



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Emily Groseclose, Deputy Director

DATE: August 25, 2021

RE: **CSI Review – Older Americans Act Nutrition Program (OAC 173-4-01, 173-4-02, 173-4-03, 173-4-04, 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-06, 173-4-07, 173-4-08, 173-4-09, 173-4-10, and 173-4-11)**

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 14 amended rules submitted by the Ohio Department of Aging (Department). The rule package was submitted to the CSI office on July 22, 2021, and the public comment period was held open through August 4, 2021. Three comments were received during that time and the Department provided its response on August 12, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with CSI on July 22, 2021.

These rules establish requirements for area agency on aging (AAA) provider agreements that are paid with Title III-C Older Americans Act funds. The Department is proposing to amend the rules to provide clarity and regulatory flexibility where possible, including updating references, adding definitions, removing regulatory restrictions, and making revisions to align with federal requirements. Amendments also extend flexibility for providers to determine eligibility for the Older Americans Act Nutrition Program or conduct certain responsibilities by phone, video conference, or in person, consistent with a previously adopted emergency rule and Executive Order 2021-09D.

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The Department also proposes several updates as a result of research conducted for the CSI regulatory reform project using an artificial intelligence software tool. These include eliminating unnecessary paperwork requirements, allowing certain electronic communications, and removing signature requirements.

As part of early stakeholder outreach, the Department solicited feedback by posting the rules on its website and sending an email to nutrition providers, the Ohio Association of Area Agencies on Aging and the state long-term care ombudsman. A request was received from an AAA to amend rules to allow eligibility determination to be conducted by phone, video conference, or in person whether or not a state of emergency exists, to which the Department replied that it intends to allow those flexibilities. Four more comments were received from providers and AAAs, some including suggestions that are already permitted in rule or not authorized by federal law. Other requests were taken into consideration and included as part of the draft rules.

The Department received three comments during the CSI public comment period, two from providers and one from an AAA. Some of the suggestions were already permitted by the current or draft rules, and some questions were posed that the Department answered. One comment drew attention to a typo affecting the ability for providers to conduct nutrition health screenings by phone or video conference, which the Department corrected. Another comment requested that providers be able to leave home-delivered meals when a consumer is not home. The Department stated that it's important for the consumer or their caregiver to be home to receive meals because they may be delivered hot, cold, or frozen, and it's necessary to ensure the integrity and safety of the food. Additionally, the Older Americans Act promotes safety/wellness checks, and the Department believes that it is important for providers to have the opportunity to check on homebound consumers.

The rules impact about 224 nutrition providers with an AAA-provider agreement. The Department noted in the BIA that adverse impacts posed by the rules are the requirements that must be complied with for every AAA-provider agreement, including general regulations found in OAC 173-3-06 and service specific requirements found in various other rules in this package, which can cover congregate or home-delivered meals, grocery shopping assistance, or nutrition counseling. Potential adverse impacts posed by the rules noted by CSI include requirements for providers to offer annual nutrition health screenings, obtain dietitian approval of menus, provide employee training, and ensure proper document completion to verify grocery assistance or meal delivery.

The Department noted in the BIA that many of the proposed amendments to these rules offer

providers regulatory relief and flexibility when delivering services. The Department stated that the rules put necessary safeguards in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds. The Department also noted that providers voluntarily bid for AAA agreements and that they may provide the same services without entering into an agreement, when paid by other funds. Additionally, the amount a provider is paid is an all-inclusive rate intended to cover all costs incurred providing the service.

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 proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.