



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Tyler Herrmann, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 15, 2024

RE: **CSI Review – Reporting Requirements for Diagnosis and Treatment of Gender-Related Conditions (OAC 3701-3-17)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on January 24, 2024, and the public comment period was held open through February 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on January 24, 2024.

Ohio Administrative Code (OAC) 3701-3-17 requires health care providers to report information to ODH about the diagnosis and treatment of gender-related conditions. The rule also requires ODH to share aggregate data collected from the aforementioned information with the Ohio General Assembly on or before January 31st and July 31st of each calendar year.

During early stakeholder outreach, ODH staff met with hospitals and physicians who provided care for gender-related conditions, children who received such care, and the parents of those children. In addition, ODH utilized the medical expertise of its own physicians when developing the rule. During the CSI public comment period, ODH received approximately 3,900 comments. In response to

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concerns about privacy, ODH adjusted the rule to clarify that the collected data will not identify individual patients.

The business community impacted by the rule includes health care providers. The adverse impacts created by the rule include the time necessary to report information and penalties for noncompliance. ODH states that the adverse impact to business is justified to preserve the life and health of Ohioans, particularly children.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.



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MEMORANDUM

TO: Tyler Herrmann, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 15, 2024

RE: **CSI Review – Hospital Quality Standards for Gender Reassignment Surgery and Genital Gender Reassignment Surgery for Minors (OAC 3701-59-06)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on January 24, 2024, and the public comment period was held open through February 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on January 24, 2024.

Ohio Administrative Code (OAC) 3701-59-06 prohibits hospitals from providing gender reassignment surgery, genital gender reassignment surgery, or any direct or indirect referral for such procedures for such procedures to any minor individual with certain exceptions.

During early stakeholder outreach, ODH staff met with hospitals and physicians who provided care for gender-related conditions, children who received such care, and the parents of those children. In addition, ODH utilized the medical expertise of its own physicians when developing the rule. During the CSI public comment period, ODH received approximately 3,900 comments addressing several related rule packages submitted to CSI. After reviewing the comments, ODH made changes to related

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rule packages. ODH also determined to reorganize the rule by reformatting the provisions of this rule, which were originally incorporated as part of another rule, into their own, distinct rule.

The business community impacted by the rule includes hospitals. The adverse impacts created by the rule include prohibitions on performing gender reassignment surgeries or genital gender reassignment surgeries on minor individuals and penalties for noncompliance. ODH states that the adverse impacts to business are justified to preserve the life and health of Ohioans, particularly children.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.



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MEMORANDUM

TO: Tyler Herrmann, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 15, 2024

RE: **CSI Review – Quality Standards for Gender Transition Treatment at Hospitals (OAC 3701-59-07)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on January 24, 2024, and the public comment period was held open through February 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on January 24, 2024.

Ohio Administrative Code (OAC) 3701-59-07 establishes the quality standards for gender transition treatment at hospitals, which include children’s hospitals. Hospitals may not provide to minor individuals any pharmacologic treatment such as the prescription of drugs or hormones for the purpose of treating a gender-related condition or assisting with gender transition except under such standards. The standards include, but are not limited to, employing or having available for referral a mental health care professional, employing or having available for referral a medical specialty board-certified endocrinologist, and maintaining a multi-disciplinary care plan that contains certain information. The rule prohibits hospitals from providing these services to a minor individual unless the individual first receives comprehensive mental health counseling and evaluation over a period of

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at least six months by a mental health professional.

During early stakeholder outreach, ODH staff met with hospitals and physicians who provided care for gender-related conditions, children who received such care, and the parents of those children. In addition, ODH utilized the medical expertise of its own physicians when developing the rule. During the CSI public comment period, ODH received approximately 3,900 comments addressing several related rule packages submitted to CSI. After reviewing the comments, ODH revised the rule to apply solely to care for minor individuals. Additional concerns were raised about the limited availability of certain medical specialties. ODH responded by expanding and modifying the options for mental health professionals included in the required multi-disciplinary care team. Lastly, some commenters were confused about the review of care plans by a medical ethicist. To alleviate confusion and after receiving assurances from healthcare leaders that institutions already appropriately engage medical ethics professionals in this type of care, ODH removed this requirement from the rule.

The business community impacted by the rule includes hospitals. The adverse impacts created by the rule include the costs associated with complying with the quality standards, employing or contracting with certain health care professionals, maintaining a care plan, and penalties for noncompliance. ODH states that the adverse impacts to business are justified to preserve the life and health of Ohioans, particularly children.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.



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MEMORANDUM

TO: Tyler Herrmann, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 15, 2024

RE: **CSI Review – Health Care Facility Quality Standards for Gender Reassignment Surgery and Genital Gender Reassignment Surgery for Minors (OAC 3701-83-60)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on January 24, 2024, and the public comment period was held open through February 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on January 24, 2024.

Ohio Administrative Code (OAC) 3701-83-60 prohibits health care facilities from providing gender reassignment surgery, genital gender reassignment surgery, or any direct or indirect referral for such procedures for such procedures to any minor individual, with certain exceptions.

During early stakeholder outreach, ODH staff met with hospitals and physicians who provided care for gender-related conditions, children who received such care, and the parents of those children. In addition, ODH utilized the medical expertise of its own physicians when developing the rule. During the CSI public comment period, ODH received approximately 3,900 comments addressing several related rule packages submitted to CSI. After reviewing the comments, ODH made changes to related

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rule packages. ODH also determined to reorganize the rule by reformatting the provisions of this rule, which were originally incorporated as part of another rule, into their own, distinct rule.

The business community impacted by the rule includes health care facilities. The adverse impacts created by the rule include prohibitions on performing gender reassignment surgeries or genital gender reassignment surgeries on minor individuals and penalties for noncompliance. ODH states that the adverse impacts to business are justified to preserve the life and health of Ohioans, particularly children.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.



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MEMORANDUM

TO: Tyler Herrmann, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 15, 2024

RE: **CSI Review – Quality Standards for Gender Transition Treatment at Health Care Facilities (OAC 3701-83-61)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on January 24, 2024, and the public comment period was held open through February 5, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on January 24, 2024.

Ohio Administrative Code (OAC) 3701-59-07 establishes the quality standards for gender transition treatment at health care facilities, which include ambulatory surgical facilities, freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers. Health care facilities may not provide to minor individuals any pharmacologic treatment such as the prescription of drugs or hormones for the purpose of treating a gender-related condition or assisting with gender transition except under such standards. The standards include, but are not limited to, employing or having available for referral a mental health care professional, employing or having available for referral a medical specialty board-certified endocrinologist, and maintaining a multi-disciplinary care

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plan that contains certain information. The rule prohibits health care facilities from providing these services to a minor individual unless the individual first receives comprehensive mental health counseling and evaluation over a period of at least six months by a mental health professional.

During early stakeholder outreach, ODH staff met with hospitals and physicians who provided care for gender-related conditions, children who received such care, and the parents of those children. In addition, ODH utilized the medical expertise of its own physicians when developing the rule. During the CSI public comment period, ODH received approximately 3,900 comments addressing several related rule packages submitted to CSI. After reviewing the comments, ODH revised the rule to apply solely to care for minor individuals. Additional concerns were raised about the limited availability of certain medical specialties. ODH responded by expanding and modifying the options for mental health professionals included in the required multi-disciplinary care team. Lastly, some commenters were confused about the review of care plans by a medical ethicist. To alleviate confusion and after receiving assurances from healthcare leaders that institutions already appropriately engage medical ethics professionals in this type of care, ODH removed this requirement from the rule.

The business community impacted by the rule includes health care facilities. The adverse impacts created by the rule includes the costs associated with complying with the quality standards, prohibitions on performing gender reassignment surgeries or genital gender reassignment surgeries on minor individuals, employing or contracting with certain health care professionals, maintaining a care plan, and penalties for noncompliance. ODH states that the adverse impacts to business are justified to preserve the life and health of Ohioans, particularly children.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODH should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.