

**MEMORANDUM**

**TO:** Tom Simmons, Policy Manager and Regulatory Ombudsman, Ohio Department of Aging

**FROM:** Sydney King, Regulatory Policy Advocate

**DATE:** August 5, 2015

**RE:** **CSI Review – Provider Certification Terminology (OAC 173-39-01, 173-39-02.22, 173-39-02.23, and 173-39-02.24)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (O.R.C) 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**

The Ohio Department of Aging (ODA) submitted to the CSI Office four amended<sup>1</sup> rules being reviewed under the five-year review process required by statute. The rule package was submitted to the CSI Office on July 6, 2015, and the comment period for the rules closed on July 19, 2015.

The rule package regulates provider certification terminology, waiver nursing services, out-of-home respite services, and home care attendant services. In addition to only allowing ODA-certified non-agency providers to furnish the services, providers must also comply with the PASSPORT program<sup>2</sup> and Medicaid regulations. In the BIA, ODA described a rule review process that considered stakeholder outreach and the impacts to industry members when amending the rules. For example, current language defines “plan of treatment” to only include orders of physicians. Because it is within the scope of practice of other healthcare professionals to

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<sup>1</sup> Rule 173-39-01 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 Therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

<sup>2</sup> The PASSPORT program helps Medicaid-eligible older Ohioans receive long-term care services.

write orders for patients, ODA amended the rule to expand the definition to include other healthcare professionals. In addition to considering the adverse impacts, ODA worked to mirror similar requirements in other agencies but was unable to rescind duplicate requirements because of statutory law.

The BIA describes a comprehensive stakeholder outreach process that included the Ohio Assisted Living Association, LifeCare Alliance, Senior Resource Connection, Ohio Association of Senior Centers, Ohio Council for Home Care and Hospice, Ohio Jewish Communities, Midwest Care Alliance, National Church Residences, and Ohio Association of Medical Equipment Suppliers. ODA provided the input received during the early stakeholder outreach in the BIA and also included how the rule package was amended based on suggestions. No comments were received during the CSI public comment period.

The BIA identifies ODA-certified providers as the impacted industry. This includes businesses that provide waiver nursing services, out-of-home respite services, and home care attendant services. ODA provided a detail description of the adverse impacts in the BIA. The costs include reporting and application requirements. Because the rules also require compliance with PASSPORT and Medicaid programs in order to be an ODA-certified provider, the requirements found in those programs are also considered adverse impacts. These regulations are not included in the review. ODA has indicated referencing these requirements is to ensure uniformity with similar regulations. No comments were received to indicate the impacted industry has concerns with the adverse impacts. ODA states the rules are necessary to comply with statutory requirements but also to ensure consumers are receiving care from quality providers.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules is justified.

### **Recommendation**

For the reasons explained above this office does not have any recommendations regarding this rule package.

### **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.

cc: Mark Hamlin, Lt. Governor's Office