



## Common Sense Initiative

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

**Joseph Baker**, Director

### MEMORANDUM

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

**FROM:** Jacob Ritzenthaler, Business Advocate

**DATE:** April 14, 2023

**RE:** **CSI Review – Provider Certification (OAC 173-39-02, 173-39-02.4, 173-39-02.11, 173-39-02.21, 173-39-03, 173-39-04, and 173-39-05)**

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This rule package consists of four amended rules, two new rules, and three rescinded rules proposed by the Ohio Department of Aging (Department). This rule package was submitted to the CSI Office on March 3, 2023, and the public comment period was held open through March 19, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 3, 2023.

Ohio Administrative Code (OAC) Chapter 173-39 establishes requirements for the certification of providers through the Department. OAC 173-39-02 lists the requirements for obtaining and maintaining certification, including requirements for qualification, compliance with criminal records and database reviews, maintaining a site of business and proper insurance, provider agreements, and reporting. The rule is amended to exempt participant-directed providers from maintaining a business site, remove requirements for home health licensees to maintain commercial liability insurance in addition to a surety bond, remove allowances for collecting signatures at a later date, remove certain reporting requirements that have been moved to a separate chapter, remove exemptions for certain providers when notifying the Department's designee before the end of service provision, and remove

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requirements for agency providers to have previous experience. OAC 173-39-02.4 sets forth requirements for certification of the choices home care attendant service. The rule is amended to the extent that it is rescinded and replaced by a new rule. Amendments include reorganization of service activities and patient transportation requirements, removal of requirements for initial interviews and certain forms during initial training and continuing education, updating initial training requirements, and incorporating scheduling requirements previously found in OAC 173-39-02.21. OAC 173-39-02.11 lists requirements for certification as a provider of personal care and is amended to allow for agency providers to conduct certain supervisor visits through telephone or video conference, remove requirements for performance appraisals for every staff position, and incorporate scheduling requirements previously found in OAC 173-39-02.21.

OAC 173-39-02.21 lists scheduling requirements for personal care aides and participant-directed providers and is proposed for rescission. OAC 173-39-03 establishes the application process for becoming a certified provider and is amended to delete a temporary paragraph that states applications will not be processed while a new electronic system is created, decrease the timeframe between the submission of a completed application and certification to sixty days for applications received from providers and thirty days for applications received for participant-directed providers, and remove requirements for applicants to participate in interviews prior to application and complete applications within ninety days. OAC 173-39-04 establishes requirements for structural compliance reviews and is amended to the extent that it is replaced by a new rule of the same number. Amendments include reducing the frequency of reviews from annually to once every three years, moving certain information into the appendices of the rule, requiring emailed results if a provider is not available for an exit interview, shortening the timeframe for demonstrating compliance from seven to five days, and indicating that a provider's review requirements may be satisfied by a review from either the Ohio Department of Developmental Disabilities or Department of Medicaid. OAC 173-39-05 lists disciplinary actions for rule violations and is amended to address deadlines that occur on a Saturday, Sunday, or legal holiday. The rules in this package also contain amendments to remove unnecessary regulatory restrictions.

During early stakeholder outreach, the Department engaged with the CSI Office to address stakeholder concerns, prompted by a stakeholder suggestion that the requirement for three months prior experience to be certified represents an adverse impact on providers. This requirement was proposed for removal and the Department made many of the proposed amendments to this rule package to simplify the processes for application and maintenance of certification. The Department also sent the proposed rules to relevant industry stakeholders for feedback. No comments were received during that time.

During the CSI public comment period, the Department received comments from several PASSPORT administrative agencies. In response to comments from the Ohio Insurance Institute, the

Department removed an exemption for providers from commercial liability insurance if they maintain a surety bond. The Department also included edits to clarify rule requirements and update language concerning Department consideration of a structural compliance review. The Department did not make changes in response to comments that advised against removing experience requirements for agency providers, stating that removing the requirements is intended to increase the pool of providers within different regions of the state.

The business community impacted by the rules includes all providers certified by the Department. The adverse impacts created by the rules include the time and effort spent applying for certification and complying with requirements to maintain certification, which can include training, continuing education, background checks, and retaining records. The Department states that the adverse impacts created by the rules are necessary to ensure the health and safety of individuals enrolled in programs administered by the Department. The Department has also eliminated several requirements which result in decreased burdens in the regulated businesses by streamlining the process for certification.

### **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.