



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: March 13, 2020

RE: **CSI Review – PACE (OAC 173-50-01, 173-50-02, 173-50-03, 173-50-04 and 173-50-05)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) under Ohio Revised Code (ORC) section 107.54, CSI has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package contains one amended rule and four rescinded/new rules submitted by the Ohio Department of Aging (Department). The rule package was submitted to CSI on December 5, 2019 as part of the statutorily required five-year review process, and the public comment period was held open through December 19, 2019. One comment was received during this time, and the Department provided its response on February 3, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with CSI on December 5, 2019.

The rules establish the Program of All-Inclusive Care for the Elderly's (PACE) eligibility, enrollment, reassessment, and disenrollment processes. The proposed changes include the additions of a definition for "IDT" (defined as "inter-disciplinary team") and language regarding plan of care and reassessment to comply with federal requirements, reference corrections, as well as rewording and reorganization to comply with changes made to 42 CFR 460 by the Centers for Medicare and Medicaid Services. The Department also filed an update to OAC 173-50-02 with CSI on February 3, 2020 for stylistic and word preference changes.

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As part of early stakeholder outreach, the Department reached out to McGregor PACE, which it noted is currently the only PACE organization in Ohio. McGregor PACE requested clarification that the PACE organization's inter-disciplinary team does not need to conduct the comprehensive in-person assessment while a person is applying for PACE. Additionally, McGregor PACE noted that language regarding a participant's rights to file a grievance when being disenrolled for failure to pay premiums should not have been included because federal requirements allow for reinstatement with no break in coverage if the participant pays the premium before the effective date of disenrollment. In both cases, the Department agreed and made the requested changes to the rules.

One comment was received during the CSI public comment period. The commenter noted that her remarks were not directly related to the draft rules as she did not read them, but were intended to express concerns about the PACE organization's control over participants and perceived lack of concern for their health care needs. Due to these concerns, the commenter felt as though there should be rules in place to protect participant rights. In response, the Department stated that while the commenter did not comment on the rules, the Department is working to resolve the commenter's grievance with the PACE organization.

The rules impact PACE organizations, requiring them to conduct comprehensive assessments of each applicant, enroll eligible applicants, develop a plan of care for each participant, and reassess each participant at least semiannually. A PACE organization is also required to forward any voluntary disenrollment forms completed by a participant to the Department, submit documentation to the Department regarding a participant slated for involuntary disenrollment, and provide the medical records of a disenrolling participant to the participant's new providers. The Department also stated that involuntary disenrollment could decrease the revenue of the PACE organization.

The Department asserted that the rules are necessary to ensure that only qualified applicants are enrolled, and that participants who no longer wish to participate or who no longer qualify are disenrolled. The Department also noted that the rules implement recent amendments to federal requirements.

Recommendations

For the reasons described above, the CSI office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI office recommends that the Ohio Department of Aging should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.