

**MEMORANDUM**

TO: Milton Sutton, Ohio Department of Administrative Services

FROM: Paula Steele, Regulatory Policy Advocate

DATE: April 14, 2014

RE: **CSI Review – Community Rehabilitation Program Administrative Rule Updates**
(OAC 123:5-3-02 through 123:5-3-05, 123:5-3-07, 123:5-3-09 and 123:5-3-11)

On behalf of Lt. Governor Mary Taylor, 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 Agency as provided for in ORC 107.54.

Analysis

This rule package consists of seven rules – two no-change and five amended¹ rules – being proposed under the five-year review required by ORC 119.032 by the Ohio Department of Administrative Services Office of Procurement for the Community Rehabilitation Program. The proposed rules address the procurement administration from certified community rehabilitation programs (CRP). The proposed rules were submitted to the CSI Office on March 18, 2014 with the comment period ending on March 31, 2014. No comments were received during that time.

CRPs are non-profit entities whose focus is to provide jobs and training opportunities for people with disabilities. Prior to any competitive bid process for state products and services, agencies must check the state “procurement list” to determine if those products or services are available for purchase from a CRP. The proposed rules provide certification requirements of CRPs and agents, reporting requirements, waivers from purchasing requirements, procurement list updates, and the administrator's authority to audit.

¹ One of the existing rules (123:5-3-07) is being amended by more than 50 percent; therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

According to the BIA, the Department reached out to all certified CRPs and all agency procurement officers seeking input on the proposed rules. One person commented that an agency's name in the proposed rule had not been updated.

Review of the proposed rules and BIA prompted the CSI Office to follow up with the Department in order to seek a better understanding of the purpose of some of the proposed changes. For example, in proposed rules 123:5-3-02 and 123:5-3-03 pertaining to certifications, language was being proposed that made certification more discretionary by changing "shall certify" to "may certify" even though an applicant had fulfilled all the certification requirements. The Department ultimately agreed that the existing rule promotes certainty and predictability by ensuring that if an entity meets the listed requirements it shall become certified. However, the Department expressed a need for flexibility, so in its revised version of the rules it has articulated additional reasons for which a certification can be suspended, revoked, or denied.

In addition to specific rules, the CSI Office followed up with the Department and requested a revised BIA to make some minor changes and to augment the discussion of the regulations' public purpose, the adverse impacts and the justification of those impacts.

After reviewing the proposed revised rules and the associated revised BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impact identified in the BIA.

Recommendations

1. Revise the proposed rule language related to OAC 123:5-3-02 (C) and 123:5-3-03 (B) to promote certainty for certification applicants who fulfill the prescribed requirements. As noted above, the Department agreed to maintain the original rule language in order promote certainty and predictability and has provided CSI with updates of these rules.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.