



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Health

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Home Health and Nonagency Skilled and Nonmedical Home care Licensure

Rule Number(s): 3701-60-01 to 3701-60-11

Date of Submission for CSI Review: August 19, 2022

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/ 10 rules

No Change/ rules (FYR?)

Amended/ 1 rules (FYR? X)

Rescinded/ 8 rules (FYR? X)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

The rules set forth in Chapter 3701-60 of the Ohio Administrative Code (“OAC”) establish the rules pertaining to the licensure of Home Health and Nonmedical Services providers in Ohio. New Chapter 3740. of the Revised Code was included in HB 110 of the 134th General Assembly requiring the licensure of agency and nonagency providers who provide care to individuals in their homes. These rules include license application requirements, criminal records checks, and enforcement.

Revisions have been made to the following rules:

3701-60-01: This rule sets forth the definitions to be used in Chapter 3701-60 of the Administrative Code. Definitions include “community-based long-term care agency,” “direct care,” and “employee.” New definitions have been added as part of the new licensure requirements, including “nonagency provider,” “operating location,” and “nonmedical home health services.”

Rescinded Rules

3701-60-02: The rule sets forth the applicability of the rules to Home Health Services. The rule is being rescinded and replaced with a new rule 3701-60-02 due to Legislative Service Commission rule drafting requirements for rules changed by fifty percent or more.

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3701-60-03: The rule sets forth the requirement for a check of state and national databases for violations prior to employing an individual to provide direct care to patients. The rule is being rescinded and renumbered as new rule 3701-60-05 to better align the new rules being integrated into the Chapter.

3701-60-04: The rule sets forth the requirement for a home health agency to conduct criminal records check on all applicants applying for positions involving the provision of direct care. The rule is being rescinded and renumbered as rule 3701-60-06 to better align the new rules being integrated into Chapter 3701-60.

3701-60-05: The rule sets forth the parameters for the conditional employment of an individual while awaiting the results of the required criminal records check. The rule is being rescinded and renumbered as new rule 3701-60-07 to better align the new rules being integrated into Chapter 3701-60.

3701-60-06: The rule sets forth the disqualifying offenses for applicants to provide direct care as an employee of a home health agency. The rule is being rescinded and renumbered with new rule 3701-60-08 to better align the new rules being integrated into Chapter 3701-60.

3701-60-07: The rule establishes the exclusionary periods for disqualifying offenses for specified criminal conviction codes. An exclusionary period is a period of time that must elapse before an applicant may be employed by a home health agency. The rule is being rescinded and renumbered as new rule 3701-60-09 to better align the new rules being integrated into Chapter 3701-60.

3701-60-08: The rule set forth the record keeping requirements pertaining to criminal records checks on employees. The rule is being rescinded and renumbered as rule 3701-60-10 to better align the new rules being integrated into Chapter 3701-60.

3701-60-09: The rule sets forth the liability and compliance actions for an agency hiring an individual in good faith. The rule is being rescinded and renumbered as new rule 3701-60-11 to better align the new rules being integrated into the Chapter.

New rules:

3701-60-02: This new rule replaces existing rule 3701-60-02 and establishes the applicability of the rules to Skilled or Nonmedical Home Health Services providers providing skilled care or homecare services in Ohio. Agency (with employees) and nonagency (individual) providers the provide care to more than two patients simultaneously, must obtain a license as either a skilled care provider or nonmedical services provider through application with the Ohio Department of Health.

3701-60-03: This new rule sets forth the application requirements for applicants for licensure as a Skilled Home Health provider or a Nonmedical Homecare provider in Ohio. The rule includes instructions and a list of supporting documentation for agencies and nonagency individuals to obtain license including a \$250 application fee, evidence of certification or accreditation if applicable, and an allowance for the waiver of specified paperwork for individual providers certified by the Ohio Department of Aging or the Ohio Department of Medicaid.

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3701-60-04: This new rule sets forth the enforcement actions that may be taken against a licensed agency or individual for material misrepresentation, failure to timely renew, and failure to maintain compliance with Chapter 3740 of the Ohio Revised Code (ORC) and Chapter 3701-60 of the Ohio Administrative Code (OAC). These enforcement options include revocation, denial, or suspension of a license. All enforcement actions are subject to a hearing upon the request of the licensee in accordance with Chapter 119. ORC. An applicant that is denied a license may request an informal review to be conducted by an ODH employee who was not part of the initial determination.

3701-60-05: This new rule replaces existing rule 3701-60-03 and sets forth requirements to check various free online databases for disqualifying information regarding an applicant or employee prior to conducting a criminal record check of an applicant or employee.

3701-60-06: The new rule replaces existing rule 3701-60-04 and requires a home health agency to provide fingerprint cards to applicants and employees and to collect completed cards for submission to the Bureau of Criminal Identification and Investigation and sets forth a requirement for a check by the Federal Bureau of Investigation if the applicant or employee cannot prove Ohio residency for the previous five years.

3701-60-07: This new rule replaces existing rule 3701-60-05 and allows for a home health agency to conditionally employ an individual for a period of sixty days while waiting on the results of the criminal records check. This rule requires the home health agency to terminate an individual if the results are not received within sixty days of request or if the results disclose a disqualifying offense and the home health agency does not choose to employ the individual after the exclusionary periods in rule 3701-60-07 have elapsed.

3701-60-08: This new rule replaces existing rule 3701-60-06 and sets forth offenses that disqualify an individual from working in a direct care position in a home health agency. Offenses include, but are not limited to, murder, reckless homicide, arson, gross sexual imposition, menacing by stalking, terrorism, elder abuse, and various fraud offenses.

3701-60-09: This new rule replaces existing rule 3701-60-07 and sets forth exclusionary periods for disqualifying offenses, the effect of a certificate of qualification for employment, a certificate of achievement and employability, and pardons. The exclusionary periods are as follows:

Permanent Bar – cannot be hired in a direct care position;

Ten Year Bar – can be hired after ten years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole. For individuals with multiple disqualifying offenses, of which at least one falls under the ten-year bar, the individual can be hired after fifteen years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole.

Seven Year Bar - can be hired after seven years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole. For individuals with multiple disqualifying offenses, of which at least one falls under the seven-year bar, the individual can be hired after ten years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole.

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Five Year Bar - can be hired after five years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole. For individuals with multiple disqualifying offenses, of which at least one falls under the five-year bar, the individual can be hired after seven years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole.

No Bar - can be hired at any time.

Additionally, a home health agency may hire or continue to employ individuals with either a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction or a certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation, unless the individual was convicted of a disqualifying offense that falls under the permanent bar.

Finally, a home health agency may hire an individual at any time if that individual has received a pardon or had a conviction or guilty plea set aside.

3701-60-10: This new rule replaces existing rule 3701-60-08 and sets forth requirements pertaining to record-keeping, including the maintenance of a log, updated as necessary, to document compliance with Chapter 60, disclosure of the criminal records check to the director of health and courts of law during cases dealing with the employee, unemployment benefits, or to the Medicaid program.

3701-60-11: This new rule replaces existing rule 3701-60-09 and sets forth both immunity from negligent hire for the home health agency, and provisions allowing the director of health to enforce compliance with Chapter 3701-60.

3. Please list the Ohio statute(s) that authorize the agency, board, or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Ohio Revised Code (ORC) section 3740.10

4. 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?

There are no federal requirements mandating this rule.

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

Not applicable to this rule.

6. 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)?

As required by Revised Code Chapter 3740, OAC Chapter 3701-60 rules provide the necessary framework for the licensure of Home Health Agencies and Nonagency Providers in Ohio.

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

Successful outcomes for the rules are measured through the number of Skilled Home Health Services and Nonmedical Home Health Services providers obtaining a license. There is no routine inspection associated with these rules; as such, the success of the enforcement-based program may be determined by the number of enforcement actions taken against licensees.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

No

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Ohio Department of Aging
Ohio Department of Mental Health and Addiction Services
Ohio Department of Medicaid
Ohio Council for Home Care and Hospice
Home Care Association of America Ohio Chapter
Visiting Angels
Select Medical
Glen Ridge LLC
Care Navigation Consulting
Star Companies
First Light Homecare
MySource Point
Options Home Services
Accent Care
Silver Crown Services
Accreditation Council for Home Care
Golden Heart Ohio
Cadence Companions
21st Century Consultants
Care Staff at Home
Prefer home Care
Unicorn Home Health
Graham Health
Certified Consultants
A Journey Ahead

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Comfort Care
Senior Care LLC
Guiding Hands Home Health
National Church Residences
MidAmerican Pure Healthcare
Help At Home Therapy
Queen City Health Care
Community Health Accreditation Partner
Trail Creek Capital Group
Peak Performance Ohio
Menorah Park
Platinum Senior Solutions
Cardwell Solutions
Prohealth Partners
Majestic Heart Homecare

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

Stakeholders provided numerous comments during the rule drafting process that were integrated into the rules, the most notable include:

- Adding clarifying language for assistance with self-administration of medication.
- Addition of the waiver of specified supporting documentation for accredited home care providers.
- Clarifying the requirement for what constitutes the provision of services to more than two individuals.

11. 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 to this rule.

12. 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?

Alternative regulations to this specific rule were not considered. ODH is required by ORC section 3740.10 to develop rules and administer a licensing program for Home Health and Nonagency providers of skilled and nonmedical services. Alternative regulations are not available to these requirements.

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13. Did the Agency specifically consider a performance-based regulation? Please explain.

ODH has drafted rules within the parameters set forth in Chapter 3740. ORC. The statute, as written, does not allow for the development of a performance-based licensing program and remains limited to the licensure process of application and issuance of licenses.

14. 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 to ensure there are no other regulations in place pertaining to these specific requirements.

15. 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.

The Bureau of Regulatory Operations is responsible for the administration of the licensure process for Skilled and Nonmedical Home Health Services providers. Application materials, guidance, and a payment portal will be provided via the ODH website and applications will be reviewed as they are received. If ODH determines a provider is operating without a license, action will be taken to notify the provider of the need for licensure to ensure that all statutorily required providers are captured by the licensing scheme.

Adverse Impact to Business

16. 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; and

All home health and homecare providers in Ohio. Currently, there are 775 CMS certified Home Health Agencies in Ohio. It is not possible to determine how many Home Health Agencies are operating without certification in Ohio nor how many Nonmedical Homecare providers currently operate within the state. There are no tracking mechanisms in place at any level of government or industry to provide definitive numbers on Nonmedical Homecare providers. The assumption could be made that there will be at least as many of these types of providers as there are certified Home Health Agencies so the potential licensing numbers could be approximately 1500 agencies and individuals.

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

- License fees
- Time to read rules
- Time to complete and submit an application

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c. Quantify the expected adverse impact from the regulation.

Application fee:

- \$250 every three years

Time for compliance:

- 15 minutes to read the rules
- 30 minutes to complete and submit an application

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

ODH is required by Revised Code Section 3740. to draft and implement rules to license skilled and nonmedical Home Health and Nonagency providers. The rules reflect the statutory requirements including a license fee and penalties for failure to comply with the statute and rules.

Regulatory Flexibility

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

No. The rules reflect the statutory requirements.

19. 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's Regulatory Ombudsman has set forth a policy for ODH to follow regarding the waiver of fines and penalties for paperwork violations and first-time offenders. ODH implements this policy as part of its business process. Information regarding this policy can be found online at: <https://odh.ohio.gov/wps/portal/gov/odh/about-us/offices-bureaus-and-departments/ogc/Statement-on-Paperwork-Violations/>

20. What resources are available to assist small businesses with compliance of the regulation?

ODH staff routinely responds to inquiries and provides guidance during the application and licensure process. Information is available on the ODH Home Health Agency webpage at: <https://odh.ohio.gov/know-our-programs/home-health-agencies/homehealthagencies>

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