

**MEMORANDUM**

TO: Kaye Norton, Ohio Department of Health

FROM: Sydney King, Regulatory Policy Advocate

DATE: August 26, 2016

RE: **CSI Review – Appeal of Denial of Long-Term Care Facility Certification (OAC 3701-63-01 and 3701-63-02)**

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 two amended rules being proposed by the Ohio Department of Health (ODH). This chapter of the Ohio Administrative Code was reviewed by ODH pursuant to the statutory five-year review requirement. The rule package was submitted to the CSI Office on June 30, 2016, and the comment period for the rules closed on July 29, 2016.

The rule package provides requirements for the appeals process for terminating or not renewing a Medicaid certification and the process for a facility to seek an informal review by ODH for deficiencies found during an inspection; this can include a second level of review conducted by a hearing officer. According to ODH, there is an agreement with the Ohio Department of Medicaid that states ODH will manage the appeals process when ODH proposes to revoke a provider's Medicaid certification arising from the survey process. The BIA states that the rules protect the integrity of Ohio's investment in the Medicaid program while allowing due process for Medicaid-certified facilities.

The BIA states that the impacted industry includes members of the long-term care facility

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community. ODH requested representatives of long-term care facilities – which includes the Academy for Senior Health Sciences, Leading Age Ohio, Ohio Assisted Living Association, and Ohio Health Care Association – to review the rule language but did not receive feedback. Additionally, no comments were received during the CSI public comment period. The cost associated with the regulations includes the time necessary to file appeals and respond to deficiency citations in a corrective action plan, implementing the corrective action plan, and the fees associated with a second informal review request. ODH states the rules are necessary to provide long-term care facilities due process rights and satisfy statutory requirements that designate ODH as the state survey agency for Ohio.

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 rule package 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