

**MEMORANDUM**

**TO:** Tom Simmons, Ohio Department of Aging

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** January 30, 2018

**RE:** **CSI Review – Provider Certification: Personal Care (OAC 173-39-02.11)**

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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 (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 one amended<sup>1</sup> rule proposed as part of a five-year review by the Ohio Department of Aging (ODA) pertaining to personal care services. The rule package was submitted to the CSI Office on November 8, 2017 and the public comment period was held open through November 29, 2017. Four public comments were received during this time. In addition, ODA provided the CSI office with a revised BIA and rule on December 11, 2017.

Ohio Administrative Code (OAC) 173-39-02.11 regulates ODA-certified providers that provide in-home personal care services under the PASSPORT program. The rule outlines the definition of personal care, provider eligibility, specific requirements for agency and consumer-directed providers, and the reimbursement rates for such services. The majority of changes include several new and revised definitions, standardize the language for all services, and clarify other language. The only substantive change to the rule is a proposal to require a personal care aide (PCA)

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<sup>1</sup> Ohio Administrative Code (OAC) 173-39-02.11 is being amended to the extent that the Legislative Service Commission requires ODA to rescind the rule and replace it with a new rule of the same rule number.

supervisor to visit individuals every 60 days instead of every 62 days.

ODA engaged multiple stakeholders during the rulemaking process, including personal care providers, provider associations, a PASSPORT administrative agency, and the Ohio Association of Area Agencies on Aging (O4A). The BIA includes a table of stakeholder feedback and ODA responses prior to filing the rules with CSI. ODA received early feedback from Catholic Social Services of the Miami Valley, Home Care by Black Stone, and O4A. Commenters raised concerns about terminology, types of providers, PCA qualifications and supervision, continuing education, and the summary of ORC 121.36. ODA provided responses for each comment and noted which feedback was incorporated into the draft rule and justified the suggestions that ODA did not incorporate.

Four comments were received during the CSI public comment period pertaining to PCA qualifications, supervisor visits, and rates of payment. ODA furnished responses to each comment in the revised BIA. While ODA justifies the draft rule and answers questions, ODA ultimately did not choose to make any additional changes to the rule.

The impacted business community includes 839 ODA-certified providers of personal care, including 767 agency providers and 72 participant-directed providers. The chief impact of the rule includes requirements that all providers must ensure adequate staffing, training, and continuing education of PCAs. The rule also requires agency providers to ensure adequate staffing of qualified PCA supervisors and for participant-directed providers to utilize a financial management service (which is paid for by ODA).

The BIA justifies the rules with the need to comply with state and federal laws. In addition, the reformatting of the rule was undertaken with the intention of standardizing the rule for the sake of clarity and ease of compliance.

### **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 Ohio Department of Aging should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

CC: Emily Kaylor, Lt. Governor's Office