



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: April 15, 2024

RE: **CSI Review – Provider Certification: Structured Family Caregiving (OAC 173-39-02.25)**

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 one new rule 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 March 19, 2024, and the public comment period was held open through April 2, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on March 19, 2024.

Ohio Administrative Code (OAC) 173-39-02.25 sets forth the requirements for becoming and remaining certified by the Department to provide structured family caregiving. The rule refers to service-specific requirements that are contained in a separate rule proposed by the Ohio Department of Medicaid (ODM) as well as to the units and rates of structured family caregiving established in rule by ODM for the PASSPORT Medicaid program.

During early stakeholder outreach, the Department emailed stakeholders on March 4, 2024, to explain that ODM and the Department proposed to offer a new service called "structured family caregiving"

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that will pay a caregiver, who may or may not be a family member, to provide personal care to an individual while living with the individual in either the caregiver's or the individual's home. The stakeholders contacted by the Department included Catholic Social Services of the Miami Valley, LeadingAge Ohio, the Ohio Academy of Senior Health Sciences, Inc., the Ohio Adult Day Healthcare Association, the Ohio Association of Area Agencies on Aging (OAAA), the Ohio Assisted Living Association (OALA), the Ohio Association of Senior Centers, the Ohio Council for Home Care and Hospice (OCHCH), the Ohio Health Care Association, Ohio Jewish Communities, and the State Long-Term Care Ombudsman (SLTCO). The Department also met with OCHCH on March 6, 2024, to discuss the rule and other proposals. The OALA wrote that it had no opposition to the proposed service-specific definition, while OAAA expressed support for the new service. The SLTCO asked how it could ensure oversight if an individual receiving structured family care or their family members are hesitant to contact case managers about a caregiver in negative situations such as neglect, abuse, or exploitation. The Department replied that it would share the comment with ODM and encouraged the SLTCO to participate in ODM's rule development process because the Department's rule will require certified providers to comply with service-specific requirements in ODM's proposed rule. During the CSI public comment period, the Department received one comment from Careforth expressing support for the rule but hoping to obtain more information on how units and rates would be addressed, particularly half-day units. The Department responded that ODM would be responsible for working out units and payment rates in its own rules.

The business community impacted by the rule includes any provider that applies for Department certification to provide structured family caregiving. The adverse impacts created by the rule include requirements to provide the Department with contact information, perform background checks, and retain records. The Department points out that certification is voluntary, but such certification allows providers to receive reimbursement through the PASSPORT Medicaid program. The PASSPORT program pays providers an all-inclusive rate for these services that is intended to cover the daily costs they incur, including employee-related costs. The Department states that the adverse impacts to business are justified to implement statutory requirements, comply with federal regulations, and ensure the health and safety of individuals enrolled in Department-administered 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 rule with the Joint Committee on Agency Rule Review.