Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Jacob Ritzenthaler, Business Advocate

DATE: October 13, 2022

RE: **CSI Review – Older Americans Act Nutrition Programs (OAC 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 consists of 12 amended rules proposed by the Ohio Department of Aging (Department). This rule package was submitted to the CSI Office on August 11, 2022, and the public comment period was held open through August 24, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 11, 2022.

Ohio Administrative Code (OAC) Chapter 173-4 establishes requirements for Area Agency on Aging (AAA) provider agreement nutrition programs funded through the Older Americans Act. In addition to other amendments, each rule in this package is amended to remove restrictive regulatory requirements. OAC 173-4-03 concerns consumer enrollment in nutrition programs. OAC 173-4-04 sets forth requirements for procurement for person direction programs and is amended to replace the term "lowest responsive bid" with "responsiveness of a bid." OAC 173-4-05 includes the requirements for nutrition programs and is amended to update language related to training. OAC 173-4-05.1, 173-4-05.2, and 173-4-05.3 establish requirements for congregate dining projects,

home-delivered meal projects, and congregate dining projects based in restaurants or grocery stores. Amendments include specification that Title II-C1 funds do not pay for regularly provided grab-and-go meals. OAC 173-4-06 concerns orders for therapeutic diets, medical food, or special dietary food from a licensed professional. OAC 173-4-07 and 173-4-08 set forth requirements for nutrition counseling and education and include amendments that allow for the verification of services without collecting the unique identifier of the caregiver during a state of emergency and to update nutrition education provision guidelines to state that it may be provided at least twice per year. OAC 173-4-09 establishes requirements for nutrition health screenings, which screen for nutritional risks and refer consumers to appropriate services. The rule is amended to update referral requirements for home and community-based services and to remove restrictions that only allow screenings to be conducted via telephone or video conference during a state of emergency. OAC 173-4-10 and 173-4-11 set forth standards for grocery shopping assistance and grocery ordering and delivery services. The rules are amended to allow flexibility during a state of emergency.

During early stakeholder outreach, the Department sent the rules to industry stakeholders for feedback. No comments were received during that time. During the CSI public comment period, the Department received comments from four stakeholders. One nutrition program provider, Mom's Meals, submitted comments that suggested allowing flexibility in delivering meals through common carriers and at times when consumers are not at home. The Department did not make changes to the rule in response to these comments, stating that part of the purpose of the program is to provide social and wellness checks for program participants, as well as noting concerns about food deliveries left unattended. The stakeholder also expressed concerns that language updates would remove flexibility from providers, to which the Department revised the relevant language to clarify that the amendments are being made only to remove regulatory restrictive language. One comment received from two AAAs suggested incorporating proposed amendments from the Administration for Community Living. The Department did not make changes based on this suggestion, stating that proposed amendments would not be incorporated until they take effect. The Ohio Academy of Nutrition & Dietetics commented that it appreciated the simplification of the rule language and did not observe any adverse impact in the amendments.

The business community impacted by the rules includes all nutrition providers that maintain provider agreements with AAAs. The adverse impacts created by the rules include the effort to provide services according to the provisions of the rules. The Department notes that providers are paid for services through bids and the payments are anticipated to cover the entire cost of service provision. The Department states that the adverse impacts are necessary to comply with statutory requirements for the provision of nutrition services and AAA provider agreements.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review