



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Selina Jackson, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: February 8, 2023

RE: **CSI Review – Appeal of Denial of Long-Term Care Facility Certification (OAC 3701-63-01 and 3701-63-02)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of two no-change rules proposed by the Ohio Department of Health (ODH) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on December 21, 2022, and the public comment period was held open through January 21, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 21, 2022.

Ohio Administrative Code (OAC) 3701-63-01 provides for the process by which a long-term care facility may appeal a proposal by the Director of ODH to deny, terminate, or not renew its certification as an intermediate care facility or an intermediate care facility for individuals with intellectual disabilities for the purposes of participation in the Medicaid Program. OAC 3701-63-02 sets forth the procedure by which ODH delivers a statement of deficiencies to a nursing facility and the process by which the nursing facility submits a plan of correction in response to the findings or requests informal review of any cited deficiency.

During early stakeholder outreach, ODH consulted with the Ohio Department of Medicaid, the Ohio Department of Aging, and the Ohio Office of the State Long-Term Care Ombudsman regarding the

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rules. None of the stakeholders requested any revisions to the rules. No comments were received during the CSI public comment period.

The business community impacted by the rules includes long-term care facilities and nursing facilities. The adverse impacts created by the rules include the costs associated with an evidentiary hearing as well as the time associated with correcting deficiencies and requesting informal review. ODH estimates that it would take approximately one hour of nursing facility staff time to respond to a deficiency citation and approximately two hours of nursing facility staff time to gather documentation and compile a request for an informal review. ODH, citing Bureau of Labor Statistics, notes that these actions would come at a cost of \$48.72 per hour assuming that the facility administrator performed them. ODH also notes that a Medicaid provider would bear costs associated with an evidentiary hearing, with attorney's fees averaging \$300.00 per hour. ODH states that the adverse impacts to business are justified to implement statutory requirements, set forth specific due process rights for long-term care facilities, and protect Ohio's investment in the Medicaid Program.

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.