

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Health

Regulation/Package Title: Chapter 3701-17, Residential Care Facilities

Rule Number(s): 3701-17-52.1

Date: February 6, 2015

Rule Type:

☒ New

☐ Amended

☐ 5-Year Review

☐ Rescinded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.

In response to House Bill 483, the Ohio Department of Health ("ODH") is proposing draft new rule 3701-17-52.1 of the Administrative Code to create expedited initial licensure surveys pursuant to section 3721.02(B)(2)(a) of the Revised Code and to set forth fees for those surveys pursuant to section 3721.02(B)(2)(c) of the Revised Code.

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The rule sets forth the requirements for submitting a request for an expedited initial survey to ODH, which includes:

- a completed application;
- the licensure fee (based on number of beds);
- the expedited initial licensure survey fee (proposed to be \$2,250.00); and
- a notice of readiness.

The rule further requires the Department of Health, upon receipt of all the required documentation and fees, to then conduct a survey of the facility within ten days of the request.

Finally, in accordance with the statute, the rule states the expedited initial licensure survey is only for new residential care facilities and does not apply to existing facilities.

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

3721.02, 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 regulation is necessary to enact a statutory requirement.

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

Success for this particular regulation will be determined by the usage of the expedited initial survey process by new residential care facilities.

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.

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ODH held stakeholder meetings on July 28, 2014 and September 29, 2014. Stakeholders included:

- Ohio Assisted Living Association
- Ohio Council on Assisted Living
- Leading Age
- The Academy of Senior Health Sciences

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

ODH did not receive substantive comments regarding the draft shared with stakeholders, other than requests to ensure the expedited initial licensure surveys do not interfere with the regular initial licensure inspection schedule.

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.

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.

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.

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.

ODH will follow the parameters of the rule. This will necessitate changes to the ODH Licensure Nursing Home/Residential Care Facility Application to include the expedited initial licensure survey options, as well as adjustments to ODH survey scheduling processes to ensure facilities that request expedited initial licensure survey are surveyed within ten days.

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 residential care facilities desiring licensure after the effective date of this rule. ODH generally process 15-20 new residential care facility applications per year. While it is unknown how many new RCFs will request expedited initial licensure surveys, ODH anticipates the majority will.

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

The major adverse impact of this rule is the fee set forth in paragraph (A)(1)(b). However, this would be significantly offset by have an expedited initial licensure survey done in 10 days, rather than waiting the current 4-8 weeks for a standard initial licensure survey as the facility would be able to admit residents at whatever rate the facility sets.

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.

- Fee of \$2,250 for an Expedited Initial Licensure Survey

In talks prior to this particular item being included in statute, ODH and the regulated community agreed that all expedited initial licensure surveys would be done on overtime so that regularly scheduled licensure surveys would not be affected. If the expedited surveys were not done on overtime, the impact to regularly scheduled surveys would be significant. All cost estimates use the overtime rate. The compensatory time rate is used where overtime is not available as it is still a cost to ODH.

See Attachment A for ODH Costs

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

Section 3721.02 allows ODH to receive requests from residential care facilities for expedited initial licensure surveys and to collect fees sufficient to cover ODH’s expenses in expediting a survey. This new rule establishes the obligations of residential care facilities and ODH.

Regulatory Flexibility

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

Alternative means of compliance may be achieved through a variance. Variances may be granted for any of the requirements of this Chapter if the Director 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 the public. The requirements for a variance are set forth in rule 3701-17-68 and are determined on a case-by-case basis.

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?

ODH is committed to the goal of ensuring that regulated customers have the opportunity to achieve compliance with ODH's procedural requirements. ODH's Regulatory Ombudsman has developed a policy implementing section 119.14 of the Revised Code. This policy is available online at: <http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>.

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 of Licensure Operations and the Bureau of Long Term Care:

<http://www.odh.ohio.gov/odhprograms/ltc/Residential%20Care%20Facilities/Main%20Page.aspx>

ATTACHMENT A

	Avr Hr'ly Rate	Fringe	Hr'ly Payroll	Indirect	Total Hr'ly Cost	Overtime rate	TOTAL COST			
							NH		RCF	
							Hr Per Survey	Cost	Hr Per Survey	Cost
Scheduling										
HC Fac Survey Sup 2 (LTC)	\$ 40.00	44%	\$ 57.58	\$ 18.00	\$ 75.58	\$ 113.36	1.00	\$ 113.36	\$ 1.00	\$ 113.36
Program Administrator 3	\$ 38.00	45%	\$ 55.00	\$ 17.00	\$ 72.00	\$ 108.00	1.00	\$ 108.00	\$ 1.00	\$ 108.00
Management Analyst	\$ 19.00	66%	\$ 31.50	\$ 10.00	\$ 41.50	\$ 62.25	1.00	\$ 62.25	\$ 1.00	\$ 62.25
Program Administrator 2	\$ 31.00	33%	\$ 41.10	\$ 13.00	\$ 54.10	\$ 81.15	0.75	\$ 60.86	\$ 0.75	\$ 60.86
Survey										
HC Fac Surveyor- Entry (LTC)	\$ 25.00	39%	\$ 34.75	\$ 11.00	\$ 45.75	\$ 68.63	5.00	\$ 343.13	\$ 5.00	\$ 343.13
HC Fac Surveyor- Indepen (LTC)	\$ 34.00	37%	\$ 46.58	\$ 15.00	\$ 61.58	\$ 92.37	10.00	\$ 923.70	\$ 10.00	\$ 923.70
Supervisor										
HC Fac Survey Sup 1 (LTC)	\$ 38.00	34%	\$ 50.92	\$ 16.00	\$ 66.92	\$ 100.38	2.00	\$ 200.76	\$ 2.00	\$ 200.76
Licensing										
Social Services Licensing Spec	\$ 22.00	60%	\$ 35.09	\$ 11.00	\$ 46.09	\$ 69.14	2.70	\$ 186.66	\$ 2.70	\$ 186.66
Health Planning Adminis 3	\$ 43.00	42%	\$ 61.23	\$ 19.00	\$ 80.23	\$ 120.35	0.30	\$ 36.10	\$ 0.30	\$ 36.10
Administration										
Executive approval	\$ 63.00	50%	\$ 94.50	\$ 29.00	\$ 123.50	\$ 185.25	0.50	\$ 92.63	\$ 0.50	\$ 92.63
Office clerical	\$ 17.00	38%	\$ 23.46	\$ 8.00	\$ 31.46	\$ 47.19	0.20	\$ 9.44	\$ 0.20	\$ 9.44
Office Chief	\$ 51.00	36%	\$ 69.36	\$ 21.00	\$ 90.36	\$ 135.54	0.10	\$ 13.55	\$ 0.10	\$ 13.55
								\$ 2,150.45		\$ 2,150.45