



# 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 16, 2024

**RE:** CSI Review – Provider Certification (OAC 173-39-02)

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 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 September 9, 2024, and the public comment period was held open through September 22, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on September 9, 2024.

Ohio Administrative Code 173-39-02 establishes requirements for the certification of providers. The rule is amended to clarify that a provider is prohibited from making decisions for an individual involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship, or authorized representative unless otherwise permitted under OAC 5160-44-22, which sets forth requirements for home and community-based Medicaid waiver program provider and direct care worker relationships.

During early stakeholder outreach, the Department sent the proposed rule to industry stakeholders for feedback, including Catholic Social Services of the Miami Valley, LeadingAge Ohio, the Ohio Assisted Living Association, the Ohio Adult Day Healthcare Association, the Ohio Association of Area Agencies on Aging, the Ohio Association of Medical Equipment Suppliers, the Ohio

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Association of Senior Centers, the Ohio Council for Home Care and Hospice, the Ohio Health Care Association, Ohio Jewish Communities, and the State Long-Term Care Ombudsman. During that time, the Department received two comments that stated that the stakeholders had no objections. No comments were received during the CSI public comment period.

The business community impacted by the rule includes every provider certified by the Department. The adverse impacts created by the rule include maintaining licensure as a provider and a national provider identifier, completing background checks, complying with requirements for record retention, electronic visit verification confidentiality, and person-centered planning. The Department notes that many of these requirements are created in separate rules but are necessary parts of the certification process. The rule specifically requires businesses to maintain a valid email address, phone number, and commercial liability insurance, ensure that volunteers are properly supervised, participate in provider training, and subscribe to receive rule updates. The Department notes that the amendment to the rule will reduce the regulatory burden on businesses by allowing providers with the legal authority to represent an individual to provide services to that individual as permitted by OAC 5160-44-22. The Department states that the adverse impacts created by the rule are necessary to ensure the health and safety of individuals enrolled in Department 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.