



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Olivia Igel, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: December 18, 2024

RE: **CSI Review – Nursing Home Facility Licensure (OAC 3701-17-01, 3701-17-02, 3701-17-03, 3701-17-03.1, 3701-17-04, 3701-17-05, 3701-17-06, 3701-17-07, 3701-17-07.1, 3701-17-07.2, 3701-17-07.3, 3701-17-08, 3701-17-09, 3701-17-10, 3701-17-11, 3701-17-12, 3701-17-13, 3701-17-14, 3701-17-15, 3701-17-16, 3701-17-17, 3701-17-18, 3701-17-19, 3701-17-20, 3701-17-21, 3701-17-22, 3701-17-23, 3701-17-24, 3701-17-25, and 3701-17-26)**

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This rule package consists of two new rules, twenty-eight amended rules, and two rescinded rules proposed by the Ohio Department of Health (ODH) as part of the statutory five-year review process.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 January 30, 2024, and the public comment period was held open through February 29, 2024, after an extension from the original end date of February 8, 2024. A supplemental comment period was held from October 9, 2024, through October 22, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 30, 2024.

Ohio Administrative Code (OAC) 3701-17-01 contains definitions pertaining to nursing home facilities. The rule is amended to update language and citations, add terms and clarifying language, and revise definitions. OAC 3701-17-02 requires all nursing homes to comply with OAC Chapter

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3701-17 and ORC Chapter 3721. The rule is amended to update language. OAC 3701-17-03 is rescinded and replaced by a new rule with the same number. The new rule specifies requirements for applications to obtain, renew, or transfer a nursing home license. Compared to the rescinded version of the rule, the new version is revised to incorporate statutory requirements pertaining to a change of operator application, outline which information must be provided as part of a licensing application, specify the remedies available to the Director of ODH (Director) if a change of operator occurs without a submitted application, and clarify that the state and regional long-term care ombudsman must be notified in the event of a nursing home closure or change in information regarding owners and operators. OAC 3701-17-03.1 allows for applicants for licensure as a new nursing home to request an expedited initial licensure inspection. The rule is amended to update language. OAC 3701-17-03.2, a new rule establishing the fee for a change of operator license application at \$3,200, was originally proposed in this package before ultimately being withdrawn after the CSI public comment period. OAC 3701-17-04 provides for the determination of a nursing home's authorized maximum licensed capacity. The rule is amended to update language and add a citation. OAC 3701-17-05 outlines prohibited actions for nursing homes. The rule is amended to update language and typography as well as clarify that a staff member's guest is considered a transient guest.

OAC 3701-17-06 outlines the responsibilities for the operator and administrator of a nursing home. The rule is amended to update language and typography, add additional criteria to the operator's reporting requirements, add notification requirements for the administrator, list the personnel who should be involved in the quality assurance and performance improvement (QAPI) program, require the establishment of a system to receive feedback and communicate QAPI priorities, and require the nursing home's quality assurance committee to conduct a root cause analysis of incidents, accidents, and events that occur in the home. OAC 3701-17-07 sets forth qualifications for nursing home personnel, including with respect to their health. The rule is amended to update language, add clarifying language, remove unnecessary language, clarify that infection control is part of the required orientation and training for staff, and clarify that only current disciplinary actions disqualify an individual from employment. OAC 3701-17-07.1 provides for the required training and competency evaluation of nursing aides working in long-term care facilities. The rule is amended to update language. OAC 3701-17-07.2 provides for the training of dining assistants that are used by long-term care facilities. The rule is amended to update language and a citation, remove unnecessary language, and allow the eight hours of didactic instruction to be presented online with an instructor present to answer questions. An appendix to the rule is provided. The appendix contains the training course curriculum for dining assistants and is amended to remove a revision date, update the ODH mailing address, update sources, and update the curriculum to reflect new language. OAC 3701-17-07.3 requires the Director to maintain a nurse aide registry. The rule is amended to update language.

OAC 3701-17-08 establishes standards for nursing home personnel. The rule is amended to update language and the rule title, bifurcate the requirement for the administrator to be present for a specified

period depending on the licensed capacity, require a nursing home to have a designated infection prevention and control coordinator on staff, and require a nursing home to annually verify and document each employee's home address. OAC 3701-17-09 provides for the enrichment of resident life in a nursing home. The rule is amended to update language, remove unnecessary language, add clarifying language, require the nursing home to have a plan in place to provide outdoor visitation in the event of a facility emergency or public health emergency, and require the administrator to ensure that residents receive email communications, residents' outgoing mail is unscreened, residents have access to a computer for video conferencing, and residents receive assistance with communication devices in a timely manner. OAC 3701-17-10 requires each nursing home to conduct written initial and periodic assessments of all residents. The rule is amended to update language and a citation, remove unnecessary language, clarify that the nursing home needs to develop a baseline care plan to meet the specific needs of each resident, and require nursing homes to include information in their assessments regarding ability to conduct daily living activities, head to toe skin status, risk for elopement, intention to seek discharge, and ability to smoke if applicable.

OAC 3701-17-11 is rescinded and replaced by a new rule with the same number. The new rule requires each nursing home to establish and implement policies and procedures for the purposes of infection control. Compared to the rescinded version of the rule, the new version is revised to establish requirements for nursing homes to have an infection prevention and control coordinator, include tuberculosis testing in their infection prevention and control plans, compile a written surveillance plan to track infections, properly report diseases, and implement a water management program. OAC 3701-17-12 specifies notification and reporting requirements for nursing homes with respect to the changes in health status, illness, injury, and death of a resident. The rule is amended to update language. OAC 3701-17-13 provides for the medical evaluation of nursing home residents. The rule is amended to update language, remove unnecessary language, add clarifying language, require nursing home medical directors to make themselves or their designees available during emergencies and review all deficiency statements issued to the home, and incorporate orders issued by email. OAC 3701-17-14 requires a nursing home to develop a plan of care for a resident upon admission and discharge a resident in a proper manner. The rule is amended to update language, add clarifying language, remove unnecessary language, and require nursing homes to keep residents well-groomed if they cannot give themselves adequate personal care and begin discharge planning if the initial and subsequent assessment indicate an interest in discharge.

OAC 3701-17-15 describes how a nursing home may and may not restrain a resident. The rule is amended to update language and add clarifying language. OAC 3701-17-16 specifies the equipment and supplies that a nursing home must provide to residents. The rule is amended to update language, add clarifying language, remove unnecessary language, and require nursing homes to ensure a bed is provided even if a resident chooses to sleep on an alternate piece of furniture, ensure windows have blinds or curtains that can be opened, and have a call signal system accessible to and within reach of

residents. OAC 3701-17-17 requires a nursing home to provide medicines and drugs for its residents. The rule is amended to update language and typography, require medicines and drugs to be provided in a manner ensuring the resident's privacy, require medications to be administered in accordance with the resident's treatment plan, and require medications and records of resident's orders to be available in the event of an emergency. OAC 3701-17-18 establishes requirements for nursing homes with respect to food and nutrition for its residents. The rule is amended to update language. OAC 3701-17-19 specifies recordkeeping requirements for nursing homes. The rule is amended to update language, remove unnecessary language, add clarifying language, and require nursing homes to routinely update residents' individual medical records and the contact information of each resident's nearest relative or current guardian. OAC 3701-17-20 contains requirements for nursing homes with respect to smoking. The rule is amended to update language and the rule title, remove unnecessary language, incorporate electronic smoking devices, and require nursing homes to make accommodations for residents during public health emergencies, incidents of isolation, or quarantine.

OAC 3701-17-21 provides for the dining and recreation rooms, utility rooms, and toilet rooms in a nursing home. The rule is amended to update language, add clarifying language, prohibit toilet rooms from being shared between rooms, and clarify square footage requirements for certain nursing homes that close and reopen, build additions, or expand. OAC 3701-17-22 outlines the building, plumbing, and sanitation standards for nursing homes. The rule is amended to update language and the rule title, require the extermination of pests to commence as soon as possible, and remove an outdated provision concerning overhead paging. OAC 3701-17-23 contains space and occupancy standards for nursing homes. The rule is amended to update language and the rule title, remove unnecessary language, and prohibit certain nursing homes that close and reopen from having more than two residents per room. OAC 3701-17-24 provides for temperature regulation in nursing homes. The rule is amended to update language, remove unnecessary language, and require nursing homes to have a device to check the ambient temperature of its rooms. OAC 3701-17-25 provides for the disaster preparedness and fire and carbon monoxide safety of nursing homes. The rule is amended to update language, require paper and electronic copies of the disaster preparedness plan to be maintained off-site, require the disaster preparedness plan to include policies and procedures to ensure infection prevention and control, clarify that the instruction of staff in a home's disaster procedures should occur semiannually, require carbon monoxide alarms and detectors to be installed according to the Ohio Fire Code, and require nursing homes to notify the Director when there is an interruption of normal services due to an emergency or disaster. OAC 3701-17-26 authorizes the Director to grant variances from the requirements found in OAC Chapter 3701-17. The rule is amended to update language and declare that a variance or waiver approved by the Director does not serve as precedent for future requests.

During early stakeholder outreach, ODH consulted several members of the industry in the drafting of the rules, including LeadingAge, the Ohio Health Care Association, the Ohio Academy of Senior

Health Sciences, the Ohio Assisted Living Association, Elder Care Systems, the Ohio Nurses Association, the State Long-Term Care Ombudsman, the Ohio Department of Aging, the Ohio Department of Medicaid, the Ohio Department of Veteran Services (ODVS), the Ohio Board of Nursing, and the Ohio Attorney General. The proposed rules reflect many of the recommendations from the stakeholders. During the CSI public comment period, ODH received ten total comments from individuals affiliated with Providence Healthcare Management (PHCM), Life Enriching Communities (LEC), Wesley Ridge, LeadingAge Ohio (LAO), Ohio Living Dorothy Love (OLDL), and the Ohio Health Care Association (OHCA).

The PHCM commenters expressed concerns regarding change of operator timing, change of operator notification, relocation of beds, inclusion of the resident council president in the QAPI program, and posting director of nursing contact information online. ODH responded by allowing incoming nursing home operators to receive the assignment or transfer of the license to operate the home at least forty-five days rather than sixty days before the proposed assignment or transfer, changing the requirement for existing operators to notify residents of a change in operator at least forty-five days prior to the transfer to instead require incoming operators to notify residents within ten days of receiving the change of operator approval letter, providing a caveat to the requirement to notify ODH about the relocation of beds in emergency circumstances, requiring nursing homes to inform the resident council president of necessary items that concern them rather than requiring them to include the resident council president in the QAPI program, and removing the requirement for nursing homes to post the names of their directors of nursing online. The individuals from LEC, Wesley Ridge, LAO, OLDL, and the OHCA urged ODH to rescind the requirement for nursing homes to designate a health professional to serve as the infection prevention and control coordinator and perform infection control duties for at least twenty hours each week. They asserted that this would place an undue burden on smaller facilities and be very costly, with one commenter estimating that it could cost her nursing home approximately \$32,000-\$39,000 a year. Furthermore, the OHCA commenter pointed out that federal regulations from the Centers for Medicare and Medicaid Services (CMS) do not require the infection preventionist to be licensed or spend twenty hours every week engaged in infection control duties. Acknowledging this, ODH removed the minimum hour limit and instead simply required the designated health professional to perform part-time infection control. Additionally, ODH eliminated the requirement for nursing homes to provide the infection prevention and control coordinator's name and contact information to the Director.

One OHCA commenter asked if ODH could allow a nursing home administrator to designate someone to act in place of the administrator rather than act as the administrator when the administrator is absent due to illness, vacation, or emergency. ODH revised the rules to allow an administrator to designate another staff member with responsibility over a nursing home in such situations. Another OHCA commenter offered several additional suggestions. ODH consequently revised the rules to condense the list of skilled nursing care treatments, incorporate devices other than

computers used by residents, provide for both indoor and outdoor visitations during public health emergencies, ensure that a nursing home is not at fault if a hospital did not disclose a medication that a resident needed, and require nursing homes to notify the Director of an interruption affecting resident health and safety due to an emergency or disaster rather than a more vague “interruption of normal business services” that occurs as a result of such events. Additionally, ODH removed proposed new rule OAC 3701-17-03.2 from consideration after deeming that its content was duplicative of existing language. Lastly, ODH amended the rules to clarify several provisions, comply with Senate Bill 144 of the 135th General Assembly regarding change of operator procedure and prelicensure programs of nursing education approved by the Ohio Board of Nursing, include exploitation of a resident among operator reporting requirements, modify the use of the term “elopement” to align with CMS language, and make technical and grammatical corrections.

During the supplemental comment period, ODH received comments from the OHCA, Rolf Goffman Martin Lang LLP (ROLF), ODVS, and a certified registered nurse (RNC). The OHCA noted that the law prohibits the transfer of a nursing home facility’s licensure but permits the transfer of operations. ODH amended the rules to reflect this. Additionally, the OHCA considered the sixty-day timeframe for notifying the Director of an intention to fill new beds or relocate existing ones to be excessive. ODH reduced the timeframe to forty-five days. The OHCA identified a conflict in the proposed rules concerning buildings on the same lot operating under one license, which ODH rectified. Furthermore, the OHCA recommended that the requirement to update contact information take place annually rather than every six months. However, ODH rejected this proposed change, believing it important for nursing homes to have the most up-to-date contact information for residents in case of emergencies. The OHCA opposed the requirement to report elopements. ODH responded by removing this requirement from the rules. The OHCA also opposed certain requirements with respect to providing ODH access to electronic records, self-reporting incidents, informing the resident council president of necessary QAPI items, and including a certificate of need or a reviewability determination with the notice to ODH when filling new beds or relocating existing ones. ODH explained that it is a health agency oversight with authority, adding that these requirements are necessary to ensure that essential functions are occurring and any insufficiencies are addressed. The OHCA advocated allowing state-recognized providers to offer comprehensive educational training for nursing facility personnel. ODH declined this suggestion, expressing a desire for nationally-recognized institutions to provide this training.

The OHCA and the RNC made several suggestions that led to ODH revising the rules to update language, citations, and typography. Both the OHCA and the RNC requested that ODH include definitions for certain terms, but ODH said this was unnecessary because those terms were already defined in statute. The OHCA and ROLF had concerns with proposed language that would prevent a nursing home from hiring someone who was alleged or suspected of having engaged in the abuse, neglect, or exploitation of a resident or the misappropriation of the property of a resident. ODH

responded by revising the relevant provisions to mirror statutory language that disqualifies those who are the subjects of findings of such actions. The RNC asked several other questions for clarification, to which ODH provided answers. ROLF recommended requiring nursing homes to restrict visitors if they are the sources of pests. ODH replied that facilities are responsible for having their own internal policies on this matter. The ODVS pointed out that statute does not permit the operation of a nursing home to be delegated to anyone but another nursing home administrator. ODH revised the rules to instead allow a nursing home administrator to designate another staff member as the point of contact for the nursing home when the administrator is absent due to illness, vacation, or emergency.

The business community impacted by the rules includes 935 licensed nursing homes in Ohio. The adverse impacts created by the rules include the time and costs associated with license fees, reporting information, employing the required personnel, recordkeeping, developing policies and procedures, and submitting forms. ODH notes specific costs of \$320 per fiscal year for every fifty persons or part thereof for a license, \$3,200 for a change of operator application, an average of \$54.86 per hour for an administrator, an average of \$102.43 per hour for a physician, an average of \$37.72 per hour for a registered nurse, and an average of \$23.38 per hour for other healthcare practitioners. ODH states that the adverse impacts to business are justified to implement statutory requirements and protect the health and safety of Ohioans who by reason of age or infirmity live in nursing homes.

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.