

**MEMORANDUM**

**TO:** Jayson Rogers, Ohio Department of Health

**FROM:** Chris Smyke, Executive Assistant

**DATE:** January 13, 2017

**RE:** **CSI Review – Resident Transfer and Discharge (OAC 3701-61-01, -02, -03, -04, -05, -06, -07, -08)**

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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 and four no-change rules proposed by the Ohio Department of Health (ODH) for its statutorily required five-year review. The rule package was submitted to the CSI Office on November 16, 2016 and the public comment period was held open through December 21, 2016. One comment was received during that time.

OAC 3701-61-01 through 3701-61-08 make up the entirety of the chapter which includes terms/definitions, the rights of residents to challenge and receive a hearing for a proposed transfer/discharge, the responsibilities of the home when proposing a transfer/discharge and the process for ODH to receive and investigate complaints for violating residents' rights. OAC 3701-61-03, -05, -07, -08 have been submitted with no changes. Proposed amendments for OAC 3701-61-01, -02, -04 and -06 include non-substantial cross-reference updates with the ORC and Federal Code of Regulations.

The BIA furnishes a list of provider organizations and other state agencies from which ODH

solicited comments for the proposed rules. No comments were received during the period of early stakeholder outreach, so there were no revisions at this stage of the process. During the CSI comment period, one comment was received from an individual who acknowledged her receipt and review of the proposed rules and that she had no input for the draft.

According to the BIA, the adversely impacted business community includes the 987 licensed nursing homes and 673 licensed residential care facilities in Ohio as of November 1, 2016. Violation of the transfer/discharge requirements can result in a hearing with ODH where a fine may be assessed, or a case may be turned over to the Attorney General given evidence of inadequate care or unsafe conditions. In addition, the BIA indicates the temporal impact of providing notice to residents and their sponsors, as well as the legal costs of hiring an attorney to attend a hearing.

The BIA justifies the rules by maintaining the need to protect elderly and infirm residents from indiscriminate transfers or discharges. In addition, the rules set forth the circumstances under which a home may transfer/discharge a resident without notice, for example, if a home cannot meet the needs of a resident or if the resident endangers the safety of others in the home

After reviewing the proposed rule and the BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule package 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 Ohio Department of Health should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.