

**MEMORANDUM**

**TO:** Tom Simmons, Ohio Department of Aging

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** January 2, 2018

**RE:** **CSI Review – Assisted Living Program - Medicaid-Funded Component (OAC 173-38-01, 173-38-04, and 173-38-05)**

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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**

This rule package consists of three amended rules<sup>1</sup> proposed by the Ohio Department of Aging (ODA) pertaining to assisted living as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on October 26, 2017 and the public comment period was held open through November 12, 2017. No comments were received during this time.

The amended rules regulate the Medicaid-funded component of the assisted living program. Specifically the rules identify which cross-referenced rules individuals must comply with in order to become certified and paid for providing assisted living services to those enrolled in the assisted living program. Further, the rules also let individuals know what services are covered by the assisted living program. ODA wishes to make terminology changes, grammar edits, and make the requisite changes to ensure all provisions of the rules are required rather than optional. ODA

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<sup>1</sup> OAC 173-38-04 and OAC 173-38-05 are being amended to the extent that the Legislative Service Commission requires the Department to rescind the rules and replace them with new rules of the same rule numbers.

states in the BIA that the purpose of the rules is primarily informational and establishes baseline requirements for the program.

ODA explained in the BIA that it contacted numerous independent living associations, corporations, and other providers as part of its early stakeholder outreach process. During this time, ODA did not receive any suggestions or concerns from stakeholders regarding the draft rules.

No comments were received during the CSI public comment period.

The rules impact each ODA-certified provider of assisted living services in the state. ODA notes in the BIA that the definition rules, which are up for five-year review, do not explicitly contain provisions which would create an adverse impact on business, however they do cross-reference provisions that do. For example, actual requirements for certified providers are not explicitly stated in OAC 173-38-04 but that rule references the provision, ORC 173.391 which does outline specific requirements to obtain certification. CSI recognizes that the cross-referenced provisions to obtain licensure and comply with the assisted living standards may cause individuals to incur fees for licensure, continuing education, and administrative time for paperwork to ensure compliance. ODA explains in the BIA that the rules are necessary to comply with state and federal law in addition to providing uniform requirements for providers and individuals receiving care in the statewide PASSPORT program.

### **Recommendation**

For the reasons explained above, the CSI Office does not have any recommendations regarding this rule package.

### **Conclusion**

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