

NOTICE OF PUBLIC RULES HEARING

DATE: Thursday, December 6, 2018
TIME: 11:00 a.m.
LOCATION: Ohio Department of Health
35 E. Chestnut Street
Columbus, Ohio 43215
ROOM: ODH Basement Training Room A

In accordance with *Chapter 119* of the Revised Code (R.C.), the Director of the Ohio Department of Health announces a Public Hearing at the date and time listed above to hear comments regarding the following action:

O.A.C. Rule 3701:1-38-04 – Radiation Generating-Equipment Inspection Schedule and Inspection Fee.

Pursuant to *R.C. 3748.02 and 3748.04* to satisfy five-year review requirements, the Director proposes no changes to the following rules. The Director proposes to satisfy the five-year review requirement of *O.A.C. Rule 3701:1-38-04* (“*Generating-Equipment Inspection Schedule and Inspection Fee*”). This regulation provides the inspection schedules for facilities with radiation-generating equipment, and inspection fees for hospitals and non-medical facilities with radiation-generating equipment. These fees support the efforts of the Radiation Protection Program to enforce the regulations that ensure radiation safety and protection to members of the public. While the federal government does not require the State of Ohio to regulate medical radiation-generating equipment, given the potential health and safety issues, Ohio law *R.C. 3748.04* does require the Ohio Department of Health, as the radiation control agency *R.C. 3738.02*, to set forth the requirements governing the registration and inspection of entities using radiation-generating equipment. This inspection schedule and fee regulation supports the efforts of the Radiation Protection Program to enforce regulations that ensure the proper operation and functioning of radiation-generating equipment for controlled delivery of radiation to patients for diagnosing and treatment of disease and injury. This includes radiation safety measures to protect operator, staff and members of the public from unnecessary radiation to reduce the likelihood of radiation induced health effects and injury.

Ohio Revised Code (O.A.C.) Chapter 3701-64 – Abuse or Neglect in Long-Term Care Facilities.

Pursuant to *R.C. 3721.26*, the Director proposes to amend the following rules. The Director proposes to amend five rules contained in this rule package *O.A.C. Rule 3701-64* (“*Abuse or Neglect in Long-Term Care Facilities*”). The rules in this package set forth requirements for investigations into allegations of abuse or neglect of long-term care facility residents. The rules include requirements for investigations, as well as procedures for hearings and the presentation of the findings of investigations. *O.A.C. Rule 3701-64-01* (“*Definitions*”) defines the terms used throughout the Chapter and is being amended to clarify current definitions and add new terms. *O.A.C. Rule 3701-64-02* (“*Investigations of abuse and neglect of residents or misappropriation of property; notice of hearing rights*”) sets forth requirements for ODH to investigate

allegations of abuse, neglect, and exploitation of residents of long-term care or residential care facilities. The rule is being amended to ensure that facilities do not perform prohibited actions while knowing that an investigation is in progress or imminent. These actions include refusing entry to the Director of ODH, refusal to allow the Director to interview employees or review records and destroying records. *O.A.C. Rule 3701-64-03* (“*Request for hearing; scheduling hearing*”) and *O.A.C. Rule 3701-64-04* (“*Hearing Procedure*”) establish the procedure for hearings and are amended to add terms newly included in *O.A.C. Rule 3701-64-01*. *O.A.C. Rule 3701-64-05* (“*Findings of director; petition to remove a finding of neglect from the nurse aide registry*”) sets forth the requirements following the results of an investigation and is being amended to include newly amended terms. Collectively, these rules serve to protect the health and safety of residents in Ohio’s long-term care settings by requiring the report of allegations of abuse, neglect, or misappropriation to the Ohio Department of Health for investigation.

Ohio Revised Code (O.A.C.) Rules 3701-19-30 – 3701-19-52 – Hospice Care Programs.

Pursuant to *R.C. 3712.031, 3712.041, 3712.051* and *3712.061* and to satisfy five-year review requirements, the Director proposes no change to the following rules. These Ohio Revised Code Sections require the Ohio Department of Health to license and regulate pediatric respite care programs in Ohio. A pediatric respite care program is defined as: A program operated by a person or public agency that provides inpatient respite care and related service, including all of the following services, only to pediatric respite care patients and pediatric respite care patients’ families, in order to meet the physical, psychological, spiritual, and other special needs that are experienced during or leading up to the final stages of illness, dying, and bereavement: Short-term inpatient care, including both palliative and respite care and procedures; Nursing care by or under the supervision of a registered nurse; Physicians’ services; Medical social services by a social worker under the director of a physician; Medical supplies, including drugs and biologicals, and the use of medical appliances; Counseling for pediatric respite care patients and pediatric respite care patients’ families; Bereavement services for respite care patients’ families. The Director proposes to satisfy the five-year review requirement of *O.A.C. Rules 3701-19-30 – 3701-19-52* (“*Hospice Care Programs.*”) *O.A.C. Rule 3701-19-30* (“*Definitions*”) sets forth the definitions for use throughout the Chapter including, but not limited to, “inpatient pediatric respite care facility,” “respite care,” and “short term”. *O.A.C. Rule 3701-19-31* (“*Applicability of licensure requirements*”) sets forth the requirements pertaining to the applicability of licensure requirements for pediatric respite care programs. The rule requires every person or public agency that proposes to provide a pediatric respite care program to apply to the director for a license. Exceptions are set forth for various health care facilities and services including, but not limited to, hospitals, home health agencies, and residential facilities licensed by the Ohio Department of Developmental Disabilities. *O.A.C. Rule 3701-19-32* (“*License application, amended license, and renewal procedures*”) sets forth the license application and fee requirements for initial, renewal, and change of ownership. These requirements include, but are not limited to, an application on a form prescribed by the director, a fee of \$600 for initial and renewal applications, \$200 for change of ownership, \$600 for an amended license to increase patient rooms involving a facility renovation, and \$200 for an amended license to increase patient rooms without a renovation. The rule also requires documentation of the types of services that will be provided by the pediatric respite care program and notification of the director of any changes that may affect the license. *O.A.C. Rule 3701-19-33* (“*Issuance, denial, transfer, and revocation of a license*”) sets forth the requirements for the issuance, denial, transfer, or revocation of a license. The rule requires the director to grant or deny a license within thirty days of receipt of all information necessary to determine compliance with *O.R.C. Section 3712.* and *OAC Chapter 3701-19*; requests to transfer a license must be made within

ninety days of a license expiration date or ninety days of the proposed transfer or relocations and include a new license application and fee of \$600. The rule allows the director to revoke a license if a pediatric respite care program fails to comply with statutory and rule requirements. Licenses are valid for three years. *O.A.C. Rule 3701-19-34 (“Inspections”)* sets forth the requirements pertaining to inspections. The rule requires pediatric respite care programs to be inspected prior to the issuance of a license and to be subject to periodic inspections to maintain their license and as a result of complaints. The fees for inspections are as follows: Licensure inspection: \$1675; Complaint inspection: \$850; Amended license inspection for an increase in patient rooms: \$850; Follow-up inspection: \$350; and Desk audit/compliance review: \$250. *O.A.C. Rule 3701-19-35 (“Compliance actions and operating without a license”)* sets forth the actions that may be taken against a program for operating without a license. The rule gives the director the authority to petition the court of common pleas for an injunction against a program operating without a license. *O.A.C. Rule 3701-19-36 (“General requirements for pediatric respite care programs”)* sets forth the general requirements for pediatric respite care programs. These include, but are not limited to, establishing an interdisciplinary plan of care for every patient, ensuring that care is available twenty-four hours a day at the facility, and maintaining a clinical record for every patient. *O.A.C. Rule 3701-19-37 (“Governing body; quality assessment and performance improvement”)* sets forth the requirements for a governing body and a quality assessment and performance improvement program for each pediatric respite care program. These requirements include, but are not limited to, the governing body must arrange for a physician medical director for the pediatric respite care program; establish policies for the management, operation, and evaluation of the pediatric respite care program; and conduct an ongoing quality assessment program. *O.A.C. Rule 3701-19-38 (“General requirements for pediatric respite care program personnel”)* sets forth the general requirements for pediatric respite care program personnel. These requirements include, but are not limited to, providing personnel with a job description and orientation; ensuring personnel act within the scope of their license, and that all personnel, including volunteers and contracted staff, are subject to a criminal records check as required by *ORC Section 3712.09*. *O.A.C. Rule 3701-19-39 (“Medical director”)* sets forth the requirements for the medical director of a pediatric respite care program. These requirements include, but are not limited to, the medical director reviewing patient eligibility for services, ensuring the continuity of medical services, and participation in interdisciplinary teams. *O.A.C. Rule 3701-19-40 (“Interdisciplinary team and interdisciplinary plan of care”)* sets forth the requirements pertaining to interdisciplinary plans of care and interdisciplinary teams. Each pediatric respite care program shall have an interdisciplinary team or teams that provides or supervises the provision of pediatric respite care and services coordinated by a registered nurse who is part of the team. An interdisciplinary plan of care must be written for each patient that must be reviewed periodically by the patient’s attending physician or the program medical director and must include a statement indicating the expected frequency of admission to the pediatric respite care program facility; this statement shall be reviewed and revised if necessary upon each admission. *O.A.C. Rule 3701-19-41 (“Contracted services”)* sets forth the requirements pertaining to the provision of a component or components of the pediatric respite care program by written contract with another entity. These requirements include, but are not limited to, the pediatric respite care program must provide the contractor with a copy of the patient’s interdisciplinary plan of care; all care must be in compliance with the interdisciplinary plan of care; and all services provided by the contractor must be documented in the pediatric respite care patient’s clinical record. *O.A.C. Rule 3701-19-42 (“Volunteers”)* sets forth the requirements pertaining to volunteers for pediatric respite care programs. Pediatric respite care programs may choose to have volunteers provide services; if volunteers are allowed, the program must provide the volunteers with an orientation and training, conduct a criminal records background check, and ensure that volunteers are supervised by appropriately qualified program staff. *O.A.C. Rule 3701-19-43 (“Nursing*

services”) sets forth the requirement for nursing services in pediatric respite care program facilities. These requirements include, but are not limited to, staffing nursing services to meet the needs of all patients and supervision and oversight by a registered nurse. *O.A.C. Rule 3701-19-44 (“Medical social services”)* sets forth the requirements for medical social services in pediatric respite care program facilities. Medical social services must be provided by a social worker in a timely manner in accordance with the pediatric respite care programs policies. *O.A.C. Rule 3701-19-45 (“Medical Services”)* sets forth the requirements for medical services in pediatric respite care program facilities. Patient’s may utilize their own physician or designate the program’s medical director as their attending physician while a residing in the program’s facility. The program must provide for or coordinate the palliation and management of life-threatening disease or condition and related conditions while the patient is a resident in their program and all medical orders for treatment, procedures, tests, and medications must be signed by a physician or an advanced practice nurse, who is acting within his or her scope of practice. *O.A.C. Rule 3701-19-46 (“Counseling and bereavement service”)* sets forth the requirements pertaining to counseling and bereavement services. Upon request, a pediatric respite care program shall make available counseling services to the pediatric respite patient and the pediatric respite patient's family including dietary, spiritual, bereavement and any other necessary counseling services while the patient is a resident in the pediatric respite care program. *O.A.C. Rule 3701-19-47 (“Admission of patients to pediatric respite care”)* sets forth the requirements pertaining to the admission of patients to a pediatric respite care program. These requirements include, but are not limited to, admission of only those patients meeting the definition of a pediatric respite care patient; obtaining an informed consent from each patient or patient’s representative prior to admission explaining the nature of the program’s care; and obtaining confirmation of the patient’s life-threatening disease or condition from the patient’s physician or the medical director. *O.A.C. Rule 3701-19-48 (“Standards for pediatric respite care program facilities”)* sets forth the specific requirements for pediatric respite care program facilities. These requirements include, but are not limited to, private rooms, a home like environment, and meeting all applicable Ohio building and occupancy codes for the facility type. *O.A.C. Rule 3701-19-49 (“Twenty-four-hour nursing services in pediatric respite care program facilities”)* sets forth the requirement for twenty-four hour a day, seven days a week nursing services in pediatric respite care program facilities sufficient to meet the needs of all patients in the facility. *O.A.C. Rule 3701-19-50 (“Clinical record”)* sets forth the requirement for each pediatric respite care program to maintain a clinical record for each patient. These requirements include, but are not limited to, inclusion of the interdisciplinary plan of care; notes from all services provided by the program and contractors, as well as those provided under agreement with a patient’s contracted providers; and to maintain records to ensure confidentiality, protect from theft, damage, or destruction. *O.A.C. Rule 3701-19-51 (“Medical Supplies, drugs, biologicals, and medical appliances”)* sets forth the requirements pertaining to medical supplies, appliances, drugs, and biologicals to pediatric respite patients. The rule allows for patients to bring in their own medications and supplies for use will a resident of the pediatric respite care program or the program to supply those items. All medications and treatments must be administered by the appropriate staff member acting within their scope of practice. *O.A.C. Rule 3701-19-52 (“Variances; waivers”)* sets forth the requirements for applying for a variance or waiver from any of the pediatric respite care program rules. The rule allows the director to grant variances or waivers if he determines: that the requirement has been met in an alternative manner, that the strict application of the requirement would result in undue hardship, and that the granting of the waiver or variance would not jeopardize the health or safety of any patient

Hearing and Contact Information:

At the hearing, people affected by the proposed action may appear and be heard in person or accompanied by an attorney. They may present their positions, arguments, or contentions orally or in writing; may offer witnesses; and may present evidence showing that the proposed rule, if adopted or effectuated, will be unreasonable or unlawful.

To aid in getting visitors through building security, any persons intending to testify at the hearing or planning to observe are encouraged to pre-register by writing to the Office of the General Counsel, Ohio Department of Health, 246 North High Street, 7th Floor, Columbus, Ohio 43215, or by phone to (614) 466-4882, or send an e-mail to odhrules@odh.ohio.gov.

Copies of the proposed rule will be available on the Register of Ohio website: <http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/searchRuleNumber.jsp> approximately a half day after the rule is filed, or from the Office of the General Counsel, Ohio Department of Health (<https://www.odh.ohio.gov/rules/drafts/drafts.aspx>).

Please e-mail any written comments to ODHrules@odh.ohio.gov by 5:00 p.m. on December 5, 2018.

10/29/2018