



# 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:** September 10, 2024

**RE:** **CSI Review – Older Americans Act: Case Management (OAC 173-3-04 and 173-3-06.9)**

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 and one amended 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 July 23, 2024, and the public comment period was held open through August 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 23, 2024.

Ohio Administrative Code (OAC) 173-3-04 sets forth the general requirements for area agency on aging (AAA)-provider agreements. The rule is amended to require an AAA to comply with applicable provider requirements in OAC Chapters 173-3 or 173-4 if it directly provides a service. OAC 173-3-06.9, a new rule, establishes the requirements for agreements between AAAs and providers with respect to providing case management in the planning and service area to consumers who receive certain services that are paid in whole or in part with Older Americans Act (OAA) funds. Such services include adult day service, chores, homemaker service, personal care, and home-delivered meals. The rule also establishes the qualifications to be a case manager.

**77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117**

**[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)**

During early stakeholder outreach, the Department emailed stakeholders on February 28, 2024, to request recommendations for consideration in proposed new rules that would establish standards regarding multiple topics, including case management. Among the contacted stakeholders were 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 Assisted Living Association, the Ohio Association of Area Agencies on Aging (OAA), the Ohio Association of Medical Equipment Suppliers, the Ohio Association of Senior Centers (OASC), the Ohio Council for Home Care and Hospice (OCHCH), the Ohio Health Care Association, Ohio Jewish Communities, and the Office of the State Long-Term Care Ombudsman (SLTCO). OCHCH requested a meeting with the Department to discuss rule development but ultimately made no specific recommendations. OAA recommended that uniform language be enacted regarding services that are regulated by both OAA rules and provider certification rules. The Department replied that it would attempt to establish a reasonable level of uniformity but noted that it does not certify providers for case management. The SLTCO recommended requiring case managers to inform consumers which providers will help them and when those providers will help them rather than leaving it up to the providers to introduce themselves. The Department included requirements in the rules for case managers to develop service plans in collaboration with the consumer or caregiver to address these concerns. The SLTCO also recommended having the rules address the responsiveness of case managers to consumers' complaints and concerns about the services received. The Department replied that it would establish a process for consumers and caregivers to file grievances and included requirements in the rules for case managers to monitor service plans, resolve problems related to services, and assist consumers or caregivers with grievances. During the CSI public comment period, the Department received comments from OAA, OCHCH, the OASC, Sourcepoint, and five AAAs.

The commenters shared concerns about the effects that the new requirements would have on providing direct services to clients. They asserted that the new rule would result in significant extra costs that are not supported by current OAA funding levels, and that funding would consequently need to be diverted from the provision of direct services. Some comments also requested that certain direct services be exempt from case management. According to the Department, federal laws require the Administration for Community Living (ACL), an operating division of the United States Department of Health and Human Services, to operate the National Aging Program Information System (NAPIS) and determine uniform data collection procedures what and how to report into NAPIS. The data collected in NAPIS is used to develop state performance reports (SPRs) which ACL then shares with the U.S. Congress. ACL's design for NAPIS, SPRs, and data collection divides services into different clusters, with cluster 1 including personal care, homemaker, chore, home-delivered nutrition, adult day care/health, and case management services. ACL requires reporting on any service in cluster 1 by providing information that can only be obtained through an assessment, which is the primary case management activity. The Department cited federal regulations that require

AAAs and providers to report data for each cluster 1 service to the Department for NAPIS and SPRs, while federal law requires the Department to report this data to ACL. As a result, the Department stated that it could not remove these services from the case management requirements. Furthermore, the Department stressed that case management was crucial to determine proper eligibility for services paid for by OAA funds so that those funds are not misspent on those who do not need the services or who qualify for other programs. The Department also emphasized that federal regulations prohibit conflicts of interest where a provider of a service also provides case management to the same consumer. Lastly, the Department answered several questions requesting clarification and revised the new rule to indicate that a case manager will not be responsible for completing specific case management activities after a client stops receiving services.

The business community impacted by the rules includes every provider with an AAA-provider agreement that is paid in whole or in part with OAA funds to provide case management in Ohio. The adverse impacts created by the rules include general AAA-provider agreement standards, case management standards, federal funding standards, case manager qualifications, and reporting requirements for service verification. A provider establishes the rate it is paid by submitting a bid to an AAA for how much it will charge per unit in response to a request for proposal. If the provider's bid is selected, it is paid an all-inclusive rate by the AAA to cover all costs incurred in providing the project or service based upon the rate that it bid. The Department points out that the new requirements are either less burdensome or comparable to similar standards in neighboring states. Additionally, the Department notes that entering into an AAA-provider agreement is voluntary. The Department states that the adverse impacts to business are justified to comply with federal regulations, implement 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.