

**MEMORANDUM**

TO: Kaye Norton, Ohio Department of Health

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: September 11, 2017

RE: **CSI Review – Residential Care Facility Licensure (OAC 3701-17-50 to 3701-17-52.1, 3701-17-53 to 3701-17-59.1, and 3701-17-60 to 3701-17-68, 3701-16-01 to 3701-16-3.1, 3701-16-4 to 3701-16-9.1, and 3701-16-10 to 3701-16-18)**

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This rule package consists of forty rules, twenty to be rescinded and twenty new, proposed by the Ohio Department of Health (ODH) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on April 19, 2017 and the public comment period was held open through May 19, 2017. No comments were received during this time.

The rules cover the licensure and regulation of residential care facilities (RCF) including provisions pertaining to skilled nursing care, admission of residents, and compliance with resident's rights required by statute. ODH wishes to rescind the current RCF licensure rules and replace them with new rules in a different chapter to help eliminate confusion between RCF rules and nursing home rules that currently share the same chapter of the Ohio Administrative Code (OAC). In addition, ODH made updates to terms, cross references, and grammar. The BIA notes that the purpose of the rules is to protect the health and safety of Ohioans who live in residential care facilities and to ensure compliance with ORC 3721.04.

As part of the early stakeholder outreach process, ODH requested comments from long term care facilities and organizations throughout the state. As a result, stakeholders offered numerous suggestions including reorganizing the rules and putting them into a new chapter. ODH decided that doing so would be the most efficient way to reduce confusion and chose to adopt the change. In addition, stakeholders were also instrumental in helping ODH draft the language that specifically differentiates between supervision of therapeutic diets and preparation of special diets. No comments were received during the CSI public comment period.

The rules impact providers who operate residential care facilities in the state. Specifically the adverse impacts include fees for licensing, staff time for reporting, record review and transcription, and administrative form completion and filing. The BIA further specifies that licensing fees will be \$320 for every 50 persons residing within a facility. In addition, ODH states that based upon figures and estimates from the United States Department of Labor and Bureau of Labor Statistics, time to input and comply with form drafting and reporting requirements can vary depending on which type of administrative professional is chosen to complete the task. However, the BIA states that the wages may vary from \$46.47 per hour for an administrative staff member to over \$92.26 per hour if a physician chooses to transcribe and file the requisite forms. ODH contends that the statutory requirement outweighs the adverse impact of the rules because the Department is required to regulate residential care facilities as directed by ORC 3721.04 and to establish the licensing structure for those facilities.

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.