



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Michael Bender, Business Advocate

DATE: August 31, 2023

RE: **CSI Review – Older Americans Act Nutrition Program: Diet Orders (OAC 173-4-05 and 173-4-06)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of two amended rules proposed by the Ohio Department of Aging (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on July 20, 2023, and the public comment period was held open through August 2, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 20, 2023.

Ohio Administrative Code (OAC) 173-4-05 establishes requirements for what must be included in an area agency on aging (AAA)-provider agreement for a nutrition project paid, in whole or in part, with Older Americans Act (OAA) funds. The rule is amended to correct grammar, remove a reference to medical food and food for special dietary use, specify that a diet order is not required for a therapeutic diet if the consumer chooses it out of preference, and prohibit a provider from paying for any supplement with OAA funds unless the supplement is part of a meal with a therapeutic diet. OAC 173-4-06 establishes requirements with respect to every AAA-provider agreement for therapeutic diets paid, in whole or in part, with OAA funds. The rule is amended to remove references to medical

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food and food for special dietary use and allow providers to provide a therapeutic diet to a consumer without a diet order if such meal is the consumer's preference.

During early stakeholder outreach, Meals on Wheels of Southwest Ohio and Northern Kentucky, a provider, and the Council on Aging of Southwest Ohio, an AAA, reached out to CSI to raise concerns about these rules as well as an Ohio Department of Medicaid (ODM) rule regarding diet orders. The stakeholders asserted that, unlike what is seen in neighboring states, the rules required diet orders for therapeutic meals. According to the stakeholders, this caused an undue burden as diet orders could be difficult to obtain in a timely manner from physicians, leading to delays in being able to provide therapeutic meals to consumers. Following further discussion between the stakeholders, CSI the Department, and ODM, the Department determined to revise the rules to allow providers to provide a therapeutic diet to a consumer without a diet order if the meal is chosen at the consumer's preference. During the CSI public comment period, the Department received one comment from the Council on Aging of Southwest Ohio supporting the rule changes as they would offer the flexibility needed to provide home-delivered meals to their clients without unnecessary delays.

The business community impacted by the rules includes nutrition providers with an AAA-provider agreement. The adverse impacts created by the rules include ensuring that the required provisions are placed in AAA-provider agreements, determining eligibility, and offering meals. The Department notes that the costs incurred providing nutrition services should be covered by the reimbursement rate established in the AAA-provider agreement and paid by the AAA. The Department also points out that the rule revisions will reduce the regulatory burden on providers by allowing them to provide therapeutic meals to consumers who choose such meals by preference without obtaining a diet order from a licensed healthcare professional before doing so. The Department states that the adverse impacts to business are justified to fulfill statutory requirements and ensure the health and safety of older Ohioans who are consumers of services through OAA programs.

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.