



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: March 25, 2024

RE: **CSI Review – Provider Certification: Application, Review, Discipline (OAC 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 three 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 February 15, 2024, and the public comment period was held open through February 29, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 15, 2024.

Ohio Administrative Code (OAC) Chapter 173-39 establishes requirements for provider certification through the Department. OAC 173-39-03 sets forth the requirements to apply for certification as a provider. The rule is amended to change the timeline for submission of supplemental application information from thirty days to five business days, allow a provider to withdraw its application before it is denied or sent to the Department's designee for a pre-certification review, remove a temporary pandemic option for the Ohio Department of Medicaid or Ohio Department of Developmental Disabilities to deem providers as certified, implement pathways for certification for members of the military out of-state licensees, and make other minor updates. OAC 173-39-04 establishes the guidelines for structural compliance reviews for providers. Reviews are conducted by the Department's designee within one year of initial certification and are subsequently conducted within

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one year for providers of adult day services, assisted living services, personal care, or enhanced community living, and within three years for other providers. The rule includes amendments that require one-year deadlines for providers of choices home care attendant services, home care attendant services, or waiver nursing. The rule previously required reviews of a provider's paid service units to cover the period "since being certified" for an initial review or "since the previous review" for any subsequent reviews. This requirement is amended to change the review period to the previous three months for providers that are reviewed annually and the previous six months for providers that are reviewed at least every three years. The rule is also amended to shorten the length of time for both the Department's designee to issue a notice of non-compliance and for the provider to provide evidence of compliance from sixty days to ten days. OAC 173-39-05 concerns the disciplinary actions that the Department or its designee may impose upon a provider, including implementing a corrective action plan and suspending referrals to the provider. The rule is amended to change the timeline for submitting a plan of correction or evidence of compliance from seven days to seven business days, add the action of removing clients to the list of disciplinary actions, and allow the Department's designee to verify compliance through a follow-up visit, supplemental information request, or record review.

During early stakeholder outreach, the Department sent the proposed rules to industry stakeholders for feedback, including Catholic Social Services of the Miami Valley, LeadingAge Ohio, the Ohio Academy of Senior Health Sciences, Ohio Adult Day Healthcare Services, OhioAging, the Ohio Assisted Living Association, the Ohio Association of Medical Equipment Suppliers, the Ohio Association of Senior Centers, the Ohio Council for Home Care and Hospice, the Ohio Health Care Association, Ohio Jewish Communities, and the State Long-Term Care Ombudsman. During that time, the Department received a comment that suggested retaining the certification deeming process to benefit the transfer of individuals between the Ohio Home Care Waiver and the PASSPORT waiver program, to which the Department responded that recent changes have made it easier to become a participant-directed provider and is working towards new methods for deeming providers certified with ODM. Other stakeholders sought clarification, which the Department provided. During the CSI public comment period, ODA did not make changes in response to comments that suggested retaining the option for ODM or DODD to deem providers as certified since it was a limited-time COVID measure. ODA provided clarification or guidance concerning new timelines for reviews and providing evidence of compliance. ODA also accepted the stakeholder suggestion to include additional providers in communications to ease compliance.

The business community impacted by the rules includes all providers certified by the Department. The adverse impacts created by the rules include the process of applying for certification, providing information and cooperation for compliance reviews, and disciplinary actions for violations of the rule requirements. Providers whose application for certification is denied are ineligible to reapply for a period of one year after the mailing date of the Department's final adjudication. Providers that

violate the rule requirements could be required to comply with a plan of correction, submit evidence of compliance, have referrals to the provider suspended, or have person-centered services plans revised to revoke authorization. The Department states that the adverse impacts created by the rules are necessary to ensure the health and safety of individuals enrolled in Department-administered 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.