

**MEMORANDUM**

**TO:** Kaye Norton, Ohio Department of Health

**FROM:** Travis Butchello, Regulatory Policy Advocate

**DATE:** May 26, 2017

**RE:** **CSI Review – Nursing Home Licensure Rules (OAC 3701-17-01 to 3701-17-03.1, 3701-17-04 to 3701-17-07.3, and 3701-17-08 to 3701-17-26)**

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On behalf of Lt. Governor Mary Taylor, 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 18 amended<sup>1</sup> and 12 no-change rules proposed by the Ohio Department of Health (ODH) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on January 17, 2017 and the public comment period was held open through February 16, 2017. Stakeholder comments led to substantial revisions of three rules so ODH posted these rules and a revised BIA for a second comment period from March 27, 2017 through April 26, 2017. Two comments were received during the first public comment period and none during the second.

The amended and no-change rules cover nursing home licensure requirements. Specifically, the rules discuss license fees, prohibited actions during the course of care, required qualifications of staff, and requirements for resident medical assessments, among other topics. ODH states in the

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<sup>1</sup> Ohio Administrative Code (OAC) 3701-17-06 and 3701-17-09 are amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

BIA that the purpose of the rules is to comply with ORC 3721.04 which requires ODH to set forth regulations governing nursing homes. In addition, the proposed rules help protect the health and safety of Ohioans who live in nursing homes.

As part of the early stakeholder outreach process, ODH reached out to numerous long term care facilities and associations for feedback regarding the rules. Some of the entities included, LeadingAge Ohio and Ohio Health Care Association. ODH held a series of stakeholder meetings to brainstorm how to make the nursing home rules more effective all while attempting to remain cost neutral for providers. For example, stakeholders requested changes to the parameters and personnel requirements for ongoing activities and programs for residents along with changes to requirements for transfer and discharge responsibilities and coordination of care when a resident is receiving hospice services. Two public comments were received during the first public comment period. The first requested term changes and alterations to staffing assessments. ODH included the commenter in the early stakeholder outreach process for the second posting of the rules and after discussion; ODH incorporated the requested changes into the rules. The second commenter expressed concern regarding qualifications of staff, term clarifications, and food and nutrition accommodations. ODH replied and also included the commenter in the second early stakeholder outreach process but ultimately chose not to incorporate the requested changes. No comments were received during the re-posting of the three amended rules.

The rules primarily impact the 952 licensed nursing homes in Ohio. The nature of the adverse impact includes fees for licensing, staff time for reporting requirements, and time for completing and submitting forms. The BIA maintains that the purpose of the rules outweighs any adverse impact because the rules do not impose any additional burden than already existed and it is imperative that Ohioans, who live in nursing homes, receive quality care.

### **Recommendation**

For the reasons explained above, this office does not have any recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Department of Health should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.