

**Note:** Email completed form to jcarr1@jcarr.state.oh.us.

Hearing Date: 5/29/2025

Today's Date: 6/13/2025

Agency: Ohio Department of Health

Rule Number(s): 3701-17

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If no comments at the hearing, please check the box. ☐

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List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Ohio Health Care Organization (OHCA), 3701-17-03(K)(4), (R), (S); 3701-17-05(C)(1)(c); 3701-17-06(A)(3), (B)(4); 3701-17-19(A)(1)(a)

2. Ohio Academy of Nutrition and Dietetics, 3701-17-01(KK), (NN); 3701-17-07(H); 3701-17-07.2 (B)(1), (C)(1), (C)(3), (H), (I)(2); 3701-17-08(E)(2); 3701-17-10(A), (C)(2), (E)(11), (F)(2), (F)(5); 3701-17-14(C); 3701-17-18(C), (F), (F), (I), (J), (J)(1), (J)(2)

3. Ohio Association of Physician Assistants, 3701-17-07-1(A)(2)(d)

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**Consolidated Summary of Comments Received**

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

No two commentors, commented on the same rule. As such below are the comments we received for each rule.

Comments from OHCA

3701-17-03(K)(4): This provision requires a SNF operator to supply a certificate of need approval or non-reviewability determination for any project that “alters [the SNF’s] physical facilities in a manner that affects bed capacity or proposes to relocate existing beds to a unlicensed portion of the facility.” We recommend changing the language of this paragraph (K)(4) to “If applicable, an approved certificate of need.” Mandating a reviewability determination for a project that does not require a CON is an excessive administrative burden, cost, and delay for the provider. The CON law does not require a non-review determination to undertake a non-reviewable project. It is an optional comfort letter that should not be required by the licensure rules. On the other hand, if the project is reviewable, it is reasonable to expect the operator to furnish evidence of compliance with the CON law. As the agency responsible for administering both the licensure rules and the CON law, ODH should have no problem detecting when a project under consideration for licensure requires a CON without further burdening the operator.

3701-17-03(R): This rule requires various parties connected to a SNF’s ownership or operations to notify ODH if a legal action is filed against them that might result in the facility going into receivership. This provision is overbroad because until a motion for appointment of a receiver is filed, the facility owner or operator won’t know whether such a motion “could be” the result of the litigation. We recommend changing this paragraph to read, “Any person(s) identified in paragraph (A)(1)(a)(i) or paragraph (D)(1)(a)(i) of this rule will notify the director within ten days of the filing of a motion or other legal request seeking to place the nursing home or building housing the nursing home into receivership.”

3701-17-03(S): This provision specifies that, “Beds in a home that has closed that are not subject to a certificate of need are considered surrendered to the department the three hundred sixty sixth day after the home has closed.” As written, this paragraph could be read as requiring that the CON must be granted within the one-year period after closure. We recommend clarifying the language by adding “an application for” before “a certificate of need.”

3701-17-05(C)(1)(c): The rule defines interference with a survey to include, “Delay of access to premises or records, including electronic and video records.” We suggest adding “, except as necessary for compliance with applicable law.” Examples of applicable law that might prevent access to records include HIPAA privacy and security requirements that would apply to off-site access to PHI by surveyors (not secure) and Esther’s Law (prohibitions on viewing certain

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video/audio recordings).

3701-17-06(A)(3) and (B)(4): These provisions engender our most serious concerns in this rule set by greatly expanding the reporting burden on SNF operators and administrators. Current rules, mirroring federal requirements, mandate reporting of alleged or suspected abuse, neglect, and misappropriation. The proposal adds a litany of new reporting requirements: elopement; cash-on-delivery; contract or delivery cancellations; non-payment or delinquent payment of taxes; inadequate food, medical, durable medical equipment, incontinence, respiratory, or pharmaceutical supplies; interruption or potential interruption of essential services (including, but not limited to, therapy, phone, internet service provider, utilities, food delivery, fire alarm monitoring, and maintenance) because of non-payment; inadequate staffing based on the facility's assessment; and known changes in facility control, ownership, or operation or the company to which the administrator reports.

Our members are very concerned about the significant increase in administrative burden that would result from addition of so many new reporting requirements as well as the potential for failure-to-report citations in the absence of any negative outcome to residents. Moreover, some of the reporting requirements are unclear and could result in differing interpretations. The proposed requirement for administrators to notify ODH of changes of facility ownership or operation places a burden on administrators that duplicates existing CHOP notice provisions for entering operators. In short, we feel the new requirements are government overreach.

We request that the new notification requirements be removed and the language returned to the federally-mandated abuse, neglect, and misappropriation reporting.

3701-17-19(A)(1)(a): This provision requires updating family contact information every 6 months. The rule creates another new administrative burden. We recommend every 12 months.

Comments from Ohio Academy of Nutrition and Dietetics

### **3701-17-01 Definitions.**

**(KK)** “Special diet” means a therapeutic diet limited to:

- (1) Nutrient adjusted diets, including high protein, no added salt, and no concentrated sweets;
- (2) Volume adjusted diets, including small medium, and large portions;
- (3) The use of finger foods or bite-sized pieces to ~~allow~~ **support** for a resident’s ~~physical~~ **self-feeding** needs; or
- (4) Mechanically altered food.

**(NN)** “Therapeutic diet” means a diet ordered by a health care practitioner:

- (1) As part of the **nutritional** treatment for a disease or clinical condition;
- (2) To modify, eliminate, decrease, or increase certain substances in the diet; or
- (3) To provide mechanically altered food **and texture modified liquids** when indicated- **for residents with dysphagia or other chewing and swallowing difficulties and to reduce the risk of aspiration.**

The suggested changes are intended to clarify the distinction between “Special diet” and “Therapeutic diets”.

### **3701-17-07 Qualifications and health of personnel.**

**(H)** A ~~food service manager~~ **director of food and nutrition services** designated pursuant to paragraph (K) **(J)** of rule 3701-17-18 of the Administrative Code who has supervisory and management responsibility and the authority to direct and control food preparation and service ~~shall~~ will obtain the **Manager Certification in Food Protection (formerly level two)** certification in food protection according to rule 3701-21-25 of the Administrative Code.

42CFR §483.60 requires that “if a qualified dietitian or other clinically qualified nutrition professional is not employed full-time, the facility must designate a person to serve as the director of food and nutrition services “ (emphasis added) . The position title should be consistent with CMS Regulations to avoid confusion in (H) and be used consistently where appropriate throughout the rules. Please change “food service manager” to “director of food and nutrition services” in this rule and in 3701-17-18 (J)

The reference to (K) of 3701-17-18 is an error as that paragraph only describes the ordering and administration of tube feedings and parenteral nutrition by licensed professionals - not the duties of a food service manager. The correct reference is (J) of rule 3701-17-18 which describes the range of functions the dietitian, food service manager, and trained unlicensed staff perform in nursing homes.

In Ohio the level two certification in food protection course has been renamed “Manager Certification in Food Protection” and should be titled accurately in this rule.

#### **3701-17-07.2 Dining assistants**

**(B)** A long term care facility may use dining assistants to feed residents who, based on the charge nurse’s assessment of the resident and the most recent resident assessment performed pursuant to rule 3701-17-10 OAC and plan of care developed pursuant to 3701-17-14 OAC, meet the following conditions:

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(1) Need assistance or encouragement with eating and drinking; ~~and/or~~

(2) Do not have a complicated feeding problem, such as the need for tube or parenteral feeding, recurrent lung aspirations or difficulty swallowing that ~~requires~~ necessitates assistance with eating and drinking by a registered nurse, licensed practical nurse, or nurse aide.

**(C)** If a facility uses a dining assistant the facility ~~must~~ will ensure that the dining assistant meets the following ~~requirements~~ criteria:

(1) Except as provided in paragraph (D) of this rule, has successfully completed a dining assistant training course approved by the director as specified in paragraph (G) of this rule; ~~and/or~~

(2) Is not the subject of a finding of abuse or neglect of a resident or misappropriation of the property of a resident on the nurse aide registry, established pursuant to section [3721.32](#) of the Revised Code; and

(3) Performs ~~dining assistance~~ duties only for residents who do not have a complicated feeding problem, and ~~functions~~ under the supervision of a registered nurse or licensed practical nurse.

“Performs duties only for residents who do not have a complicated feeding problem” sounds like the dining assistant is restricted from providing non-dining assistant care services to individuals who have complicated feeding problems.

Please add the suggested clarifying language as it supports staffing flexibility.

**(H)** ..... “An approved dining assistant training course is not ~~required~~ necessary to renew an approval provided that the director is notified of any changes to the information provided in the original application.”

This sentence is very confusing. Please clarify.

**(I)(2)** The course is operated by or in a long term care facility and one ~~of~~ the following applies; \*\*\*

Simple type-o.

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### **3701-17-08 Personnel requirements standards.**

(E) Each nursing home ~~shall~~ will also have the following staff who are competent to perform the duties they are assigned:

\*\*\* (2) Dietary staff as ~~required~~ as set forth by paragraph (K) ~~(J)~~ of rule 3701-17-18 of the Administrative Code; \*\*\*

The reference to (K) of 3701-17-18 is an error as it only describes the ordering and administration of tube feedings and parenteral nutrition. The correct reference is (J) of rule 3701-17-18 which describes the range of functions that a dietitian, food service manager, and trained unlicensed staff perform in nursing homes.

### **3701-17-10 Resident Assessments; advanced care planning.**

(A) Each nursing home, in accordance with this rule, ~~shall~~ will conduct written initial and periodic assessments of all residents. The different components of the assessment may be performed by different licensed health professionals, consistent with the type of information ~~required~~ needed and the professional's scope of practice, as defined by the applicable law, ~~. and shall~~ Assessments will be based on personal observation and judgment. This paragraph does not ~~prohibit~~ forbid the licensed health professional from including ~~in the assessment~~ resident information obtained by or from unlicensed staff provided the licensed health professional ~~evaluation of~~ evaluates such information ~~is performed by that licensed health professional~~ in accordance with the applicable scope of practice.

This paragraph was confusing. The suggested changes are for clarity.

(C) Upon admission, the nursing home ~~shall~~ will assess each resident in the following areas:

\*\*\*

(2) Hydration and nutritional status, including food allergies and intolerances; and risk of aspiration.

These changes are intended to focus on the food related allergies and intolerances and to assure that risk of aspiration is identified without delay in order to minimize risk of aspiration.

(E) The comprehensive assessment ~~shall~~ will include documentation of the following:

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(7) Nutritional and dietary ~~requirements~~ needs, food preferences, and need for any adaptive equipment, and needs for assistance and supervision of meals;

\*\*\*

(11) Vision, ~~dental~~ and hearing function, including the need for eyeglasses or other visual aids;

Dental is covered in( E) (12) below. Please remove it in (11)

(12) Dental function; including the need for dentures or partial dentures;

(F) Subsequent to the initial comprehensive assessment, the nursing home ~~shall~~ will periodically reassess each resident, \*\*\* This periodic assessment will include documentation of at least the following:

\*\*\*

(2) Updated nutritional ~~and dietary requirements~~ ~~needs~~ ~~and needs for assistance and supervision of meals; as described in (E)(7) of this rule;~~

These changes are recommended for consistency within the rule. See (E)(7) above.

\*\*\*

( (5) A functional assessment as described in paragraph (E)(8) ~~(9)~~ of this rule;

Wrong reference. Should be (E) (9) of this rule.

\*\*\*

(7) Any changes in the resident's psycho-social status or preferences as described in paragraph (E)(4) of this rule; ~~and~~

It appears that the reference to (E) (4) is a wrong ... (E)4) is health history and physical, cognitive functioning, etc. It should probably reference (E)(1) and/or (E)(5) of this rule.

### **3701-17-14 Plan of care; treatment and care; discharge planning, bathing.**

(C) The nursing home ~~shall~~ will provide ~~all residents~~ each resident who cannot give themselves adequate personal care with such care as is necessary to keep them clean, ~~and~~ nourished, comfortable, and well groomed.

Eating is a fundamental component of personal care for nursing home residents<sup>1</sup> and is a vital aspect of daily life that ensures that the resident receives adequate nutrition and maintains their health. The facility has a duty to ensure that residents receive the nourishment necessary to maintain health and well-being if they are unable to do so themselves. We recommend adding the word "nourished" to reflect that residents should be provided with the personal care necessary to be nourished.

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<sup>1</sup> Edemekong, P. F., Bomgaars, D., Sukumaran, S., & Levy, S. B. (2019). Activities of Daily Living. *StatPearls* Retrieved from [https://digitalcollections.dordt.edu/faculty\\_work/1222](https://digitalcollections.dordt.edu/faculty_work/1222)

### **3701-17-18 Food and nutrition.**

(C) Each nursing home ~~shall~~ will provide at least three **varied**, nourishing, palatable, and appetizing meals daily to all residents at regular hours comparable to normal mealtimes in the community. ~~The meals shall be~~ **The meals will that are varied and** meet the nutritional needs of the residents and be capable of providing the dietary referenced intake of the “Food and Nutrition Board” of the “National Academy of Science.”

(1) Food ~~shall will~~ be prepared and served in a form that meets the resident’s individual needs based on the assessment conducted pursuant to rule 3701-17-10 of the Administrative Code, the plan of care ~~required by~~ set forth in rule 3701-17-14 of the Administrative Code, allow for resident choice, and accommodate religious, ethnic, cultural and personal preferences.

(2) There can ~~shall~~ be no more that sixteen hours between the evening meal and breakfast. Each nursing home ~~shall~~ will offer a nourishing snack, consisting of a choice of beverages and a food item from a basic food group, after the evening meal.

(3) Food substitutes of similar nutritive value ~~shall~~ **are to will** be offered to residents who ~~refuse~~ **choose desire the** ~~an alternate~~ **alternative to** the food served, and serving size may be adjusted according to resident preference. The nursing home ~~shall will~~ accommodate a resident’s preference or medical need to eat at different intervals.

Paragraph (C) as published is overly long. Can it be divided up please as suggested to modify for clarity.

(F) Each nursing home ~~shall~~ will have planned menus for all meals that are approved by the dietitian ~~required~~ set forth by paragraph (K) **(J)** of this rule, for all meals at least one week in advance.

The reference to (K) of 3701-17-18 is an error as that paragraph only describes the ordering and administration of tube feedings and parenteral nutrition. The correct reference is (J) of rule 3701-17-18 which describes the range of functions that a dietitian, food service manager, and trained unlicensed staff perform in nursing homes perform.

Two occurrences of “for all meals” in one sentence is redundant. Please remove the second use of the phrase.

(I) \*\*\* “Notification of any significant unplanned or undesired weight change ~~shall~~ will be made to the resident’s attending physician and the dietitian ~~required~~ set forth by paragraph (K) **(J)** of this rule.”



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The reference to (K) of 3701-17-18 is an error as that paragraph only describes the ordering and administration of tube feedings and parenteral nutrition. The correct reference is (J) of rule 3701-17-18 which describes the range of functions that a dietitian, food service manager, and trained unlicensed staff perform in nursing homes perform.

(J) Each nursing home ~~shall~~ will employ a dietitian, who may be hired on a full-time, part-time or consultant basis, to plan, direct and implement dietary services that meet the residents' nutritional needs and comply with the ~~requirements~~ standards of this rule. If the home does not have the full-time equivalent of a dietitian, the nursing home ~~shall~~ will designate a person who meets the qualifications specified in paragraph (H) of rule 3701-17-07 of the Administrative Code, to serve as the director of food and nutrition services ~~manager~~. The part-time or consultant dietitian, at minimum, ~~shall~~ will consult monthly, or sooner, if needed, with the ~~food service manager~~ director of food and nutrition services. Each nursing home ~~shall~~ will ensure that the dietitian performs the following functions:

(1) Assesses, plans, monitors and evaluates food and nutritional services that meet the needs of the residents;

(2) Assures that food and nutrition staff participate as a member of the interdisciplinary care team and provide person centered care planning and nutrition services as appropriate for residents;

~~(2)(3)~~ \*\*\*

~~(3)(4)~~ \*\*\*

~~(4)(5)~~ \*\*\*

~~(5)(6)~~ Oversees, or arranges for, the training of staff in performing the duties specified in this rule and in the preparation and service of foods for all diets. Trained unlicensed staff, including the ~~dietary manager~~ director of food and nutrition services, may perform routine tasks that:

(a) May be assigned pursuant to Chapter 4759. Of the Revised Code and this rule; and

(b) Do not ~~require~~ need professional judgement or knowledge.

42CFR §483.60(a)(2) states “if a qualified dietitian or other clinically qualified nutrition professional is not employed full-time, the facility must designate a person to serve as the director of food and nutrition services “(emphasis added). The position title should be consistent with CMS Regulations to avoid confusion and be used consistently where appropriate throughout the rules. Please change “food service manager” to “director of food and nutrition services” as suggested in this rule {and in 3701-17-07 (H).}

42CFR §83.21 states “A member of the Food and Nutrition Services staff must participate on the interdisciplinary team as required in §483.21(b)(2)(ii) and

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42CFR §483.21(b)(2)(ii)(E) states “A comprehensive care plan must be - Prepared by an interdisciplinary team, that includes but is not limited to - A member of food and nutrition services staff.”

Please add the suggested language clarifying that each nursing home will ensure and a dietitian “Assures that food and nutrition staff participate as a member of the interdisciplinary care team and provides person centered care planning and nutrition services as appropriate for residents.”

### Ohio Association of Physician Assistant Comments

We would like to recommend an edit to one phrase within Rule [3701-17-07.1](#), **part (A)(2)(d)**, which reads:

A physician's assistant for whom a physician holds a valid certificate of registration issued under section 4730.04 of the Revised Code;

As written, this does not accurately represent the physician assistant profession's name nor how the profession is licensed in Ohio.

We recommend these edits:

A physician's assistant ~~for whom a physician holds a valid certificate of registration issued~~ **licensed** under section 4730.04 of the Revised Code;

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### **Incorporated Comments into Rule(s)**

Indicate how comments received during the hearing process were incorporated into the rule(s).  
If no comments were incorporated, explain why not.

The comments from Ohio Academy of Nutrition and Dietetics concerning the incorrect reference to a different subsection (K)-(J) led to a change in the rules to reference the correct section. Other grammatical comments All other comments from Ohio Academy of Nutrition and Dietetics were deemed to be substantive which would have required that ODH start this process over. Ohio Academy of Nutrition and Dietetics did not engage with ODH at any previous point in the previous 2 years during rule process and as such we have decided to not make any further changes based on their comments.

Comments from OHCA were duplicative of comments they had previously submitted during the rule process. ODH had previously responded to those comments and determined that no change would be made in those areas.

Comments from Ohio Association of Physician Assistant comments were also substantive and would have required starting over. Ohio Association of Physician Assistant also did not engage in the previous 2 years that these rules were open. As such no changes were made.