



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: Transportation (OAC 173-39-02.13 and 173-39-02.18)**

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This rule package consists of one amended rule and one rescinded rule proposed by the Ohio Department of Aging (Department). This rule package was submitted to the CSI Office on March 15, 2023, and the public comment period was held open through March 29, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 15, 2023.

Ohio Administrative Code (OAC) Chapter 173-39 establishes requirements for provider certification by the Department. OAC 173-39-02.13 sets forth requirements to become a non-emergency medical transportation service provider. This rule is proposed for rescission, as the Centers for Medicare and Medicaid Services (CMS) has notified the Department that non-emergency medical transportation will no longer be approved as a service under the PASSPORT Program. OAC 173-39-02.18 establishes requirements to become a certified provider of non-medical transportation. The rule also includes requirements for vehicle maintenance and inspections, as well as driver eligibility and information required for trip verification. The rule is amended to include new definitions and to introduce requirements that state providers must have a backup plan when a driver or vehicle is

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unavailable and that a driver must help the individual safely transfer from the point of pick-up to the vehicle.

During early stakeholder outreach, the Department sent the rules to industry stakeholders for feedback, including service providers and health care associations. No comments were received during that time. During the CSI public comment period, the Department received comments that expressed concern regarding the availability of Automotive Service Excellence (ASE) certified vehicle repair shops, approved forms for vehicle inspections, and requirements for hiring drivers. In response to these comments, the Department provided clarification, stating that the rules allow an Area Agency on Aging to approve of a non-ASE vehicle repair shop, that allowing other signatories to conduct evaluations is dependent on Ohio's scope of practice statutes, and that the authorizing statute of the rule requires first aid and CPR training and alcohol and drug testing prior to employment. Several comments were received that opposed removing non-emergency medical transportation as a service through the PASSPORT Program. The Department advised the stakeholders that CMS no longer approved non-emergency medical transportation as a service through the PASSPORT Program and that individuals who need these services may receive them through the Medicaid state plan.

The business community impacted by the rules includes certified providers of non-emergency medical transportation and non-medical transportation. The adverse impacts created by the rules include requirements to have a back-up plan available when a scheduled driver or vehicle is unavailable, transfer individuals into and out of service vehicles, maintain and inspect vehicles, and ensure drivers meet qualifications. Providers negotiate the rate for services through the PASSPORT Program, which cannot exceed the maximum rate amount sent in OAC 5160-1-06.1. The Department states that the adverse impacts are necessary to ensure the health and safety of individuals enrolled in Department programs, as well as to comply with statutory requirements.

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.