

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Health

Regulation/Package Title: Nurse Aide Training and Competency Evaluation Programs / Train-The-Trainer Programs

Rule Number(s): 3701-18-01 to 3701-18-27

Date: August 23, 2016 [Revised October 20, 2016]

**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☐ Rescinded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.

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## **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.*

Nurse aides in Ohio work in a variety of settings. While the rules are necessarily geared toward nursing homes, state tested nurse aides also work in assisted living, home and community based settings, hospitals and other health care facilities. The rules in this package set forth minimum standards for (1) programs to train nurse aides; (2) the testing of nurse aides; (3) the training of trainers of nurse aide instructors; and (4) the testing of trainers of nurse aide instructors to ensure state tested nurse aides entering the workforce, whether in long term care or another capacity, have the same baseline knowledge and skills to help ensure the health and safety of residents and patients in Ohio's health care settings.

The Ohio Department of Health is (ODH) proposing to amend the rules as follows:

#### **3701-18-01**

This rule establishes definitions for commonly used words and phrases in Chapter 3701-18.

An amendment has been made to remove unnecessary language.

#### **3701-18-02**

This rule establishes with whom the director may enter into agreement with for (1) approval of NATCEPS and TTT programs, and (2) administration of the state test.

Amendments have been made to clarify the rule language, to state the test must be conducted by a national standardized testing service, and to delete language that is duplicative of the Ohio public records law.

#### **3701-18-04**

The rule establishes the application requirements for nurse aide training programs.

Amendments have been made to memorialize veteran's preference language consistent with Governor Kasich's Executive Order 2013-5K and House Bill 98 of the 130<sup>th</sup> General Assembly.

#### **3701-18-05**

The rule establishes the requirements for re-approval of a program.

Minor amendments have been made to eliminate an outdated requirement for an original application and to remove the requirement that the Director of Health provide written

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notice to a program when approving or proposing to deny an application. Both amendments recognize that the re-application process has been moved to an electronic system.

#### 3701-18-06.1

This rule establishes post-approval notification requirements for nurse aide training and competency evaluation programs (NATCEPs).

Amendments have been made to require reporting to the director when the NATCEP's demographics have changed to ensure ODH has updated information, and to remove outdated language requiring written notification.

#### 3701-18-09

The rule establishes the personnel requirements for training and competency evaluation programs, including the requirements for a program coordinator and for primary instructors.

Amendments have been made to clarify program coordinator requirements and to expand the pool of eligible primary instructors by allowing licensed practical nurses with two years of long term care experience to serve as a primary instructor for non-facility based programs.

#### 3701-18-10

The rule establishes basic physical facility requirements for training programs.

The rule has been amended to remove duplicative language and to make specific equipment requirements as an appendix to this rule.

#### 3701-18-11

This rule establishes basic recordkeeping requirements for programs. These records are reviewed by ODH on each inspection.

Amendments have been made to specify what other records need to be kept (clinical evaluation and certificate of completion).

#### 3701-18-12

The rule establishes the curriculum content for training programs, time for completing various components of the training, and minimum time to complete the program.

No amendments have been made to the rule; however, numerous changes have been made to the appendix to this rule, the NATCEP Curriculum. The curriculum has been

updated to reflect person-centered care concepts and to reflect current professional standards.

#### 3701-18-13

This rule establishes what a training program must evaluate its students on before they are eligible for the state test.

Amendments have been made to raise the passing rate for tests, quizzes, or both used by a training program from 70% to 80% to match the state test standard of 80%.

Additionally, the Appendix to this rule has been updated to reflect current clinical practices, person centered care, and to update the bibliography.

#### 3701-18-14

The rule establishes the application requirements for train-the-trainer (TTT) programs.

The rule has been amended to correct a reference to the Director of Health's designee in accordance with LSC drafting standards, and to memorialize veteran's preference language consistent with Governor Kasich's Executive Order 2013-5K and House Bill 98 of the 130<sup>th</sup> General Assembly.

#### 3701-18-21

This rule establishes what a TTT program must evaluate its students on before they are eligible for the state test.

Amendments have been made to raise the passing rate for tests, quizzes or both used by a training program from 70% to 80% to match the state test standard of 80%.

Additionally, the Appendix to this rule has been updated to reflect the proposed rules and to update the bibliography.

#### 3701-18-26

This rule establishes requirements for administration of the test, including required documentation by a student and materials that can be brought to the test.

Amendments have been made to clarify what identification is acceptable and to allow for the use of calculators when taking the test.

ODH is proposing rules 3701-18-03, 3701-18-06, 3701-18-08, 3701-18-16 to 3701-18-19, 3701-18-20, 3701-18-22 to 3701-18-25, and 3701-18-27 without amendment (no change).

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

3721.30.

- 2. 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.*

Yes. The federal Medicare and Medicaid programs pay for the training of nurse aides used by nursing homes that are certified for participation in those programs. As such, the Centers for Medicare and Medicaid Services, through 42 CFR 483.151, requires each state to either specify NATCEPs that meet the federal requirements set forth in 42 CFR 483.152 and/or 42 CFR or to offer a NATCEP. Ohio has chosen to specify those programs that meet the federal requirements though meeting the OAC 3701-18 regulations.

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

The training curriculum to rule 3701-18-13 exceeds the federal requirements found at 42 CFR 483.152 in one limited area, namely that Ohio requires training programs to teach bed-making techniques. This was implemented based on suggestions from providers that they were spending time teaching this skill at the facility where it took away from patient care and they would like to see students trained in this area before coming to the facility.

- 4. 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)?**

In addition to the above-referenced federal requirements, this rule implements the statutory requirements set forth in section 3721.30 of the Revised Code, which requires ODH to issue rules regarding the approval of training programs.

- 5. 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 twelve months. Successful outcomes would be indicated by a finding of compliance with the Chapter 3701-18 requirements. Further

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evidence of success would be represented by the number of complaints received and the number of validated complaint surveys.

### **Development of the Regulation**

**6. 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.*

Stakeholders were notified via email of two meetings to discuss the rules, February 22 and May 16. Additionally, ODH convened a curriculum review committee made up of stakeholders and practitioners to review both the NATCEP and TTT curriculums. A series of meetings was held over summer, 2016 to review the curriculums.

Participants for the meetings include:

C-TEC OF LICKING COUNTY  
OHIO ACADEMY OF NUTRITION AND DIETETICS  
NATIONAL NETWORK OF CAREER NURSING ASSISTANTS  
COLUMBUS STATE COMMUNITY COLLEGE  
MOTHER ANGELINE MCCRORY MANOR  
TRI-COUNTY CAREER CENTER  
LEADINGAGE OHIO  
REGIONAL LONG-TERM CARE OMBUDSMAN PROGRAM  
MY TEES HEALTH CARE  
PRODOCEO HEALTH  
ALLIANCE TRAINING CENTER  
OHIO HEALTH CARE ASSOCIATION  
OHIO DEPARTMENT OF AGING  
MILLSTREAM CAREER AND TECHNOLOGY CENTER  
D&S DIVERSIFIED TECHNOLOGIES LLP  
COMPANIONS NURSE AIDE TRAINING CENTERS  
CLARK STATE COMMUNITY COLLEGE  
APOLLO CAREER CENTER  
MENORAH PARK CENTER FOR SENIOR LIVING  
RN AND ASSOCIATES LLC  
CUYAHOGA COMMUNITY COLLEGE  
LIFE MORE ABUNDANTLY  
SANDUSKY CAREER CENTER

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

Stakeholders provided significant input to nearly every rule amended and most significantly to the amendments to the Nurse Aide Training curriculum. Stakeholders identified areas where the curriculum could be improved and/or updated and suggested solutions to identified issues.

**8. 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?**

The curriculum was informed by best practices in the medical field. See the updated bibliographies in the Appendices to 3701-18-12 and 3701-18-21.

**9. 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 3721.30 of the Revised Code. These rules reflect the current statutory requirement for approval of NATCEP/TTT programs.

**10. 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.***

Rules 3701-18-01 to 3701-18-27 contain both structural (process) and performance (outcome) based requirements. When there is a poor outcome, ODH can then look to ensure that processes were implemented correctly and can identify break-downs in the processes that lead to those poor outcomes.

**11. 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 pertaining to NATCEP/TTT programs.

**12. 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.**

Providers will be surveyed approximately once every year to determine compliance with the regulations. The survey will be done by long term care program staff using a

standard survey tool. This staff will have been trained in the survey process, including understanding of the regulation(s).

### **Adverse Impact to Business**

**13. 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 NATCEP and TTT programs. As of August 12, 2016 there are:

- 464 NATCEPs; and
- 20 TTT programs.

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

In general, these rules do not represent costs that are independent of those already obligated to the licensee by the virtue of their participation in the industry. Those costs include, but are not limited to, the costs associated with the purchase or lease of real estate, equipment, and personnel. There are also time and manpower costs associated with administrative requirements, including, but not limited to, policy development/implementation and quality assurance and performance improvement. The similar requirements set forth in Ohio's rules are unlikely to require a significant amount of time or costs in addition to that which is already expended by the service and the services will, more likely than not, already meet or exceed the state requirements.

The adverse impact of these rules as a whole consist license suspension, denial, or revocation. Individual rules have additional adverse impacts; including application fee, reporting, recordkeeping, as well as time completing and submitting required forms to ODH.

**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.*

Compliance with these rules may require:

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- (1) Application fees of \$300.00 (NATCEP) and \$600.00 (TTT).
- (2) Filing of initial/renewal license applications with ODH may require eight (8) to twelve (12) hours of work by a registered nurse.<sup>1</sup>
- (3) Notice requirements to ODH require up to four (4) hours of time by a registered nurse.<sup>1</sup>
- (4) Equipment costs. This generally requires a NATCEP to set-up a nursing home resident room in their building. While nearly all NATCEPs have this equipment, the cost for providing the equipment required by Appendix E to rule 3701-18-10 can range from \$0.00 to approximately \$5,000.00 if the program must buy a new long-term care bed (approximately \$4,000.00).<sup>2</sup> The TTE equipment rule requires a TTT program to provide audio/visual equipment and other teaching aides, not the full range of equipment required of NATCEPs. Provision of this equipment is estimated to be up to \$2,000.00.
- (5) Test taking fees for students as follow:
  - Exam: \$24.00
  - Oral exam: \$34.00
  - Performance demonstration (skills): \$76
- (6) Time to read the rules specific to the level of care provided; up to one (1) hour for applicable portions of the Chapter.<sup>1</sup>

<sup>1</sup> Registered Nurse: An average of \$30.04 per hour.\* ODH is using this occupation code the program director is generally a registered nurse.

<sup>2</sup> Figure compiled from discussions with stakeholders and internet searches. Bed price from [www.hill-rom.com](http://www.hill-rom.com), a leading supplier of long-term care beds.

<sup>3</sup> Fees are set through a competitive bidding process with testing companies.

\*Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2014, using the code for Registered Nurse (29-1111) because the program director is generally a registered nurse.

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

Section 3721.30 requires ODH to establish rules regarding the approval of training programs. These Chapter 3701-18 rules establish those approval requirements for

programs to ensure the nurse aide workforce has a baseline of knowledge and skills when entering a long-term care facility to provide direct care to residents.

### **Regulatory Flexibility**

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

Alternative means of compliance may be achieved through waiver or variance. Variances or waivers may be granted for the program coordinator or primary instructor requirements of the Chapter. The requirements for a waiver or variance are set forth in rule 3701-18-09 and are determined on a case-by-case basis.

**16. 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's Regulatory Ombudsman has set forth a policy for ODH to follow regarding the waiver of fines and penalties for paperwork violations and first-time offenders. ODH implements this policy as part of its business process. Information regarding this policy can be found online at:

<http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>.

**17. 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, NATCEP/TTT Unit.

<https://www.odh.ohio.gov/odhprograms/dc/natrg/na1.aspx>.