



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Michael Bender, Business Advocate

DATE: March 18, 2024

RE: CSI Review – PACE (OAC 173-50-01 and 173-50-03)

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This rule package consists of one new rule, one amended rule, and one rescinded rule proposed by the Ohio Department of Aging (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 13, 2023, and the public comment period was held open through September 26, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 13, 2023.

Ohio Administrative Code (OAC) 173-50-01 declares the purpose of the chapter to regulate the Program of All-Inclusive Care for the Elderly (PACE) and sets forth relevant definitions. The rule is amended to update language and a citation, add a term, and remove a term. OAC 173-50-03 is rescinded and replaced by a new rule with the same number. OAC 173-50-03, the proposed new rule, establishes standards for the Department and PACE organizations with respect to the enrollment of a person into PACE. These standards concern oversight, the intake process, enrollment, denial, instances where no available slot exists, the initial comprehensive assessment, plans of care, and continued enrollment. Compared to the rescinded version, the new rule replaces certain provisions with citations to federal requirements instead and requires the Department rather than the PACE

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organization to conduct the level-of-care assessment pursuant to federal regulations.

During early stakeholder outreach, the Department emailed McGregor PACE, Ohio's only PACE organization, on June 29, 2023, to offer the opportunity to give recommendations for improving the rules by July 13, 2023. The Department also explained to McGregor PACE the changes that it had been considering. McGregor PACE did not provide any feedback on the rules. The Department similarly received no input on the rules via its website, which asks members of the public to reach out at any time with suggestions regarding its rules. During the CSI public comment period, the Department received comments from two employees affiliated with an area agency on aging (AAA).

The AAA employees sought clarification on how the rules would be applied in practice, since many of the proposed changes included references to tasks performed by the Department and/or its "designee," which by rule would be an AAA. The Department responded by removing all references to a "designee" and explained that the PACE organization would be responsible for intake duties pursuant to federal regulations. However, the Department declared that it would remain responsible for level-of-care assessments and authorized itself to delegate this responsibility. Additionally, the Department revised the rules to require a PACE organization to notify the applicant, the Department, and the federal Centers for Medicare and Medicaid Services (CMS) when it determines that an applicant does not meet eligibility requirements. In response to confusion about whether the proposed rules would no longer require a PACE organization to submit at least one of the semi-annual comprehensive assessments to the Department, the Department amended the relevant provisions to follow federal rules more closely. The Department also made changes to require the PACE organization's interdisciplinary team to conduct these assessments in person. The commenters raised concern about the apparent removal of deemed eligibility from the rules. The Department replied that deeming continues to exist even if not stated in the rules explicitly, as federal regulations require the Department to establish the criteria for making the determination of deemed continued eligibility in the program agreement between CMS, the Department, and each PACE organization. Lastly, the Department made a technical correction to the rules.

The business community impacted by the rules includes PACE organizations, of which there is currently only one in Ohio (McGregor PACE). The adverse impacts created by the rules include conducting intake, notifying a qualified applicant of the opportunity to enroll, conducting an assessment, developing a plan of care, and enrolling a qualified applicant. The Department notes that providers voluntarily apply to become a PACE organization and that the regulatory burden for PACE organizations is reduced because the requirement to conduct the level-of-care assessment is transferred to itself. The Department states that the adverse impacts to business are justified to implement federal requirements as well as ensure that qualified applicants are enrolled and qualified participants remain enrolled in PACE to receive necessary care.

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.