with OAA funds. The Department proposes to amend OAC 173-3-05 to include the contents of OAC 173-3-05.1 to reduce unnecessary regulatory restrictions. Based on that proposed amendment, the Department plans to rescind OAC 173-3-05.1.

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OAC 173-3-06 sets forth requirements for all provider agreements paid for with OAA funding and has been amended to update a reference, streamline language, clarify that provider agreements are subject to certain executive orders, remove unnecessary regulatory restrictions, include additional examples of supporting documentation, and require records retention of employee performance reviews. OAC 173-3-06.1. 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, and 173-3-06.6 set forth standards and delivery requirements for various types of services, including adult day services, home maintenance, home modification, homemaker services, personal care, and transportation services. Each rule has been amended to remove unnecessary regulatory restrictions. Amendments have also been made to streamline language, update references, allow consumer caregivers to attest to receiving certain services, and adopt clarifying changes.

During early stakeholder outreach, the Department shared the proposed rule with organizations including LeadingAge Ohio, the Ohio Assisted Living Association, Ohio Association of Area Agencies on Aging, Ohio Academy of Senior Health Sciences, Ohio Adult Day Healthcare Association, Ohio Health Care Association, Ohio Council for Home Care and Hospice, and others. No comments were received in response to the request for early stakeholder feedback. During the CSI public comment period, the Department received comments from a local area agency on aging (AAA) requesting the Department allow AAAs to enter into provider agreements for personal care with participant-directed providers in the same manner as AAAs may do for homemaker services. The Department responded to the comment stating that it would consider the feedback and revisit the topic in the future. Additionally, the AAA requested that the Department adopt a new rule governing AAA-provider agreements for home medical equipment and supplies. However, the Department responded to the comment stating that it does not plan to adopt a new rule at this time.

The business community impacted by the rules includes all service providers that have agreements with local AAAs to provide services using OAA funds. The adverse impacts to business created by the rules include the administrative time and compliance efforts to meet the requirements for providing services outlined in the rules. The Department notes that payment rates are set by providers when they submit bids to local AAAs, which is an amount intended to support all costs of providing services, including administration, training, and reporting. The Department states that the adverse impacts to business are justified to ensure the health and safety of older Ohioans who receive services through Older Americans Act programs.

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.