

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Department of Health

Regulation/Package Title: Chapter 3701-17, Nursing Homes

Rule Number(s): 3701-17-03.1, 3701-17-06, 3701-17-21

Date: February 6, 2015

**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☐ Rescinded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.

### **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.*

In response to House Bills 59 and 483, the Ohio Department of Health ("ODH") is proposing new rule 3701-17-03.1 of the Administrative Code and amendments to rules 3701-17-06 and 3701-17-21 of the Administrative Code that:

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- Create expedited initial licensure surveys pursuant to section 3721.02(B)(2)(a) of the Revised Code;
- Set forth fees for those surveys pursuant to section 3721.02(B)(2)(c) of the Revised Code; and
- Require participation in quality improvement projects, and clarify requirements for dining and activity spaces that share with adult day programs, residential care facilities, or both.

Changes to specific rules are set forth below.

3701-17-03.1 - The rule sets forth the requirements for submitting a request for an expedited initial survey to ODH, which includes:

- a completed application;
- the licensure fee (based on number of beds);
- the expedited initial licensure survey fee (proposed to be \$2,250.00);
- if needed, any certificate of need confirmation the those requirements have been met; and
- a notice of readiness.

Upon receipt of all the required documentation and fees, ODH will then conduct a survey of the facility within ten days of the request. Finally, in accordance with the statute, the rule states the expedited initial licensure survey is only for new nursing homes and does not apply to existing facilities.

3701-17-06 - The rule sets forth the requirements that each home participate in a quality improvement project every two years from those approved by the Ohio Department of Aging.

3701-17-21 – This rule clarifies existing ODH policy that requires a nursing home that shares dining or recreation space with an adult day program or residential care facility must provide space for residential care facility residents at the same ratio space is provided to adult day program participants.

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

3721.02, 3721.04, 3721.072

3. 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.*

No.

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

Not Applicable.

5. 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)?

New rule 3701-17-03.1 and amended rule 3701-17-06 are necessary to enact statutory requirements. The amendments to 3701-17-21 clarify existing ODH policy that is consistent with statutory requirements related to shared spaces. ODH is placing this policy in rule so that all regulated entities are aware of the requirements.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success for these regulations will be measured as follows:

- Usage of the expedited initial survey process by new nursing homes;
- Participation in quality improvement projects by nursing homes; and
- Lack of citations on inspection for sharing of space between the above-listed homes/programs.

### **Development of the Regulation**

7. 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.*

ODH held stakeholder meetings on July 28, 2014 and September 29, 2014. Stakeholders included:

- Ohio Health Care Association
- Leading Age Ohio
- The Academy of Senior Health Sciences

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- State Agencies, including
  - Medicaid
  - Aging
  - State Long Term Care Ombudsman

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

ODH did not receive substantive comments regarding the draft shared with stakeholders, other than requests to ensure the expedited initial licensure surveys do not interfere with the regular initial licensure inspection schedule.

**9. 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?**

Not applicable.

**10. 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.

**11. 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.***

A performance based regulation was not deemed appropriate for this standard.

**12. 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.

**13. 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.**

3701-17-03.1: This rule will necessitate changes to the ODH Licensure Nursing Home/Residential Care Facility Application to include the expedited initial licensure survey options, as well as adjustments to ODH survey scheduling processes to ensure facilities that request expedited initial licensure survey are surveyed within ten days.

3701-17-06: ODH will establish a procedure to verify a home's participation in a Quality Improvement Project.

3701-17-21: No changes to existing process as this implements current policy.

### **Adverse Impact to Business**

**14. 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 consists of existing nursing homes and nursing homes desiring licensure after the effective date of this rule. As of January 1, 2015, ODH has 936 licensed nursing homes. ODH processes approximately 10 applications for new nursing homes each year.

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

3701-17-03.1: The adverse impact of this rule is the fee set forth in paragraph (A)(1)(b). However, this would be significantly offset by have an expedited initial licensure survey done in 10 days, rather than waiting the current 4-8 weeks for a standard initial licensure survey as the facility would be able to admit residents at whatever rate the facility sets.

3701-17-06: The adverse impact of this includes staff time for participation in a quality improvement projects. There is also time devoted to documentation of these activities.

3701-17-21: The adverse impact of this rule is the need to design and build dining and recreation spaces to accommodate adult day program participants and/or residential care facility residents *if* the nursing home decides to share these spaces.

**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.*

- Fee of \$2,250 for an Expedited Initial Licensure Survey

In talks prior to this particular item being included in statute, ODH and the regulated community agreed that all expedited initial licensure surveys would be done on overtime so that regularly scheduled licensure surveys would not be affected. If the expedited surveys were not done on overtime, the impact to regularly scheduled surveys would be significant. All cost estimates use the overtime rate. The compensatory time rate is used where overtime is not available as it is still a cost to ODH.

\*See Attachment A for ODH Costs\*

- Participation in a quality improvement program

Most programs approved by the Department of Aging are offered free of charge to facilities ODH estimates a program length averaging 2 hours and participation to average 15 individuals as follows:

10 State Tested Nurse Aides

- \$11.23 per hour per aide

3 Licensed Practical Nurses

- \$19.19 per hour, per nurse

2 Registered Nurses

- \$33.23 per hour, per nurse

\*All figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, using the codes for Family and Nursing Assistants (31-1014), Licensed Practical and Licensed Vocational Nurses (29-2061), and Registered Nurses (29-1141).

- Building Shared Dining/Recreation Space

A review of nursing home construction projects that have undergone Certificate of Need review place the cost of building a nursing home at \$115 per square foot.

A nursing home that chooses to share space with, for example, a 50 bed residential care facility, would incur the below costs (though, as noted above, this is not a new cost):

Dining Space @ \$115: 25 sq. ft (50\*115) = \$143,750

Recreation Space @ \$115: 25 sq. ft ((50\*.75)\*115) = \$107,813

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

These rules generally enact statutory requirements set by the General Assembly. Where there is an adverse impact, such as the fee charged for expedited initial licensure surveys, it is in accordance with the statute. Further, in conversations with the regulated community, ODH believes the economic benefits of the major adverse impact, the fee, significantly offset the adverse impact as homes will be able to fill beds with residents shortly after a 10 day wait, rather than waiting the current 6-8 weeks before the initial survey.

**Regulatory Flexibility**

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

Alternative means of compliance may be achieved through a variance. Variances may be granted for any of the requirements of this Chapter if the Director determines: that the requirement has been met in an alternative manner, that the strict application of the requirement would result in undue hardship, and that the granting of the waiver or variance would not jeopardize the health or safety of the public. The requirements for a variance are set forth in rule 3701-17-26 and are determined on a case-by-case basis.

**17. 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 is committed to the goal of ensuring that regulated customers have the opportunity to achieve compliance with ODH's procedural requirements. ODH's Regulatory Ombudsman has developed a policy implementing section 119.14 of the Revised Code. This policy is available online at: <http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>.

**18. 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 of Licensure Operations and the Bureau of Long Term Care:

<http://www.odh.ohio.gov/odhprograms/ltc/nurhome/nurhome1.aspx>

# ATTACHMENT A

|                                | Avr Hr'ly Rate | Fringe | Hr'ly Payroll | Indirect | Total Hr'ly Cost | Overtime rate | TOTAL COST    |           |               |           |
|--------------------------------|----------------|--------|---------------|----------|------------------|---------------|---------------|-----------|---------------|-----------|
|                                |                |        |               |          |                  |               | NH            |           | RCF           |           |
|                                |                |        |               |          |                  |               | Hr Per Survey | Cost      | Hr Per Survey | Cost      |
| Scheduling                     |                |        |               |          |                  |               |               |           |               |           |
| HC Fac Survey Sup 2 (LTC)      | \$ 40.00       | 44%    | \$ 57.58      | \$ 18.00 | \$ 75.58         | \$ 113.36     | \$ 1.00       | \$ 113.36 | \$ 1.00       | \$ 113.36 |
| Program Administrator 3        | \$ 38.00       | 45%    | \$ 55.00      | \$ 17.00 | \$ 72.00         | \$ 108.00     | \$ 1.00       | \$ 108.00 | \$ 1.00       | \$ 108.00 |
| Management Analyst             | \$ 19.00       | 66%    | \$ 31.50      | \$ 10.00 | \$ 41.50         | \$ 62.25      | \$ 1.00       | \$ 62.25  | \$ 1.00       | \$ 62.25  |
| Program Administrator 2        | \$ 31.00       | 33%    | \$ 41.10      | \$ 13.00 | \$ 54.10         | \$ 81.15      | \$ 0.75       | \$ 60.86  | \$ 0.75       | \$ 60.86  |
| Survey                         |                |        |               |          |                  |               |               |           |               |           |
| HC Fac Surveyor- Entry (LTC)   | \$ 25.00       | 39%    | \$ 34.75      | \$ 11.00 | \$ 45.75         | \$ 68.63      | \$ 5.00       | \$ 343.13 | \$ 5.00       | \$ 343.13 |
| HC Fac Surveyor- Indepen (LTC) | \$ 34.00       | 37%    | \$ 46.58      | \$ 15.00 | \$ 61.58         | \$ 92.37      | \$ 10.00      | \$ 923.70 | \$ 10.00      | \$ 923.70 |
| Supervisor                     |                |        |               |          |                  |               |               |           |               |           |
| HC Fac Survey Sup 1 (LTC)      | \$ 38.00       | 34%    | \$ 50.92      | \$ 16.00 | \$ 66.92         | \$ 100.38     | \$ 2.00       | \$ 200.76 | \$ 2.00       | \$ 200.76 |
| Licensing                      |                |        |               |          |                  |               |               |           |               |           |
| Social Services Licensing Spec | \$ 22.00       | 60%    | \$ 35.09      | \$ 11.00 | \$ 46.09         | \$ 69.14      | \$ 2.70       | \$ 186.66 | \$ 2.70       | \$ 186.66 |
| Health Planning Adminis 3      | \$ 43.00       | 42%    | \$ 61.23      | \$ 19.00 | \$ 80.23         | \$ 120.35     | \$ 0.30       | \$ 36.10  | \$ 0.30       | \$ 36.10  |
| Administration                 |                |        |               |          |                  |               |               |           |               |           |
| Executive approval             | \$ 63.00       | 50%    | \$ 94.50      | \$ 29.00 | \$ 123.50        | \$ 185.25     | \$ 0.50       | \$ 92.63  | \$ 0.50       | \$ 92.63  |
| Office clerical                | \$ 17.00       | 38%    | \$ 23.46      | \$ 8.00  | \$ 31.46         | \$ 47.19      | \$ 0.20       | \$ 9.44   | \$ 0.20       | \$ 9.44   |
| Office Chief                   | \$ 51.00       | 36%    | \$ 69.36      | \$ 21.00 | \$ 90.36         | \$ 135.54     | \$ 0.10       | \$ 13.55  | \$ 0.10       | \$ 13.55  |
|                                |                |        |               |          |                  |               | \$ 2,150.45   |           | \$ 2,150.45   |           |