

**MEMORANDUM**

TO: Kaye Norton, Ohio Department of Health

FROM: Sydney King, Regulatory Policy Advocate

DATE: August 18, 2014

RE: **CSI Review – Nursing Homes (OAC 3701-07, 3701-17-10, 3701-17-11, and 3701-17-22)**

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 (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of four amended rules being proposed by the Ohio Department of Health (ODH) related to nursing homes. Rule 3701-17-06 was initially included in the review but ODH notified CSI that additional amendments to the rule were necessary and the Department would file with CSI again at a later time. Because the rule package was not filed as a five-year rule review, the CSI Office is only reviewing the amendments to the rules. The rule package was filed with the CSI Office on June 11, 2014, and the CSI public comment period for the rules closed on July 11, 2014.

The rules regulate qualifications for personnel working in nursing homes, requirements for resident medical assessments, infection control procedures, and facility requirements for nursing homes. According to ODH, Rules 3701-17-07, 3701-17-11, and 3701-17-10 were amended based on stakeholder concerns regarding the frequency of required tuberculosis testing. The amendments will “decrease costs to the facility, and relieve the administrative burden of record-keeping for health care workers in counties where tuberculosis morbidity is low and annual testing has not identified previously unknown diseases.” Rule 3701-17-10 was also amended to

include an “advanced care planning” session to discuss goals upon admission and throughout the length of the nursing home care. Rule 3701-17-22 was amended to prohibit the use of overhead paging in a nursing home except in the case of urgent public safety or urgent clinical operations.

The BIA states stakeholders were asked to provide feedback on the rules in December 2013 and provided no comments. ODH met with stakeholders subsequent to the solicitation for feedback to discuss the tuberculin skin test shortage. According to ODH, the shortage is a result of the manufacturer’s break in production, and testing orders are given preference. As a result of this discussion, ODH modified the rules to require “testing in accordance with the facility’s assessment under CDC guidelines.” No comments were received during the CSI public comment period.

There are 971 licensed nursing homes in Ohio identified as the impacted business community. ODH identifies those adverse impacts as costs associated with staff time for participating in advance care planning and developing a tuberculosis control plan assessment for the nursing home. The estimated time for an interdisciplinary team to participate in an advanced care plan is four hours every quarter of a year. The estimated time to develop an overhead paging policy is approximately four hours of staff time. According to ODH, the rules regulating advance care planning and the use of overheard paging are necessary to comply with Ohio Revised Code 3721.072.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules is justified.

Recommendation

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

Conclusion

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

cc: Mark Hamlin, Lt. Governor’s Office