Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Tom Simmons, Ohio Department of Aging

FROM: Jacob Ritzenthaler, Business Advocate

DATE: October 5, 2021

RE: **CSI Review – Older Americans Act Programs (OAC 173-3-01, 173-3-04, 173-3-05, 173-3-05.1, 173-3-06, 173-3-06.1, 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, 173-3-06.6, and 173-3-09)**

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 Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 12 amended rules proposed by the Ohio Department of Aging (Department). This rule package was submitted to the CSI Office on August 4, 2021, and the public comment period was held open through August 17, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 4, 2021.

Ohio Administrative Code (OAC) Chapter 173-3 establishes requirements for area agency on aging (AAA) provider agreements that are funded through the Older Americans Act. OAC 173-3-01 lists the definitions used throughout the chapter and OAC Chapter 173-4. The rule is amended to update the list of definitions to comply with nursing statutes. OAC 173-3-04 sets forth provider requirements for AAA providers and is amended to remove references to written forms. OAC 173-3-05 and 173-3-05.1 establish procurement standards, including requirements for authorizing non-competitive and renewable procurement processes. The rules are amended to remove requirements for written requests for authorization and to allow for electronic submission. OAC 173-3-06

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describes the applicable state and federal requirements that are to be included in every AAA-provider agreement, including safety measures, provider qualification, and payments. The rule is amended to update the list of federal requirements. OAC 173-3-06.1, 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, and 173-3-06.6 concern the provision of adult day services, home maintenance and chores, home modification, homemaker services, personal care, and transportation. These rules are amended to allow for electronic means of communication and to amend requirements that allow visits or similar services to be conducted remotely during both a state of emergency declared by the governor or a federal public health emergency. OAC 173-3-06.1 also includes amendments that remove duplicative requirements, update continuing education requirements for training completed within a calendar year, and create a new pathway for an individual to qualify to be an activity director in an adult day center if they qualify to be an activity director in a residential care facility. OAC 173-3-09 establishes the procedures for administrative hearings for adversely affected providers and is amended to allow for electronic methods of requesting hearings, transmitting testimony and evidence, and delivering hearing decisions.

Many of these changes were made as a result of research conducted for the CSI regulatory reform project using an artificial intelligence software tool. As noted in the BIA, the Department proposes to eliminate instances where the language implies certain activities must be carried out using paper only and instead add options for electronic communications.

During early stakeholder outreach, the Department sent the rules to industry stakeholders for feedback, including service providers and health care associations. Recommendations from stakeholders included reducing the number of PCA supervisor visits less often than the currently required once every 60 days and allow AAAs to maintain an electronic appeals process for providers. No changes were made as a result of these requests. Other concerns raised were addressed by the Department explaining in several instances that the updated rules already allow what they requested. No comments were received during the CSI public comment period.

The business community impacted by the rules includes all providers with an AAA-provider agreement. The rules require providers to make specific expenditures or report certain information as a condition of compliance. However, the Department noted that the rules in this package will extend relief from certain regulations and provide flexibility. The Department also noted that providers voluntarily bid for AAA agreements and that they may provide the same services without entering into an agreement, when paid by other funds. Additionally, the amount a provider is paid is an all-inclusive rate intended to cover all costs incurred providing the service.

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.