

CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: Kaye Norton, Ohio Department of Health

FROM: Whitney Sullinger, Regulatory Policy Advocate

DATE: April 19, 2012

RE: CSI Review – ODH 3701-61 Resident Transfer and Discharge

On behalf of Lt. Governor Mary Taylor, 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. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The rules submitted (Ohio Administrative Code Chapter 3701-61) consist of six rules that were reviewed as required by the 5-year rule review process and one new rule. Amendments were made as follows to 3701-61-01 (sets forth definitions for the terms “distinct part,” “dually certified part,” “resident transfer,” and “room change”) and to 3701-61-02 and 3701-61-04 (corrects citation to rule 3701-61-3). No changes were made to rules 3701-61-05 to 3701-61-07. Rule 3701-61-03 is currently undergoing revisions due to recent legislative changes and is not part of this review. Proposed new rule 3701-61-08 sets forth notice requirements when a facility proposes a room change.

The proposed rules are the result of collaboration between the Governor's Office of Health Transformation (OHT), Ohio Department of Health (ODH), and stakeholders. OHT handled stakeholder input for this rule package via a subcommittee of the Unified Long-Term Care System Advisory Workgroup created in House 153 of the 129th General Assembly. Meetings were held from early 2011 until late summer with representatives from the Ohio Health Care Association, The Academy of Senior Health Sciences, and LeadingAge; and the subcommittee ultimately produced a report dated September 1, 2011, which recommended the changes included in these draft rules.

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In its Business Impact Analysis (BIA), ODH notes there are approximately 1,500 nursing homes and residential care facilities that are impacted by this rule. According to ODH, the highest cost of compliance is associated with preparing and providing notice to residents and resident sponsors. ODH estimates that less than an hour is required for compliance and cost \$15.37-\$32.16 per hour, according to the United States Department of Labor. ODH notes that attorney fees may also be incurred, when a facility attends a hearing or an appeal and hires an attorney, at an average cost of \$53.27/hr. for approximately five hours.

After reviewing the BIA, the CSI Office has determined not to suggest any changes with respect to the rule or the BIA for the following reasons:

- One comment was received from the public during the public comment period and was addressed by OHT/ODH.
- The BIA submitted by ODH was accurate and complete and did not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impact identified in the BIA.

Recommendations

For the reasons explained above this office does not have any recommendations regarding this rule change.

Conclusion

Based on the above comments, the CSI Office concludes that the Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Monica Juenger, Governor's Office of Health Transformation
Mark Hamlin, Lt. Governor's Office