



# 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: Olivia Igel and Cole Weidman (614-995-5945)

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

Nursing Home Facility Licensure Chapter 3701-17

Rule Number(s): 3701-17-01 through 3701-17-26

Date of Submission for CSI Review: 1<sup>st</sup> POSTING: 1/19/24-2/19/24 & 2<sup>ND</sup> POSTING: 10/9/24 **CHANGES MADE AFTER 1<sup>ST</sup> POSTING ARE HIGHLIGHTED IN YELLOW. CHANGES MADE AFTER 2<sup>ND</sup> POSTING ARE HIGHLIGHTED IN BLUE.**

Public Comment Period End Date: 10/22/24

Rule Type/Number of Rules:

New/ X rules

No Change/      rules (FYR?     )

Amended/ X rules (FYR? X)

Rescinded/ X rules (FYR?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.

*Please include the key provisions of the regulation as well as any proposed amendments.*

Rules 3701-17-01 to 3701-17-26, collectively, serve to regulate nursing home facilities. Such facilities provide care and services to adults who, by reason of age and/or infirmity elect to receive or require the provision of such care.

### **Amended**

#### 3701-17-01

This rule lists the definitions of terms used in rules 3701-17-01 to 3701-17-26 of the Administrative Code.

Amendments include adding, modifying, and updating terms to meet current professional standards, including chemical restraint,” “elopement,” and “skilled nursing.”

#### **Changes made:**

- Updated (JJ) (5) and list of treatments per stakeholder request to condense.

#### 3701-17-02

This rule states that rules 3701-17-01 to 3701-17-26 of the Administrative Code apply to all nursing homes.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

#### 3701-17-03.1

This rule states the fee (\$2,250.00) for expedited initial inspections of nursing homes.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

#### 3701-17-04

The rule sets forth the requirements for determining a nursing home's licensing capacity.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and update a reference to "adult care facility" which are now called "residential facilities" and are licensed by the Ohio Board of Mental Health and Addiction Services.

#### 3701-17-05

This rule summarizes certain actions prohibited for applicants, nursing homes, staff, and other individuals.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, reformat paragraphs for clarity and flow of information, and clarify that a guest of a staff member is considered a transient guest.

#### 3701-17-06

This rule outlines the responsibilities of the nursing home administrator and the operator, as well as requirements for quality assurance and performance improvement (QAPI).

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and add additional criteria to the existing reporting requirements. These include resident elopements, cash on delivery requirements from vendors for past non-payment, non-payment of taxes, and inadequate supplies. The rule has been further amended to require the administrator to notify the director of interruptions to services, lack of staff, and a known change to the owner or operator of the home. Finally, the rule has been amended to clarify who should be involved in the QAPI.

#### **Changes made:**

- Updated language to match current ORC 3721.07 in paragraph (F).
- Modified the use of the term elopement to track the CMS language and deleted other references to reporting elopement after 3701-17-06.
- Added "exploitation of a resident" to (A)(3)(a).
- Updated language in (C)(1)(j) pertaining to resident council president or their designee in the involvement of the QAPI program per stakeholder request.

### 3701-17-07

This rule sets forth the qualifications for health personnel including physicals, testing, licensing, and criminal records checks for direct care providers. Additionally, the rule outlines the responsibilities of the activity's director, food service manager, medical and nursing, and operators.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, clarify that infection control is part of the required orientation and training for staff, and that current disciplinary actions against a professional license disqualify that individual from employment by the facility.

#### **Changes made:**

- Added changes to (K)(4) and (5) to include the "exploitation of a resident."
- Removed "real alleged" and kept "exploitation" to clarify language for stakeholders.

### 3701-17-07.1

This rule details the required training and competency evaluation for state tested nurse aides working in long term care facilities.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly

#### **Changes made:**

- Added language to paragraph (B)(8) to mirror language that was added as part of SB 144. Moved the language that was below (B)(7) to below (B)(8).

### 3701-17-07.2

This rule sets forth the required training for, and how a dining assistant may be used in a nursing home. The rule also includes an appendix that has the dining assistant program curriculum.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly. Additionally, the rule has been amended to allow for eight hours of didactic training to be provided online with an instructor present to answer questions. The curriculum in Appendix A has been updated to reflect the new language.

#### **Changes made:**

- Changed language in paragraph (E) from "present" to "available" to clarify the virtual dining assistant training is a virtual program, as "present" could indicate that it is in-person. Made this change per stakeholder's request.

### 3701-17-07.3

This rule sets forth the training, testing, and work experience requirements that a nurse aide must meet to be placed and retained on the Nurse Aide Registry.

Amendments are limited to removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and adding clarifying language where appropriate.

### 3701-17-08

This rule establishes the minimum personnel standards for nursing homes, including nursing, dietary, activities, and ancillary staff.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and adding clarifying language where appropriate. The rule has been further amended to require homes to have a designated infection prevention and control coordinator and homes with one hundred or more residents to employ an administrator on a full-time basis and to have the administrator designate another staff member to act in their stead when they are absent. Finally, the home is required to check and update employee contact information at least twice a year.

#### **Changes made:**

- Changes made to clarify language in paragraph (A) from “act as the administrator,” to “have responsibility of the nursing home,” per stakeholder request.
- Changes made to paragraph (A) to clarify for stakeholders that the administrator will designate another staff member as a “point of contact” when they’re ill, on vacation, etc., and not as the “actual” administrator that conflicts with the statute in ORC 4751.10.

### 3701-17-09

This rule establishes parameters and personnel requirements for ongoing activities programs, social services, chaplain services, mail, and access to technology.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and adding electronic mail and teleconferencing on a computer or other device to the communication options available to residents. Finally, staff are required to assist residents with their communication devices as necessary and provide outdoor visitation in the event of emergencies or public health emergencies.

#### **Changes made:**

- Changes were made in (E)(3) to remove “computer” and insert “device” to capture such things as iPads or tablets, and this was made per stakeholder request.
- Changes made in paragraph (F) from “outdoor” to “appropriate” as public health emergencies can be indoors and outdoors. This change was made per stakeholder request.

### 3701-17-10

This rule details the requirements for resident medical assessments, both annual and periodic, as well as advanced care planning for residents.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and add to the assessment criteria to determine what type of assistance a resident may require. These new criteria include a head-to-toe skin assessment, ability to conduct activities of daily living, risk for elopement, and planning for discharge if that is the choice of the

resident. Finally, the home is required to assess whether residents who smoke can do so safely on their own or if they require a smoking apron or observation.

#### 3701-17-12

This rule establishes notification and reporting requirements for nursing homes when residents have a change in health status.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and report elopements to the Director and elopements involving cognitively impaired elopements to the local law enforcement.

#### Changes made:

- Clarified language after paragraph (A) per stakeholder request.

#### 3701-17-13

This rule requires each nursing home to have a medical director and establishes the medical directors' duties, including periodic evaluation of residents. The rule also requires each home to ensure that every resident is under the supervision of a physician.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, require the medical director to review all deficiency statements pertaining to the home and to make themselves or their designee available in-person or on-call during emergencies, evacuations, closures, and decertification or licensure actions.

#### Changes made:

- Referred language back to 3701-17-07(I) and took away "acting within their scope of practice" per stakeholder request.
- Clarified language in (A)(3)(c), (A)(5), and (A)(7).

#### 3701-17-14

This rule details the requirements for resident care plans, transfer and discharge responsibilities of the home, and coordination of care when the resident is receiving hospice services.

#### Changes made:

- O.A.C. 3701-17-12 (E) language was removed.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, require discharge planning to begin upon admission for residents who wish to be discharged, and report elopements involving cognitively impaired residents to local law enforcement.

#### 3701-17-15

This rule outlines how restraint may be used in nursing homes, including the need for a physician's order and periodic review of the restraint. The rule also bars transitional holds and prone restraints in homes.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

#### 3701-17-16

This rule sets forth what equipment and supplies a nursing home must have to meet the needs of residents, including mattresses, dressers and other bedroom items not furnished by the residents. Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, clarify that a resident can choose an alternate piece of furniture to sleep in, the home must maintain a bed for the resident regardless of where they choose to sleep, windows will have blinds or curtains the resident or staff can open, and that a call system must be accessible to the resident in a manner most appropriate for their abilities and be within reach.

##### **Changes made:**

- Changes made to include “upon request” in paragraph (A) per stakeholder request.

#### 3701-17-17

This rule sets forth what medicines and drugs the nursing home is required to obtain. The rule also details to whom the drug should be administered and how they should be labeled.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, has been reformatted to improve the flow of information, medication and records for each resident must be available during emergencies and evacuations, and medications must be available or arranged to be available in accordance with a resident’s plan of care upon admission.

##### **Changes made:**

- Changes were made to (F)(4) to the end of the first sentence to include “as disclosed to the nursing home.” Per stakeholder request this is to make sure nursing homes are not at fault when a hospital did not disclose a medication a resident needed to the nursing home.
- Removed “must be available” and changed to “available” in paragraph (K).

#### 3701-17-18

This rule outlines the food and nutrition requirements in nursing homes, including what meals must be served. The rule also requires a nursing home to employ a dietician to oversee the dietary service of the home.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

#### 3701-17-19

This rule outlines what records are to be kept by a nursing home and for how long, requires the home to note the resident’s Medicare Part D plan, if any, in the resident’s admission record, and to require a photograph of the resident, if the resident consents.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and the facility must review and update contact information for each resident's relative or guardian, if applicable, every six months.

**Changes made:**

- Changed from "current guardian" to "legal guardian" per stakeholder request.

3701-17-20

This rule sets forth requirements for smoking and fire safety requirements for ashtrays and waste containers and to require a home that permits outdoor smoking to make accommodations for residents during adverse weather conditions.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, incorporate electronic smoking devices (vapes) into smoking prohibitions, and plan for residents who smoke during inclement weather, public health emergencies, isolation, or quarantine.

3701-17-21

This rule outlines the space requirements for nursing home dining and activity areas. The rule also details the requirements for toilet rooms in nursing homes. This rule has been amended to clarify the timeframes for compliance with the dining and activity room requirements: (1) prior to December 22, 1964, (2) between December 22, 1964, and July 17, 2002; and (3) after July 17, 2002.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and clarify the square footage requirements for dining and recreation rooms when a building has been closed and reopens and that toilet rooms are not allowed to be shared by rooms.

3701-17-22

This rule sets forth plumbing, building and sanitation requirements for nursing homes, and bans the use of overhead paging.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly, clarify that pest extermination should be considered urgent, and remediation should commence as soon as possible, and remove an outdated paragraph pertaining to overhead paging.

3701-17-23

This rule establishes space and occupancy requirements for resident sleeping rooms with 3 square footage and room capacity requirements based on the date the home was licensed: (1) prior to December 22, 1964; (2) between December 22, 1964, and July 17, 2002; and (3) after July 17, 2002.



Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and clarify that buildings or rooms taken out of service and then reopened are allowed to have no more than two residents.

#### 3701-17-24

This rule establishes the temperature range allowable in nursing homes, between 71- and 81-degrees Fahrenheit, requires the home to develop a plan for resident health and safety when the temperature in the home is outside of the range, and requires repairs to be made in less than 48 hours when the HVAC system is incapable of maintaining appropriate temperatures.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and the home is required to have a device, such as a handheld hygrometer or infrared thermometer to check the ambient temperature of rooms.

#### 3701-17-25

This rule sets forth the disaster preparedness requirements in the event of fire or another emergency. The rule also requires emergency evacuation drills, a plan for protection of all persons in the event of fire, to include a fire watch, notice to the Ohio missing adult alert system when a resident is missing, and for staff fire training to be conducted by the state fire marshal or township, municipal, or local legally constituted fire department.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly. Additional amendments require the home to notify the director when there is an interruption of services due to emergency or disaster, report elopements to the director and elopements of cognitively impaired residents to local law enforcement, maintain a copy of the disaster preparedness plan offsite, and have policies and procedures in place to ensure infection prevention and control during evacuation or other movement of residents.

#### Changes made:

- Changes made in paragraph (H) from “interruption of normal business services” to “interruption affecting the resident health and safety” per stakeholder’s request to revise.
- Revised language in paragraph (G) to include the Ohio Fire Code per stakeholder's request.

#### 3701-17-26

This rule sets forth the procedures for requesting and granting a variance to the requirements of Administrative Code Chapter 3701-17.

Amendments include removing regulatory restrictions in accordance with SB 9 of the 134<sup>th</sup> General Assembly and that the approval of a waiver or variance for one facility does not constitute a precedent for other waivers or variances requests.

#### New

#### 3701-17-03

This new rule replaces the existing rule due to the Legislative Service Commission rule drafting requirements for rules amended more than fifty percent. The rule sets forth the application for license requirements, what constitutes a complete application, what the license fee is for nursing homes (\$320.00 for every 50 persons or part thereof), the application process, conditions for issuance of a license, and circumstances in which a license can be revoked.

In accordance with HB 33 of the 135<sup>th</sup> General Assembly, the rule has been amended to incorporate statutory requirements pertaining to a Change of Operator application, specify what information must be provided as part of the licensing application, and the remedies available to the Director if a change of operator occurs without an application being submitted. Additional amendments clarify that the state and regional long-term care ombudsman's must be notified in the event of a closure or change in information regarding owners and operators previously provided to ODH.

**Changes made:**

- Reorganization of the rule was done to comply with stakeholder needs and new SB 144 language.
- Grammatical changes were made, and technical changes, such as adding clarifying language, or breaking down a rule into subsections so the rule is easier to read at the request of stakeholders.
- Changes were made from sixty days to forty-five days as part of the Change of Operator (CHOP) application per stakeholder request.
- The following language was added to paragraph (K) per stakeholder request: "The administrator will provide the director with written notice of the relocation of beds within twenty-four hours after the relocation of a bed or beds due to emergency circumstances."
- Deleted (3) and added it to (2) in paragraph (O) as part of the plan for a transfer and adequate relocation of a resident.
- Fixed technical error in paragraph (A) and (B) to reference paragraph (E) of Revised Code section 3721.02.
- Fixed technical error in paragraph (B)(2) from referencing (A)(2)(b) to (A)(1). As well as in paragraph (B)(3) from (A)(3) to (A)(2).
- Clarified language in paragraph (D) as well as condensed language in paragraph (D)(1)-(3) as it's the same language and stakeholder input was to condense.
- Modified language in paragraph (E) per stakeholder request to remain consistent with statute.
- Changes made to include "(CHOP)" acronym as part of paragraph (D) per stakeholder request to understand where the acronym comes from.
- Made changes from "approval letter" to "license" in paragraph (I) per stakeholder's request.
- Language changes in paragraph (J) per stakeholder's request for clarifying language.
- Language changes were made in paragraph (L) to clarify the language as well as update it from "residential care facility" to "nursing home."
- Changes were made to clarify language per stakeholder's request in paragraph (R).
- Added "application" after "certificate of need" per stakeholder's request in paragraph (S).

### 3701-17-03.2

This new rule establishes the fee for a change of operator license application at \$3,200.

Changes made: **\*\*REMOVED RULE\*\*** per stakeholder request.

### 3701-17-11

This new rule replaces existing rule 3701-17-11 and establishes the tuberculosis and infection control requirements for nursing homes. These requirements include developing policies and procedures to ensure a safe, sanitary and comfortable environment for residents and to control the development and transmission of infections and diseases including standard precautions, tuberculosis facility assessments, and laundry practices.

Amendments have been made to require nursing homes to have an infection prevention and control coordinator that works at least part-time in the facility and has the appropriate education and training to perform the job. Each home must have an infection prevention and control plan that includes tuberculosis testing in accordance with Chapter 3701-15 of the Ohio Administrative Code, surveillance, and disease reporting. Finally, each home is required to establish and implement an effective water management program to identify hazardous conditions and take steps to manage the risk of occurrence and transmission of waterborne pathogens.

Changes made:

- Removed language in paragraph (A) regarding the nursing home providing individuals names and contact information based on stakeholder's request.
- Removed stray text.
- Removed "at least" in paragraph (A) to clarify language for stakeholders.
- Updated paragraph (B) to avoid redundant language per stakeholder's request.
- Switched subsection (2) and (3) to clarify language per stakeholder's request.

## **Rescind**

### 3701-17-03

This rule is being replaced by a new rule due to the Legislative Service Commission rule drafting requirements for rules amended more than fifty percent.

### 3701-17-11

This rule is being replaced by a new rule due to the Legislative Service Commission rule drafting requirements for rules amended more than fifty percent.

### **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.**

3721.04
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- 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?**

***If yes, please briefly explain the source and substance of the federal requirement.***

Generally, no. While nursing homes can also be certified for participation in the federal Medicare and/or Medicaid program(s), and be subject to similar federal regulations, this chapter sets forth the state licensure requirements for oversight of nursing homes.

In the three areas these rules do implement federal requirements (namely, 3701-17-07.1, use of state tested nurse aides; 3701-17-07.2, use of dining assistants; and 3701-17-07.3, operation of a nurse aide registry).

Federal law (Titles XVIII and XIX of the Social Security Act and the regulations at 42 CFR §§ 483.154, 483.160, 483.156) require homes certified for participation in the Medicare and/or Medicaid program to use state tested nurse aides, trained dining assistants, and nurse aides to be listed on a nurse aide registry maintained by the state.

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

The rules do not exceed the federal requirements for the use of state tested nurse aides, dining assistants or the operation of a nurse aide registry.

- 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)?**

The Department of Health is required (RC § 3721.04) to set forth regulations governing nursing homes. These rules serve to protect the health and safety of Ohioans, who, by reason of age or infirmity, live in nursing homes. The rules serve to ensure: that NHs have minimum space requirements for occupants and equipping of the buildings in which homes are housed so that residents have healthful, safe, sanitary, and comfortable conditions; the number and qualifications of personnel, including management and nursing staff are appropriate for the population served; the medical, rehabilitative and recreational services are provided in accordance with acceptable standards; that dietary services are provided to ensure residents are offered the appropriate nutritional intake; the personal and social services provided each NH are appropriate for the residents of the home; the business and accounting practices followed are in accordance with accepted standards, and patient and business records are stored in accordance standards and kept for accepted timeframes.

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

Successful outcomes are measured through a standard survey (inspection) process. This process is generally conducted once every fifteen months. Successful outcomes would be indicated by a finding of compliance with chapter 3701-17. Further evidence of success would be represented by the number of complaints received and the number of validated complaint surveys.

**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?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. 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.*

Leading Age  
Ohio Health Care Association  
Ohio Academy of Senior Health Sciences  
State Long-term Care Ombudsman  
Ohio Department Aging  
Ohio Attorney General  
Elder Care Systems  
Ohio Department of Medicaid  
Ohio Assisted Living Association  
Ohio Department of Veterans Services  
Ohio Department of Medicaid  
Ohio Nurses Association  
Ohio Board of Nursing

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

Stakeholders were involved in the drafting of the rules and the rules directly reflect many of the recommendations from the industry and include:

- Definitions for elopement, full-time, clarifications to the skilled nursing definition.
- Addition of elements to required reporting of elopements, cash on delivery requirements from vendors, and inadequate supplies.
- Clarification of who should be involved in the home's QAPI programs as needed such as the pharmacist, resident council president, and representatives of the nurse aides.
- Excluding individuals with a current disciplinary action against their license from being employed by the home.
- Clarifying that residents who need assistance with communication devices are to receive assistance in a timely manner and homes will plan for outdoor visitation when necessary.
- Residents will receive a head-to-toe skin assessment, a safety assessment for those residents who smoke, and a risk of elopement assessment.
- Residents who indicate an interest in being discharged will have discharge planning started as soon as their choice is made known.
- Residents may choose to sleep on an alternate piece of furniture and the facility will ensure a physical bed remains available to them and blinds, shades, or other window coverings are to be available for all windows that may be opened or closed upon resident request.
- Medications are to be available or arranged to be available in accordance with a resident's plan of care when they are admitted to the home.

**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?**

Scientific data was not used in this review.

**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 may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

ODH did not consider any alternatives to the proposed regulation. ODH is required to implement section 3721.04 of the Revised Code. The rules reflect the current statutory requirement.

**13. 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 for the licensure of nursing homes.

**14. 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.**

An on-site survey may be initiated to determine compliance with this rule. The survey will be done by long term care program staff using a standard survey tool. This staff will have been trained in the survey process, including understanding of the regulations.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

The impacted business community consists of licensed nursing homes. As of January 1, 2024, there are 935 licensed nursing homes in Ohio.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

License Fee for initial or renewal - For each state fiscal year thereafter, three hundred twenty dollars for each fifty person or part thereof.

The adverse impact of rules 3701-17-01 to 3701-17-26 include fees for licensing, staff time for reporting, personnel, record review and transcription, development of policies and procedures, as well as time completing and submitting required forms to ODH.

In general, these rules do not represent costs that are independent of those already obligated to the licensee by the virtue of their participation in the industry, including Centers for Medicare and Medicaid Services requirements for nursing facilities and skilled nursing facilities. Those costs include, but are not limited to, the costs associated with the purchase or lease of real estate, equipment, and personnel. There are also time and manpower costs associated with administrative requirements, including, but not limited to, policy development/implementation and quality assurance and performance improvement. The similar requirements set forth in Ohio's rules are unlikely to require a significant amount of time or costs in addition to that which is already expended by the service and the services will, more likely than not, already meet or exceed the state requirements.

Fees, as authorized in section 3721.02 of the Ohio Revised Code of \$320.00 for every 50 persons or part thereof.

Costs associated with having an administrator to work full time, 30 or more hours a week, in homes with 100 or greater residents will depend on whether the current administrator is working less than 30 hours a week. There are currently 254 homes that this requirement may impact. Costs will be dependent on the hours worked and the hourly rate of pay or salary of the administrator.

Fee for a change of operator application of \$3,200.

Time and manpower necessary to develop written plans for a Quality Assessment and Performance Improvement (QAPI) program and conduct meetings.

Time and manpower necessary to develop tuberculosis control plan and infection control policies and provide training.

If applicable, time and manpower necessary to provide dining assistant training.

Time and manpower necessary to adopt and follow disaster preparedness and fire evacuation plans.

Time and manpower necessary to prepare a waiver or variance request; both will be determined by the nature and complexity of the requirement.

The costs borne by the health care service are those generally associated with the provision of services within the industry including, but not limited to patient care planning, written policies, and employee training and development. All costs associated with policy and procedure development and training would be based upon the nature and complexity of the requirement and the staff chosen to perform the task. In most instances the administrator, physician or registered nurse would be responsible for this requirement, while training may be conducted by other health care practitioners.

Administrator: \$0.00 to an average of \$54.86 per hour; Physician: \$0.00 to an average of \$102.43 per hour; Registered Nurse: \$0.00 to an average of \$37.72 per hour; Other Healthcare Practitioners: \$23.38 per hour.\*

\*Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May 2023, using the codes for Medical and Health Services Managers (11-9111), Family Practitioners (29-1215), Registered Nurses (29-1141), and All Health Care Practitioners and Technical Occupations (29-9099).



- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Regulatory restrictions have been removed in accordance with SB 9 of the 134<sup>th</sup> General Assembly.

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

Section 3721.04 requires ODH to establish rules for the licensure of nursing homes. These rules establish the licensure structure for Ohio nursing homes.

### **Regulatory Flexibility**

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

No. The rules apply to all residential nursing homes regardless of the size of the business.

- 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/Office-of-General-Counsel/Statement-on-Paperwork-Violations/>

- 20. 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 licensees through the Bureau of Regulatory Operations and the Bureau of Survey and Certification.

<https://odh.ohio.gov/know-our-programs/nursing-homes-facilities>