

Ohio Nursing Home Licensure and Related Statutes

Ohio Revised Code

Complete as of January 1, 2020

Table of Contents

Section titles are unofficial

Nursing Home Licensure

3721.01 Nursing home and residential care facility definitions and classifications.	4
3721.011 Skilled nursing care.	7
3721.012 Risk agreement.	10
3721.02 Procedures for inspecting and licensing homes - fees.	10
3721.021 Review of documents by prospective residents and associated persons.	13
3721.022 Establishing and maintaining health standards and serving as state survey agency.	13
3721.023 Party identified in license deemed sole owner of business on premises leased on or before 1-1-70.	14
3721.024 Nursing facility recognition program.	15
3721.026 Assignment or transfer of operation of nursing home.	15
3721.027 Investigation of unresolved complaints found to be valid.	16
3721.03 Enforcement of provisions - revocation of license.	16
3721.031 Investigation of complaint concerning home - disclosure of information.	17
3721.032 Fire marshal to enforce and adopt fire safety rules.	19
3721.04 Adoption and publication of uniform rules governing operation of homes.	19
3721.041 Vaccinations to be offered to residents.	21
3721.042 Excluded grounds for denial of license.	22
3721.05 Operating home requires license - prohibited activities.	23
3721.051 County or district - prohibited activities.	23
3721.06 Prohibition against placement of person in unlicensed home.	23
3721.07 Requirement for issuance of license - revocation.	24
3721.071 Home must be equipped with both automatic fire extinguishing and fire alarm systems.	25
3721.072 Biennial participation in quality improvement projects.	26
3721.08 Injunctive relief.	27
3721.09 Local regulations.	29

Residents' rights, background checks

3721.10 Residents' rights definitions.	30
3721.11 Director to adopt rules.	31
3721.12 Duties of nursing home administrator concerning residents' rights.	31
3721.121 Criminal records check.	33
3721.122 Screening and accommodations for sex offenders.	37
3721.13 Residents' rights.	38
3721.14 Implementation of residents' rights.	42
3721.15 Authorization to handle residents' financial affairs.	43
3721.16 Residents' rights concerning transfer or discharge.	44

3721.161 Hearing challenging proposed transfer or discharge.	46
3721.162 Determining whether transfer or discharge complies.	47
3721.17 Grievance procedure.	48
3721.18 Attorney general duties.	51
3721.19 Nonparticipation in state assistance program.	51

Abuse, Neglect, Misappropriation, Exploitation

3721.21 Long-term care facility definitions.	52
3721.22 Reporting abuse or neglect of resident or misappropriation of property.	55
3721.23 Investigations.	56
3721.24 Whistleblower protection.	58
3721.25 Confidentiality.	59
3721.26 Adoption of rules.	60

Nurse Aide Training, Penalties

3721.28 Nurses aides training and competency evaluation programs.	60
3721.29 Orientation program - performance review - in-service education.	64
3721.30 Competency evaluation program contents.	65
3721.31 Approving or rejecting programs.	67
3721.32 State nurse aide registry.	70
3721.33 Nurse aide training fund.	71
3721.34 Cooperation with other agencies.	71
3721.35 Unauthorized practice of nursing.	72
3721.99 Penalty.	72

3721.01 Nursing home and residential care facility definitions and classifications.

(A) As used in sections [3721.01](#) to [3721.09](#) and [3721.99](#) of the Revised Code:

(1)

(a) "Home" means an institution, residence, or facility that provides, for a period of more than twenty-four hours, whether for a consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a nursing home, residential care facility, home for the aging, and a veterans' home operated under Chapter 5907. of the Revised Code.

(b) "Home" also means both of the following:

(i) Any facility that a person, as defined in section [3702.51](#) of the Revised Code, proposes for certification as a skilled nursing facility or nursing facility under Title XVIII or XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, and for which a certificate of need, other than a certificate to recategorize hospital beds as described in section [3702.521](#) of the Revised Code or division (R)(7)(d) of the version of section [3702.51](#) of the Revised Code in effect immediately prior to April 20, 1995, has been granted to the person under sections [3702.51](#) to [3702.62](#) of the Revised Code after August 5, 1989;

(ii) A county home or district home that is or has been licensed as a residential care facility.

(c) "Home" does not mean any of the following:

(i) Except as provided in division (A)(1)(b) of this section, a public hospital or hospital as defined in section [3701.01](#) or [5122.01](#) of the Revised Code;

(ii) A residential facility as defined in section [5119.34](#) of the Revised Code;

(iii) A residential facility as defined in section [5123.19](#) of the Revised Code;

(iv) A community addiction services provider as defined in section [5119.01](#) of the Revised Code;

(v) A facility licensed under section 5119.37 of the Revised Code to operate an opioid treatment program;

(vi) A facility providing services under contract with the department of developmental disabilities under section [5123.18](#) of the Revised Code;

(vii) A facility operated by a hospice care program licensed under section [3712.04](#) of the Revised Code that is used exclusively for care of hospice patients;

(viii) A facility operated by a pediatric respite care program licensed under section [3712.041](#) of the Revised Code that is used exclusively for care of pediatric respite care patients; 1010

(ix) A facility, infirmary, or other entity that is operated by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and does not participate in the Medicare program or the Medicaid program if on January 1, 1994, the facility, infirmary, or entity was providing care exclusively to members of the religious order;

(x) A county home or district home that has never been licensed as a residential care facility.

(2) "Unrelated individual" means one who is not related to the owner or operator of a home or to the spouse of the owner or operator as a parent, grandparent, child, grandchild, brother, sister, niece, nephew, aunt, uncle, or as the child of an aunt or uncle.

(3) "Mental impairment" does not mean mental illness, as defined in section [5122.01](#) of the Revised Code, or developmental disability, as defined in section [5123.01](#) of the Revised Code.

(4) "Skilled nursing care" means procedures that require technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated. "Skilled nursing care" includes, but is not limited to, the following:

(a) Irrigations, catheterizations, application of dressings, and supervision of special diets;

(b) Objective observation of changes in the patient's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment;

(c) Special procedures contributing to rehabilitation;

(d) Administration of medication by any method ordered by a physician, such as hypodermically, rectally, or orally, including observation of the patient after receipt of the medication;

(e) Carrying out other treatments prescribed by the physician that involve a similar level of complexity and skill in administration.

(5)

(a) "Personal care services" means services including, but not limited to, the following:

(i) Assisting residents with activities of daily living;

(ii) Assisting residents with self-administration of medication, in accordance with rules adopted under section [3721.04](#) of the Revised Code;

(iii) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with rules adopted under section [3721.04](#) of the Revised Code.

(b) "Personal care services" does not include "skilled nursing care" as defined in division (A) (4) of this section. A facility need not provide more than one of the services listed in division (A)(5) (a) of this section to be considered to be providing personal care services.

(6) "Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care.

(7) "Residential care facility" means a home that provides either of the following:

(a) Accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment;

(b) Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care authorized by section [3721.011](#) of the Revised Code.

(8) "Home for the aging" means a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment.

The part or unit of a home for the aging that provides services only as a residential care facility is licensed as a residential care facility. The part or unit that may provide skilled nursing care beyond the extent authorized by section [3721.011](#) of the Revised Code is licensed as a nursing home.

(9) "County home" and "district home" mean a county home or district home operated under Chapter 5155. of the Revised Code.

(B) The director of health may further classify homes. For the purposes of this chapter, any residence, institution, hotel, congregate housing project, or similar facility that meets the definition of a home under this section is such a home regardless of how the facility holds itself out to the public.

(C) For purposes of this chapter, personal care services or skilled nursing care shall be considered to be provided by a facility if they are provided by a person employed by or associated with the facility or by another person pursuant to an agreement to which neither the resident who receives the services nor the resident's sponsor is a party.

(D) Nothing in division (A)(4) of this section shall be construed to permit skilled nursing care to be imposed on an individual who does not require skilled nursing care.

Nothing in division (A)(5) of this section shall be construed to permit personal care services to be imposed on an individual who is capable of performing the activity in question without assistance.

(E) Division (A)(1)(c)(ix) of this section does not prohibit a facility, infirmary, or other entity described in that division from seeking licensure under sections [3721.01](#) to [3721.09](#) of the Revised Code or certification under Title XVIII or XIX of the "Social Security Act." However, such a facility, infirmary, or entity that applies for licensure or certification must meet the requirements of those sections or titles and the rules adopted under them and obtain a certificate of need from the director of health under section [3702.52](#) of the Revised Code.

(F) Nothing in this chapter, or rules adopted pursuant to it, shall be construed as authorizing the supervision, regulation, or control of the spiritual care or treatment of residents or patients in any home who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

Amended by 132nd General Assembly File No. TBD, HB 111, §1, eff. 6/29/2019.

Amended by 131st General Assembly File No. TBD, HB 158, §1, eff. 10/12/2016.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.194, HB 303, §1, eff. 3/20/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01 See act for effective dates.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Amended by 128th General Assemblych.9, SB 79, §1, eff. 10/6/2009.

Effective Date: 03-14-2003; 07-01-2005

3721.011 Skilled nursing care.

(A) In addition to providing accommodations, supervision, and personal care services to its residents, a residential care facility may do the following:

(1) Provide the following skilled nursing care to its residents:

(a) Supervision of special diets;

(b) Application of dressings, in accordance with rules adopted under section 3721.04 of the Revised Code;

(c) Subject to division (B)(1) of this section, administration of medication.

(2) Subject to division (C) of this section, provide other skilled nursing care on a part-time, intermittent basis for not more than a total of one hundred twenty days in a twelve-month period;

(3) Provide skilled nursing care for more than one hundred twenty days in a twelve-month period to a resident when the requirements of division (D) of this section are met.

A residential care facility may not admit or retain an individual requiring skilled nursing care that is not authorized by this section. A residential care facility may not provide skilled nursing care beyond the limits established by this section.

(B)(1) A residential care facility may admit or retain an individual requiring medication, including biologicals, only if the individual's personal physician has determined in writing that the individual is capable of self-administering the medication or the facility provides for the medication to be administered to the individual by a home health agency certified under Title XVIII of the "Social Security Act," 79 Stat. 620 (1965), 42 U.S.C. 1395, as amended; a hospice care program licensed under Chapter 3712. of the Revised Code; or a member of the staff of the residential care facility who is qualified to perform medication administration. Medication may be administered in a residential care facility only by the following persons authorized by law to administer medication:

(a) A registered nurse licensed under Chapter 4723. of the Revised Code;

(b) A licensed practical nurse licensed under Chapter 4723. of the Revised Code who holds proof of successful completion of a course in medication administration approved by the board of nursing and who administers the medication only at the direction of a registered nurse or a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(c) A medication aide certified under Chapter 4723. of the Revised Code;

(d) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(2) In assisting a resident with self-administration of medication, any member of the staff of a residential care facility may do the following:

(a) Remind a resident when to take medication and watch to ensure that the resident follows the directions on the container;

(b) Assist a resident by taking the medication from the locked area where it is stored, in accordance with rules adopted pursuant to section 3721.04 of the Revised Code, and handing it to the resident. If the resident is physically unable to open the container, a staff member may open the container for the resident.

(C) Assist a physically impaired but mentally alert resident, such as a resident with arthritis, cerebral palsy, or Parkinson's disease, in removing oral or topical medication from containers and in consuming or applying the medication, upon request by or with the consent of the resident. If a resident is physically unable to place a dose of medicine to the resident's mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident. Except as provided in division (D) of this section, a residential care facility may admit or retain individuals who require skilled nursing care beyond the supervision of special diets, application of dressings, or administration of medication, only if the care will be provided on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve- month period. In accordance with Chapter 119. of the Revised Code, the director of health shall adopt rules specifying what constitutes the need for skilled nursing care on a part-time, intermittent basis. The director shall adopt rules that are consistent with rules pertaining to home health care adopted by the Medicaid director for the Medicaid program .

Skilled nursing care provided pursuant to this division may be provided by a home health agency certified for participation in the Medicare program, a hospice care program licensed under Chapter 3712. of the Revised Code, or a member of the staff of a residential care facility who is qualified to perform skilled nursing care.

A residential care facility that provides skilled nursing care pursuant to this division shall do both of the following:

(1) Evaluate each resident receiving the skilled nursing care at least once every seven days to determine whether the resident should be transferred to a nursing home;

(2) Meet the skilled nursing care needs of each resident receiving the care.

(D)(1) A residential care facility may admit or retain an individual who requires skilled nursing care for more than one hundred twenty days in any twelve-month period only if the facility has entered into a written agreement with each of the following:

(a) The individual or individual's sponsor;

(b) The individual's personal physician;

(c) Unless the individual's personal physician oversees the skilled nursing care, the provider of the skilled nursing care;

(d) If the individual is a hospice patient as defined in section 3712.01 of the Revised Code, a hospice care program licensed under Chapter 3712. of the Revised Code.

(2) The agreement required by division (D)(1) of this section shall include all of the following provisions:

(a) That the individual will be provided skilled nursing care in the facility only if a determination has been made that the individual's needs can be met at the facility;

(b) That the individual will be retained in the facility only if periodic redeterminations are made that the individual's needs are being met at the facility;

(c) That the redeterminations will be made according to a schedule specified in the agreement;

(d) If the individual is a hospice patient, that the individual has been given an opportunity to choose the hospice care program that best meets the individual's needs;

(e) Unless the individual is a hospice patient that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

(E) Notwithstanding any other provision of this chapter, a residential care facility in which residents receive skilled nursing care pursuant to this section is not a nursing home.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.
Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.
Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 07-01-2000; 06-30-2005; 04-14-2006

3721.012 Risk agreement.

A residential care facility may enter into a risk agreement with a resident or the resident's sponsor. Under a risk agreement, the resident or sponsor and the facility agree to share responsibility for making and implementing decisions affecting the scope and quantity of services provided by the facility to the resident. The facility also agrees to identify the risks inherent in a decision made by a resident or sponsor not to receive a service provided by the facility. A risk agreement is valid only if it is made in writing.

Effective Date: 09-29-1995.

3721.02 Procedures for inspecting and licensing homes - fees.

(A) As used in this section, "residential facility" means a residential facility licensed under section 5119.34 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

(B)(1) The director of health shall license homes and establish procedures to be followed in inspecting and licensing homes. The director may inspect a home at any time. Each home shall be inspected by the director at least once prior to the issuance of a license and at least once every fifteen months thereafter. The state fire marshal or a township, municipal, or other legally constituted fire department approved by the marshal shall also inspect a home prior to issuance of a license, at least once every fifteen months thereafter, and at any other time requested by the director. A home does not have to be inspected prior to issuance of a license by the director, state fire marshal, or a fire department if ownership of the home is assigned or transferred to a different person and the home was licensed under this chapter immediately prior to the assignment or transfer. A nursing home does not need to be inspected before the director increases the nursing home's licensed capacity if the beds being added to the nursing home are placed in resident rooms that were inspected, as part of the most recent previous inspection of the nursing home, for the same number of residents proposed to be placed in a room after the capacity increase. The director may enter at any time, for the purposes of investigation, any institution, residence, facility, or other structure that has been reported to the director or that the director has reasonable cause to believe is operating as a nursing home, residential care facility, or home for the aging without a valid license required by section 3721.05 of the Revised Code or, in the case of a county home or district home, is operating despite the revocation of its residential care facility license. The director may delegate the director's authority and duties under this chapter to any division, bureau, agency, or official of the department of health.

(2)(a) If, prior to issuance of a license, a home submits a request for an expedited licensing inspection and the request is submitted in a manner and form approved by the director, the director shall commence an inspection of the home not later than ten business days after

receiving the request.

(b) On request, submitted in a manner and form approved by the director, the director may review plans for a building that is to be used as a home for compliance with applicable state and local building and safety codes.

(c) The director may charge a fee for an expedited licensing inspection or a plan review that is adequate to cover the expense of expediting the inspection or reviewing the plans. The fee shall be deposited in the state treasury to the credit of the general operations fund created in section 3701.83 of the Revised Code and used solely for expediting inspections and reviewing plans.

(C) A single facility may be licensed both as a nursing home pursuant to this chapter and as a residential facility pursuant to section 5119.34 of the Revised Code if the director determines that the part or unit to be licensed as a nursing home can be maintained separate and discrete from the part or unit to be licensed as a residential facility.

(D) In determining the number of residents in a home for the purpose of licensing, the director shall consider all the individuals for whom the home provides accommodations as one group unless one of the following is the case:

(1) The home is a home for the aging, in which case all the individuals in the part or unit licensed as a nursing home shall be considered as one group, and all the individuals in the part or unit licensed as a rest home shall be considered as another group.

(2) The home is both a nursing home and a residential facility. In that case, all the individuals in the part or unit licensed as a nursing home shall be considered as one group, and all the individuals in the part or unit licensed as an adult care facility shall be considered as another group.

(3) The home maintains, in addition to a nursing home or residential care facility, a separate and discrete part or unit that provides accommodations to individuals who do not require or receive skilled nursing care and do not receive personal care services from the home, in which case the individuals in the separate and discrete part or unit shall not be considered in determining the number of residents in the home if the separate and discrete part or unit is in compliance with the Ohio basic building code established by the board of building standards under Chapters 3781. and 3791. of the Revised Code and the home permits the director, on request, to inspect the separate and discrete part or unit and speak with the individuals residing there, if they consent, to determine whether the separate and discrete part or unit meets the requirements of this division.

(E)(1) The director of health shall charge the following application fee and annual renewal licensing and inspection fee for each fifty persons or part thereof of a home's licensed capacity:

(a) For state fiscal year 2010, two hundred twenty dollars;

(b) For state fiscal year 2011, two hundred seventy dollars;

(c) For each state fiscal year thereafter, three hundred twenty dollars.

(2) All fees collected by the director for the issuance or renewal of licenses shall be deposited into the state treasury to the credit of the general operations fund created in section 3701.83 of the Revised Code for use only in administering and enforcing this chapter and rules adopted under it.

(F)(1) Except as otherwise provided in this section, the results of an inspection or investigation of a home that is conducted under this section, including any statement of deficiencies and all findings and deficiencies cited in the statement on the basis of the inspection or investigation, shall be used solely to determine the home's compliance with this chapter or another chapter of the Revised Code in any action or proceeding other than an action commenced under division (I) of section 3721.17 of the Revised Code. Those results of an inspection or investigation, that statement of deficiencies, and the findings and deficiencies cited in that statement shall not be used in either of the following:

(a) Any court or in any action or proceeding that is pending in any court and are not admissible in evidence in any action or proceeding unless that action or proceeding is an appeal of an action by the department of health under this chapter or is an action by any department or agency of the state to enforce this chapter or another chapter of the Revised Code;

(b) An advertisement, unless the advertisement includes all of the following:

(i) The date the inspection or investigation was conducted;

(ii) A statement that the director of health inspects all homes at least once every fifteen months;

(iii) If a finding or deficiency cited in the statement of deficiencies has been substantially corrected, a statement that the finding or deficiency has been substantially corrected and the date that the finding or deficiency was substantially corrected;

(iv) The number of findings and deficiencies cited in the statement of deficiencies on the basis of the inspection or investigation;

(v) The average number of findings and deficiencies cited in a statement of deficiencies on the basis of an inspection or investigation conducted under this section during the same calendar year as the inspection or investigation used in the advertisement;

(vi) A statement that the advertisement is neither authorized nor endorsed by the department of health or any other government agency.

(2) Nothing in division (F)(1) of this section prohibits the results of an inspection or investigation conducted under this section from being used in a criminal investigation or prosecution.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 130th General Assembly File No. TBD, HB 290, §1, eff. 3/23/2015.

Amended by 130th General Assembly File No. TBD, HB 483, §101.01, eff. 9/15/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.
Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 7/1/2011.
Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/1/2009, op. 7/17/2009.

Effective Date: 06-26-2003; 09-29-2005

3721.021 Review of documents by prospective residents and associated persons.

Every person who operates a home, as defined in section 3721.01 of the Revised Code, and each county home and district home licensed as a residential care facility shall have available in the home for review by prospective patients and residents, their guardians, or other persons assisting in their placement, each inspection report completed pursuant to section 3721.02 of the Revised Code and each statement of deficiencies and plan of correction completed and made available to the public under Titles XVIII and XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and any rules promulgated under Titles XVIII and XIX, including such reports that result from life safety code and health inspections during the preceding three years, and shall post prominently within the home a notice of this requirement.

Effective Date: 07-21-2000.

3721.022 Establishing and maintaining health standards and serving as state survey agency.

(A) As used in this section:

(1) "Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

(2) "Deficiency" and "survey" have the same meanings as in section 5165.60 of the Revised Code.

(3) "Title XIX" and "Title XVIII" have the same meanings as in section 5165.01 of the Revised Code.

(B) The department of health is hereby designated the state agency responsible for establishing and maintaining health standards and serving as the state survey agency for the purposes of Title XVIII and Title XIX . The department shall carry out these functions in accordance with the regulations, guidelines, and procedures issued under Title XVIII and Title XIX by the United States secretary of health and human services and with sections 5165.60 to 5165.89 of the Revised Code. The director of health shall enter into agreements with regard to these functions with the department of Medicaid and the United States department of health and human services. The director may also enter into agreements with the department of Medicaid under which the department of health is designated to perform functions under sections 5165.60 to 5165.89 of the Revised Code.

The director, in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to implement the survey and certification requirements for skilled nursing facilities and nursing facilities established by the United States secretary of health and human services under Title

XVIII and Title XIX and the survey requirements established under sections 5165.60 to 5165.89 of the Revised Code. The rules shall include an informal process by which a facility may obtain up to two reviews of any deficiencies that have been cited on a statement of deficiencies made by the department of health under 42 C.F.R. Part 488 and cause the facility to be in noncompliance as defined in 42 C.F.R. 488.301. The first review shall be conducted by an employee of the department who did not participate in and was not otherwise involved in any way with the survey. A facility that is not satisfied with the results of a first review may receive a second review on payment of a fee to the department. The amount of the fee shall be specified in rules adopted under this section. The fee shall be deposited into the state treasury to the credit of the general operations fund created in section 3701.83 of the Revised Code for use in the implementation of this section. The second review shall be conducted by either of the following as selected by the facility: a hearing officer employed by the department or a hearing officer included on a list the department shall provide the facility. A final determination that any deficiency citation is unjustified shall be reflected clearly in all records relating to the survey.

The director need not adopt as rules any of the regulations, guidelines, or procedures issued under Title XVIII and Title XIX by the United States secretary of health and human services.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 07-01-2000.

3721.023 Party identified in license deemed sole owner of business on premises leased on or before 1-1-70.

Where a nursing home licensed under this Chapter is operated in a building that was leased pursuant to a written lease agreement entered into on or before January 1, 1970, and where the lease agreement does not expressly determine or state the identity of the party that owns the nursing home business, operating rights, certificate of need, or legal rights associated with ownership and operation of the nursing home beds located in the leased building and does not provide that the lessor retains any rights to the nursing home business that is operated in the leased building, the party identified in the nursing home license in existence on the effective date of this section shall be deemed the sole owner of the nursing home business, operating rights, certificate of need, and legal rights associated with ownership and operation of the nursing home beds and may relocate the nursing home business, beds, or operating rights without the consent of the owner of the real estate in or on which the nursing home is operated. Where a court having jurisdiction over a nursing home has determined prior to July 1, 1993, that the lessee or person in possession of and operating the nursing home owns the operating rights of the nursing home and there is no written lease agreement between the owner of the real estate and the person in possession and operating the nursing home, the director of health shall not grant a certificate of need under sections 3702.51 to 3702.62 of the Revised Code to relocate any of the nursing facility beds or the license from the owner's real estate in or on which the beds are located unless the lessee or person in possession of the facility obtains the voluntary written consent of the owner or sublessor of the real estate to such relocation and meets all other requirements for the relocation of beds as specified in this chapter and the rules adopted under it.

Effective Date: 10-29-1993.

3721.024 Nursing facility recognition program.

As used in this section, "nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

The department of health may establish a program of recognition of nursing facilities that provide the highest quality care to residents who are Medicaid recipients. The program may be funded with public funds appropriated by the general assembly for the purpose of the program or any funds appropriated for nursing home licensure.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 11-15-1995.

3721.026 Assignment or transfer of operation of nursing home.

(A) If the operation of a nursing home is assigned or transferred to a different person, the person to whom the operation is assigned or transferred must, before the director of health may issue a license authorizing the person to operate the nursing home, submit to the director documentation showing that the person meets all of the following requirements:

(1) Unless the assignment or transfer is in the form of a lease of the nursing home, the person has financial resources that the director determines are sufficient to cover any reasonably anticipated revenue shortfall for at least twelve months after the assignment or transfer.

(2) If the assignment or transfer is in the form of a lease of the nursing home, either of the following applies to the person:

(a) The person has obtained a bond that has a term of at least twelve months, has an annual renewal, and is for an amount not less than one million dollars.

(b) If the person is unable to obtain a bond that meets the requirements of division (A)(2)(a) of this section at a cost the director determines to be reasonable or operates other nursing homes in this state, the person has financial resources that the director determines are sufficient to cover any reasonably anticipated revenue shortfall for at least twelve months after the assignment or transfer.

(3) The person has at least five years of experience as an operator, manager, or administrator of a nursing home.

(4) The person has plans for quality assurance and risk management for the nursing home.

(5) The person has general and professional liability insurance coverage that provides coverage of at least one million dollars per occurrence and three million dollars aggregate.

(B) The documentation required by divisions (A)(1) and (2)(b) of this section shall include projected financial statements for the nursing home for the twelve-month period after the assignment or transfer of the operation of the nursing home.

The documentation required by division (A)(3) of this section shall include a list of each currently or previously licensed nursing home located in this or another state in which the person has or previously had any percentage of ownership. The percentage of ownership may have been in the operation, real property, or both of the nursing home.

(C) The requirements established by this section are in addition to the other requirements established by this chapter and the rules adopted under it for a license to operate a nursing home.

Added by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

3721.027 Investigation of unresolved complaints found to be valid.

(A) As used in this section, "survey" has the same meaning as in section 5165.60 of the Revised Code.

(B) The department of health shall investigate within ten working days after referral, in accordance with procedures and criteria to be established by the department of health and the department of aging, any unresolved complaint that the office of the state long-term care ombudsman has investigated and found to be valid and refers to the department of health. This requirement does not supersede federal requirements for survey agency complaint investigations.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 07-01-2000.

3721.03 Enforcement of provisions - revocation of license.

(A) As used in this section, "person" has the same meaning as in section 1.59 of the Revised Code.

(B) The director of health shall enforce the provisions of sections 3721.01 to 3721.13 and 3721.99 of the Revised Code and may issue orders to secure compliance with the provisions of these sections and the rules adopted under them. The director may hold hearings, issue subpoenas, compel testimony, and make adjudications.

The director may issue an order revoking a license in the event the director finds, upon hearing or opportunity afforded pursuant to Chapter 119. of the Revised Code, that any of the following apply to a person, county home, or district home licensed under section 3721.07 of the Revised Code:

(1) Has violated any of the provisions of Chapter 3721. of the Revised Code or rules adopted by the director under it;

- (2) Has violated any order issued by the director;
- (3) Is not, or any of its principals are not suitable, morally or financially to operate such an institution;
- (4) Is not furnishing humane, kind, and adequate treatment and care;
- (5) Has had a long-standing pattern of violations of this chapter or the rules adopted under it that has caused physical, emotional, mental, or psychosocial harm to one or more residents.

Upon the issuance of any order of revocation, the person whose license is revoked, or the county home or district home that has its license revoked, may appeal in accordance with Chapter 119. of the Revised Code.

(C) Once the director notifies a person, county home, or district home licensed to operate a home that the license may be revoked or issues any order under this section, the person, county home, or district home shall not assign or transfer to another person or entity the right to operate the home, unless the notice or order is issued solely because the home has already closed or ceased operations. This prohibition shall remain in effect until proceedings under Chapter 119. of the Revised Code concerning the order or license revocation have been concluded or the director notifies the person, county home, or district home that the prohibition has been lifted.

If a license is revoked under this section, the former license holder shall not assign or transfer or consent to assignment or transfer of the right to operate the home. Any attempted assignment or transfer to another person or entity is void.

On revocation of a license, the former licensee shall take all necessary steps to cease operation of the home.

The director of health shall not accept a certificate of need application under section 3702.52 of the Revised Code regarding a home if the license to operate the home has been revoked under this section.

Amended by 131st General Assembly File No. TBD, HB 340, §101.01, eff. 12/22/2015.
Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 07-21-2000; 06-30-2005

3721.031 Investigation of complaint concerning home - disclosure of information.

(A) The director of health may investigate any complaint the director receives concerning a home.

(1) Except as required by court order, as necessary for the administration or enforcement of any statute relating to homes, or as provided in division (C) of this section, the director and any employee of the department of health shall not release any of the following information without the permission of the individual or of the individual's legal representative:

- (a) The identity of any patient or resident;
- (b) The identity of any individual who submits a complaint about a home;
- (c) The identity of any individual who provides the director with information about a home and has requested confidentiality;
- (d) Any information that reasonably would tend to disclose the identity of any individual described in division (A)(1)(a) to (c) of this section.

(2) An agency or individual to whom the director is required, by court order or for the administration or enforcement of a statute relating to homes, to release information described in division (A)(1) of this section shall not release the information without the permission of the individual who would be or would reasonably tend to be identified, or of the individual's legal representative, unless the agency or individual is required to release it by division (C) of this section, by court order, or for the administration or enforcement of a statute relating to homes.

(B) Except as provided in division (C) of this section, any record that identifies an individual described in division (A)(1)(a) to (c) of this section or that reasonably would tend to identify such an individual is not a public record for the purposes of section 149.43 of the Revised Code, and is not subject to inspection and copying under section 1347.08 of the Revised Code.

(C)(1) If the director, or an agency or individual to whom the director is required by court order or for administration or enforcement of a statute relating to homes to release information described in division (A)(1) of this section, uses information in any administrative or judicial proceeding against a home that reasonably would tend to identify an individual described in division (A)(1)(a) to (c) of this section, the director, agency, or individual shall disclose that information to the home. However, the director, agency, or individual shall not disclose information that directly identifies an individual described in divisions (A)(1)(a) to (c) of this section, unless the individual is to testify in the proceedings.

(2)(a) On the request of the director of aging or the director's designee and subject to division (C)(2)(b) of this section, the director of health may release to the department of aging the identity of a patient or resident of a home who receives assisted living services pursuant to sections 173.54 to 173.548 of the Revised Code.

(b) The department of aging shall not use information obtained under division (C)(2)(a) for any purpose other than monitoring the well-being of patients or residents who receive assisted living services.

(D) No person shall knowingly register a false complaint about a home with the director, or knowingly swear or affirm the truth of a false complaint, when the complaint is made for the purpose of incriminating another.

(E) An individual who in good faith submits a complaint under this section or any other provision of the Revised Code regarding a violation of this chapter, or participates in any

investigation, administrative proceeding, or judicial proceeding resulting from the complaint, has the full protection against retaliatory action provided by sections 4113.51 to 4113.53 of the Revised Code.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 04-10-2001.

3721.032 Fire marshal to enforce and adopt fire safety rules.

The state fire marshal shall enforce all statutes and rules pertaining to fire safety in homes and shall adopt rules pertaining to fire safety in homes as the marshal determines necessary. The rules adopted by the marshal shall be in addition to those fire safety rules that the board of building standards and the director of health are empowered to adopt. In the event of a dispute between the marshal and another officer having responsibilities under sections 3721.01 to 3721.09 of the Revised Code with respect to the interpretation or application of a specific fire safety statute or rule, the interpretation of the marshal shall prevail.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 06-30-2005.

3721.04 Adoption and publication of uniform rules governing operation of homes.

(A) The director of health shall adopt and publish rules governing the operation of homes, which shall have uniform application throughout the state, and shall prescribe standards for homes with respect to, but not limited to, the following matters:

- (1) The minimum space requirements for occupants and equipping of the buildings in which homes are housed so as to ensure healthful, safe, sanitary, and comfortable conditions for all residents, so long as they are not inconsistent with Chapters 3781. and 3791. of the Revised Code or with any rules adopted by the board of building standards and by the state fire marshal;
- (2) The number and qualifications of personnel, including management and nursing staff, for each class of home, and the qualifications of nurse aides, as defined in section 3721.21 of the Revised Code, used by long-term care facilities, as defined in that section;
- (3) The medical, rehabilitative, and recreational services to be provided by each class of home;
- (4) Dietetic services, including but not limited to sanitation, nutritional adequacy, and palatability of food;
- (5) The personal and social services to be provided by each class of home;
- (6) The business and accounting practices to be followed and the type of patient and business records to be kept by such homes;

(7) The operation of adult day-care programs provided by and on the same site as homes licensed under this chapter;

(8) The standards and procedures to be followed by residential care facilities in admitting and retaining a resident who requires the application of dressings, including requirements for charting and evaluating on a weekly basis;

(9) The requirements for conducting weekly evaluations of residents receiving skilled nursing care in residential care facilities.

(B) The director may adopt whatever additional rules are necessary to carry out or enforce the provisions of sections 3721.01 to 3721.09 and 3721.99 of the Revised Code.

(C) The following apply to the director when adopting rules under division (A)(1) of this section regarding the equipping of the buildings in which homes are housed:

(1) The rules shall not require that each resident sleeping room, or a percentage of the resident sleeping rooms, have a bathtub or shower that is directly accessible from or exclusively for the room.

(2) The rules shall require that the privacy and dignity of residents be protected when the residents are transported to and from bathing facilities, prepare for bathing, and bathe.

(D) The following apply to the director when adopting rules under division (A)(2) of this section regarding the number and qualifications of personnel in homes:

(1) When adopting rules applicable to residential care facilities, the director shall take into consideration the effect that the following may have on the number of personnel needed:

(a) Provision of personal care services;

(b) Provision of part-time, intermittent skilled nursing care pursuant to division (C) of section 3721.011 of the Revised Code;

(c) Provision of skilled nursing care to residents pursuant to division (D) of section 3721.011 of the Revised Code.

(2) When adopting rules applicable to nursing homes, the director shall require each nursing home to do both of the following:

(a) Have sufficient direct care staff on each shift to meet the needs of the residents in an appropriate and timely manner;

(b) Have the following individuals provide a minimum daily average of two and one-half hours of direct care per resident:

(i) Registered nurses, including registered nurses who perform administrative and supervisory

duties;

(ii) Licensed practical nurses, including licensed practical nurses who perform administrative and supervisory duties;

(iii) Nurse aides.

(3) The rules prescribing qualifications of nurse aides used by long-term care facilities, as those terms are defined in section 3721.21 of the Revised Code, shall be no less stringent than the requirements, guidelines, and procedures established by the United States secretary of health and human services under section 1819 of the "Social Security Act," 101 Stat. 1330-160 (1987), 42 U.S.C. 1395i-3, as amended, and section 1919 of the "Social Security Act," 101 Stat. 1330-182 (1987), 42 U.S.C. 1396r, as amended.

(E) The following apply to the director when adopting rules under division (A)(2) of this section regarding the number and qualifications of personnel in nursing homes or rules under division (A)(5) of this section regarding social services to be provided by nursing homes:

(1) The rules shall not prescribe the number of individuals licensed as social workers under Chapter 4757. of the Revised Code that a nursing home with one hundred twenty or fewer beds must employ.

(2) The rules shall require each nursing home with more than one hundred twenty beds to employ on a full-time basis one individual licensed as a social worker under Chapter 4757. of the Revised Code.

(3) The rules shall require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.
Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 06-20-1996; 04-14-2006

3721.041 Vaccinations to be offered to residents.

(A) As used in this section:

(1) "Advisory committee" means the advisory committee on immunization practices of the United States centers for disease control and prevention or a successor committee or agency.

(2) "Home" has the same meaning as in section 3721.01 of the Revised Code.

(3) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(B)(1) Each home shall, on an annual basis, offer to each resident, in accordance with guidelines issued by the advisory committee, vaccination against influenza, unless a physician has determined that vaccination of the resident is medically inappropriate. The vaccine shall be of a form approved by the advisory committee for that calendar year. A resident may refuse vaccination.

(2) Each home shall obtain the influenza vaccine information sheet described in section 3701.138 of the Revised Code and post the sheet in a conspicuous location that is accessible to all residents, employees, and visitors. Not later than the first day of August each year, the home shall determine whether the information sheet it has posted is the most recent version available. If it is not, the home shall replace the information sheet with the updated version. Nothing in this division requires an older adult to be vaccinated against influenza.

Failure to comply with the requirement to post the information sheet shall not be taken into account when any survey or inspection of the home is conducted and shall not be used as the basis for imposing any penalty against the home.

(C) Each home shall offer to each resident, in accordance with guidelines issued by the advisory committee, vaccination against pneumococcal pneumonia, unless the resident has already received such vaccination or a physician has determined that vaccination of the resident is medically inappropriate. Each vaccine shall be of a form approved by the advisory committee for that calendar year. A resident may refuse vaccination.

(D) The director of health may adopt rules under Chapter 119. of the Revised Code as the director considers appropriate to implement this section.

Amended by 131st General Assembly File No. TBD, SB 311, §1, eff. 3/21/2017.

Effective Date: 06-15-2006.

3721.042 Excluded grounds for denial of license.

The director of health may not deny a nursing home license to a facility seeking a license under this chapter as a nursing home on the grounds that the facility does not satisfy a requirement established in rules adopted under section 3721.04 of the Revised Code regarding the toilet rooms and dining and recreational areas of nursing homes if all of the following requirements are met:

(A) The facility seeks a license under this chapter because it is a county home or district home being sold under section 5155.31 of the Revised Code to a person who may not operate the facility without a nursing home license under this chapter.

(B) The requirement would not have applied to the facility had the facility been a nursing home first licensed under this chapter before October 20, 2001.

(C) The facility was a nursing facility, as defined in section 5165.01 of the Revised Code, on the date immediately preceding the date the facility is sold to the person seeking the license.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 2008 HB125 06-25-2008

3721.05 Operating home requires license - prohibited activities.

No person, firm, partnership, association, or corporation shall:

- (A) Operate a home as defined in section 3721.01 of the Revised Code without obtaining a license from the director of health;
- (B) Violate any of the conditions or requirements necessary for licensing after the license has been issued;
- (C) Operate a home after the license for such has been revoked by the director of health;
- (D) Interfere with the inspection of a licensed home by any state or local official when he is performing duties required of him by Chapter 3721. of the Revised Code. All licensed homes shall be open for inspection.
- (E) Violate any of the provisions of Chapter 3721. of the Revised Code or any rules and regulations adopted pursuant thereto.

Effective Date: 06-30-1995.

3721.051 County or district - prohibited activities.

No county home or district home licensed under section 3721.07 of the Revised Code shall do any of the following:

- (A) Violate any of the conditions or requirements necessary for licensing after the license has been issued;
- (B) Continue operation after its license has been revoked by the director of health;
- (C) Fail to be open for an inspection, or interfere with an inspection, by a state or local official performing inspection duties under Chapter 3721. of the Revised Code;
- (D) Violate any of the provisions of this chapter or any rules adopted thereunder.

Effective Date: 07-21-2000.

3721.06 Prohibition against placement of person in unlicensed home.

No public official or employee shall place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any home as defined in

section 3721.01 of the Revised Code which is being operated without a license from the director of health or from a political subdivision certified pursuant to section 3721.09 of the Revised Code.

Effective Date: 10-20-1965.

3721.07 Requirement for issuance of license - revocation.

Every person desiring to operate a home and the superintendent or administrator of each county home or district home for which a license as a residential care facility is sought shall apply for a license to the director of health. The director shall issue a license for the home, if after investigation of the applicant and, if required by section 3721.02 of the Revised Code, inspection of the home, the following requirements or conditions are satisfied or complied with:

- (A) The applicant has not been convicted of a felony or a crime involving moral turpitude;
- (B) The applicant is not violating any of the rules adopted by the director of health or any order issued by the director ;
- (C) The applicant has not had a license to operate the home revoked pursuant to section 3721.03 of the Revised Code because of any act or omission that jeopardized a resident's health, welfare, or safety nor has the applicant had a long-standing pattern of violations of this chapter or rules adopted under it that caused physical, emotional, mental, or psychosocial harm to one or more residents.
- (D) The buildings in which the home is housed have been approved by the state fire marshal or a township, municipal, or other legally constituted fire department approved by the marshal. In the approval of a home such agencies shall apply standards prescribed by the board of building standards, and by the state fire marshal, and by section 3721.071 of the Revised Code.
- (E) The applicant, if it is an individual, or the principal participants, if it is an association or a corporation, is or are suitable financially and morally to operate a home;
- (F) The applicant is equipped to furnish humane, kind, and adequate treatment and care;
- (G) The home does not maintain or contain:
 - (1) Facilities for the performance of major surgical procedures;
 - (2) Facilities for providing therapeutic radiation;
 - (3) An emergency ward;
 - (4) A clinical laboratory unless it is under the supervision of a clinical pathologist who is a licensed physician in this state;
 - (5) Facilities for radiological examinations unless such examinations are performed only by a

person licensed to practice medicine, surgery, or dentistry in this state.

(H) The home does not accept or treat outpatients, except upon the written orders of a physician licensed in this state, maternity cases, boarding children, and does not house transient guests, other than participants in an adult day-care program, for twenty-four hours or less;

(I) The home is in compliance with sections 3721.28 and 3721.29 of the Revised Code.

When the director issues a license, the license shall remain in effect until revoked by the director or voided at the request of the applicant; provided, there shall be an annual renewal fee payable during the month of January of each calendar year. Any licensed home that does not pay its renewal fee in January shall pay, beginning the first day of February, a late fee of one hundred dollars for each week or part thereof that the renewal fee is not paid. If either the renewal fee or the late fee is not paid by the fifteenth day of February, the director may, in accordance with Chapter 119. of the Revised Code, revoke the home's license.

If, under division (B)(5) of section 3721.03 of the Revised Code, the license of a person has been revoked or the license of a county home or district home to operate as a residential care facility has been revoked, the director of health shall not issue a license to the person or home at any time. A person whose license is revoked, and a county home or district home that has its license as a residential care facility revoked other than under division (B)(5) of section 3721.03 of the Revised Code, for any reason other than nonpayment of the license renewal fee or late fees shall not be issued a new license under this chapter until a period of one year following the date of revocation has elapsed.

Any applicant who is denied a license may appeal in accordance with Chapter 119. of the Revised Code.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 07-21-2000; 06-30-2005

3721.071 Home must be equipped with both automatic fire extinguishing and fire alarm systems.

The buildings in which a home is housed shall be equipped with both an automatic fire extinguishing system and fire alarm system. Such systems shall conform to standards set forth in the regulations of the board of building standards and the state fire marshal.

The time for compliance with the requirements imposed by this section shall be January 1, 1975, except that the date for compliance with the automatic fire extinguishing requirements is extended to January 1, 1976, provided the buildings of the home are otherwise in compliance with fire safety laws and regulations and:

(A) The home within thirty days after August 4, 1975, files a written plan with the state fire marshal's office that:

(1) Outlines the interim safety procedures which shall be carried out to reduce the possibility of a fire;

(2) Provides evidence that the home has entered into an agreement for a fire safety inspection to be conducted not less than monthly by a qualified independent safety engineer consultant or a township, municipal, or other legally constituted fire department, or by a township or municipal fire prevention officer;

(3) Provides verification that the home has entered into a valid contract for the installation of an automatic fire extinguishing system or fire alarm system, or both, as required to comply with this section;

(4) Includes a statement regarding the expected date for the completion of the fire extinguishing system or fire alarm system, or both.

(B) Inspections by a qualified independent safety engineer consultant or a township, municipal, or other legally constituted fire department, or by a township or municipal fire prevention officer are initiated no later than sixty days after August 4, 1975, and are conducted no less than monthly thereafter, and reports of the consultant, fire department, or fire prevention officer identifying existing hazards and recommended corrective actions are submitted to the state fire marshal, the division of industrial compliance in the department of commerce, and the department of health.

It is the express intent of the general assembly that the department of Medicaid shall terminate the Medicaid provider agreements of those homes that do not comply with the requirements of this section for the submission of a written fire safety plan and the deadline for entering into contracts for the installation of systems.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 07-01-2000.

3721.072 Biennial participation in quality improvement projects.

(A) As used in this section:

(1) "Advance care planning" means providing an opportunity to discuss the goals that may be met through the care provided by a nursing home.

(2) "Overhead paging" means sending audible announcements through an electronic sound amplification and distribution system throughout part or all of a nursing home to staff, residents, residents' families, or others.

(B) Beginning July 1, 2013, each nursing home shall participate every two years in at least one of the quality improvement projects included on the list made available by the department of

aging under the nursing home quality initiative established under section 173.60 of the Revised Code.

(C) Beginning July 1, 2015, each nursing home shall participate in advance care planning with each resident or the resident's sponsor if the resident is unable to participate. For each resident, the advance care planning shall be provided on admission to the nursing home or, in the case of an individual residing in a nursing home on July 1, 2015, as soon as practicable. Thereafter, for each resident, the advance care planning shall be provided quarterly each year.

(D) Beginning July 1, 2015, each nursing home shall prohibit the use of overhead paging within the nursing home, except that the nursing home may permit the use of overhead paging for matters of urgent public safety or urgent clinical operations. The nursing home shall develop a written policy regarding its use of overhead paging and make the policy available to staff, residents, and residents' families.

Added by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

3721.08 Injunctive relief.

(A) As used in this section, "real and present danger" means imminent danger of serious physical or life-threatening harm to one or more occupants of a home.

(B) The director of health may petition the court of common pleas of the county in which the home is located for an order enjoining any person from operating a home without a license or enjoining a county home or district home that has had its license revoked from continuing to operate. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a home without a license or that the county home or district home named in the petition is operating despite the revocation of its license. The court shall have jurisdiction to grant such injunctive relief against the operation of a home without a valid license regardless of whether the home meets essential licensing requirements.

(C) Unless the department of Medicaid or contracting agency has taken action under section 5165.77 of the Revised Code to appoint a temporary manager or seek injunctive relief, if, in the judgment of the director of health, real and present danger exists at any home, the director may petition the court of common pleas of the county in which the home is located for such injunctive relief as is necessary to close the home, transfer one or more occupants to other homes or other appropriate care settings, or otherwise eliminate the real and present danger. The court shall have the jurisdiction to grant such injunctive relief upon a showing that there is real and present danger.

(D)(1) If the director determines that real and present danger exists at a home and elects not to immediately seek injunctive relief under division (C) of this section, the director may give written notice of proposed action to the home. The notice shall specify all of the following:

(a) The nature of the conditions giving rise to the real and present danger;

(b) The measures that the director determines the home must take to respond to the conditions;

(c) The date on which the director intends to seek injunctive relief under division (C) of this section if the director determines that real and present danger exists at the home.

(2) If the home notifies the director, within the time specified pursuant to division (D)(1)(c) of this section, that it believes the conditions giving rise to the real and present danger have been substantially corrected, the director shall conduct an inspection to determine whether real and present danger exists. If the director determines on the basis of the inspection that real and present danger exists, the director may petition under division (C) of this section for injunctive relief.

(E)(1) If in the judgment of the director of health conditions exist at a home that will give rise to real and present danger if not corrected, the director shall give written notice of proposed action to the home. The notice shall specify all of the following:

(a) The nature of the conditions giving rise to the director's judgment;

(b) The measures that the director determines the home must take to respond to the conditions;

(c) The date, which shall be no less than ten days after the notice is delivered, on which the director intends to seek injunctive relief under division (C) of this section if the conditions are not substantially corrected and the director determines that a real and present danger exists.

(2) If the home notifies the director, within the period of time specified pursuant to division (E)(1)(c) of this section, that the conditions giving rise to the director's determination have been substantially corrected, the director shall conduct an inspection. If the director determines on the basis of the inspection that the conditions have not been corrected and a real and present danger exists, the director may petition under division (C) of this section for injunctive relief.

(F)(1) A court that grants injunctive relief under division (C) of this section may also appoint a special master who, subject to division (F)(2) of this section, shall have such powers and authority over the home and length of appointment as the court considers necessary. Subject to division (F)(2) of this section, the salary of a special master and any costs incurred by a special master shall be the obligation of the home.

(2) No special master shall enter into any employment contract on behalf of a home, or purchase with the home's funds any capital goods totaling more than ten thousand dollars, unless the special master has obtained approval for the contract or purchase from the home's operator or the court.

(G) If the director takes action under division (C), (D), or (E) of this section, the director may also appoint employees of the department of health to conduct on-site monitoring of the home. Appointment of monitors is not subject to appeal under Chapter 119. or any other section of the Revised Code. No employee of a home for which monitors are appointed, no person employed by the home within the previous two years, and no person who currently has a consulting contract with the department or a home, shall be appointed under this division. Every monitor shall have the professional qualifications necessary to monitor correction of the conditions that

give rise to or, in the director's judgment, will give rise to real and present danger. The number of monitors present at a home at any given time shall not exceed one for every fifty residents, or fraction thereof.

(H) On finding that the real and present danger for which injunctive relief was granted under division (C) of this section has been eliminated and that the home's operator has demonstrated the capacity to prevent the real and present danger from recurring, the court shall terminate its jurisdiction over the home and return control and management of the home to the operator. If the real and present danger cannot be eliminated practicably within a reasonable time following appointment of a special master, the court may order the special master to close the home and transfer all residents to other homes or other appropriate care settings.

(I) The director of health shall give notice of proposed action under divisions (D) and (E) of this section to both of the following:

(1) The home's administrator;

(2) If the home is operated by an organization described in subsection 501(c)(3) and tax exempt under subsection 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, the board of trustees of the organization; or, if the home is not operated by such an organization, the owner of the home.

Notices shall be delivered by certified mail or hand delivery. If notices are mailed, they shall be addressed to the persons specified in divisions (I)(1) and (2) of this section, as indicated in the department of health's records. If they are hand delivered, they shall be delivered to persons who would reasonably appear to the average prudent person to have authority to accept them.

(J) If ownership of a home is assigned or transferred to a different person, the new owner is responsible and liable for compliance with any notice of proposed action or order issued under this section prior to the effective date of the assignment or transfer.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 07-21-2000.

3721.09 Local regulations.

Sections 3721.02, 3721.03, 3721.04, 3721.05, 3721.051, 3721.07, and 3721.08 of the Revised Code and the regulations adopted pursuant thereto are not applicable in political subdivisions which the director of health, by annual certification, determines have adopted and are enforcing their own standards which are equal to or greater in the requirements than those of sections 3721.02, 3721.03, 3721.04, 3721.05, 3721.051, 3721.07, and 3721.08 of the Revised Code and the regulations adopted pursuant thereto. Officials of political subdivisions shall cooperate fully with the director and provide the director with information which the director finds necessary in order to make a determination.

Effective Date: 07-21-2000.

3721.10 Residents' rights definitions.

As used in sections 3721.10 to 3721.18 of the Revised Code:

(A) "Home" means all of the following:

- (1) A home as defined in section 3721.01 of the Revised Code;
- (2) Any facility or part of a facility not defined as a home under section 3721.01 of the Revised Code that is a skilled nursing facility or nursing facility, both as defined in section 5165.01 of the Revised Code;
- (3) A county home or district home operated pursuant to Chapter 5155. of the Revised Code.

(B) "Resident" means a resident or a patient of a home.

(C) "Administrator" means all of the following:

- (1) With respect to a home as defined in section 3721.01 of the Revised Code, a nursing home administrator as defined in section 4751.01 of the Revised Code;
- (2) With respect to a facility or part of a facility not defined as a home in section 3721.01 of the Revised Code that is authorized to provide skilled nursing facility or nursing facility services, the administrator of the facility or part of a facility;
- (3) With respect to a county home or district home, the superintendent or administrator appointed or selected under Chapter 5155. of the Revised Code.

(D) "Sponsor" means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare.

(E) "Residents' rights advocate" means:

- (1) An employee or representative of any state or local government entity that has a responsibility regarding residents and that has registered with the department of health under division (B) of section 3701.07 of the Revised Code;
- (2) An employee or representative of any private nonprofit corporation or association that qualifies for tax-exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and that has registered with the department of health under division (B) of section 3701.07 of the Revised Code and whose purposes include educating and counseling residents, assisting residents in resolving problems and complaints concerning their care and treatment, and assisting them in securing adequate services to meet their needs;
- (3) A member of the general assembly.

(F) "Physical restraint" means, but is not limited to, any article, device, or garment that interferes with the free movement of the resident and that the resident is unable to remove easily, a geriatric chair, or a locked room door.

(G) "Chemical restraint" means any medication bearing the American hospital formulary service therapeutic class 4:00, 28:16:08, 28:24:08, or 28:24:92 that alters the functioning of the central nervous system in a manner that limits physical and cognitive functioning to the degree that the resident cannot attain the resident's highest practicable physical, mental, and psychosocial well-being.

(H) "Ancillary service" means, but is not limited to, podiatry, dental, hearing, vision, physical therapy, occupational therapy, speech therapy, and psychological and social services.

(I) "Facility" means a facility, or part of a facility, certified as a nursing facility or skilled nursing facility, both as defined in section 5165.01 of the Revised Code. "Facility" does not include an intermediate care facility for individuals with intellectual disabilities, as defined in section 5124.01 of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 290, §1, eff. 4/6/2017.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 09-05-2001.

3721.11 Director to adopt rules.

(A) The director of the department of health shall adopt rules under Chapter 119. of the Revised Code to govern procedures for the implementation of sections 3721.10 to 3721.17 of the Revised Code.

(B) The director may adopt, amend, and repeal substantive rules under Chapter 119. of the Revised Code defining with reasonable specificity acts that violate division (A) of section 3721.13 of the Revised Code.

Effective Date: 01-09-1979.

3721.12 Duties of nursing home administrator concerning residents' rights.

(A) The administrator of a home shall:

(1) With the advice of residents, their sponsors, or both, establish and review at least annually, written policies regarding the applicability and implementation of residents' rights under sections 3721.10 to 3721.17 of the Revised Code, the responsibilities of residents regarding the rights, and the home's grievance procedure established under division (A)(2) of this section. The administrator is responsible for the development of, and adherence to, procedures implementing the policies.

(2) Establish a grievance committee for review of complaints by residents. The grievance committee shall be comprised of the home's staff and residents, sponsors, or outside representatives in a ratio of not more than one staff member to every two residents, sponsors, or outside representatives.

(3) Furnish to each resident and sponsor prior to or at the time of admission, and to each member of the home's staff, at least one of each of the following:

(a) A copy of the rights established under sections 3721.10 to 3721.17 of the Revised Code;

(b) A written explanation of the provisions of sections 3721.16 to 3721.162 of the Revised Code;

(c) A copy of the home's policies and procedures established under this section;

(d) A copy of the home's rules;

(e) A copy of the addresses and telephone numbers of the board of health of the health district of the county in which the home is located, the county department of job and family services of the county in which the home is located, the state departments of health and Medicaid, the state and local offices of the department of aging, and any Ohio nursing home ombudsman program.

(B) Written acknowledgment of the receipt of copies of the materials listed in this section shall be made part of the resident's record and the staff member's personnel record.

(C) The administrator shall post all of the following prominently within the home:

(1) A copy of the rights of residents as listed in division (A) of section 3721.13 of the Revised Code;

(2) A copy of the home's rules and its policies and procedures regarding the rights and responsibilities of residents;

(3) A notice that a copy of this chapter, rules of the department of health applicable to the home, and federal regulations adopted under the Medicare and Medicaid programs, and the materials required to be available in the home under section 3721.021 of the Revised Code, are available for inspection in the home at reasonable hours;

(4) A list of residents' rights advocates;

(5) A notice that the following are available in a place readily accessible to residents:

(a) If the home is licensed under section 3721.02 of the Revised Code, a copy of the most recent licensure inspection report prepared for the home under that section;

(b) If the home is a facility, a copy of the most recent statement of deficiencies issued to the home under section 5165.68 of the Revised Code.

(D) The administrator of a home may, with the advice of residents, their sponsors, or both, establish written policies regarding the applicability and administration of any additional residents' rights beyond those set forth in sections 3721.10 to 3721.17 of the Revised Code, and the responsibilities of residents regarding the rights. Policies established under this division shall be reviewed, and procedures developed and adhered to as in division (A)(1) of this section.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 09-05-2001.

3721.121 Criminal records check.

(A) As used in this section:

(1) "Adult day-care program" means a program operated pursuant to rules adopted by the director of health under section 3721.04 of the Revised Code and provided by and on the same site as homes licensed under this chapter.

(2) "Applicant" means a person who is under final consideration for employment with a home or adult day-care program in a full-time, part-time, or temporary position that involves providing direct care to an older adult. "Applicant" does not include a person who provides direct care as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(3) "Community-based long-term care services provider" means a provider as defined in section 173.39 of the Revised Code.

(4) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(5) "Home" means a home as defined in section 3721.10 of the Revised Code.

(6) "Older adult" means a person age sixty or older.

(B)(1) Except as provided in division (I) of this section, the chief administrator of a home or adult day-care program shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of each applicant. If an applicant for whom a criminal records check request is required under this division does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation in a criminal records check, the chief administrator shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the applicant. Even if an applicant for whom a criminal records check request is required under this division presents proof of having been a resident of this state for the five-year period, the chief administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) A person required by division (B)(1) of this section to request a criminal records check shall do both of the following:

(a) Provide to each applicant for whom a criminal records check request is required under that division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section, and obtain the completed form and impression sheet from the applicant;

(b) Forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation.

(3) An applicant provided the form and fingerprint impression sheet under division (B)(2)(a) of this section who fails to complete the form or provide fingerprint impressions shall not be employed in any position for which a criminal records check is required by this section.

(C)(1) Except as provided in rules adopted by the director of health in accordance with division (F) of this section and subject to division (C)(2) of this section, no home or adult day-care program shall employ a person in a position that involves providing direct care to an older adult if the person has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code.

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (C)(1)(a) of this section.

(2)(a) A home or an adult day-care program may employ conditionally an applicant for whom a criminal records check request is required under division (B) of this section prior to obtaining the results of a criminal records check regarding the individual, provided that the home or program shall request a criminal records check regarding the individual in accordance with division (B)(1) of this section not later than five business days after the individual begins conditional employment. In the circumstances described in division (I)(2) of this section, a home or adult day-care program may employ conditionally an applicant who has been referred to the home or adult day-care program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and for whom, pursuant to that division, a criminal records check is not required under division (B) of this section.

(b) A home or adult day-care program that employs an individual conditionally under authority of division (C)(2)(a) of this section shall terminate the individual's employment if the results of the criminal records check requested under division (B) of this section or described in division (I)(2) of this section, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending thirty days after the date the request is

made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the offenses listed or described in division (C)(1) of this section, the home or program shall terminate the individual's employment unless the home or program chooses to employ the individual pursuant to division (F) of this section. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the individual makes any attempt to deceive the home or program about the individual's criminal record.

(D)(1) Each home or adult day-care program shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under division (B) of this section.

(2) A home or adult day-care program may charge an applicant a fee not exceeding the amount the home or program pays under division (D)(1) of this section. A home or program may collect a fee only if both of the following apply:

(a) The home or program notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment;

(b) The Medicaid program does not reimburse the home or program the fee it pays under division (D)(1) of this section.

(E) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The individual who is the subject of the criminal records check or the individual's representative;

(2) The chief administrator of the home or program requesting the criminal records check or the administrator's representative;

(3) The administrator of any other facility, agency, or program that provides direct care to older adults that is owned or operated by the same entity that owns or operates the home or program;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant;

(5) Any person to whom the report is provided pursuant to, and in accordance with, division (I)(1) or (2) of this section;

(6) The board of nursing for purposes of accepting and processing an application for a medication aide certificate issued under Chapter 4723. of the Revised Code;

(7) The director of aging or the director's designee if the criminal records check is requested by the chief administrator of a home that is also a community-based long-term care services provider.

(F) In accordance with section 3721.11 of the Revised Code, the director of health shall adopt rules to implement this section. The rules shall specify circumstances under which a home or adult day-care program may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section but meets personal character standards set by the director.

(G) The chief administrator of a home or adult day-care program shall inform each individual, at the time of initial application for a position that involves providing direct care to an older adult, that the individual is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the individual comes under final consideration for employment.

(H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an individual who a home or adult day-care program employs in a position that involves providing direct care to older adults, all of the following shall apply:

(1) If the home or program employed the individual in good faith and reasonable reliance on the report of a criminal records check requested under this section, the home or program shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate;

(2) If the home or program employed the individual in good faith on a conditional basis pursuant to division (C)(2) of this section, the home or program shall not be found negligent solely because it employed the individual prior to receiving the report of a criminal records check requested under this section;

(3) If the home or program in good faith employed the individual according to the personal character standards established in rules adopted under division (F) of this section, the home or program shall not be found negligent solely because the individual prior to being employed had been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section.

(I)(1) The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and both of the following apply:

(a) The chief administrator receives from the employment service or the applicant a report of the results of a criminal records check regarding the applicant that has been conducted by the superintendent within the one-year period immediately preceding the applicant's referral;

(b) The report of the criminal records check demonstrates that the person has not been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section, or the report demonstrates that the person has been convicted of or pleaded guilty to one or more of those offenses, but the home or adult day-care program chooses to employ the individual pursuant to division (F) of this section.

(2) The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant and may employ the applicant conditionally as described in this division, if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and if the chief administrator receives from the employment service or the applicant a letter from the employment service that is on the letterhead of the employment service, dated, and signed by a supervisor or another designated official of the employment service and that states that the employment service has requested the superintendent to conduct a criminal records check regarding the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of or pleaded guilty to any offense listed or described in division (C)(1) of this section, that, as of the date set forth on the letter, the employment service had not received the results of the criminal records check, and that, when the employment service receives the results of the criminal records check, it promptly will send a copy of the results to the home or adult day-care program. If a home or adult day-care program employs an applicant conditionally in accordance with this division, the employment service, upon its receipt of the results of the criminal records check, promptly shall send a copy of the results to the home or adult day-care program, and division (C)(2)(b) of this section applies regarding the conditional employment.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012 and 1/1/2013.

Effective Date: 09-26-2003; 06-30-2005

3721.122 Screening and accommodations for sex offenders.

Before an individual is admitted as a resident to a home, the home's administrator shall search for the individual's name in the internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code. If the search results identify the individual as a sex offender and the individual is admitted as a resident to the home, the administrator shall provide for the home to do all of the following:

(A) Develop a plan of care to protect the other residents' rights to a safe environment and to be free from abuse;

(B) Notify all of the home's other residents and their sponsors that a sex offender has been admitted as a resident to the home and include in the notice a description of the plan of care developed under division (A) of this section;

(C) Direct the individual in updating the individual's address under section 2950.05 of the Revised Code and, if the individual is unable to do so without assistance, provide the assistance the individual needs to update the individual's address under that section.

Added by 130th General Assembly File No. TBD, HB 483, §101.01, eff. 9/15/2014.

3721.13 Residents' rights.

(A) The rights of residents of a home shall include, but are not limited to, the following:

(1) The right to a safe and clean living environment pursuant to the Medicare and Medicaid programs and applicable state laws and rules adopted by the director of health;

(2) The right to be free from physical, verbal, mental, and emotional abuse and to be treated at all times with courtesy, respect, and full recognition of dignity and individuality;

(3) Upon admission and thereafter, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted. This care shall be provided without regard to considerations such as race, color, religion, national origin, age, or source of payment for care.

(4) The right to have all reasonable requests and inquiries responded to promptly;

(5) The right to have clothes and bed sheets changed as the need arises, to ensure the resident's comfort or sanitation;

(6) The right to obtain from the home, upon request, the name and any specialty of any physician or other person responsible for the resident's care or for the coordination of care;

(7) The right, upon request, to be assigned, within the capacity of the home to make the assignment, to the staff physician of the resident's choice, and the right, in accordance with the rules and written policies and procedures of the home, to select as the attending physician a physician who is not on the staff of the home. If the cost of a physician's services is to be met under a federally supported program, the physician shall meet the federal laws and regulations governing such services.

(8) The right to participate in decisions that affect the resident's life, including the right to communicate with the physician and employees of the home in planning the resident's treatment or care and to obtain from the attending physician complete and current information concerning medical condition, prognosis, and treatment plan, in terms the resident can reasonably be expected to understand; the right of access to all information in the resident's medical record; and the right to give or withhold informed consent for treatment after the consequences of that choice have been carefully explained. When the attending physician finds that it is not medically advisable to give the information to the resident, the information shall be made available to the resident's sponsor on the resident's behalf, if the sponsor has a legal interest or is authorized by the resident

to receive the information. The home is not liable for a violation of this division if the violation is found to be the result of an act or omission on the part of a physician selected by the resident who is not otherwise affiliated with the home.

(9) The right to withhold payment for physician visitation if the physician did not visit the resident;

(10) The right to confidential treatment of personal and medical records, and the right to approve or refuse the release of these records to any individual outside the home, except in case of transfer to another home, hospital, or health care system, as required by law or rule, or as required by a third-party payment contract;

(11) The right to privacy during medical examination or treatment and in the care of personal or bodily needs;

(12) The right to refuse, without jeopardizing access to appropriate medical care, to serve as a medical research subject;

(13) The right to be free from physical or chemical restraints or prolonged isolation except to the minimum extent necessary to protect the resident from injury to self, others, or to property and except as authorized in writing by the attending physician for a specified and limited period of time and documented in the resident's medical record. Prior to authorizing the use of a physical or chemical restraint on any resident, the attending physician shall make a personal examination of the resident and an individualized determination of the need to use the restraint on that resident.

Physical or chemical restraints or isolation may be used in an emergency situation without authorization of the attending physician only to protect the resident from injury to self or others. Use of the physical or chemical restraints or isolation shall not be continued for more than twelve hours after the onset of the emergency without personal examination and authorization by the attending physician. The attending physician or a staff physician may authorize continued use of physical or chemical restraints for a period not to exceed thirty days, and at the end of this period and any subsequent period may extend the authorization for an additional period of not more than thirty days. The use of physical or chemical restraints shall not be continued without a personal examination of the resident and the written authorization of the attending physician stating the reasons for continuing the restraint.

If physical or chemical restraints are used under this division, the home shall ensure that the restrained resident receives a proper diet. In no event shall physical or chemical restraints or isolation be used for punishment, incentive, or convenience.

(14) The right to the pharmacist of the resident's choice and the right to receive pharmaceutical supplies and services at reasonable prices not exceeding applicable and normally accepted prices for comparably packaged pharmaceutical supplies and services within the community;

(15) The right to exercise all civil rights, unless the resident has been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code and has not been restored to legal capacity, as well

as the right to the cooperation of the home's administrator in making arrangements for the exercise of the right to vote;

(16) The right of access to opportunities that enable the resident, at the resident's own expense or at the expense of a third-party payer, to achieve the resident's fullest potential, including educational, vocational, social, recreational, and habilitation programs;

(17) The right to consume a reasonable amount of alcoholic beverages at the resident's own expense, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;

(18) The right to use tobacco at the resident's own expense under the home's safety rules and under applicable laws and rules of the state, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;

(19) The right to retire and rise in accordance with the resident's reasonable requests, if the resident does not disturb others or the posted meal schedules and upon the home's request remains in a supervised area, unless not medically advisable as documented by the attending physician;

(20) The right to observe religious obligations and participate in religious activities; the right to maintain individual and cultural identity; and the right to meet with and participate in activities of social and community groups at the resident's or the group's initiative;

(21) The right upon reasonable request to private and unrestricted communications with the resident's family, social worker, and any other person, unless not medically advisable as documented in the resident's medical record by the attending physician, except that communications with public officials or with the resident's attorney or physician shall not be restricted. Private and unrestricted communications shall include, but are not limited to, the right to:

(a) Receive, send, and mail sealed, unopened correspondence;

(b) Reasonable access to a telephone for private communications;

(c) Private visits at any reasonable hour.

(22) The right to assured privacy for visits by the spouse, or if both are residents of the same home, the right to share a room within the capacity of the home, unless not medically advisable as documented in the resident's medical record by the attending physician;

(23) The right upon reasonable request to have room doors closed and to have them not opened without knocking, except in the case of an emergency or unless not medically advisable as documented in the resident's medical record by the attending physician;

(24) The right to retain and use personal clothing and a reasonable amount of possessions, in a reasonably secure manner, unless to do so would infringe on the rights of other residents or would

not be medically advisable as documented in the resident's medical record by the attending physician;

(25) The right to be fully informed, prior to or at the time of admission and during the resident's stay, in writing, of the basic rate charged by the home, of services available in the home, and of any additional charges related to such services, including charges for services not covered under the Medicare or Medicaid program. The basic rate shall not be changed unless thirty days' notice is given to the resident or, if the resident is unable to understand this information, to the resident's sponsor.

(26) The right of the resident and person paying for the care to examine and receive a bill at least monthly for the resident's care from the home that itemizes charges not included in the basic rates;

(27)

(a) The right to be free from financial exploitation;

(b) The right to manage the resident's own personal financial affairs, or, if the resident has delegated this responsibility in writing to the home, to receive upon written request at least a quarterly accounting statement of financial transactions made on the resident's behalf. The statement shall include:

(i) A complete record of all funds, personal property, or possessions of a resident from any source whatsoever, that have been deposited for safekeeping with the home for use by the resident or the resident's sponsor;

(ii) A listing of all deposits and withdrawals transacted, which shall be substantiated by receipts which shall be available for inspection and copying by the resident or sponsor.

(28) The right of the resident to be allowed unrestricted access to the resident's property on deposit at reasonable hours, unless requests for access to property on deposit are so persistent, continuous, and unreasonable that they constitute a nuisance;

(29) The right to receive reasonable notice before the resident's room or roommate is changed, including an explanation of the reason for either change.

(30) The right not to be transferred or discharged from the home unless the transfer is necessary because of one of the following:

(a) The welfare and needs of the resident cannot be met in the home.

(b) The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home.

(c) The safety of individuals in the home is endangered.

(d) The health of individuals in the home would otherwise be endangered.

(e) The resident has failed, after reasonable and appropriate notice, to pay or to have the Medicare or Medicaid program pay on the resident's behalf, for the care provided by the home. A resident shall not be considered to have failed to have the resident's care paid for if the resident has applied for Medicaid, unless both of the following are the case:

(i) The resident's application, or a substantially similar previous application, has been denied.

(ii) If the resident appealed the denial, the denial was upheld.

(f) The home's license has been revoked, the home is being closed pursuant to section [3721.08](#), sections [5165.60](#) to [5165.89](#), or section [5155.31](#) of the Revised Code, or the home otherwise ceases to operate.

(g) The resident is a recipient of Medicaid, and the home's participation in the Medicaid program is involuntarily terminated or denied.

(h) The resident is a beneficiary under the Medicare program, and the home's participation in the Medicare program is involuntarily terminated or denied.

(31) The right to voice grievances and recommend changes in policies and services to the home's staff, to employees of the department of health, or to other persons not associated with the operation of the home, of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to a residents' rights advocate, and the right to be a member of, to be active in, and to associate with persons who are active in organizations of relatives and friends of nursing home residents and other organizations engaged in assisting residents.

(32) The right to have any significant change in the resident's health status reported to the resident's sponsor. As soon as such a change is known to the home's staff, the home shall make a reasonable effort to notify the sponsor within twelve hours.

(33) The right, if the resident has requested the care and services of a hospice care program, to choose a hospice care program licensed under Chapter 3712. of the Revised Code that best meets the resident's needs.

(B) A sponsor may act on a resident's behalf to assure that the home does not deny the residents' rights under sections [3721.10](#) to [3721.17](#) of the Revised Code.

(C) Any attempted waiver of the rights listed in division (A) of this section is void.

Amended by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-05-2001.

3721.14 Implementation of residents' rights.

To assist in the implementation of the rights granted in division (A) of section 3721.13 of the Revised Code, each home shall provide:

(A) Appropriate staff training to implement each resident's rights under division (A) of section 3721.13 of the Revised Code, including, but not limited to, explaining:

(1) The resident's rights and the staff's responsibility in the implementation of the rights;

(2) The staff's obligation to provide all residents who have similar needs with comparable service.

(B) Arrangements for a resident's needed ancillary services;

(C) Protected areas outside the home for residents to enjoy outdoor activity, within the capacity of the facility, consistent with applicable laws and rules;

(D) Adequate indoor space, which need not be dedicated to that purpose, for families of residents to meet privately with families of other residents;

(E) Access to the following persons to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents:

(1) Employees of the department of health, department of mental health and addiction services, department of developmental disabilities, department of aging, department of job and family services, and county departments of job and family services;

(2) Prospective residents and their sponsors;

(3) A resident's sponsors;

(4) Residents' rights advocates;

(5) A resident's attorney;

(6) A minister, priest, rabbi, or other person ministering to a resident's religious needs.

(F) In writing, a description of the home's grievance procedures.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 128th General Assembly ch.127, SB 79, §1, eff. 10/6/2009.

Effective Date: 07-01-2000.

3721.15 Authorization to handle residents' financial affairs.

(A) A home that manages a resident's financial affairs shall deposit the resident's funds in excess of one thousand dollars, and may deposit the resident's funds that are one thousand dollars or

less, in an interest-bearing account separate from any of the home's operating accounts. Interest earned on the resident's funds shall be credited to the resident's account. A resident's funds that are one thousand dollars or less and have not been deposited in an interest-bearing account may be deposited in a noninterest-bearing account or petty cash fund.

(B) Each resident whose financial affairs are managed by a home shall be promptly notified by the home when the total of the amount of funds in the resident's accounts and the petty cash fund plus other nonexempt resources reaches two hundred dollars less than the maximum amount permitted a recipient of Medicaid. The notice shall include an explanation of the potential effect on the resident's eligibility for Medicaid if the amount in the resident's accounts and the petty cash fund, plus the value of other nonexempt resources, exceeds the maximum assets a Medicaid recipient may retain.

(C) Each home that manages the financial affairs of residents shall purchase a surety bond or otherwise provide assurance satisfactory to the director of health, or, in the case of a home that participates in the Medicaid program, to the Medicaid director, to assure the security of all residents' funds managed by the home.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 09-05-2001; 06-30-2005

3721.16 Residents' rights concerning transfer or discharge.

For each resident of a home, notice of a proposed transfer or discharge shall be in accordance with this section.

(A)(1) The administrator of a home shall notify a resident in writing, and the resident's sponsor in writing by certified mail, return receipt requested, in advance of any proposed transfer or discharge from the home. The administrator shall send a copy of the notice to the state department of health. The notice shall be provided at least thirty days in advance of the proposed transfer or discharge, unless any of the following applies:

- (a) The resident's health has improved sufficiently to allow a more immediate discharge or transfer to a less skilled level of care;
- (b) The resident has resided in the home less than thirty days;
- (c) An emergency arises in which the safety of individuals in the home is endangered;
- (d) An emergency arises in which the health of individuals in the home would otherwise be endangered;
- (e) An emergency arises in which the resident's urgent medical needs necessitate a more immediate transfer or discharge.

In any of the circumstances described in divisions (A)(1)(a) to (e) of this section, the notice shall be provided as many days in advance of the proposed transfer or discharge as is practicable.

(2) The notice required under division (A)(1) of this section shall include all of the following:

(a) The reasons for the proposed transfer or discharge;

(b) The proposed date the resident is to be transferred or discharged;

(c) Subject to division (A)(3) of this section, a proposed location to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location to which the resident will relocate;

(d) Notice of the right of the resident and the resident's sponsor to an impartial hearing at the home on the proposed transfer or discharge, and of the manner in which and the time within which the resident or sponsor may request a hearing pursuant to section 3721.161 of the Revised Code;

(e) A statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date;

(f) The address of the legal services office of the department of health;

(g) The name, address, and telephone number of a representative of the state long-term care ombudsman program and, if the resident or patient has a developmental disability or mental illness, the name, address, and telephone number of the Ohio protection and advocacy system.

(3) The proposed location to which a resident may relocate as specified pursuant to division (A)(2)(c) of this section in the proposed transfer or discharge notice shall be capable of meeting the resident's health-care and safety needs. The proposed location for relocation need not have accepted the resident at the time the notice is issued to the resident and resident's sponsor.

(B) No home shall transfer or discharge a resident before the date specified in the notice required by division (A) of this section unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.

(C) Transfer or discharge actions shall be documented in the resident's medical record by the home if there is a medical basis for the action.

(D) A resident or resident's sponsor may challenge a transfer or discharge by requesting an impartial hearing pursuant to section 3721.161 of the Revised Code, unless the transfer or discharge is required because of one of the following reasons:

(1) The home's license has been revoked under this chapter;

(2) The home is being closed pursuant to section 3721.08, sections 5165.60 to 5165.89, or section 5155.31 of the Revised Code;

(3) The resident is a recipient of Medicaid and the home's participation in the Medicaid

program has been involuntarily terminated or denied by the federal government;

(4) The resident is a beneficiary under the Medicare program and the home's certification under the Medicare program has been involuntarily terminated or denied by the federal government.

(E) If a resident is transferred or discharged pursuant to this section, the home from which the resident is being transferred or discharged shall provide the resident with adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, and the home or alternative setting to which the resident is to be transferred or discharged shall have accepted the resident for transfer or discharge.

(F) At the time of a transfer or discharge of a resident who is a recipient of Medicaid from a home to a hospital or for therapeutic leave, the home shall provide notice in writing to the resident and in writing by certified mail, return receipt requested, to the resident's sponsor, specifying the number of days, if any, during which the resident will be permitted under the Medicaid program to return and resume residence in the home and specifying the Medicaid program's coverage of the days during which the resident is absent from the home. An individual who is absent from a home for more than the number of days specified in the notice and continues to require the services provided by the facility shall be given priority for the first available bed in a semi-private room.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.28, HB 153, §120.20, eff. 10/1/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 09-05-2001.

3721.161 Hearing challenging proposed transfer or discharge.

(A) Not later than thirty days after the date a resident or the resident's sponsor receives notice of a proposed transfer or discharge, whichever is later, the resident or resident's sponsor may challenge the proposed transfer or discharge by submitting a written request for a hearing to the state department of health. On receiving the request, the department shall conduct a hearing in accordance with section 3721.162 of the Revised Code to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code.

(B) Except in the circumstances described in divisions (A)(1)(a) to (e) of section 3721.16 of the Revised Code, if a resident or resident's sponsor submits a written hearing request not later than ten days after the resident or the resident's sponsor received notice of the proposed transfer or discharge, whichever is later, the home shall not transfer or discharge the resident unless the department determines after the hearing that the transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.

(C) If a resident or resident's sponsor does not request a hearing pursuant to division (A) of this section, the home may transfer or discharge the resident on the date specified in the notice

required by division (A) of section 3721.16 of the Revised Code or thereafter, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.

(D) If the resident or resident's sponsor requests a hearing in writing pursuant to division (A) of this section and the home transfers or discharges the resident before the department issues a hearing decision, the home shall readmit the resident in the first available bed if the department determines after the hearing that the transfer or discharge does not comply with division (A)(30) of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.

Effective Date: 09-05-2001.

3721.162 Determining whether transfer or discharge complies.

(A) On receiving a request pursuant to section 3721.161 of the Revised Code, the department of health shall conduct hearings under this section in accordance with 42 C.F.R. 431, subpart E, to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code.

(B) The department shall employ or contract with an attorney to serve as hearing officer. The hearing officer shall conduct a hearing in the home not later than ten days after the date the department receives a request pursuant to section 3721.161 of the Revised Code, unless the resident and the home or, if the resident is not competent to make a decision, the resident's sponsor and the home, agree otherwise. The hearing shall be recorded on audiotape, but neither the recording nor a transcript of the recording shall be part of the official record of the hearing. A hearing conducted under this section is not subject to section 121.22 of the Revised Code.

(C) Unless the parties otherwise agree, the hearing officer shall issue a decision within five days of the date the hearing concludes. In all cases, a decision shall be issued not later than thirty days after the department receives a request pursuant to section 3721.161 of the Revised Code. The hearing officer's decision shall be served on the resident or resident's sponsor and the home by certified mail. The hearing officer's decision shall be considered the final decision of the department.

(D) A resident, resident's sponsor, or home may appeal the decision of the department to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code, except for all of the following:

(1) The resident, resident's sponsor, or home shall file the appeal in the court of common pleas of the county in which the home is located.

(2) The resident or resident's sponsor may apply to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor shall not be required to furnish the costs of the appeal.

(3) The appeal shall be filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party shall serve the opposing party a copy of

the notice of appeal by hand-delivery or certified mail, return receipt requested. If the home is the appealing party, it shall provide a copy of the notice of appeal to both the resident and the resident's sponsor or attorney, if known.

(4) The department shall not file a transcript of the hearing with the court unless the court orders it to do so. The court shall issue such an order only if it finds that the parties are unable to stipulate to the facts of the case and that the transcript is essential to the determination of the appeal. If the court orders the department to file the transcript, the department shall do so not later than thirty days after the day the court issues the order.

(E) The court shall not require an appellant to pay a bond as a condition of issuing a stay pending its decision.

(F) The resident, resident's sponsor, home, or department may commence a civil action in the court of common pleas of the county in which the home is located to enforce the decision of the department or the court. If the court finds that the resident or home has not complied with the decision, it shall enjoin the violation and order other appropriate relief, including attorney's fees.

Effective Date: 09-05-2001.

3721.17 Grievance procedure.

(A) Any resident who believes that the resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may file a grievance under procedures adopted pursuant to division (A)(2) of section 3721.12 of the Revised Code.

When the grievance committee determines a violation of sections 3721.10 to 3721.17 of the Revised Code has occurred, it shall notify the administrator of the home. If the violation cannot be corrected within ten days, or if ten days have elapsed without correction of the violation, the grievance committee shall refer the matter to the department of health.

(B) Any person who believes that a resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may report or cause reports to be made of the information directly to the department of health. No person who files a report is liable for civil damages resulting from the report.

(C)(1) Within thirty days of receiving a complaint under this section, the department of health shall investigate any complaint referred to it by a home's grievance committee and any complaint from any source that alleges that the home provided substantially less than adequate care or treatment, or substantially unsafe conditions, or, within seven days of receiving a complaint, refer it to the attorney general, if the attorney general agrees to investigate within thirty days.

(2) Within thirty days of receiving a complaint under this section, the department of health may investigate any alleged violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, not covered by division (C)(1) of this section, or it may, within seven days of receiving a complaint, refer the complaint to the grievance committee at the home where the alleged violation occurred, or to the attorney general if the attorney general agrees to investigate within thirty days.

(D) If, after an investigation, the department of health finds probable cause to believe that a violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, has occurred at a home that is certified under the Medicare or Medicaid program, it shall cite one or more findings or deficiencies under sections 5165.60 to 5165.89 of the Revised Code. If the home is not so certified, the department shall hold an adjudicative hearing within thirty days under Chapter 119. of the Revised Code.

(E) Upon a finding at an adjudicative hearing under division (D) of this section that a violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant thereto, has occurred, the department of health shall make an order for compliance, set a reasonable time for compliance, and assess a fine pursuant to division (F) of this section. The fine shall be paid to the general revenue fund only if compliance with the order is not shown to have been made within the reasonable time set in the order. The department of health may issue an order prohibiting the continuation of any violation of sections 3721.10 to 3721.17 of the Revised Code.

Findings at the hearings conducted under this section may be appealed pursuant to Chapter 119. of the Revised Code, except that an appeal may be made to the court of common pleas of the county in which the home is located.

The department of health shall initiate proceedings in court to collect any fine assessed under this section that is unpaid thirty days after the violator's final appeal is exhausted.

(F) Any home found, pursuant to an adjudication hearing under division (D) of this section, to have violated sections 3721.10 to 3721.17 of the Revised Code, or rules, policies, or procedures adopted pursuant to those sections may be fined not less than one hundred nor more than five hundred dollars for a first offense. For each subsequent offense, the home may be fined not less than two hundred nor more than one thousand dollars.

A violation of sections 3721.10 to 3721.17 of the Revised Code is a separate offense for each day of the violation and for each resident who claims the violation.

(G) No home or employee of a home shall retaliate against any person who:

(1) Exercises any right set forth in sections 3721.10 to 3721.17 of the Revised Code, including, but not limited to, filing a complaint with the home's grievance committee or reporting an alleged violation to the department of health;

(2) Appears as a witness in any hearing conducted under this section or section 3721.162 of the Revised Code;

(3) Files a civil action alleging a violation of sections 3721.10 to 3721.17 of the Revised Code, or notifies a county prosecuting attorney or the attorney general of a possible violation of sections 3721.10 to 3721.17 of the Revised Code.

If, under the procedures outlined in this section, a home or its employee is found to have

retaliated, the violator may be fined up to one thousand dollars.

(H) When legal action is indicated, any evidence of criminal activity found in an investigation under division (C) of this section shall be given to the prosecuting attorney in the county in which the home is located for investigation.

(I)(1)(a) Any resident whose rights under sections 3721.10 to 3721.17 of the Revised Code are violated has a cause of action against any person or home committing the violation.

(b) An action under division (I)(1)(a) of this section may be commenced by the resident or by the resident's legal guardian or other legally authorized representative on behalf of the resident or the resident's estate. If the resident or the resident's legal guardian or other legally authorized representative is unable to commence an action under that division on behalf of the resident, the following persons in the following order of priority have the right to and may commence an action under that division on behalf of the resident or the resident's estate:

(i) The resident's spouse;

(ii) The resident's parent or adult child;

(iii) The resident's guardian if the resident is a minor child;

(iv) The resident's brother or sister;

(v) The resident's niece, nephew, aunt, or uncle.

(c) Notwithstanding any law as to priority of persons entitled to commence an action, if more than one eligible person within the same level of priority seeks to commence an action on behalf of a resident or the resident's estate, the court shall determine, in the best interest of the resident or the resident's estate, the individual to commence the action. A court's determination under this division as to the person to commence an action on behalf of a resident or the resident's estate shall bar another person from commencing the action on behalf of the resident or the resident's estate.

(d) The result of an action commenced pursuant to division (I)(1)(a) of this section by a person authorized under division (I)(1)(b) of this section shall bind the resident or the resident's estate that is the subject of the action.

(e) A cause of action under division (I)(1)(a) of this section shall accrue, and the statute of limitations applicable to that cause of action shall begin to run, based upon the violation of a resident's rights under sections 3721.10 to 3721.17 of the Revised Code, regardless of the party commencing the action on behalf of the resident or the resident's estate as authorized under divisions (I)(1)(b) and (c) of this section.

(2)(a) The plaintiff in an action filed under division (I)(1) of this section may obtain injunctive relief against the violation of the resident's rights. The plaintiff also may recover compensatory damages based upon a showing, by a preponderance of the evidence, that the violation of the resident's rights resulted from a negligent act or omission of the person or home and that the

violation was the proximate cause of the resident's injury, death, or loss to person or property.

(b) If compensatory damages are awarded for a violation of the resident's rights, section 2315.21 of the Revised Code shall apply to an award of punitive or exemplary damages for the violation.

(c) The court, in a case in which only injunctive relief is granted, may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed.

(3) Division (I)(2) (b) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action in which this section is relevant, whether the action is pending in court or commenced on or after July 9, 1998.

(4) Within thirty days after the filing of a complaint in an action for damages brought against a home under division (I)(1)(a) of this section by or on behalf of a resident or former resident of the home, the plaintiff or plaintiff's counsel shall send written notice of the filing of the complaint to the department of Medicaid if the department has a right of recovery under section 5160.37 of the Revised Code against the liability of the home for the cost of Medicaid services arising out of injury, disease, or disability of the resident or former resident.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 11-07-2002.

3721.18 Attorney general duties.

The attorney general may investigate alleged violations of Chapter 3721. of the Revised Code or rules, policies, or procedures adopted thereunder. When it appears, as the result of the investigation, that there is cause to prosecute for the commission of a crime, the attorney general shall refer the evidence to the prosecuting attorney having jurisdiction in the matter.

Effective Date: 04-09-1979.

3721.19 Nonparticipation in state assistance program.

(A) As used in this section:

(1) "Home" and "residential care facility" have the same meanings as in section 3721.01 of the Revised Code;

(2) "Provider agreement" has the same meaning as in section 5165.01 of the Revised Code.

(3) "Sponsor" and "residents' rights advocate" have the same meanings as in section 3721.10 of the Revised Code.

A home licensed under this chapter that is not a party to a provider agreement shall provide each prospective resident, before admission, with the following information, orally and in a separate written notice on which is printed in a conspicuous manner: "This home is not a participant in the

Medicaid program administered by the Ohio department of Medicaid. Consequently, you may be discharged from this home if you are unable to pay for the services provided by this home."

If the prospective resident has a sponsor whose identity is made known to the home, the home shall also inform the sponsor, before admission of the resident, of the home's status relative to the Medicaid program. Written acknowledgement of the receipt of the information shall be provided by the resident and, if the prospective resident has a sponsor who has been identified to the home, by the sponsor. The written acknowledgement shall be made part of the resident's record by the home.

No home shall terminate its provider agreement unless it has complied with section 5165.50 of the Revised Code and, at least ninety days prior to such termination, provided written notice to the residents of the home and their sponsors of such action. This requirement shall not apply in cases where the department of Medicaid terminates a home's provider agreement or provider status.

(B) A home licensed under this chapter as a residential care facility shall provide notice to each prospective resident or the individual's sponsor of the services offered by the facility and the types of skilled nursing care that the facility may provide. A residential care facility that, pursuant to section 3721.012 of the Revised Code, has a policy of entering into risk agreements with residents or their sponsors shall provide each prospective resident or the individual's sponsor a written explanation of the policy and the provisions that may be contained in a risk agreement. At the time the information is provided, the facility shall obtain a statement signed by the individual receiving the information acknowledging that the individual received the information. The facility shall maintain on file the individual's signed statement.

(C) A resident has a cause of action against a home for breach of any duty imposed by this section. The action may be commenced by the resident, or on the resident's behalf by the resident's sponsor or a residents' rights advocate, by the filing of a civil action in the court of common pleas of the county in which the home is located, or in the court of common pleas of Franklin County.

If the court finds that a breach of any duty imposed by this section has occurred, the court shall enjoin the home from discharging the resident from the home until arrangements satisfactory to the court are made for the orderly transfer of the resident to another mode of health care including, but not limited to, another home, and may award the resident and a person or public agency that brings an action on behalf of a resident reasonable attorney's fees. If a home discharges a resident to whom or to whose sponsor information concerning its status relative to the Medicaid program was not provided as required under this section, the court shall grant any appropriate relief including, but not limited to, actual damages, reasonable attorney's fees, and costs.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 07-01-2000; 07-01-2005

3721.21 Long-term care facility definitions.

As used in sections 3721.21 to 3721.34 of the Revised Code:

(A) "Long-term care facility" means either of the following:

(1) A nursing home as defined in section 3721.01 of the Revised Code;

(2) A facility or part of a facility that is certified as a skilled nursing facility or a nursing facility under Title XVIII or XIX of the "Social Security Act.

(B) "Residential care facility" has the same meaning as in section 3721.01 of the Revised Code.

(C) "Abuse" means any of the following:

(1) Physical abuse;

(2) Psychological abuse;

(3) Sexual abuse.

(D) "Neglect" means recklessly failing to provide a resident with any treatment, care, goods, or service necessary to maintain the health or safety of the resident when the failure results in serious physical harm to the resident. "Neglect" does not include allowing a resident, at the resident's option, to receive only treatment by spiritual means through prayer in accordance with the tenets of a recognized religious denomination.

(E) "Exploitation" means taking advantage of a resident, regardless of whether the action was for personal gain, whether the resident knew of the action, or whether the resident was harmed.

(F) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of a resident by any means prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.

(G) "Resident" includes a resident, patient, former resident or patient, or deceased resident or patient of a long-term care facility or a residential care facility.

(H) "Physical abuse" means knowingly causing physical harm or recklessly causing serious physical harm to a resident through either of the following:

(1) Physical contact with the resident;

(2) The use of physical restraint, chemical restraint, medication that does not constitute a chemical restraint, or isolation, if the restraint, medication, or isolation is excessive, for punishment, for staff convenience, a substitute for treatment, or in an amount that precludes habilitation and treatment.

(I) "Psychological abuse" means knowingly or recklessly causing psychological harm to a

resident, whether verbally or by action.

(J) "Sexual abuse" means sexual conduct or sexual contact with a resident, as those terms are defined in section 2907.01 of the Revised Code.

(K) "Physical restraint" has the same meaning as in section 3721.10 of the Revised Code.

(L) "Chemical restraint" has the same meaning as in section 3721.10 of the Revised Code.

(M) "Nursing and nursing-related services" means the personal care services and other services not constituting skilled nursing care that are specified in rules the director of health shall adopt in accordance with Chapter 119. of the Revised Code.

(N) "Personal care services" has the same meaning as in section 3721.01 of the Revised Code.

(O)(1) Except as provided in division (O)(2) of this section, "nurse aide" means an individual who provides nursing and nursing-related services to residents in a long-term care facility, either as a member of the staff of the facility for monetary compensation or as a volunteer without monetary compensation.

(2) "Nurse aide" does not include either of the following:

(a) A licensed health professional practicing within the scope of the professional's license;

(b) An individual providing nursing and nursing-related services in a religious nonmedical health care institution, if the individual has been trained in the principles of nonmedical care and is recognized by the institution as being competent in the administration of care within the religious tenets practiced by the residents of the institution.

(P) "Licensed health professional" means all of the following:

(1) An occupational therapist or occupational therapy assistant licensed under Chapter 4755. of the Revised Code;

(2) A physical therapist or physical therapy assistant licensed under Chapter 4755. of the Revised Code;

(3) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(4) A physician assistant authorized under Chapter 4730. of the Revised Code to practice as a physician assistant;

(5) A registered nurse or licensed practical nurse licensed under Chapter 4723. of the Revised Code;

(6) A social worker or independent social worker licensed under Chapter 4757. of the Revised

Code or a social work assistant registered under that chapter;

(7) A speech-language pathologist or audiologist licensed under Chapter 4753. of the Revised Code;

(8) A dentist or dental hygienist licensed under Chapter 4715. of the Revised Code;

(9) An optometrist licensed under Chapter 4725. of the Revised Code;

(10) A pharmacist licensed under Chapter 4729. of the Revised Code;

(11) A psychologist licensed under Chapter 4732. of the Revised Code;

(12) A chiropractor licensed under Chapter 4734. of the Revised Code;

(13) A nursing home administrator licensed or temporarily licensed under Chapter 4751. of the Revised Code;

(14) A licensed professional counselor or licensed professional clinical counselor licensed under Chapter 4757. of the Revised Code;

(15) A marriage and family therapist or independent marriage and family therapist licensed under Chapter 4757. of the Revised Code.

(Q) "Religious nonmedical health care institution" means an institution that meets or exceeds the conditions to receive payment under the Medicare program established under Title XVIII of the "Social Security Act" for inpatient hospital services or post-hospital extended care services furnished to an individual in a religious nonmedical health care institution, as defined in section 1861(ss)(1) of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395x(ss)(1), as amended.

(R) "Competency evaluation program" means a program through which the competency of a nurse aide to provide nursing and nursing-related services is evaluated.

(S) "Training and competency evaluation program" means a program of nurse aide training and evaluation of competency to provide nursing and nursing-related services.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 130th General Assembly File No. TBD, HB 232, §1, eff. 7/10/2014.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff.

9/10/2012. Effective Date: 09-27-2000; 06-30-2005

3721.22 Reporting abuse or neglect of resident or misappropriation of property.

(A)(1) No person identified in division (P)(1) to (12), (14), or (15) of section 3721.21 of the Revised Code who knows or suspects that a resident has been abused , neglected, or exploited, or

that a resident's property has been misappropriated, by any individual used by a long-term care facility or residential care facility to provide services to residents, shall fail to report that knowledge or suspicion to the facility.

(2) No nursing home administrator licensed or temporarily licensed under Chapter 4751. of the Revised Code, and no administrator of a residential care facility, who knows or suspects that a resident has been abused, neglected, or exploited, or that a resident's property has been misappropriated, by any individual used by a long-term care facility or residential care facility to provide services to residents, shall fail to report that knowledge or suspicion to the director of health.

(B) Any person, including a resident, who knows or suspects that a resident has been abused , neglected, or exploited, or that a resident's property has been misappropriated, by any individual used by a long-term care facility or residential care facility to provide services to residents, may report that knowledge or suspicion to the director of health.

(C) Any person who in good faith reports suspected abuse, neglect, exploitation, or misappropriation to a facility or the director of health, provides information during an investigation of suspected abuse, neglect, exploitation, or misappropriation conducted by the director, or participates in a hearing conducted under section 3721.23 of the Revised Code is not subject to criminal prosecution, liable in damages in a tort or other civil action, or subject to professional disciplinary action because of injury or loss to person or property allegedly arising from the making of the report, provision of information, or participation in the hearing.

(D) If the director has reason to believe that a violation of division (A) of this section has occurred, the director may report the suspected violation to the appropriate professional licensing authority and to the attorney general, county prosecutor, or other appropriate law enforcement official.

(E) No person shall knowingly make a false allegation of abuse , neglect, or exploitation of a resident or misappropriation of a resident's property, or knowingly swear or affirm the truth of a false allegation, when the allegation is made for the purpose of incriminating another.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 09-29-1995.

3721.23 Investigations.

(A) The director of health shall receive, review, and investigate allegations of abuse , neglect, or exploitation of a resident or misappropriation of the property of a resident by any individual used by a long-term care facility or residential care facility to provide services to residents.

(B) The director shall make findings regarding alleged abuse, neglect, exploitation, or misappropriation of property after doing both of the following:

(1) Investigating the allegation and determining that there is a reasonable basis for it;

(2) Giving notice to the individual named in the allegation and affording the individual a reasonable opportunity for a hearing.

Notice to the person named in an allegation shall be given and the hearing shall be conducted pursuant to rules adopted by the director under section 3721.26 of the Revised Code. For purposes of conducting a hearing under this section, the director may issue subpoenas compelling attendance of witnesses or production of documents. The subpoenas shall be served in the same manner as subpoenas and subpoenas duces tecum issued for a trial of a civil action in a court of common pleas. If a person who is served a subpoena fails to attend a hearing or to produce documents, or refuses to be sworn or to answer any questions, the director may apply to the common pleas court of the county in which the person resides, or the county in which the long-term care facility or residential care facility is located, for a contempt order, as in the case of a failure of a person who is served a subpoena issued by the court to attend or to produce documents or a refusal of such person to testify.

(C)(1) If the director finds that an individual used by a long-term care facility or residential care facility has abused, neglected, or exploited a resident or misappropriated property of a resident, the director shall do both of the following:

- (a) Notify the individual, the facility using the individual, the attorney general, county prosecutor, or other appropriate law enforcement official, and, if applicable, the appropriate professional licensing authority established under Title XLVII of the Revised Code;
- (b) In accordance with section 3721.32 of the Revised Code, include in the nurse aide registry established under that section a statement detailing the findings pertaining to the individual.

(2) An individual about whom a statement is required by this division to be included in the nurse aide registry may provide the director with a statement disputing the director's findings and explaining the circumstances of the allegation. The statement shall be included in the nurse aide registry with the director's findings.

(D)(1) If the director finds that alleged abuse, neglect, or exploitation of a resident or misappropriation of property of a resident cannot be substantiated, the director shall notify the individual and expunge all files and records of the investigation and the hearing by doing all of the following:

- (a) Removing and destroying the files and records, originals and copies, and deleting all index references;
- (b) Reporting to the individual the nature and extent of any information about the individual transmitted to any other person or government entity by the director of health;
- (c) Otherwise ensuring that any examination of files and records in question show no record whatever with respect to the individual.

(2)(a) If, in accordance with division (C)(1) of this section, the director includes in the nurse aide registry a statement of a finding of neglect, the individual found to have neglected a resident

may, not earlier than one year after the date of the finding, petition the director to rescind the finding and remove the statement and any accompanying information from the nurse aide registry. The director shall consider the petition. If, in the judgment of the director, the neglect was a singular occurrence and the employment and personal history of the individual does not evidence abuse, exploitation, or any other incident of neglect of residents, the director shall notify the individual and remove the statement and any accompanying information from the nurse aide registry. The director shall expunge all files and records of the investigation and the hearing, except the petition for rescission of the finding of neglect and the director's notice that the rescission has been approved.

(b) A petition for rescission of a finding of neglect and the director's notice that the rescission has been approved are not public records for the purposes of section 149.43 of the Revised Code.

(3) When files and records have been expunged under division (D)(1) or (2) of this section, all rights and privileges are restored, and the individual, the director, and any other person or government entity may properly reply to an inquiry that no such record exists as to the matter expunged.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 09-29-1995.

3721.24 Whistleblower protection.

(A) No person or government entity shall retaliate against an employee or another individual used by the person or government entity to perform any work or services who, in good faith, makes or causes to be made a report of suspected abuse, neglect, or exploitation of a resident or misappropriation of the property of a resident; indicates an intention to make such a report; provides information during an investigation of suspected abuse, neglect, exploitation, or misappropriation conducted by the director of health; or participates in a hearing conducted under section 3721.23 of the Revised Code or in any other administrative or judicial proceedings pertaining to the suspected abuse, neglect, exploitation, or misappropriation. For purposes of this division, retaliatory actions include discharging, demoting, or transferring the employee or other person, preparing a negative work performance evaluation of the employee or other person, reducing the benefits, pay, or work privileges of the employee or other person, and any other action intended to retaliate against the employee or other person.

(B)(1) No person or government entity shall retaliate against a resident who reports or causes to be reported suspected abuse, neglect, exploitation, or misappropriation; indicates an intention to make such a report; provides information during an investigation of alleged abuse, neglect, exploitation, or misappropriation conducted by the director; or participates in a hearing under section 3721.23 of the Revised Code or in any other administrative or judicial proceeding pertaining to the suspected abuse, neglect, exploitation, or misappropriation; or on whose behalf any other person or government entity takes any of those actions.

(2) No person or government entity shall retaliate against a resident whose family member,

guardian, sponsor, or personal representative reports or causes to be reported suspected abuse, neglect, exploitation, or misappropriation; indicates an intention to make such a report; provides information during an investigation of alleged abuse, neglect, exploitation, or misappropriation conducted by the director; or participates in a hearing under section 3721.23 of the Revised Code or in any other administrative or judicial proceeding pertaining to the suspected abuse, neglect, exploitation, or misappropriation; or on whose behalf any other person or government entity takes any of those actions.

(3) For purposes of divisions (B)(1) and (2) of this section, retaliatory actions include abuse, verbal threats or other harsh language, change of room assignment, withholding of services, failure to provide care in a timely manner, and any other action intended to retaliate against the resident.

(C) Any person has a cause of action against a person or government entity for harm resulting from violation of division (A) or (B) of this section. If it finds that a violation has occurred, the court may award damages and order injunctive relief. The court may award court costs and reasonable attorney's fees to the prevailing party.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 12-13-1990.

3721.25 Confidentiality.

(A)(1) Except as required by court order, as necessary for the administration or enforcement of any statute or rule relating to long-term care facilities or residential care facilities, or as provided in division (D) of this section, the director of health shall not disclose any of the following without the consent of the individual or the individual's legal representative:

(a) The name of an individual who reports suspected abuse, neglect, or exploitation of a resident or misappropriation of a resident's property to the facility or director;

(b) The name of an individual who provides information during an investigation of suspected abuse, neglect, exploitation, or misappropriation conducted by the director;

(c) Any information that would tend to disclose the identity of an individual described in division (A)(1)(a) or (b) of this section.

(2) An agency or individual to whom the director is required, by court order or for the administration or enforcement of a statute relating to long-term care facilities or residential care facilities, to release information described in division (A)(1) of this section shall not release the information without the permission of the individual who would be or would reasonably tend to be identified, or of the individual's legal representative, unless the agency or individual is required to release it by division (D) of this section, by court order, or for the administration or enforcement of a statute relating to long-term care facilities or residential care facilities.

(B) Except as provided in division (D) of this section, any record that identifies an individual

described in division (A)(1)(a) or (b) of this section, or that would tend to disclose the identity of such an individual, is not a public record for the purposes of section 149.43 of the Revised Code, and is not subject to inspection or copying under section 1347.08 of the Revised Code.

(C) Except as provided in division (B) of this section and division (D) of section 3721.23 of the Revised Code, the records of a hearing conducted under section 3721.23 of the Revised Code are public records for the purposes of section 149.43 of the Revised Code and are subject to inspection and copying under section 1347.08 of the Revised Code.

(D) If the director, or an agency or individual to whom the director is required by court order or for administration or enforcement of a statute relating to long-term care facilities or residential care facilities to release information described in division (A)(1) of this section, uses information in any administrative or judicial proceeding against a long-term care facility or residential care facility that reasonably would tend to identify an individual described in division (A)(1)(a) or (b) of this section, the director, agency, or individual shall disclose that information to the facility. However, the director, agency, or individual shall not disclose information that directly identifies an individual described in division (A)(1)(a) or (b) of this section, unless the individual is to testify in the proceedings.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 09-29-1995.

3721.26 Adoption of rules.

The director of health shall adopt rules pursuant to Chapter 119. of the Revised Code to implement sections 3721.21 to 3721.25 of the Revised Code, including rules prescribing requirements for the notice and hearing required under section 3721.23 of the Revised Code. The notice and hearing required under section 3721.23 of the Revised Code are not subject to Chapter 119. of the Revised Code; however, the rules may provide for the notice to be provided and the hearing to be conducted in accordance with that chapter. Rules adopted under this section shall be no less stringent than the requirements, guidelines, and procedures established by the United States secretary of health and human services under sections 1819 and 1919 of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

Effective Date: 12-13-1990.

3721.28 Nurses aides training and competency evaluation programs.

(A)(1) Each nurse aide used by a long-term care facility on a full-time, temporary, per diem, or other basis on July 1, 1989, shall be provided by the facility a competency evaluation program approved by the director of health under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section. Each long-term care facility using a nurse aide on July 1, 1989, shall provide the nurse aide the preparation necessary to complete the competency evaluation program by January 1, 1990.

(2) Each nurse aide used by a long-term care facility on a full-time, temporary, per diem, or other

basis on January 1, 1990, who either was not used by the facility on July 1, 1989, or was used by the facility on July 1, 1989, but had not successfully completed a competency evaluation program by January 1, 1990, shall be provided by the facility a competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section. Each long-term care facility using a nurse aide described in division (A)(2) of this section shall provide the nurse aide the preparation necessary to complete the competency evaluation program by October 1, 1990, and shall assist the nurse aide in registering for the program.

(B) Effective June 1, 1990, no long-term care facility shall use an individual as a nurse aide for more than four months unless the individual is competent to provide the services the individual is to provide, the facility has received from the nurse aide registry established under section 3721.32 of the Revised Code the information concerning the individual provided through the registry, and one of the following is the case:

(1) The individual was used by a facility as a nurse aide on a full-time, temporary, per diem, or other basis at any time during the period commencing July 1, 1989, and ending January 1, 1990, and successfully completed, not later than October 1, 1990, a competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section.

(2) The individual has successfully completed a training and competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section or has met the conditions specified in division (F) of this section and, in addition, if the training and competency evaluation program or the training, instruction, or education the individual completed in meeting the conditions specified in division (F) of this section was conducted by or in a long-term care facility, or if the director pursuant to division (E) of section 3721.31 of the Revised Code so requires, the individual has successfully completed a competency evaluation program conducted by the director.

(3) Prior to July 1, 1989, if the long-term care facility is certified as a skilled nursing facility or a nursing facility under Title XVIII or XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, or prior to January 1, 1990, if the facility is not so certified, the individual completed a program that the director determines included a competency evaluation component no less stringent than the competency evaluation programs approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section, and was otherwise comparable to the training and competency evaluation programs being approved by the director under division (A) of that section.

(4) The individual is listed in a nurse aide registry maintained by another state and that state certifies that its program for training and evaluation of competency of nurse aides complies with Titles XVIII and XIX of the "Social Security Act" and regulations adopted thereunder.

(5) Prior to July 1, 1989, the individual was found competent to serve as a nurse aide after the completion of a course of nurse aide training of at least one hundred hours' duration.

(6) The individual is enrolled in a prelicensure program of nursing education approved by the

board of nursing or by an agency of another state that regulates nursing education, has provided the long-term care facility with a certificate from the program indicating that the individual has successfully completed the courses that teach basic nursing skills including infection control, safety and emergency procedures, and personal care, and has successfully completed a competency evaluation program conducted by the director under division (C) of section 3721.31 of the Revised Code.

(7) The individual has the equivalent of twelve months or more of full-time employment in the preceding five years as a hospital aide or orderly and has successfully completed a competency evaluation program conducted by the director under division (C) of section 3721.31 of the Revised Code.

(C) Effective June 1, 1990, no long-term care facility shall continue for longer than four months to use as a nurse aide an individual who previously met the requirements of division (B) of this section but since most recently doing so has not performed nursing and nursing-related services for monetary compensation for twenty-four consecutive months, unless the individual successfully completes additional training and competency evaluation by complying with divisions (C)(1) and (2) of this section:

(1) Doing one of the following:

(a) Successfully completing a training and competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section;

(b) Successfully completing a training and competency evaluation program described in division (B)(4) of this section;

(c) Meeting the requirements specified in division (B)(6) or (7) of this section.

(2) If the training and competency evaluation program completed under division (C)(1)(a) of this section was conducted by or in a long-term care facility, or if the director pursuant to division (E) of section 3721.31 of the Revised Code so requires, successfully completing a competency evaluation program conducted by the director.

(D)(1) The four-month periods provided for in divisions (B) and (C) of this section include any time, on or after June 1, 1990, that an individual is used as a nurse aide on a full-time, temporary, per diem, or any other basis by the facility or any other long-term care facility.

(2) During the four-month period provided for in division (B) of this section, during which a long-term care facility may, subject to division (E) of this section, use as a nurse aide an individual who does not have the qualifications specified in divisions (B)(1) to (7) of this section, a facility shall require the individual to comply with divisions (D)(2)(a) and (b) of this section:

(a) Participate in one of the following:

(i) If the individual has successfully completed a training and competency evaluation program

approved by the director under division (A) of section 3721.31 of the Revised Code, and the program was conducted by or in a long-term care facility, or the director pursuant to division (E) of section 3721.31 of the Revised Code so requires, a competency evaluation program conducted by the director;

(ii) If the individual is enrolled in a prelicensure program of nursing education described in division (B)(6) of this section and has completed or is working toward completion of the courses described in that division, or the individual has the experience described in division (B)(7) of this section, a competency evaluation program conducted by the director;

(iii) A training and competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section.

(b) If the individual participates in or has successfully completed a training and competency evaluation program under division (D)(2)(a)(iii) of this section that is conducted by or in a long-term care facility, or the director pursuant to division (E) of section 3721.31 of the Revised Code so requires, participate in a competency evaluation program conducted by the director.

(3) During the four-month period provided for in division (C) of this section, during which a long-term care facility may, subject to division (E) of this section, use as a nurse aide an individual who does not have the qualifications specified in divisions (C)(1) and (2) of this section, a facility shall require the individual to comply with divisions (D)(3)(a) and (b) of this section:

(a) Participate in one of the following:

(i) If the individual has successfully completed a training and competency evaluation program approved by the director, and the program was conducted by or in a long-term care facility, or the director pursuant to division (E) of section 3721.31 of the Revised Code so requires, a competency evaluation program conducted by the director;

(ii) If the individual is enrolled in a prelicensure program of nursing education described in division (B)(6) of this section and has completed or is working toward completion of the courses described in that division, or the individual has the experience described in division (B)(7) of this section, a competency evaluation program conducted by the director;

(iii) A training and competency evaluation program approved or conducted by the director.

(b) If the individual participates in or has successfully completed a training and competency evaluation program under division (D)(3)(a)(iii) of this section that is conducted by or in a long-term care facility, or the director pursuant to division (E) of section 3721.31 of the Revised Code so requires, participate in a competency evaluation program conducted by the director.

(E) A long-term care facility shall not permit an individual used by the facility as a nurse aide while participating in a training and competency evaluation program to provide nursing and nursing-related services unless both of the following are the case:

(1) The individual has completed the number of hours of training that must be completed prior to providing services to residents as prescribed by rules that shall be adopted by the director in accordance with Chapter 119. of the Revised Code;

(2) The individual is under the personal supervision of a registered or licensed practical nurse licensed under Chapter 4723. of the Revised Code.

(F) An individual shall be considered to have satisfied the requirement, under division (B)(2) of this section, of having successfully completed a training and competency evaluation program conducted or approved by the director, if the individual meets both of the following conditions:

(1) The individual, as of July 1, 1989, completed at least sixty hours divided between skills training and classroom instruction in the topic areas described in divisions (B)(1) to (8) of section 3721.30 of the Revised Code;

(2) The individual received, as of that date, at least the difference between seventy-five hours and the number of hours actually spent in training and competency evaluation in supervised practical nurse aide training or regular in-service nurse aide education.

(G) The director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying persons, in addition to the director, who may establish competence of nurse aides under division (B)(5) of this section, and establishing criteria for determining whether an individual meets the conditions specified in division (F) of this section.

(H) The rules adopted pursuant to divisions (E)(1) and (G) of this section shall be no less stringent than the requirements, guidelines, and procedures established by the United States secretary of health and human services under sections 1819 and 1919 of the "Social Security Act."

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff.

9/10/2012. Effective Date: 07-26-1991.

3721.29 Orientation program - performance review - in-service education.

In addition to competency evaluation programs and training and competency evaluation programs required by this chapter, each long-term care facility shall provide both of the following to each nurse aide it uses:

(A) An orientation program that includes at least an explanation of the organizational structure of the facility, its policies and procedures, its philosophy of care, a description of its resident population, and an enumeration of its employee rules;

(B) Regular performance review and in-service education to assure that individuals working in the facility as nurse aides are competent to perform the nursing and nursing-related services they perform. In-service education shall include training for nurse aides providing nursing and

nursing-related services to residents and patients with cognitive impairments.

The director of health shall adopt rules to implement the purposes of this section. The rules shall be no less stringent than the requirements, guidelines, and procedures established by the United States secretary of health and human services under sections 1819 and 1919 of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff.

9/10/2012. Effective Date: 03-13-1990.

3721.30 Competency evaluation program contents.

(A)(1) A competency evaluation program approved by the director of health under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section shall evaluate the competency of a nurse aide in the following areas:

- (a) Basic nursing skills;
- (b) Personal care skills;
- (c) Recognition of mental health and social service needs;
- (d) Care of cognitively impaired residents;
- (e) Basic restorative services;
- (f) Residents' rights;
- (g) Any other area specified by rule of the director.

(2) Any competency evaluation program approved or conducted by the director may include a written examination, but shall permit a nurse aide, at the nurse aide's option, to establish competency in another manner approved by the director. A nurse aide shall be permitted to have the competency evaluation conducted at the long-term care facility at which the nurse aide is or will be employed, unless the facility has been determined by the director or the United States secretary of health and human services to have been out of compliance with the requirements of subsection (b), (c), or (d) of section 1819 or 1919 of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, within the previous two years.

(B) A training and competency evaluation program approved or conducted by the director under section 3721.31 of the Revised Code shall consist of training and competency evaluation specified by the director in rules adopted under division (C) of this section, including a minimum of seventy-five hours divided between skills training and classroom instruction in the following topic areas:

- (1) Basic nursing skills;

- (2) Personal care skills;
- (3) Recognition of mental health and social service needs;
- (4) Care of cognitively impaired residents;
- (5) Basic restorative services;
- (6) Residents' rights;
- (7) Needs of various groups of long-term care facility residents and patients;
- (8) Other topic areas specified by rule of the director.

(C) In accordance with Chapter 119. of the Revised Code, the director shall adopt rules establishing procedures and criteria for approval of competency evaluation programs and training and competency evaluation programs. The requirements established by rules shall be no less stringent than the requirements, guidelines, and procedures established by the United States secretary of health and human services under sections 1819 and 1919 of the "Social Security Act." The director also shall adopt rules governing all of the following:

- (1) Procedures for determination of an individual's competency to perform services as a nurse aide;
- (2) The curriculum of training and competency evaluation programs;
- (3) The clinical supervision and physical facilities used for competency evaluation programs and training and competency evaluation programs;
- (4) The number of hours of training required in training and competency evaluation programs;
- (5) The qualifications for instructors, coordinators, and evaluators of competency evaluation programs and training and competency evaluation programs;
- (6) Requirements that approved competency evaluation programs and training and competency evaluation programs must meet to retain approval;
- (7) Standards for successful completion of a competency evaluation program or training and competency evaluation program;
- (8) Procedures and criteria for review and reapproval of competency evaluation programs and training and competency evaluation programs;
- (9) Fees for application for approval or reapproval of competency evaluation programs, training and competency evaluation programs, and programs to train instructors and coordinators for training and competency evaluation programs and evaluators for competency evaluation

programs;

(10) Fees for participation in any competency evaluation program, training and competency evaluation program, or other program conducted by the director under section 3721.31 of the Revised Code;

(11) Procedures for reporting to the nurse aide registry established under section 3721.32 of the Revised Code whether or not individuals participating in competency evaluation programs and training and competency evaluation programs have successfully completed the programs.

(D) In accordance with Chapter 119. of the Revised Code, the director may adopt rules prescribing criteria and procedures for approval of training programs for instructors and coordinators for training and competency evaluation programs, and for evaluators for competency evaluation programs. The director may adopt other rules that he considers necessary for the administration and enforcement of sections 3721.28 to 3721.34 of the Revised Code or for compliance with requirements, guidelines, or procedures issued by the United States secretary of health and human services for implementation of section 1819 or 1919 of the "Social Security Act."

(E) No person or government entity shall impose on a nurse aide any charge for participation in any competency evaluation program or training and competency evaluation program approved or conducted by the director under section 3721.31 of the Revised Code, including any charge for textbooks, other required course materials, or a competency evaluation.

(F) No person or government entity shall require that an individual used by the person or government entity as a nurse aide or seeking employment as a nurse aide pay or repay, either before or while the individual is employed by the person or government entity or when the individual leaves the person or government entity's employ, any costs associated with the individual's participation in a competency evaluation program or training and competency evaluation program approved or conducted by the director.

Effective Date: 06-30-1995.

3721.31 Approving or rejecting programs.

(A)(1) Except as provided in division (E) of this section, the director of health shall approve competency evaluation programs and training and competency evaluation programs in accordance with rules adopted under section 3721.30 of the Revised Code and shall periodically review and reapprove programs approved under this section.

(2) Except as otherwise provided in division (A)(3) of this section, the director may approve and reapprove programs conducted by or in long-term care facilities, or by any government agency or person, including an employee organization.

(3) The director shall not approve or reapprove a competency evaluation program or training and competency evaluation program conducted by or in a long-term care facility that was determined by the director or the United States secretary of health and human services to have been out of compliance with the requirements of subsection (b), (c), or (d) of section 1819 or 1919 of the

"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, within a two-year period prior to making application for approval or reapproval and shall revoke the approval or reapproval of a program conducted by or in a facility for which such a determination is made.

(4) A long-term care facility, employee organization, person, or government entity seeking approval or reapproval of a competency evaluation program or training and competency evaluation program shall make an application to the director for approval or reapproval of the program and shall provide any documentation requested by the director.

(5) The director may conduct inspections and examinations of approved competency evaluation programs and training and competency evaluation programs, competency evaluation programs and training and competency evaluation programs for which an application for approval has been submitted under division (A)(4) of this section, and the sites at which they are or will be conducted. The director may conduct inspections of long-term care facilities in which individuals who have participated in approved competency evaluation programs and training and competency evaluation programs are being used as nurse aides.

(B) In accordance with Chapter 119. of the Revised Code, the director may do the following:

(1) Deny, suspend, or revoke approval or reapproval of any of the following that is not in compliance with this section and section 3721.30 of the Revised Code and rules adopted thereunder:

(a) A competency evaluation program;

(b) A training and competency evaluation program;

(c) A training program for instructors or coordinators for training and competency evaluation programs;

(d) A training program for evaluators for competency evaluation programs.

(2) Deny a request that the director determine any of the following for the purposes of division (B) of section 3721.28 of the Revised Code:

(a) That a program completed prior to the dates specified in division (B)(3) of section 3721.28 of the Revised Code included a competency evaluation component no less stringent than the competency evaluation programs approved or conducted by the director under this section, and was otherwise comparable to the training and competency evaluation programs being approved under this section;

(b) That an individual satisfies division (B)(5) of section 3721.28 of the Revised Code;

(c) That an individual meets the conditions specified in division (F) of section 3721.28 of the Revised Code.

(C) The director may develop and conduct a competency evaluation program for individuals

used by long-term care facilities as nurse aides at any time during the period commencing July 1, 1989, and ending January 1, 1990, and individuals who participate in training and competency evaluation programs conducted in or by long-term care facilities. The director also may conduct other competency evaluation programs and training and competency evaluation programs. When conducting competency evaluation programs and training and competency evaluation programs, the director may use a nurse aide competency evaluation prepared by a testing service, and may contract with the service to administer the evaluation pursuant to section 3701.044 of the Revised Code.

(D) The director may approve or conduct programs to train instructors and coordinators for training and competency evaluation programs and evaluators for competency evaluation programs. The director may conduct inspections and examinations of those programs that have been approved by the director or for which an application for approval has been submitted, and the sites at which the programs are or will be conducted.

(E) Notwithstanding division (A) of this section and division (C) of section 3721.30 of the Revised Code, the director, in the director's discretion, may decline to approve any competency evaluation programs. The director may require all individuals used by long-term care facilities as nurse aides after June 1, 1990, who have completed a training and competency evaluation program approved by the director under division (A) of this section or who have met the conditions specified in division (F) of section 3721.28 of the Revised Code to complete a competency evaluation program conducted by the director under division (C) of this section. The director also may require all individuals used as nurse aides by long-term care facilities after June 1, 1990, who were used by a facility at any time during the period commencing July 1, 1989, and ending January 1, 1990, to complete a competency evaluation program conducted by the director under division (C) of this section rather than a competency evaluation program approved by the director under division (A) of this section.

(F) The test materials, examinations, or evaluation tools used in any competency evaluation program or training and competency evaluation program that the director conducts or approves under this section are subject to the confidentiality provisions of section 3701.044 of the Revised Code.

(G) The director shall impose fees prescribed by rules adopted under section 3721.30 of the Revised Code for both of the following:

(1) Making application for approval or reapproval of either of the following:

- (a) A competency evaluation program or a training and competency evaluation program;
- (b) A training program for instructors or coordinators for training and competency evaluation programs, or evaluators for competency evaluation programs;

(2) Participation in any competency evaluation program, training and competency evaluation program, or other program conducted by the director under this section.

Effective Date: 09-29-1999.

3721.32 State nurse aide registry.

(A) The director of health shall establish a state nurse aide registry listing all individuals who have done any of the following:

(1) Were used by a long-term care facility as nurse aides on a full-time, temporary, per diem, or other basis at any time during the period commencing July 1, 1989, and ending January 1, 1990, and successfully completed, not later than October 1, 1990, a competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or conducted by the director under division (C) of that section;

(2) Successfully completed a training and competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code or met the conditions specified in division (F) of section 3721.28 of the Revised Code, and, if the training and competency evaluation program or the training, instruction, or education the individual completed in meeting the conditions specified in division (F) of section 3721.28 of the Revised Code was conducted in or by a long-term care facility, or if the director so required pursuant to division (E) of section 3721.31 of the Revised Code, has successfully completed a competency evaluation program conducted by the director;

(3) Successfully completed a training and competency evaluation program conducted by the director under division (C) of section 3721.31 of the Revised Code;

(4) Successfully completed, prior to July 1, 1989, a program that the director has determined under division (B)(3) of section 3721.28 of the Revised Code included a competency evaluation component no less stringent than the competency evaluation programs approved or conducted by the director under section 3721.31 of the Revised Code, and was otherwise comparable to the training and competency evaluation program being approved by the director under section 3721.31 of the Revised Code;

(5) Are listed in a nurse aide registry maintained by another state that certifies that its program for training and evaluation of competency of nurse aides complies with Titles XVIII and XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, or regulations adopted thereunder;

(6) Were found competent, as provided in division (B)(5) of section 3721.28 of the Revised Code, prior to July 1, 1989, after the completion of a course of nurse aide training of at least one hundred hours' duration;

(7) Are enrolled in a prelicensure program of nursing education approved by the board of nursing or by an agency of another state that regulates nursing education, have provided the long-term care facility with a certificate from the program indicating that the individual has successfully completed the courses that teach basic nursing skills including infection control, safety and emergency procedures, and personal care, and have successfully completed a competency evaluation program conducted by the director under division (A) of section 3721.31 of the Revised Code;

(8) Have the equivalent of twelve months or more of full-time employment in the five years preceding listing in the registry as a hospital aide or orderly and have successfully completed a competency evaluation program conducted by the director under division (C) of section 3721.31 of the Revised Code.

(B) In addition to the list of individuals required by division (A) of this section, the registry shall include both of the following:

(1) The statement required by section 3721.23 of the Revised Code detailing findings by the director under that section regarding alleged abuse, neglect, or exploitation of a resident or misappropriation of resident property;

(2) Any statement provided by an individual under section 3721.23 of the Revised Code disputing the director's findings.

Whenever an inquiry is received as to the information contained in the registry concerning an individual about whom a statement required by section 3721.23 of the Revised Code is included in the registry, the director shall disclose the statement or a summary of the statement together with any statement provided by the individual under section 3721.23 or a clear and accurate summary of that statement.

(C) The director may by rule specify additional information that must be provided to the registry by long-term care facilities and persons or government agencies conducting approved competency evaluation programs and training and competency evaluation programs.

(D) Information contained in the registry is a public record for the purposes of section 149.43 of the Revised Code, and is subject to inspection and copying under section 1347.08 of the Revised Code.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 09-29-1995.

3721.33 Nurse aide training fund.

Except for any fee collected and retained by a testing service under contract pursuant to division (C) of section 3721.31 of the Revised Code, all fees collected under section 3721.31 of the Revised Code shall be deposited in the state treasury to the credit of the nurse aide training fund, which is hereby created. The moneys in the fund shall be used solely for the purposes set forth in sections 3721.28 to 3721.32 of the Revised Code and rules adopted thereunder.

Effective Date: 09-29-1999.

3721.34 Cooperation with other agencies.

For purposes of implementing sections 3721.28 to 3721.33 of the Revised Code, the director of

health may advise, consult or cooperate with, or enter into agreements with state agencies, political subdivisions, the federal government, or any person. The director may enter into agreements that provide for a state agency to do any of the following:

(A) Approve or reapprove, in accordance with division (A) of section 3721.31 of the Revised Code and the rules adopted by the director under section 3721.30 of the Revised Code, competency evaluation programs and training and competency evaluation programs, or, in accordance with rules adopted by the director under section 3721.30 of the Revised Code, programs to train instructors and coordinators for training and competency evaluation programs and evaluators for competency evaluation programs, and to perform any functions related to approval and reapproval of those programs including any of the following:

(1) Conduct adjudications under Chapter 119. of the Revised Code;\

(2) Conduct the inspections and examinations described in division (A)(5) or (D) of section 3721.31 of the Revised Code;

(3) Deny, suspend, or revoke approval or reapproval, in accordance with Chapter 119. of the Revised Code, of programs that are not in compliance with sections 3721.30 and 3721.31 of the Revised Code and the rules adopted thereunder;

(4) Collect the fees described in division (G) of section 3721.31 of the Revised Code in the amounts prescribed in rules adopted by the director of health under section 3721.30 of the Revised Code and deposit them into the nurse aide training fund created by section 3721.33 of the Revised Code.

(B) Approve or deny, in accordance with Chapter 119. of the Revised Code, the requests described in division (B)(2) of section 3721.31 of the Revised Code.

Effective Date: 04-10-2001.

3721.35 Unauthorized practice of nursing.

Nothing in sections 3721.28 to 3721.34 of the Revised Code shall be construed to permit any individual to engage in the practice of nursing as a registered nurse or the practice of nursing as a licensed practical nurse if the individual does not hold a valid license issued under Chapter 4723. of the Revised Code.

Effective Date: 12-13-1990.

3721.99 Penalty.

(A) Whoever violates section 3721.021, division (B), (D), or (E) of section 3721.05, division (A), (C), or (D) of section 3721.051, section 3721.06, division (A) of section 3721.22, division (A) or (B) of section 3721.24, or division (E) or (F) of section 3721.30 of the Revised Code shall be fined one hundred dollars for a first offense. For each subsequent offense, the violator shall be fined five hundred dollars.

(B) Whoever violates division (A) or (C) of section 3721.05 or division (B) of section 3721.051 of the Revised Code shall be fined five thousand dollars for a first offense. For each subsequent offense, the violator shall be fined ten thousand dollars.

(C) Whoever violates division (D) of section 3721.031 or division (E) of section 3721.22 of the Revised Code is guilty of registering a false complaint, a misdemeanor of the first degree.

Effective Date: 07-21-2000.