



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### MEMORANDUM

**TO:** Alicyn Carrel, Ohio Department of Health

**FROM:** Jacob Ritzenthaler, Business Advocate

**DATE:** October 6, 2021

**RE:** **CSI Review – Abuse and Neglect in Long-Term Care Facilities (OAC 3701-64-01 through 3701-64-05)**

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On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

#### Analysis

This rule package consists of five amended rules proposed by the Ohio Department of Health (ODH) as part of the statutorily required five-year review requirement. This rule package was submitted to the CSI Office on February 22, 2021, and the public comment period was held open through March 21, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 22, 2021.

Ohio Administrative Code (OAC) Chapter 3701-64 establishes requirements related to abuse or neglect that occurs in long-term care facilities. OAC 3701-64-01 lists definitions used throughout the chapter and is amended to update the definitions for "neglect" and "physical abuse" to clarify that allowing a resident to be treated through spiritual means, like prayer, does not constitute neglect. OAC 3701-64-02 sets requirements for investigations of abuse and neglect or misappropriation of property. The rule is amended to update the procedure for filing an allegation to reflect that they may be submitted to the ODH Bureau of Survey and Certification or Bureau of Regulatory Operations. OAC 3701-64-03 addresses requests for an abuse or neglect hearing and is amended to extend the timeframe for setting a hearing date from 60 days to 90 days. OAC 3701-

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64-04 establishes hearing procedures, including the issuance of subpoenas, attorney appointments, and the delivery of reports. The rule is amended to update recording procedures and the amendment date of the Ohio Rules of Evidence. OAC 3701-64-05 concerns findings issued from a hearing and is amended to remove requirements related to the issuance of findings by the ODH Director and to clarify requirements related to the nurse aide registry.

During early stakeholder outreach, ODH reviewed the rules with industry stakeholders during Long-Term Care Provider Meetings, including Academy for Senior Health Sciences, Ohio Assisted Living Association, Ohio Health Care Association, and LeadingAge Ohio. No comments were received during that time. During the CSI public comment period, ODH received two comments and provided its response to CSI on August 20, 2021. ODH made changes in response to suggestions concerning definitions that would mirror statutory requirements. ODH did not make changes in response to suggestions that would exceed federal requirements or interfere with investigations of abuse or neglect.

The business community impacted by the rules include 946 licensed nursing homes and 787 licensed residential care facilities. The adverse impacts created by the rules include requirements to notify in instances of abuse or neglect, as well as maintenance of records related to investigations. ODH states in the BIA that the rules are necessary to ensure the health and safety of individuals in long-term care facilities.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.