



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Olivia Igel, Ohio Department of Health

FROM: Jacob Ritzenthaler, Business Advocate

DATE: March 18, 2024

RE: CSI Review – Residential Care Facilities (OAC 3701-16-01 through 3701-16-18)

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 Agency as provided for in ORC 107.54.

Analysis

This rule package consists of nineteen amended rules, one new rule, and one rescinded rule proposed by the Ohio Department of Health (ODH) as part of the statutorily required five-year review process. This rule package was submitted to the CSI Office on December 1, 2023, and the public comment period was held open through January 1, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 1, 2023.

Ohio Administrative Code (OAC) Chapter 3701-16 establishes requirements concerning residential care facilities. In addition to other amendments discussed below, each rule in this package includes amendments that remove unnecessary regulatory restrictions. OAC 3701-16-01 lists definitions used throughout the chapter and is amended to update definitions. OAC 3701-16-02 establishes general requirements and prohibitions for RCFs, including the provision of accommodations and nursing care. OAC 3701-16-03 is a new rule that replaces a rescinded rule, including similar language regarding the licensure application and renewal process for RCFs. The new rule includes clarification concerning changes in operator, financial solvency statement submission, and contact information. The new rule also includes requirements for notifying ODH when closing an RCF. OAC 3701-16-03.1 sets forth the procedure for expedited initial licensure applications and is amended to remove unnecessary regulatory restrictions. OAC 3701-16-04 concerns inspection and investigations of

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RCFs. RCFs must be inspected at least once prior to the issuance of a license, at least once every fifteen months, and as the Director of ODH deems necessary. The rule is amended to remove unnecessary regulatory restrictions. OAC 3701-16-05 establishes personnel requirements for RCFs, including requirements for administrators, nurses, providers of personal services or medication, psychologists, physicians, dietitians, and other employees, as well as requirements for scheduling and record maintenance. The rule is amended to include a requirement that prevents RCFs from admitting residents in numbers that exceed its ability to provide consistent nursing coverage and appropriate staffing levels.

OAC 3701-16-06 sets forth the qualifications for RCF personnel, including criteria for qualification for staff members that provide personal care services and administer medication. The rule is amended to allow licensed practical nurses (LPNs) to teach training or continuing education courses under the direction of a registered nurse (RN). OAC 3701-16-07 sets forth requirements regarding resident agreements, risk agreements, and information required upon admission. The rule is amended to include requirements for the RCF to provide a copy of the resident agreement to individuals designated to make decisions and consent on the resident's behalf. OAC 3701-16-08 concerns resident health assessments, including the types of information to be documented during the assessment, timeframes for completion, annual reassessments, as well as during the transfer and discharge of residents. The rule is amended to remove unnecessary regulatory restrictions. OAC 3701-16-09 establishes the personnel that may perform personal care services, medication administration, dressing application, and therapeutic diet administration. The rule includes amendments that clarify the criteria for personal care services and skilled nursing care provided by an RCF and to update the definition of "chemical restraint" to apply to any drug used for discipline or staff convenience and not prescribed to treat medical symptoms. OAC 3701-16-09.1 and 3701-16-10 concern skilled nursing care and dietary services and are amended to remove unnecessary regulatory restrictions. OAC 3701-16-11 establishes requirements for various services offered through the RCF, including recreational, social, and leisure activities, management of a resident's financial affairs, pets, and laundry services. The rule is amended to include internet services as a potential offered service and specify that local daily newspapers may be offered in either digital or paper format. OAC 3701-16-12 sets forth requirements regarding changes to a resident's health status and infection control and is amended to include detailed infection control requirements, including requirements to maintain an infection prevention and control designee, as well as written plans concerning tuberculosis control, surveillance, infectious disease control, and water management.

OAC 3701-16-13 establishes safety requirements concerning RCF buildings, fires, and carbon monoxide. The rule is amended to include disaster preparedness within the rule title, require RCFs to notify ODH when there is a disruption of normal services due to a disaster or emergency, maintain a copy of the disaster preparedness plan either electronically or at an offsite location, include electronic smoking and vapor devices as smoking activities that are permitted only in designated

areas, and streamline carbon monoxide detector requirements by referencing Ohio Fire Code section 915. OAC 3701-16-14 provides standards for resident spaces, including residential units, meal areas, and bathrooms. The rule is amended to remove unnecessary regulatory restrictions. OAC 3701-16-15 sets forth requirements for building maintenance, equipment, and supplies and is amended to state that RCFs are obligated to maintain a bed for a resident that chooses to sleep on an alternate piece of furniture, such as a reclining chair, as well as to remove unnecessary regulatory restrictions. OAC 3701-16-16 concerns temperature regulation within RCFs and is amended to require that RCFs maintain a device, such as a hand-held hygrometer or infrared thermometer, to measure the ambient temperature, as well as to remove unnecessary regulatory restrictions. OAC 3701-16-17 establishes record keeping requirements and is amended to require that RCFs review and update the contact information of the nearest relative or guardian of a resident every six months to ensure appropriate notification. OAC 3701-16-18 allows the Director of ODH to grant a variance from the rule requirements.

During early stakeholder outreach, ODH reviewed the proposed rules during a meeting with industry stakeholders, including LeadingAge Ohio, Ohio Health Care Association (OHCA), Ohio Academy of Senior Health Sciences, State Long-Term Care Ombudsman, Ohio Department of Aging, Elder Care Systems, Ohio Department of Medicaid, and Ohio Assisted Living Association (OALA). In response to discussions with stakeholders, the rules were revised to include infection control requirements and the ability for residents to choose alternative furniture for sleeping, update chemical restraint definitions, and allow LPNS to teach courses under the direction of an RN.

During the CSI public comment period, ODH received comments from the OHCA and OALA. In response to comments received from OHCA, ODH amended the rules to allow RCFs that share a building or are in the same lot as a nursing home to share an infection prevention and control designee that is responsible for both facilities. ODH did not make the suggested changes concerning facility safety, disaster preparedness, and fire safety, citing safety standards that are in place for resident safety. ODH provided clarification where appropriate. OALA submitted a comment that suggested updating water management plan requirements to necessitate only coordination between the ODH and local health districts when there is a legionellosis presumptive healthcare-associated case, two or more cases within a twelve-month period, or during an outbreak. ODH did not make this change, stating that the rule, which requires RCFs to have a water management program that is in accordance with United States Centers for Disease Control and Prevention standards, represents the minimum recommended standard and that it allows for facilities to assess treatment standards to determine potential risks.

The business community impacted by the rules includes 794 RCFs currently operating in Ohio. The adverse impacts created by the rules include the cost of fees for licenses and inspections, as well as time and effort spent to comply with requirements for maintaining plans and programs for water

management, disasters and emergencies, quality assessment, and special diets. The cost of initial and renewal licenses costs \$320 annually for every fifty residents. Expedited inspections cost \$2,250 and the fee for an inspection concerning an increase or decrease in the number of beds costs \$2,250. ODH states that costs for the creation of plans and programs, training, and the provision of care can vary based on the type of employee providing the service, with physicians averaging \$103.33 per hour, registered nurses averaging \$37.72 per hour, other health care practitioners averaging \$20.01 per hour, and dieticians averaging \$31.15 per hour. ODH states that the adverse impacts to business are justified to effectively monitor and ensure the health and safety of residents.

Recommendations

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

Conclusion

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