

**MEMORANDUM**

**TO:** Kaye Norton, Ohio Department of Health

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** August 29, 2018

**RE:** **CSI Review – Abuse or Neglect of Residents or Misappropriation of Property in Long-Term Care Facilities (OAC 3701-64-01 through 3701-64-05)**

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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 five amended rules proposed by the Ohio Department of Health (ODH). The rule package was originally submitted to the CSI Office on December 15, 2017 and the public comment period was held open through January 14, 2018. Due to some work with the Attorney General's Office, ODH resubmitted the rule package with an amended rule and BIA to the CSI Office on May 25, 2018 and the public comment period was held open through June 24, 2018. Two comments were received during the second public comment period.

The rules in this package set forth requirements for investigations into allegations of abuse or neglect of long-term care facility residents. The rules include requirements for investigations, as well as procedures for hearings and the presentation of the findings of investigations. Ohio Administrative Code (OAC) 3701-64-01 defines the terms used throughout the Chapter and is being amended to clarify current definitions and add new terms. OAC 3701-64-02 sets forth requirements for ODH to investigate allegations of abuse, neglect, and exploitation of residents of long-term care or residential care facilities. The rule is being amended to ensure that facilities do

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not perform prohibited actions while knowing that an investigation is in progress or imminent. These actions include refusing entry to the Director of ODH, refusal to allow the Director to interview employees or review records, and destroying records. OAC 3701-64-03 and 3701-64-04 establish the procedures for hearings and are amended to add terms newly included in OAC 3701-64-01. OAC 3701-64-05 sets forth the requirements following the results of an investigation and is being amended to include newly amended terms.

During early stakeholder outreach, ODH sent the rule to relevant stakeholders for comment, including professional associations and state agencies. Two comments were received during the second CSI public comment period. One comment suggested removing language from OAC 3701-64-02 that would prevent facilities from overwriting audio or video recordings, stating that ODH should not require facilities to invest in recording devices. ODH responded to the stakeholder at a meeting of the Ohio Public Health Advisory Board, stating that the rule does not require facilities to purchase recording equipment, but prevents the overwriting of recordings in the event of an investigation. The stakeholder rescinded the comment following the response of ODH. One comment was received that supported the proposed rules.

The business community impacted by these rules includes approximately 955 licensed nursing homes and 710 licensed residential care facilities. The adverse costs created by the rules include the time and effort required to comply with the requirements of the rules, typically in the form of notifying ODH of allegations and maintaining records. ODH estimates that the cost of maintaining some records, such as audio or video recordings, could require between \$5 and \$500 in order to save the recordings through external storage methods. ODH states in the BIA that the rules protect residents of long-term care facilities by allowing for ODH to properly and thoroughly investigate cases of abuse.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Health should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.