



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

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

**FROM:** Emily Groseclose, Senior Policy and Business Advocate

**DATE:** November 13, 2019

**RE:** **CSI Review – Older Americans Act: Home Maintenance + Chores and Home Modification (OAC 173-3-04, 173-3-06.2, and 173-3-06.3)**

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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 Agency as provided for in ORC 107.54.

#### Analysis

This rule package contains one amended and two new rules that are replacing two rescinded rules submitted by the Ohio Department of Aging (ODA). The rule package was submitted to the CSI Office on September 20, 2019 as part of the statutorily required five-year review process, and the public comment period was held open through October 3, 2019. One stakeholder provided comments during this time. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 20, 2019.

The rules establish the required content for agreements between area agencies on aging (AAAs) and providers of home and community-based services when paid with Older Americans Act funds. Providers voluntarily bid on the agreements, for which ODA pays providers an all-inclusive rate.

In general, the proposed rules are being amended to reclassify provider services to home maintenance and chores and home modification which aligns with the Older Americans Act Program and for ODA provider certification. The reclassification also aligns with the U.S.

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Department of Health and Human Services' use in the National Aging Program Information System.

OAC 173-3-04 provides the general requirements for the AAA-provider agreements and addresses purchase-of-service agreements, time-and-material agreements, retroactivity and ineligible providers. The proposed rule amends term references to reflect the proposed reclassification of provider services.

OAC 173-3-06.2 prescribes what constitutes home maintenance and chores and defines a unit of the service. If any portion of the work is paid with Older Americans Act funds, the proposed rule requires a provider agreement, licensure or accreditation if required for the service performed, written consent for services from the homeowner, and information to homeowner of potential risks and how the provider will mitigate the risks. The draft rule also requires the provider to verify each job for which it bills and report information on the services provided and allows providers to report partial hours. Material costs must be included in the hourly rate.

OAC 173-3-06.3 addresses home modifications performed by a provider for the purpose of increasing accessibility and independence at home. The draft rule defines what constitutes home modifications and defines units and details the requirements of the AAA-provider agreement. The rule also requires the provider to have the proper licensure or accreditation when necessary, provide a written cost estimate, and obtain authorization from the AAA prior to starting the job. The provider must also obtain written consent from the homeowner, obtain any permits required by law, inform the homeowner of any risks, provide a warranty on the work, obtain necessary inspections; and verify the job and report information to the AAA.

As part of early stakeholder outreach, ODA sent each AAA a survey and a follow-up survey to better understand their current practices and needs. In August 2018, ODA emailed stakeholders soliciting suggestions to improve the rules. Six AAAs responded to the surveys and one AAA and one provider responded to the email. No changes were made to the proposed rules as a result of the comments. During the CSI public comment period, the Ohio Association of Area Agencies on Aging noted a minor typographical error in the BIA and a minor grammatical error in OAC 173-3-06.2. ODA provided CSI with a corrected BIA and draft rule on October 15, 2019.

The rules impact the State's twelve AAAs (designees of ODA) and providers who have successfully bid and been awarded an AAA-provider agreement. Adverse impacts include AAAs' management of provider agreements. For providers, the adverse impacts are pre-job requirements such as obtaining consent agreements from homeowners and securing permits and post-job requirements, such as inspections and warranties. Because provider rates are all-inclusive and are intended to

cover all costs incurred in providing the job, providers who prepare an unsuccessful bid for services would be adversely impacted for their lost time and effort. ODA noted that the proposed rules are justified in order to implement the Ohio statute mandate to establish AAA-provider agreement standards and ensure the health and safety of consumers receiving services paid with Older Americans Act funds.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends that the Ohio Department of Aging should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.