

Rule Summary and Fiscal Analysis (Part A)**Department of Health**

Agency Name

Division

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3701-64-02

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Investigations of abuse and neglect of residents or misappropriation of property; notice of hearing rights.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **3721.26**
5. Statute(s) the rule, as filed, amplifies or implements: **3721.23**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODH is proposing this rule as part of the five year rule review require by section 119.04 of the Revised Code.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule sets forth the requirements for ODH to conduct investigations of allegations of abuse or neglect, requirements for the content of a notice, and the hearing rights of an accused.

Amendments have been made to: (1) change references to the Division of Quality Assurance to the Office of Health Assurance and Licensing; (2) allow ODH to provide written notice to entities associated with an individual (e.g., another nursing home); (3) clarify language requiring mailing of notice of allegations and the right to a hearing; (4) remove the requirements that ODH publish a notice one time per week in a local paper when service has failed, instead requiring posting of a notice on the ODH website for 21 consecutive days.

Minor technical amendments have also been made to conform to the Legislative Services Commission's rule drafting standards.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule references the Ohio Revised and Administrative Codes; the O.R.C. and O.A.C. are generally available in libraries and on the internet to persons who reasonably can be expected to be affected by the rule.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

The cited materials are exempted from inclusion in this filing pursuant to R.C. 121.76.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date: **1/5/2016**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0,00

The proposed amendment eliminates duplicative and often wasteful attempts to contact an individual through multiple mailings and publication of notices in newspapers. Under the proposed rule, when delivery to a last known address fails due to failure to deliver (e.g., the individual no longer resides there), ODH may now publish a notice to the website rather than incur expenses related to publication in a newspaper.

The current notice requirement costs approximately \$55* for publishing in a newspaper; however, ODH has not needed to publish a notice for several years. ODH estimates that publishing would be required 15 times per year, for a total of \$825.00. Publishing to the website would potentially decrease ODH expenditures by the same amount.

*figures from The Daily Reporter @ \$0.96 per line, 10-15 lines (estimated).

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Not applicable

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

While this rule does not require a license, all long-term care facilities and residential care facilities required to report allegations of abuse, neglect or misappropriation are required to be licensed in accordance with Chapter 3721. of the Revised Code.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

While this rule does not set forth any sanctions for non-compliance, violations of some requirements of Chapter 3701-64 of the Administrative Code may bring about both criminal and civil penalties. This rule requires ODH to provide an accused with notice of potential penalties.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

This rule requires the reporting of allegations of abuse, neglect or misappropriation by both long-term care facilities and residential care facilities.