

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Health

Regulation/Package Title: Nursing Home Personnel Requirements

Rule Number(s): 3701-17-08

Date: September 7, 2012, UPDATED November 13, 2012

**Rule Type:**

☐ New

☐ 5-Year Review

☒ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

This rule has been amended to reflect statutory changes in HB 487 that prohibits ODH from requiring a nursing home with 120 beds or fewer to have a social worker, while still requiring each nursing home to offer its residents medically related social services that assist the residents

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

3721.04

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

This rule implements the statutory requirement set forth in section 3721.04 of the Revised Code, which limits ODH's authority to require a social worker in nursing homes with 120 beds or fewer, while still requiring each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Successful outcomes are measured through a standard survey (inspection) process. This process is generally conducted once every fifteen months. Successful outcomes would be indicated by a finding of compliance with rule 3701-17-08 requirements. Further evidence of success would be represented by the number of complaints received and the number of validated complaint surveys.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

As the sole amendment is to track new statutory language, stakeholders were not contacted prior to or during the development of this rule.

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- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Not applicable.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

ODH did not consider any alternatives to the proposed regulation. ODH is required to implement section 3721.04 of the Revised Code. The rule reflects the current statutory requirement.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

A performance based regulation was not deemed appropriate for this standard and not authorized by statute.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place regarding personnel requirements in nursing homes.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

An on-site survey may be initiated to determine compliance with this rule. The survey will be done by health care facility program staff using a standard survey tool. This staff will have been trained in the survey process, including understanding of the regulation.

#### **Adverse Impact to Business**

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**

The impacted business community consists of licensed nursing homes. As of September 4, 2012, there are 934 licensed nursing homes in Ohio.

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**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The adverse impact of rule 3701-17-08 is the cost for staff. However, it should be noted that this rule is much less costly for a nursing home with 120 beds or less to implement than without the proposed amendment.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The adverse impact of the amendment is the cost of staff. In this case, homes with less than 120 beds will be able to replace a social worker with social services staff, with the ensuing savings.

- Social Worker:
  - \$22.85 per hour (\$47,530 per year)
- Social Service Staff:
  - \$13.84 per hour (\$28,790 per year)

Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2011, using the codes for Healthcare Social Worker (21-1022), Social and Human Service Assistants (21-1093).

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Section 3721.04 requires ODH to establish rules, for nursing homes, to include the qualifications of personnel. This rule establishes those requirements relating to the provision of social services.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Yes. Nursing homes with 120 beds or fewer do not need to employ a full-time social worker.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The waiver of penalties and fines for first-time paperwork offenses set forth in section 119.14 of the Ohio Revised Code will not be applied to the substantive statutory requirement for providing nursing home residents with appropriate social services, including the requirements for a full-time social worker for homes with 121 beds or greater. Failure to provide necessary social services to nursing home residents represents a significant potential for serious harm to nursing home residents and the public interest. As authorized by the applicable state laws and rules governing the specific licensee, ODH may take appropriate action against a provider that violates the requirements of Chapter 3701-17 of the Administrative Code and the Chapter 3721. of the Revised Code.

**18. What resources are available to assist small businesses with compliance of the regulation?**

The agency maintains program staff that can assist and provide guidance to licensee to improve their survey outcomes and maintain compliance through the Bureau Long Term Care Quality:

<http://www.odh.ohio.gov/odhprograms/ltc/nurhome/nurhome1.aspx>.