

**MEMORANDUM**

TO: Tom Simmons, Ohio Department of Aging

FROM: Whitney Sullinger, Regulatory Policy Advocate

DATE: April 24, 2013

RE: **CSI Review – Long-Term Care Consumer Guide**

On behalf of Lt. Governor Mary Taylor, 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 Agency as provided for in ORC 107.54.

Analysis

The Ohio Department of Aging (ODA) submitted three amended rules to the CSI Office for review. ODA reviewed rules 173-45-06.1, 173-45-06 and 173-45-10 of the Ohio Administrative Code (OAC) as part of the five-year review process required by ORC 119.032. Because ODA's proposed amendments to rule 173-45-06.1 of would amend over 50% of the rule, ODA is proposing to rescind the current rule and to adopt a new rule of the same number.

The three amended rules relate to the Ohio Long-Term Care Consumer Guide published by the Department. According to ODA, the goal of the guide is to provide timely, comparative information about Ohio's nursing facilities and residential care facilities. The guide includes information on each facility's inspection report from the Department of Health, consumer-satisfaction data, and specialized services offered by the nursing facilities.

Rule 173-45-06.1 provides a checklist of boxes that each facility may choose to check so that Ohioans searching for facilities with certain specializations can be matched with those facilities

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claiming to offer such special services. ODA is amending this rule to include more details for each specialization listed, remove two specialized categories, and add attestation and disclaimer clauses. A requirement for nursing facilities to show documentation demonstrating how it meets the services it attested to is also being proposed.

Rule 173-45-06 is being amended to delete the section requiring ODA to publish information about waivers of space and occupancy requirements the facility receives from the Department of Health. According to ODA, since the Guide does not publish information on citations, the waiver information should not be published either.

Rule 173-45-10 regulates the customer satisfaction surveys. The amendments allow for excluding returned surveys when they are incomplete due to a resident's inability to respond to the survey questions. According to ODA, this change is needed to ensure such a survey will not skew a facility's overall score in the Guide.

ODA contacted a significant number of stakeholders on multiple occasions to seek input on the rule package. No substantive comments were received during the official comment period. The main adverse impact of the amended rules is time to complete a checklist. Although 173-45-06.1 does not require a fee, each of Ohio's 960 nursing facilities is required to pay \$650 per year to be published in the Guide. Each of Ohio's 598 residential care facilities is required to pay \$300 per year to be published in the Guide. ODA states the rules benefit the facilities that are listed in the Guide by giving them the opportunity to highlight their quality, specialized services, policies, and staffing levels. Moreover, the Department's BIA notes that the state is required by federal law to maintain a consumer web site related to all nursing and skilled nursing facilities in the state.

The CSI Office is not suggesting any changes with respect to the rule or the BIA for the following reasons:

- No substantive comments were received from the public during the public comment period.
 - Three comments were received regarding minor rewording and clarification to rule 173-45-06.1. ODA incorporated the comments and sent a revised version of the rule to the CSI Office April 17.
- The BIA submitted by ODA is accurate and complete and does not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office.

Recommendation

For the reasons explained above this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office