



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: January 3, 2024

RE: CSI Review – Provider Certification (OAC 173-39-01, 173-39-02, 173-39-02.2, 173-39-02.4, 173-39-02.5, 173-39-02.6, 173-39-02.9, 173-39-02.12, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.19, 173-39-02.22, 173-39-02.23, 173-39-02.24, 173-39-03.2, 173-39-03.3, and 173-39-03.4)

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This rule package consists of seventeen amended rules and one rescinded rule proposed by the Ohio Department of Aging (Department) as part of the statutorily required five-year review process. This rule package was submitted to the CSI Office on December 1, 2023, and the public comment period was held open through December 14, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 1, 2023.

Ohio Administrative Code (OAC) Chapter 173-39 establishes requirements related to the certification of providers by the Department. OAC 173-39-01 lists the definitions used throughout the chapter and is amended to update the list of definitions and provide clarification. OAC 173-39-02 sets forth requirements for providers to become certified, including provider qualifications, requirements for providers to remain certified, and requirements for specific types of providers. The rule is amended to remove language that prohibits providers from providing services to family members or other representatives and replace it with a reference to OAC 5160-44-32, which establishes standards for providing services to related individuals. OAC 173-39-02.2 establishes

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requirements specific for providers of alternative meals and is amended to remove unnecessary regulatory restrictions. OAC 173-39-02.4 establishes requirements for choices home care attendant services and includes amendments that correct references and remove caregiver respite as an allowed service for these providers. OAC 173-39-02.5, 173-39-02.6, and 173-39-02.9 set forth requirements for home maintenance and chores, personal emergency response systems, and home modifications. These rules are amended to remove unnecessary regulatory restrictions.

OAC 173-39-02.12 concerns social work and counseling services and is amended to allow licensed psychologists, licensed professional clinical counselors, licensed professional counselors, independent marriage and family therapists, marriage and family therapists, licensed independent social workers, licensed social workers, and advanced practice registered nurses licensed in another state to qualify for certification in Ohio. Amendments also remove requirements for the provider to provide an individual's case manager prior to the creation of the treatment plan, allow services to be provided in community-based setting other than an individual's home, and remove unnecessary or duplicative regulatory restrictions. OAC 173-39-02.14, 173-39-02.15, and 173-39-02.17 establish requirements for home-delivered meals, community integration, and community transition services. These rules are amended to remove unnecessary regulatory restrictions. 173-39-02.19 concerns kosher options for home-delivered meals and is proposed for rescission, as the requirements are being relocated to OAC 5160-44-11. OAC 173-39-02.22, 173-39-02.23, and 173-39-02.24 set forth requirements for waiver nursing, out-of-home respite, and home care attendant service and are amended to remove unnecessary regulatory restrictions. OAC 173-39-03.2 requires providers to notify the Department concerning changes in the provider's ownership interest or organizational structure and is amended to remove requirements for having notifications notarized and to relax the timeframe in which discharging residents is prohibited after an assisted living provider applies for new certification. OAC 173-39-03.3 and 173-39-03.4 concern the process for a provider that applies to provide additional services, including the process for submitting applications, the Department's pre-certification review, and either approval or denial of the application. The rules are amended to update language regarding applications and references to other rules.

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, Ohio Academy of Senior Health Sciences, Inc., Ohio Adult Day Healthcare Association, OhioAging, Ohio Assisted Living Association, Ohio Association of Medical Equipment Suppliers, Ohio Association of Senior Centers, Ohio Council for Home Care and Hospice, Ohio Health Care Association, Ohio Jewish Communities, and State Long-Term Care Ombudsman. In response to comments received during that time, the Department amended the rules concerning discharge prohibition timelines, adoption of OAC 5160-44-32 concerning providers with relationships to individuals and removing notarization requirements. No comments were received during the CSI public comment period.

The business community impacted by the rules includes every provider certified by the Department. The adverse impacts created by the rules include requirements to become certified by the Department and comply with standards specific to each type of service, as well as providing reports. Certification through the Department requires providers to maintain licensure, background checks, and business sites. The Department states that the adverse impacts created by the rules are necessary to ensure the health and safety of individuals receiving services through Department-certified providers. Furthermore, the Department notes that the proposed amendments to the rules will reduce the regulatory burden on stakeholders by allowing certain providers licensed in another state to qualify for certification and allowing providers to provide services in community-based settings.

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.