



Common Sense Initiative

Mike DeWine, Governor
Jim Tressel, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Caleb White, Business Advocate

DATE: March 28, 2025

RE: **CSI Review – PACE: Participant Eligibility and Enrollment (OAC 173-50-02 and 173-50-03)**

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 a part of the statutory five-year review process. This rule package was submitted to the CSI Office on February 13, 2025, and the public comment period was held open through February 27, 2025. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 13, 2025.

Ohio Administrative Code (OAC) 173-50-02 establishes the requirements an individual must meet to be eligible to participate in the Program of All-Inclusive Care for the Elderly (PACE). This rule is amended to align it more closely with federal rules by updating the list of Medicare and Medicaid programs an individual is not eligible for if they are enrolled in PACE, as well as eliminating duplicative language or references. OAC 173-50-03 establishes the Department as the entity that provides oversight for PACE, outlines the application, intake, enrollment, and denial processes, sets forth the process for when there is not an available spot for an applicant, details who is responsible

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for the initial comprehensive assessment and plan of care required by federal regulations, establishes the requirements for continued enrollment, and allows the applicant to be represented by an authorized representative. This rule is amended to add a reference to a federal rule and establish this rule as containing the requirements for continued enrollment in PACE.

During early stakeholder outreach, the Department shared the proposed rules with stakeholders on November 29, 2024. This list of stakeholders included BoldAge PACE, High Bridge Consulting, LeadingAge Ohio, McGregor PACE, One Senior Care PACE, and TriHealth PACE. During this period, the Department received several comments. The first set of comments came from One Senior Care. Their first suggestion was to add language from a federal rule to OAC 173-50-02. The Department did not accept this change as the rule does not establish requirements for PACE organizations and instead elected to cite the rule instead. Their next suggestion was to delete a requirement in OAC 173-50-02 for an individual enrolled in PACE to obtain Medicare services through a PACE organization as it is a condition of enrollment and not an eligibility requirement. The Department agreed to make this change and deleted this provision from the rule. Lastly, One Senior Care stated that a requirement for an individual to reside in a non-institutional setting in OAC 173-50-02 excludes those that have nursing home transitions. The Department responded to this comment by clarifying that these are conditions at the time of enrollment and since this is the case an individual could still qualify for PACE on the day they transfer to a community setting. The Department further explained that this requirement also aligns with federal rules. The next set of comments came from BoldAge. The first comment asked for language to be added to OAC 173-50-02 clarifying that an individual needs to be able to live in a community setting safely with the support of a PACE organization. The Department did not add this language but instead added a citation to a federal rule. Next, BoldAge stated that a provision in OAC 173-50-02 related to Medicaid enrollment was confusing. The Department stated that they understood the confusion but did not change the language to remain aligned with Ohio Department of Medicaid rules. Next, BoldAge asked for clarification if a certain requirement in OAC 173-50-2 was for the individual's eligibility or for a PACE organization to disenroll an individual in other programs before enrolling them in PACE. The Department clarified that PACE organizations would not need to disenroll participants from other programs. Lastly, BoldAge requested language to clarify the waiving of an annual assessment in OAC 173-50-02. The Department responded that this language is contained in a federal rule which is cited in OAC 173-50-03 and as such elected not to add the language. Additionally, the Department highlighted that both OAC 173-50-02 and OAC 173-50-03 address the topic of continued enrollment and therefore determined to delete this provision from OAC 173-50-02 and move a reference to OAC 173-50-03. No comments were received during the CSI public comment period.

The business community impacted by the rules includes all PACE organizations in the state. The adverse impacts created by the rules are documentation requirements and the required approval of the Department for a PACE organization to withdraw enrollment, intake requirements, notification

requirements, assessment requirements, the costs associated with developing a plan of care, and the procedural requirements an organization must follow when there is no slot available for a qualified applicant. The Department notes that one amendment to OAC 173-50-02 eliminates a reference to OAC 173-50-05. Removing this reference will eliminate the requirement to obtain approval from the Department to withdraw an individual's enrollment and with it the documentation requirements associated with obtaining this approval. The Department states that the adverse impacts to business are justified to establish necessary safeguards to ensure that qualified applicants are enrolled and qualified participants who want to remain in the program continue to be enrolled.

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.