

## MEMORANDUM

Date: December 1, 2023

To: Interested Parties

From: Olivia Igel  
Bureau of Regulatory Operations, Ohio Department of Health

Subject: Five Year Review 370-16-01 through 3701-16-18 of the Ohio Administrative Code, Pertaining to Residential Care Facilities

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In accordance with Ohio Revised Code Section 119.04, the five-year rule review of the rules set forth in Chapter 3701-16 of the Ohio Administrative Code pertaining to Residential Care Facilities must be completed by February 24, 2024. The Ohio Department of Health (“ODH”) has drafted revisions to rule 3701-16-01 through 3701-16-18 of the Administrative Code to comply with Senate Bill 9, of the 134<sup>th</sup> General Assembly, to remove regulatory restrictive language. Additional revisions to each rule are as follows:

### 3701-16-01

The rule lists the definitions of terms used in rules 3701-16-01 to 3701-16-18 of the Administrative Code. Amendments include adding, modifying, and updating terms to meet current professional standards, including “complex therapeutic diets,” “special diets,” and “therapeutic diets.” Statutory citations have been amended to meet Legislative Service Commission rule drafting standards. The term “call signal system” has been replaced by the term “resident call system.”

### 3701-16-02

The rule establishes general requirements and prohibitions for residential care facilities, including, but not limited to, those pertaining to the provision of skilled nursing care, the admission of residents, and compliance with statutory residents’ rights provisions.

Current 3701-16-03 (rescind) due to Legislative Service Commission rule rafting requirements for rules with greater than fifty percent revisions.

### New Rule 3701-16-03

The rule describes the licensure application and renewal procedures for RCFs, the conditions for issuance of licenses, and the circumstances in which a license can be revoked.

#### 3701-16-03.1

The rule sets forth the requirements for submitting a request for an expedited initial survey to ODH and a timeframe in which ODH must complete the inspection upon receipt of all the required documentation and fees.

#### 3701-16-04

The rule sets forth requirements that RCFs must follow during inspections and investigations conducted by the Ohio Department of Health.

#### 3701-16-05

The rule sets forth the personnel requirements for residential care facilities, including, but not limited to, those pertaining to nursing, dietary, activities, and ancillary staff. Paragraph (L) was added to not allow RCF's to admit residents in excess without a proper amount of nursing coverage and other appropriate staffing levels.

#### 3701-16-06

The rule summarizes the qualifications and requirements for personnel working in residential care facilities, including those pertaining to tuberculosis testing. Paragraph (E)(c) has been added to allow an LPN to work under the direction of an RN to provide first-aid training.

#### 3701-16-07

The rule sets forth admission and discharge criteria for residents, as well as the types of information that must be included in a resident agreement.

#### 3701-16-08

The rule sets forth what is required in a resident assessment, and the timeframes for such assessments.

#### 3701-16-09

The rule sets forth who may perform personal care services and who may perform medication administration, application of dressings and supervise special diets. Revisions have been made to clarify when personal care services are considered provided and require the RCF to have policies and procedures to prevent the misappropriation or theft of controlled substances. The definition of "chemical restraint" for purposes of this rule, has been revised to clarify that it means any drug that is used for discipline or staff convenience and not prescribed to treat medical symptoms.

#### 3701-16-09.1

The rule describes the types of part-time skilled nursing care that may be provided in residential care facilities, as well as what types of care are counted towards the 120-day skilled nursing care limit.

#### 3701-16-10

The rule sets forth the dietary standards that must be met for facilities that choose to provide meals to residents. Also included in this rule are the requirements for the supervision of special diets. The rule has been revised to clarify that the RCF will ensure that food texture is appropriate to the individual needs of each resident, except that residential care facility staff are not allowed to perform syringe feedings.

#### 3701-16-11

The rule sets forth a variety of RCF requirements, such as those pertaining to laundry services, resident activities, the regulation of pets, and accounting practices.

#### 3701-16-12

The rule sets forth the responsibilities of a residential care facility with regards to changes in a resident's health status and other incidents, as well as infection control. The rule has been revised to provide detailed infection control requirements including having an infection, prevention, and control coordinator that works at least part-time in the facility, a TB control plan, communicable disease restrictions, and a water management plan to prevent the transmission of waterborne pathogens.

#### 3701-16-13

The rule sets forth building, plumbing, fire, carbon monoxide safety, and disaster preparedness standards for residential care facilities. The rule has been revised to require the RCF to notify ODH when there is an interruption of normal business due to a disaster or emergency, integrate the restriction of vapor products with the smoking prohibitions, and maintain a copy of the facility disaster preparedness plan electronically or offsite to ensure access during emergencies.

#### 3701-16-14

The rule sets forth the space requirements for areas of a residential care facility, including dining and activity areas, and resident sleeping rooms.

### 3701-16-15

The rule sets forth requirements for building maintenance, equipment, and supplies. Paragraph (C)(1) allows residents to choose an alternative piece of furniture, such as a recliner, to sleep in.

### 3701-16-16

The rule sets forth requirements for temperature regulation in residential care facilities. Paragraph (B) now states that a device such as hand held hygrometer or infrared thermometer should be on hand to check the ambient temperature of rooms.

### 3701-16-17

The rule sets forth requirements for residential care facilities in keeping records and reports. Paragraph (A)(1)(i) was added, if applicable, that contact information of nearest relative or guardian information be updated every six months to ensure notification in case of an emergency.

### 3701-16-18

The rule sets forth procedures with which a residential care facility may request a variance or waiver for the requirements of rules set forth in Chapter 3701-16.

Please review the draft new rule and provide any comments you may have by **January 1, 2024**, to ODH at the address below. Please include the words "Residential Care Facility Rules" in the subject line of all comments sent via regular mail or e-mail. ODH will review and consider the comments received for possible further revision to the draft rules before they are submitted for formal rule proposal and adoption proceedings. Thank you.

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## 3701-16-01 Definitions.

As used in rules 3701-16-01 to 3701-16-18 of the Administrative Code:

- (A) "Accommodations" means housing, meals, laundry, housekeeping, transportation, social or recreational activities, maintenance, security, or similar services that are not personal care services or skilled nursing care.
- (B) "Activities of daily living" means walking and moving, bathing, grooming, toileting, oral hygiene, hair care, dressing, eating, and nail care.
- (C) "Administrator" means the person responsible for the daily operation of the residential care facility. The administrator and the operator may be the same person.
- (D) "Advanced Practice Nurse" means a registered nurse authorized to practice as a certified nurse specialist, certified registered nurse anesthetist, certified nurse midwife or certified nurse practitioner in accordance with section 4723.41 of the Revised Code.
- ~~(E)~~(E) "Bedroom" means a room used by a resident or residents for sleeping purposes that is either a resident unit or a portion of a resident unit.
- ~~(E)~~(F) "Complex therapeutic diets" has the same meaning as "therapeutic diet" as that term is defined in paragraph (OO) of this rule
- ~~(F)~~(G) "County home" and "district home" mean an entity operated under Chapter 5155. of the Revised Code.
- ~~(G)~~(H) "Department" means the department of health.
- ~~(H)~~(I) "Developmental delay" means that a child has not reached developmental milestones expected for ~~his or her~~their chronological age as measured by qualified professionals using appropriate diagnostic instruments and/or procedures.
  - (1) Delay ~~shall~~will be demonstrated in one or more of the following developmental areas: adaptive behavior, physical developmental or maturation (fine and gross motor skills; growth) cognition; social or emotional development; and sensory development; or
  - (2) An established risk involving early aberrant development related to diagnosed medical disorders, such as infants and toddlers who are on a ventilator, are adversely affected by drug exposure, or have a diagnosed medical disorder or physical or mental condition known to result in developmental delay such as Down syndrome.
- ~~(I)~~(J) "Developmental diagnosis" means a severe, chronic disability that is characterized by the following:
  - (1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental impairment solely caused by mental illness as that term is defined in division (A) of section 5122.01 of the Revised Code.
  - (2) It is manifested before age twenty-two.
  - (3) It is likely to continue indefinitely.

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(4) It results in one of the following:

- (a) In the case of a person under three years of age, at least one developmental delay or an established risk;
- (b) In the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk.
- (c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and if the person is at least sixteen years of age, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

~~(J)~~(K) "Director" means the director of health or any office, bureau, agency, official or employee of the department to which the director has delegated ~~his~~their authority or duties.

~~(K)~~(L) "Dietitian" means an individual licensed under Chapter 4759. of the Revised Code to practice dietetics.

(M) "Full-time" means an individual works thirty hours or more per week.

~~(L)~~(N) "Home":

(1) ~~"Home" means~~Means both of the following:

- (a) Any 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, and the Ohio veterans' home;
- (b) A county home or district home that is or has been licensed as a residential care facility.

(2) ~~"Home" also~~Also means 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. 301, as amended ~~(1981)~~, and for which a certificate of need, other than a certificate to recategorize hospital beds as described in section ~~3702.522-3702.521~~3702.521 of the Revised Code or under 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 ~~3702.62-3702.594~~3702.594 of the Revised Code after August 5, 1989.

(3) ~~"Home" does~~Does not mean any of the following:

- (a) Except as provided in division (A)(1)(b) of section 3721.01 of the Revised Code, a public hospital or hospital as defined in section 3701.01 or 5122.01 of the Revised Code;
- (b) A residential facility for mentally ill persons as defined under section ~~5119.22-5119.34~~5119.34 of the Revised

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Code;

- (c) A residential facility as defined in section 5123.19 of the Revised Code;
- (d) An alcohol or drug addiction program as defined in section ~~3793.01~~5119.01 of the Revised Code;
- (e) A facility licensed to provide methadone treatment under section ~~3793.11~~5119.391 of the Revised Code;
- (f) A facility providing services under contract with the department of mental retardation and developmental disabilities under section 5123.18 of the Revised Code;
- (g) 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;
- (h) 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;
- (i) 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 established under Title XVIII of the "Social Security Act" or the medical assistance program established under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," if on January 1, 1994, the facility, infirmary, or entity was providing care exclusively to members of the religious order; ~~or~~
- (j) A county home or district home that has never been licensed as a residential care facility; or
- (k) A facility registered to provide a pediatric transition care program under section 3712.042 of the Revised Code that is used exclusively for pediatric transition care patients.

~~(M)~~(O) "Home health agency" means ~~an agency certified as a provider of home health services under Title XVIII of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981)~~an entity licensed under section 3740.04 of the Revised Code.

~~(N)~~(P) "Licensed practical nurse" means a person licensed under Chapter 4723. of the Revised Code to practice nursing as a licensed practical nurse.

~~(O)~~(Q) "Lot" means a plot or parcel of land considered as a unit, devoted to a certain use, or occupied by a building or group of buildings that are united by a common interest and use, and the customary accessories and open spaces belonging to the same.

~~(P)~~(R) "Maximum licensed capacity" means the authorized type and number of residents in a home as determined in paragraph (S) of rule 3701-16-03 of the Administrative Code.

~~(Q)~~(S) "Mechanically altered food" means that the texture of food is altered altered by chopping, grinding, mashing, or pureeing so that it can be successfully chewed and safely swallowed.

~~(R)~~(T) "Mental impairment" means a condition in which a part of a person's brain has been damaged or is not working properly. Mental impairment does not mean mental illness as that term is defined in section 5122.01

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of the Revised Code or intellectual disability as that term is defined in section 5123.01 of the Revised Code.

- ~~(S)~~(U) "Nonambulatory" means not able to walk or not physically able to leave the premises without assistance from another individual.
- ~~(T)~~(V) "Nurse" means a registered nurse or licensed practical nurse.
- ~~(U)~~(W) "Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment ~~require~~is in need of skilled nursing care and of individuals who ~~require~~are in need of personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care.
- ~~(V)~~(X) "Ohio building code" means the building ~~requirements~~standards, as adopted by the board of building standards pursuant to section 3781.10 of the Revised Code.
- ~~(W)~~(Y) "On call" means the person can be contacted at all times and is immediately available to go on duty in the home upon short notice.
- ~~(X)~~(Z) "On duty" means being in the home, awake, and immediately available.
- ~~(Y)~~(AA) "Operator" means the person, firm, partnership, association, or corporation which is ~~required~~obligated by section 3721.05 of the Revised Code to obtain a license in order to open, maintain or operate a home and the superintendent or administrator of a county home or district home licensed or seeking to be licensed as a residential care facility.
- ~~(Z)~~(BB) "Personal care services" means services including, but not limited to, the following:
- (1) Assisting residents with activities of daily living;
  - (2) Assisting residents with self-administration of medication, in accordance with rule 3701-16-09 of the Administrative Code;
  - (3) Preparing food for special diets, other than therapeutic diets, for residents pursuant to the instructions of a physician, a licensed health care professional acting within their applicable scope of practice, or a licensed dietitian, in accordance with rule 3701-16-10 of the Administrative Code.
- "Personal care services" does not include "skilled nursing care." A facility need not provide more than one of the services listed in this paragraph to be considered to be providing personal care services.
- ~~(AA)~~(CC) "Physician" means an individual licensed under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.
- ~~(BB)~~(DD) "Registered nurse" means an individual licensed to practice nursing as a registered nurse under Chapter 4723. of the Revised Code.
- ~~(CC)~~(EE) "Resident" means an unrelated individual to whom a residential care facility provides accommodations.
- ~~(DD)~~(FF) "Resident call system" means a set of devices that are connected electrically, electronically, by radio frequency transmission, or in a like manner, are resident activated, and effectively can alert the staff member

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or members on duty of emergencies or resident needs.

~~(EE)~~(GG) "Resident unit" means the private room or rooms occupied by a resident or residents.

~~(FF)~~(HH) "Residents' rights" means the rights enumerated in sections 3721.10 to 3721.17 of the Revised Code.

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

- (1) 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;
- (2) 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.

~~(HH)~~(JJ) "Serious mental illness" means an illness classified in the "Diagnostic and Statistical Manual of Mental Disorders, Third-Fifth Edition, Revised (~~DSM-III-R~~DSM-V)," that meets at least two of the three following criteria of diagnosis, duration and disability:

(1) Diagnosis: The current primary diagnosis is:

~~(a)~~(a) ~~Delusional disorders (DSM-III-R 297.10);~~

~~(b)~~(a) Dissociative disorders (~~DSM-III-R~~DSM-V ~~300.14~~F44.81);

~~(c)~~(b) ~~Eating-Feeding and eating disorders (DSM-III-R~~DSM-V ~~307.10, 307.51, 307.52~~F50.01, F50.02, F50.2, F50.8, F 50.9);

~~(d)~~(c) ~~Mood-Depressive disorders (DSM-III-R~~DSM-V ~~296.3x~~F32.8, F32.9, F34.8, F33, F33.1, F33.2, F33.3, F 34, F34.1, 296.4x, 296.5x, 296.6x, 296.70, 300.40, 301.13, 311.00);

~~(e)~~(d) ~~Organic-mental~~Major neurocognitive disorders (~~DSM-III-R~~DSM-V ~~290.0, 290.10, 290.1x, 290.4x~~F01.50, F01.51, , 294.10, 294.80~~F02.8x, F06.8~~);

~~(f)~~(e) ~~Personality-Disruptive, impulsive-control, and conduct disorders (DSM-III-R~~DSM-V ~~301.00, 301.20, 301.22, 301.40, 301.50, 301.60, 301.70, 301.81, 301.82, 301.83, 301.84, 301.90~~F21, F60, F60.1, F60.2, F60.3, , F60.5, F60.6, F60.7 F60.81, F60.9);

~~(g)~~(g) ~~Psychotic disorders (DSM-III-R~~DSM-V ~~395.40, 295.40, 295.70, 298.90~~);

~~(h)~~(f) Schizophrenia spectrum and other psychotic disorders (~~DSM-III-R~~DSM-V ~~295.1x~~F20.81, F20.9, 295.2x, 295.3x, 295.6x, 295.9xF22, F23, F25x, F25.0, F25.1, F28, F29);

~~(i)~~(g) Somatoform disorder (~~DSM-III-R~~DSM-V ~~307.80~~F45.1);

~~(j)~~(h) Other disorders (~~DSM-III-R~~DSM-V ~~313.23~~F94.40, F91.3, 313.81, 313.82F93.8); or

~~(k)~~(i) Other specified.

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- (2) Duration: the length of the problem can be assessed by either inpatient or outpatient use of service history, reported length of time of impairment, or some combination, including at least two prior hospitalizations of more than twenty-one days or any number of hospitalizations (more than one) totaling at least forty-two days prior to the assessment, or ninety to three hundred sixty-five days in a hospital or nursing home within three prior years, or major functional impairment lasting more than two years, resulting in utilization of outpatient mental health services on an intermittent basis, a continuous basis, or both.
- (3) Disability/functional impairment: severity of disability can be established by disruption in two or more life activities, including but not limited to:
- (a) Employment;
  - (b) Contributing substantially to one's own financial support (not to be entitlements);
  - (c) Independent residence;
  - (d) Self-care;
  - (e) Perception and cognition;
  - (f) Stress management or coping skills; or
  - (g) Interpersonal and social relations.

~~(H)~~(KK) "Skilled nursing care" means procedures that ~~require~~necessitate 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:

- (1) Irrigations, catheterizations, application of dressings, and supervision of special diets;
- (2) Objective observation of changes in the resident's condition as a means of analyzing and determining the nursing care ~~required~~necessary and the need for further medical diagnosis and treatment;
- (3) Special procedures contributing to rehabilitation;
- (4) Administration of medication by any method ordered by a physician or other licensed health care professional acting within their applicable scope of practice, such as hypodermically, rectally, or orally, including observation of the resident after receipt of the medication; or
- (5) Carrying out other treatments prescribed by the physician or other licensed health care professional acting within their applicable scope of practice, that involve a similar level of complexity and skill in administration.

~~(JJ)~~(LL) "Special care unit" means a residential care facility, or part thereof, that is dedicated to providing care to residents with diagnoses, that include, but are not limited to, late-stage cognitive impairment with significant ongoing daily living assistance needs, cognitive impairments with increased emotional needs or presenting behaviors that cause problems for the resident or other residents, or both; or, serious mental illness.

~~(KK)~~(MM) "Special diets" means a therapeutic diet limited to:

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- (1) Nutrient adjusted diets, including high protein, no added salt, and no concentrated sweets
- (2) Volume adjusted diets, including small, medium and large portions;
- (3) The use of finger foods or bite-sized pieces for a resident's physical needs; or
- (4) Mechanically altered food.

~~(LL)~~(NN) "Staff member" or "staff" means an individual working in a residential care facility including the owner; the administrator; a full-time, part-time or temporary paid employee; or an individual working on contract for the facility.

~~(MM)~~(OO) "Supervision" means:

- (1) Watching over a resident, when necessary, while the resident engages in activities of daily living or other activities to ensure the resident's health, safety, and welfare;
- (2) Reminding a resident to do or complete such an activity, as by reminding ~~him or her~~ them to engage in personal hygiene or other self-care activity; or
- (3) Helping a resident to schedule or keep an appointment, or both, including the arranging for transportation.

"Supervision" does not include reminding a resident to take medication and watching the resident to ensure that the resident follows the directions on the container, or supervision of therapeutic diets as described in paragraph (J) of rule 3701-16-10 of the Administrative Code.

~~(NN)~~(PP) "Supervision of therapeutic diets" means services, including, but not limited to, the following:

- (1) Monitoring a resident's access to appropriate foods as ~~required~~ obligated by a therapeutic diet;
- (2) Monitoring a resident's weight and acceptance of a therapeutic diet;
- (3) Providing assistance to residents on therapeutic diets as needed or requested: and
- (4) Providing or preparing therapeutic diets.

~~(OO)~~(QQ) "Therapeutic diet" means a diet ordered by a health care practitioner:

- (1) As part of the treatment for a disease or clinical condition;
- (2) To eliminate, decrease, or increase certain substances in the diet; or
- (3) To provide mechanically altered food when indicated.

~~(PP)~~(RR) "Unrelated individual" means one who is not related to the owner or operator of the residential care facility or to ~~his or her~~ their spouse as a parent, grandparent, child, grandchild, brother, sister, niece, nephew, aunt, uncle, or as the child of an aunt or uncle.

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**3701-16-02 General provisions and prohibitions.**

- (A) Nothing contained in rules 3701-16-01 to 3701-16-18 of the Administrative Code ~~shall~~should be construed as authorizing the supervision, regulation, or control of the spiritual care or treatment of residents who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.
- (B) For the purposes of rules 3701-16-01 to 3701-16-18 of the Administrative Code:
- (1) Any residence, institution, hotel, assisted living facility, congregate housing project, or similar facility that meets the definition of a residential care facility or a home for the aging under section 3721.01 of the Revised Code is such a home regardless of how the facility holds itself out to the public;
  - (2) Any residence, institution, hotel, assisted living facility, congregate housing project, or similar facility that provides personal care services to fewer than three residents or that provides for any number of residents, only housing, housekeeping, laundry, meals, social or recreational activities, maintenance, security, transportation, and similar services that are not personal care services or skilled nursing care ~~is not a home required~~does not need to be licensed under Chapter 3721. of the Revised Code or rules 3701-16-01 to 3701-16-18 of the Administrative Code; and
  - (3) Personal care services or skilled nursing care ~~shall~~will be considered to be provided by a residential care 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 ~~his~~their sponsor is a party.
- (C) Nothing in paragraph (~~ZBB~~) of rule 3701-16-01 of the Administrative Code ~~shall~~should be be construed to permit personal care services to be imposed upon a resident who is capable of performing the activity in question without assistance. Nothing in paragraph (~~HKK~~) of rule 3701-16-01 of the Administrative Code ~~shall~~should be be construed to permit skilled nursing care to be imposed upon an individual who does not ~~require~~need skilled nursing care.
- (D) In addition to providing accommodations, supervision, and personal care services to its residents, a residential care facility is licensed to provide skilled nursing care to its residents as follows:
- (1) Supervision of therapeutic diets;
  - (2) Application of dressings pursuant to division (A)(2) of section 3721.011 of the Revised Code and paragraph (J) of rule 3701-16-09 of the Administrative Code;
  - (3) Subject to division (B)(1) of section 3721.011 of the Revised Code, administration of medication;
  - (4) Subject to division (C) of section 3721.011 of the Revised Code, other skilled nursing care provided on a part-time, intermittent basis for not more than a total of one hundred twenty days in any twelve-month period; and
  - (5) Subject to division (D) of section 3721.011 of the Revised Code, skilled nursing care provided for more than one hundred twenty days in any twelve-month period to a resident whose physician has determined the skilled nursing care needed is routine, or to a hospice patient as defined in section 3712.01 of the

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- (E) A residential care facility ~~may not~~ is not allowed to admit or retain individuals requiring skilled nursing care or provide skilled nursing care beyond the limits established under section 3721.011 of the Revised Code and rules 3701-16-07 and 3701-16-09.1 of the Administrative Code.
- (F) Each residential care facility ~~shall~~ is obligated to provide services as outlined in the resident agreement in accordance with acceptable practices and the facility's policies and procedures.
- (G) Each residential care facility ~~shall~~ is obligated to comply with all the residents' rights provisions under Chapter 3721. of the Revised Code.
- (H) A residential care facility ~~shall~~ is forbidden from not use using the word "hospital" in its name, letterhead or advertising.
- (I) A residential care facility ~~shall~~ is forbidden from not admit admitting residents in excess of the maximum licensed bed capacity.
- (J) Notwithstanding section 3721.011 of the Revised Code, a residential care facility in which residents receive skilled nursing care as described in section 3721.011 of the Revised Code is not a nursing home.
- (K) An applicant for a license to operate a residential care facility ~~shall~~ will not accept more than two residents who need personal care services, medication administration, supervision of therapeutic diets, application of dressings or skilled nursing care before receiving a license.
- (L) In addition to the provisions listed in this rule, no person, firm, partnership, association, or corporation ~~shall~~ is obligated to:
- (1) Operate a residential care facility as defined in section 3721.01 of the Revised Code and paragraph (GGII) of rule 3701-16-01 of the Administrative Code without obtaining a license from the director;
  - (2) Violate any of the conditions or ~~requirements~~ qualifications necessary for licensing after the license has been issued;
  - (3) Operate a residential care facility after the license for such has been revoked by the director;
  - (4) Interfere with the inspection of a licensed residential care facility by any state or local official when ~~he or she is~~ they are performing duties ~~required~~ obligated ~~of him or her~~ by Chapter 3721. of the Revised Code. All licensed residential care facilities ~~shall~~ are obligated to be open for inspection; or
  - (5) Violate any applicable provision of Chapter 3721. of the Revised Code or rules 3701-16-01 to 3701-16-18 of the Administrative Code.
- (M) No county home or district home licensed under section 3721.07 of the Revised Code ~~shall~~ will do any of the following:
- (1) Violate any of the conditions or ~~requirements~~ qualifications necessary for licensing after the licensed has

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been issued;

- (2) Continue operation after its license has been revoked by the director of health;
  - (3) 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; or
  - (4) Violate any of the provisions of this chapter or any rules adopted thereunder.
- (N) Nothing contained in rules 3701-16-01 to 3701-16-18 of the Administrative Code ~~shall~~should be 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.

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**3701-16-03 Initial, renewal, and change of operator license applications; fees; issuance; revocation; notice.**

(A) Not less than sixty days before the proposed opening of a residential care facility, the operator of a residential care facility will submit, on a form prescribed by the director, a completed initial application, and pay the non-refundable application fee specified in section (A) 3721.02 of the Revised Code, with the fee made payable to the "treasurer, state of Ohio" in the form of a check or money order to be deposited in the state treasury to the credit of the general operations fund created by section (A) 3701.83 of the Revised Code. A completed application includes:

- (1) A statement by the applicant of the status of the proposed residential care facility under any applicable zoning ordinances or rules, or a statement by the applicant that there is no zoning authority where the proposed home is to be located;
- (2) A statement of financial solvency at the time of initial application, signed by a certified public accountant, on a form provided by the director, showing that the applicant has the financial ability to staff, equip, and operate the residential care facility in accordance with Chapter 3721. of the Revised Code, and rules 3701-16-01 to 3701-16-18 of the Administrative Code, and that the applicant has sufficient capital or financial reserve to cover not less than three months of operation;
- (3) A statement containing the following information:
  - (a) If the operator is an individual and owner of the business, the individual's name, address, electronic mail address, and telephone number. If the operator of the business is owned by an association, corporation, or partnership, the business activity, address, and telephone number of the entity and the name of every person who has an ownership interest of five per cent or more in the entity;
  - (b) If the operator does not own the building or buildings or if the operator owns only part of the building or buildings in which the residential care facility is housed, the name of each person who has an ownership interest of five per cent or more in the buildings;
  - (c) The name and address of any residential care facility and any facility described in divisions (A)(1)(a) and (A)(1)(c) of section 3721.01 of the Revised Code in which the operator or administrator, or both, have an ownership interest of five per cent or more or with which the operator or administrator have been affiliated with through ownership or employment in the five years prior to the date of the application;
  - (d) The name, business address, electronic mail address, and telephone number of the administrator of the residential care facility, if different from the operator;
  - (e) The name, business address, electronic mail address, and telephone number of any management firm or business employed to manage the residential care facility; and
  - (f) The name, business address, and telephone number of the statutory agent of the operator;
- (4) Copies of the:
  - (a) Floor plan for the building or area of a building to be licensed as a residential care facility, including beds;
  - (b) Certificate of occupancy obligated by paragraph (A) of rule 3701-16-13 of the Administrative Code,

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showing a use group of R-4, I-1, or I-2;

(c) Inspection report of the state fire marshal or a township, municipal, or other legally constituted fire department approved by the state fire marshal obligated by paragraph (A) of rule 3701-16-13 of the Administrative Code; and

(d) Heating inspection report obligated by paragraph (A) of rule 3701-16-15 of the Administrative Code.

(B) The operator of a residential care facility will submit, on a form prescribed by the director, a completed renewal application, and pay the non-refundable application fee specified in section (A) 3721.02 of the Revised Code, with the fee made payable to the "treasurer, state of Ohio" to be deposited in the state treasury to the credit of the general operations fund created by section (A) 3701.83 of the Revised Code. A completed renewal application includes:

(1) Include an update of the information obligated by paragraphs (A)(2), (A)(3), and (A)(4)(c) of this rule; and

(2) Provide information the director may require to assess whether the operator has violated section 3721.07 of the Revised Code.

(C) Except as provided in paragraph (E) of this rule, the operator or administrator will notify the director in writing or electronically of any changes in the information contained in paragraphs (A) or (B) no later than ten days after the change occurs.

(D) The operator or administrator will notify the residents and their sponsors or legal representatives and the regional long-term care ombudsman program, designated under section 173.16 of the Revised Code, serving the area where the home is located, in writing or electronically of any changes in the information contained in paragraphs (A)(3)(a), (A)(3)(b), (A)(3)(d), or (A)(3)(e) of this rule no later than ten days after the change occurs.

(E) Subject to sections 3721.026, 3721.03, 3721.05, and 3701.07 of the Revised Code, at least sixty days before the proposed assignment or transfer of the license, the operator of a residential care facility may, with the approval of the director, assign or transfer the license to operate the home after submitting, on a form prescribed by the director, a completed change of operator application and paying the non-refundable application fee specified in section 3721.02 of the Revised Code. The department will deposit the fee in the state treasury to the credit of the general operations fund created by section 3701.83 of the Revised Code. A completed change of operator application includes:

(1) A statement containing the following information:

(a) If the operator is an individual and owner of the business, the individual's name, address, and telephone number. If the operator of the business is owned by an association, corporation, or partnership, the business activity, address, electronic mail address, and telephone number of the entity and the name of every person who has an ownership interest of five per cent or more in the entity;

(b) If the operator does not own the building or buildings or if the operator owns only part of the building or buildings in which the residential care facility is housed, the name of each person who has an ownership interest of five per cent or more in the buildings;

(c) The name and address of any residential care facility and any facility described in divisions (A)(1)(a)

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and (A)(1)(c) of section 3721.01 of the Revised Code in which the operator or administrator, or both, have an ownership interest of five per cent or more or with which the operator or administrator have been affiliated with through ownership or employment in the five years prior to the date of the application;

(d) The name, business address, electronic mail address, and telephone number of the administrator of the residential care facility, if different from the operator;

(e) The name, business address, electronic mail address, and telephone number of any management firm or business employed to manage the residential care facility; and

(f) The name, business address, and telephone number of the statutory agent of the operator; and

(2) Copies of the inspection report from the state fire marshal or a township, municipal, or other legally constituted fire department approved by the marshal, performed within the previous fifteen months, showing zero uncorrected deficiencies.

A change of the majority ownership of a licensed operator is a change of operator for purposes of this paragraph.

(F) If the residential care facility alters its physical facilities in a manner that affects bed capacity or proposes to relocate existing beds to a unlicensed portion of the facility, the facility will provide the director with written notice at least sixty days prior to the date the facility wants to commence filling the new beds or relocating existing beds. The residential care facility will not use the altered or unlicensed area until the department notifies the facility, in writing, that the alteration or move complies with the applicable provisions of Chapter 3721. of the Revised Code and rules 3701-16-01 to 3701-16-18 of the Administrative Code. The written notice from the facility will include:

(1) A floor plan of the area, including beds;

(2) The results of the inspection by the state fire marshal or a township, municipal, or other legally constituted fire department approved by the state fire marshal for the area; and

(3) A certificate of occupancy for the area.

(G) The following persons will notify the director within ten days of commencement of a suit against them, meaning a party suing has filed a written complaint or petition with the clerk of the court, which could result in the residential care facility being placed in a receivership:

(1) Operator;

(2) Owner of the operator or any person who has an ownership interest of five per cent or more in the entity;

(3) Owner of the building(s) in which the residential care facility is housed or any person who has an ownership interest of five per cent or more in the entity; and

(4) Management firm or business employed to manage the residential care facility.

(H) The director may request additional information at any time which the director determines to be necessary to assess compliance with the applicable criteria, standards, and requirements established by Chapter 3721. of the Revised Code and rules 3701-16-01 to 3701-16-18 of the Administrative Code. The applicant will truthfully respond and submit any additional information requested by the director within sixty days of the

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director's request unless the director specifies otherwise.

- (I) If the license to operate a home is assigned or transferred to a different person in accordance with paragraph (C) of this rule, the new operator is responsible and liable for compliance with any notice of proposed action or order issued under section 3721.08 of the Revised Code prior to the effective date of the assignment or transfer.
- (J) An operator who operates one or more residential care facilities in more than one building will obtain a separate license for each building except if such buildings are on the same lot and constitute a single residential care facility, such residential care facility may be operated under a single license. However, no residential care facility will be licensed in the same building as another residential care facility. On or after April 1, 2007, an operator who operates one or more residential care facilities in more than one building, where the buildings are intersected by a public roadway, will not be granted a license to operate the buildings as a single residential care facility, unless before April 1, 2007 the buildings were so licensed.
- (K) The license will be posted in a conspicuous place in the residential care facility.
- (L) If, under division (B)(5) of section 3721.03 of the Revised Code, the license of a person has been revoked, the director of health will not issue a license to the person or home at any time. A person whose license is revoked for any reason other than nonpayment of the license renewal fee or late fees is not allowed apply for a new license under Chapter 3721. of the Revised Code until a period of one year following the date of revocation has elapsed.
- (M) When closing a home, the operator will provide the director written notification of closure at least ninety days or as soon as practicable after determination is made, but no less than 60 days prior to the proposed closing date and within twenty four hours of an unplanned closure. This notice will include:
- (1) An address where the operator may be reached after the closing of the home;
  - (2) A plan for the transfer and adequate relocation of all residents; and
  - (3) Assurances that the residents will be transferred to the most integrated and appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.
- (N) While providing a written notification of closure under paragraph (O) of this rule, the operator will, in accordance with Chapter 3701-61 of the Administrative Code, also provide written notice of the proposed date of closing of the home to its residents and their sponsors or legal representatives and the regional long-term care ombudsmen program, designated under section 173.16 of the Revised Code, serving the area where the home is located.
- (O) A license for a home that has closed are considered surrendered to the department the three hundred sixty sixth day after the home has closed.
- (P) The residential care facility will include in all official correspondence with the department pertaining to the home, its name, address and license number as it appears on the residential care facility license.
- (Q) The director will determine the type and number of residents a residential care facility can accommodate which will be the authorized maximum licensed capacity of the facility. Such determination will be made on the basis of the physical facilities, personnel of the facility and the services and care needed by the residents to be admitted or retained in the residential care facility, and the permitted occupancy approved by the

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department of commerce. No operator, administrator, staff member or any other person will set up beds for resident use in a residential care facility which exceed the authorized maximum licensed capacity.

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**3701-16-03.1 Expedited initial licensure inspections.**

- (A) An applicant for licensure as a residential care facility may request an expedited initial licensure inspection by providing the department of health with all of the following:
- (1) A complete initial residential care facility application and fee ~~required~~obligated by paragraph (A) of rule 3701-16-03 of the Administrative Code;
    - (a) An application will be deemed complete when the department verifies all information contained therein is complete and accurate and meets the ~~requirements~~criteria of paragraph (B) of rule 3701-16-03 of the Administrative Code;
    - (b) An applicant may elect an expedited initial licensure inspection on the initial residential care facility application and, if electing such an inspection, provide a fee in addition to that ~~required~~obligated by paragraph (A) of rule 3701-16-03 of the Administrative Code, in the amount of two thousand two hundred fifty dollars;
    - (c) A fee collected by the department ~~shall~~will be deposited in the state treasury to the credit of the general operations fund created by section 3701.83 of the Revised Code, and the fee shall not be refunded; and
  - (2) Notice of readiness for inspection.
- (B) Upon receipt of a completed request for expedited initial inspection made pursuant to paragraph (A) of this rule, the department will commence an inspection of the residential care facility not later than ten business days. Inspections under this rule will be scheduled in the order in which the request for expedited initial licensure inspection is determined to be complete.
- (C) If the residential care facility does not meet the ~~requirements~~standards for licensure upon the initial licensure inspection requested under paragraph (B) of this rule, the department of health may deny the license.
- (D) This rule applies only to applicants for licensure as a new residential care facility and does not apply to an existing licensed residential care facility.

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**3701-16-04 Inspections and investigations; correction.**

- (A) The director ~~shall~~is obligated to inspect each residential care facility at least once prior to the issuance of a license, at least once every fifteen months and as the director considers necessary. The inspections may be announced or unannounced except that one unannounced inspection ~~shall~~is obligated to be conducted at least every fifteen months. The state fire marshal or a township, municipal, or other legally constituted fire department approved by the fire marshal ~~shall~~is also obligated to ~~also~~ inspect a residential care facility prior to issuance of a license, at least once every fifteen months thereafter, and at any other time requested by the director. A residential care facility 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 facility is assigned or transferred to a different person and the facility was licensed under Chapter 3721. of the Revised Code as a residential care facility immediately prior to the assignment or transfer.
- (B) The director may investigate any complaint concerning a facility in accordance with sections 3721.031 and 3721.17 of the Revised Code.
- (C) An operator, administrator, staff member or any other person ~~shall~~is forbidden from ~~not~~:
- (1) ~~Refuse~~Refusing to permit the director for the purpose of inspecting or investigating the operation of a residential care facility, to enter and inspect at any time a building or premise where a residential care facility is located, or to enter and inspect records, including resident medical records, which are kept concerning the operation of the residential care facility for information pertinent to the legitimate interest of the department.
  - (2) ~~Use~~Using profane or abusive language directed at or in the presence of residents or the director.
- (D) When inspecting or investigating a residential care facility, the director ~~shall~~will respect the residents' privacy and dignity, cooperate with the residents, behave in a congenial manner toward the residents, protect the residents' rights, and behave in a cooperative and professional manner toward individuals working in the facility. The director or the director's designee ~~shall~~will:
- (1) Refrain from using language or behavior that is derogatory, insulting, intimidating, or threatening;
  - (2) Not harass or coerce residents or otherwise attempt to influence residents' responses to inquiries;
  - (3) Not make remarks or comparison, positive or negative, about another residential care facility or other residents;
  - (4) Not solicit, accept, or agree to accept from the residential care facility or a resident of the facility compensation, gratuities, gifts, or any other thing of value that is of such character as to manifest a substantial and improper influence upon the director or the director's designee with respect to their duties;
  - (5) Obtain the resident's consent prior to conducting an evaluation of a resident unless a court has issued a search warrant or other order authorizing such an evaluation. When requesting the resident's consent to evaluate the resident, the director or the director's designee ~~shall~~will explain that the resident:

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- (a) Has the option to consent or not to consent to the evaluation;
  - (b) Will not be evaluated without the resident's consent;
  - (c) May have another individual of the resident's choice present during the evaluation. If a resident requests that another individual be present during the evaluation and that individual is not available, the resident has not consented to the evaluation; and
  - (d) Will not suffer any adverse consequences if the resident refuses to consent.
- (E) The director may enter at any time, for the purposes of investigation, any institution, residence, facility, or other structure which has been reported to the director or that the director has reasonable cause to believe is operating as a residential care facility without a valid license or in the case of a county or district home, is operating despite the revocation of its residential care facility license.
- (F) If an inspection reveals a violation or violations of Chapter 3721. of the Revised Code or of rules 3701-16-01 to 3701-16-18 of the Administrative Code, the director may provide the facility with the opportunity to correct the violation or violations.

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**3701-16-05 Personnel requirements.**

- (A) Each residential care facility ~~shallis~~ obligated to arrange for the services of an administrator who ~~shallis~~ obligated to:
- (1) Meet the applicable requirements of rule 3701-16-06 of the Administrative Code;
  - (2) Be responsible for the daily operation of the residential care facility including, but not limited to, assuring that residents' ongoing or changing service needs, as identified in the resident assessments, and services ordered by a licensed health care professional are acted upon by the appropriate staff member. If the facility does not provide for the needed service, ~~it shall be~~ the facility is obligated to discuss ~~discussed~~ the lack of the needed service with the resident as required by paragraph (G) of rule 3701-16-08 of the Administrative Code;
  - (3) Provide not less than twenty hours of service in the facility during each calendar week during the hours of eight a.m. and six p.m. If the administrator is unable to provide at least twenty hours of service in the residential care facility in a given calendar week because of a vacation, illness, or other temporary situation, the administrator ~~shallis~~ obligated to designate a staff member, who ~~shallis~~ not allowed to be less than twenty-one years of age and who meets the requirements of paragraphs (D) and (H) of rule 3701-16-06 of the Administrative Code, to serve as acting administrator;  
  
~~The administrator or acting administrator shall be accessible at all other times when not present at the residential care facility. A residential care facility located in the same building as a nursing home, or on the same lot as a nursing home, both of which are owned and operated by the same entity, shall be considered to have met this requirement if the nursing home has a full-time administrator licensed under Chapter 4751. of the Revised Code who is responsible for both the residential care facility and nursing home. For the purposes of this paragraph, "full-time" means no less than thirty-two hours per calendar week.~~  
  
(4) The administrator or acting administrator is obligated to be accessible at all other times when not present at the residential care facility. A residential care facility located in the same building as a nursing home, or on the same lot as a nursing home, both of which are owned and operated by the same entity, will be considered to have met this requirement if the nursing home has a full-time administrator licensed under Chapter 4751. of the Revised Code who is responsible for both the residential care facility and nursing home. For the purposes of this paragraph, "full-time" means no less than thirty-two hours per calendar week.
- (B) The residential care facility administrator may provide services to residents if the administrator meets the applicable qualifications of rule 3701-16-06 of the Administrative Code. An administrator, providing personal care services, of a facility with:
- (1) Sixteen or less beds may be counted toward meeting the staffing requirements of paragraph (C) of this rule;
  - (2) Seventeen to thirty-five beds ~~shallis not allowed to be~~ not be counted toward meeting the staffing requirements of paragraph (C) of this rule until he or she has met the requirements of paragraph (A)(3)

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of this rule;

(3) More than thirty-five beds ~~shallis not allowed to be not be~~ counted toward meeting the staffing requirements of paragraph (C) of this rule.

(C) Each residential care facility ~~shallis obligated to~~ have the following staff members who are competent to perform the duties they are assigned:

(1) At least one staff member on duty at all times who ~~shall meet~~ meets the qualifications of rule 3701-16-06 of the Administrative Code for staff members providing personal care services. During the night, the staff member who is physically present in the facility may be on call if the facility meets the resident call system requirements of paragraph (B)(5) of rule 3701-16-14 of the Administrative Code. When only one staff person is on duty in the facility, the residential care facility ~~shallis obligated to~~ designate another staff member who meets the same qualifications to be on call; and

(2) Sufficient additional staff members who meet the applicable qualifications of rule 3701-16-06 of the Administrative Code for the services they perform and appropriate scheduling of sufficient staff time to adequately do all of the following:

(a) Meet, in a timely manner, the residents' total care, supervisory and emotional needs as determined by the resident assessment required under rule 3701-16-08 of the Administrative Code and consistent with the resident agreement required under rule 3701-16-07 of the Administrative Code and reasonable and appropriate requests for services, including monitoring in excess of supervision of residents with increased emotional needs or presenting behaviors that cause problems for the resident or other residents, or both;

(b) Properly provide dietary, housekeeping, laundry, and facility maintenance services and recreational activities for the residents in accordance with the rules of this chapter;

(c) Assist, when necessary, with prompt evacuation of nonambulatory residents. The additional staff members needed to implement the facility's evacuation plan required by paragraph (J) of rule 3701-16-13 of the Administrative Code ~~shallare obligated to~~ be present in the facility at all times; and

(d) Provide or arrange for resident activities required under rule 3701-16-11 of the Administrative Code.

(3) Each residential care facility ~~shallis obligated to~~ have at least one staff member capable of giving personal care services who has successfully completed the first aid training required by paragraph (E) of rule 3701-16-06 of the Administrative Code, if applicable, present in the facility at all times.

(4) In determining the staffing level for the facility, the facility is not required to consider resident needs:

(a) That are being served through a contractual arrangement between the resident and a third party provider;

(b) That the resident chooses not to have met as documented in the resident's record; or

(c) That the resident has not contracted with the facility to meet if the facility has complied with

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paragraph (G) of rule 3701-16-08 of the Administrative Code.

- (5) Unless the resident's needs are being met by a private psychologist or physician, each residential care facility that admits or retains residents with a diagnosis of late-stage cognitive impairment with significant ongoing daily living assistance needs, cognitive impairments with increased emotional needs or presenting behaviors that cause problems for the resident or other residents, or both, or serious mental illness, ~~shall~~ is obligated to have a psychologist or physician with experience in the diagnosis and treatment of the applicable condition or conditions, either on staff or as a consultant.
- (D) In addition to the requirements set forth in this rule, each residential care facility that elects to admit or retain residents for whom the facility provides skilled nursing care beyond the supervision of special diets, application of dressings, or administration of medication ~~shall~~ is obligated to do all of the following:
- (1) Employ or contract with a registered nurse ~~who shall to~~ provide onsite supervision of skilled nursing care provided to residents. For purposes of this rule, "onsite supervision" means that the registered nurse ~~shall~~ is obligated to spend sufficient time each week in the facility to manage the provision of skilled nursing care in accordance with accepted standards of practice;
  - (2) Have a licensed nurse on call when one is not present in the facility; and
  - (3) Have sufficient additional nursing staff to meet residents' needs.
- (E) The operator or administrator ~~shall~~ is obligated to establish a schedule for staff coverage that includes coverage during vacations, emergency situations, and long-term absences due to illness. The residential care facility ~~shall~~ is not allowed to not require mandate, coerce or persuade a resident to supervise other residents, provide personal care services, supervise special diets, administer medications or manage the facility. Residents who voluntarily help or receive assistance from one another ~~shall~~ are not allowed to not be counted in determining whether the residential care facility meets the staffing requirements of this rule.
- (F) Each residential care facility which elects to administer medication ~~shall~~ is obligated to have one of the following individuals on duty ~~who shall to~~ administer medications in accordance with paragraphs (G) and (H) of rule 3701-16-09 of the Administrative Code and remain on duty for a sufficient amount of time to observe medication acceptance and reaction:
- (1) A registered nurse;
  - (2) A licensed practical nurse holding proof of successful completion of a course in medication administration approved by the Ohio board of nursing pursuant to Chapter 4723. of the Revised Code who ~~shall~~ will administer medication only at the direction of a registered nurse or physician;
  - (3) A physician; or
  - (4) A person authorized by law to administer medication.
- (G) Each residential care facility which elects to supervise therapeutic diets ~~shall~~ is obligated to provide or arrange for a dietitian and comply with the applicable requirements of rule 3701-16-10 of the Administrative Code.

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- (H) Each residential care facility which elects to provide for the application of dressings in accordance with division (A)(2) of section 3721.011 of the Revised Code ~~shall~~is obligated to have sufficient nursing staff to provide the service and ~~shall~~ comply with the requirements of paragraph (J) of rule 3701-16-09 of the Administrative Code.
- (I) Each residential care facility that elects to provide skilled nursing care using staff members, in accordance with division (C) of section 3721.011 of the Revised Code and paragraph (B) of rule 3701-16-09.1 of the Administrative Code, ~~shall~~is obligated to have sufficient nursing staff to provide the skilled nursing care. If the residential care facility elects to provide enteral tube feedings on a part-time intermittent basis the facility ~~shall~~is obligated to provide or arrange for a dietitian and provide sufficient nursing staff with appropriate experience and training in enteral tube feedings. Skilled nursing care may be delegated in accordance with Chapter 4723-13 of the Administrative Code.
- (J) A residential care facility that is physically located in the same building or on the same lot as a nursing home, or that provides an adult day care program, or both, which are owned and operated by the same entity may use staff from the residential care facility to provide services in the nursing home or adult day care program, or use appropriate and qualified staff from the nursing home or the adult day care program to meet part or all of the staffing requirements of this rule, if all of the following criteria are met:
- (1) The residential care facility at all times meets the minimal staffing levels required by paragraph (C) of this rule. The staff members, assigned to and responsible for meeting the residential care facility residents' needs, may provide services to nursing home residents if they meet the nurse aide qualifications of rule 3701-17-07.1 of the Administrative Code, but ~~shall~~are not allowed to ~~not~~ be counted towards meeting the nursing home staffing levels of rule 3701-17-08 of the Administrative Code;
  - (2) The nursing home at all times meets the staffing level requirements of rule 3701-17-08 of the Administrative Code;
  - (3) Separate staffing schedules for the residential care facility, nursing home, and adult day care program are maintained;
  - (4) The residential care facility has the resident call systems required by paragraph (B)(5) of rule 3701-16-14 of the Administrative Code, for residents to use in obtaining unscheduled care or services, as needed, when unexpected care needs arise and the monitoring of resident call systems in the residential care facility and nursing home is not disrupted. The residential care facility ~~shall~~is not allowed to ~~not~~ limit the use of the resident call systems to emergencies only;
  - (5) Utilization of the nurses or aides, or both, does not adversely affect the quality and timeliness of meeting the care needs of the nursing home and residential care facility residents; and
  - (6) For a residential care facility on the same lot as a nursing home, the homes are located within two minutes or less response time from each other.
- ~~No~~A staff member simultaneously assigned to the staffing schedule of the residential care facility and the nursing home ~~shall~~is allowed to be counted in determining whether the residential care facility meets the staffing requirements of paragraph (C) of this rule, unless over fifty per cent of the staff

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member's assigned daily working hours are in the residential care facility.

(K) The operator or the administrator of each residential care facility ~~shall~~is obligated to maintain records, on forms provided by the director, documenting compliance with the personnel requirements of this rule.

(L) Each residential care facility will not admit residents in excess of the number for which it is able to provide consistent nursing coverage and other appropriate staffing levels based on the volume and needs of the residents.

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**3701-16-06 Qualifications and health of personnel.**

- (A) No person with a disease which may be transmitted in the performance of the person's job responsibilities shallis allowed to work in a residential care facility during the stage of communicability unless the person is given duties that minimize the likelihood of transmission and follows infection control precautions and procedures.
- (B) No person shallis allowed to work in a residential care facility who uses alcohol or drugs to the extent that it adversely affects the performance of the person's duties or the health or safety of any resident.
- (C) No person shallis allowed to work in a residential care facility in any capacity as a full-time, part-time or temporary paid employee of the facility unless the person has been examined by a physician or other health care professional acting within their applicable scope of practice within thirty days before commencing work or on the first day of work. No person shallis allowed to commence work in a residential care facility in any capacity unless the person is medically capable of performing the person's prescribed duties. Operators shallare obligated to retain copies of the examinations ~~required-obligated~~ by this paragraph and shallare obligated to furnish them to the director upon request.
- (1) Employees of temporary employment services or, to the extent applicable, paid consultants working in a facility shallare obligated to have medical examinations in accordance with paragraph (C) of this rule, except that a new physical examination is not ~~required-necessary~~ for each new assignment. Each facility in which such an individual works shallare obligated to obtain verification of the physical examination, as applicable, from the employment agency or consultant before the individual begins work and shallare obligated to maintain this documentation on file.
- (2) Individuals used by an adult day care program provided by and on the same site as the residential care facility shallare obligated to have medical examinations in accordance with paragraph (C) of this rule if the adult day care program is located or shares space within the same building as the residential care facility or if there is a sharing of staff between the residential care facility and adult day care program.
- (D) Each residential care facility staff member and volunteer who:
- (1) Provides personal care services shallwill be at least sixteen years of age. Staff members or volunteers who provide personal care services who are under the age of eighteen shallare obligated to have on-site supervision by a staff member over the age of eighteen. The administrator shallis obligated to be at least twenty-one years of age;
- (2) Assists residents with self-administration of medications shallis obligated to demonstrate an ability to read, write and understand information and directions in English. All other staff members and volunteers shallare obligated to demonstrate an ability to understand and communicate job-related information and directions in English; or
- (3) Plans activities for residents with late-stage cognitive impairment with significant ongoing daily living assistance needs, cognitive impairments with increased emotional needs or presenting behaviors that cause problems for the resident or other residents, or both; or, serious mental illness shallis obligated to

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have training in appropriate activities for such residents.

(E) Staff members who provide personal care services in a residential care facility, except licensed health professionals whose scope of practice include the provision of personal care services, ~~shall~~ are obligated to meet complete the following training ~~requirements~~:

(1) Within sixty days of hire, have first-aid training evidenced by one of the following:

- (a) Currently valid documentation of successful completion, online or in-person, of the "American Red Cross Standard First-Aid Course", the "American Red Cross First-Aid Basics", or any other American red cross course covering the training topics described in paragraph (E)(1)(c) of this rule;
- (b) Currently valid documentation of successful completion, online or in-person, of the "American Heart Association Heartsaver First-Aid" course, or any other "American Heart Association" course covering the training topics described in paragraph (E)(1)(c) of this rule; or
- (c) Documentation of successful completion, within the past three years, of first-aid training by a physician, ~~or~~ registered nurse, a licensed practical nurse under the direction of a registered nurse, an emergency medical technician, or an instructor certified by the American red cross" or the American heart association. ~~This-Applicable first-aid~~ training ~~shall include~~ includes recognition and emergency management of bleeding, burns, poisoning, respiratory distress including choking, musculoskeletal injury, wounds including animal and insect bites, sudden illness, shock, hypothermia, heat stroke and exhaustion, and frost bite;

(2) Have documentation that, prior to providing personal care services without supervision in the facility, the staff member met one of the following ~~requirements~~ criteria:

- (a) Successfully completed training or continuing education taught by a registered nurse or licensed practical nurse under the direction of a registered nurse that ~~shall cover~~ covers, as is necessary to meet the needs of residents in the facility, the following:
  - (i) The correct techniques of providing (i) personal care services as ~~required~~ obligated by the staff member's job responsibilities;
  - (ii) Observational skills such as recognizing changes in residents' normal status and the facility's procedures for reporting changes; and
  - (iii) Communication and interpersonal skills.

The training or continuing education ~~shall be provided by a registered nurse or a licensed practical nurse under the direction of a registered nurse and be~~ will be sufficient to ensure that the staff member receiving the training can demonstrate an ability to provide the personal care services. The facility may utilize other health care professionals acting within the scope of the professional's practice as part of the training or continuing education;

(b) Successfully completed the training and competency evaluation program and competency evaluation

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program approved or conducted by the director under section 3721.31 of the Revised Code; or

- (c) Successfully completed ~~the~~ training or testing ~~requirements~~ in accordance with the medicare condition of participation of home health aide services, 42 C.F.R. 484.4 (November 6, 2014) and 42 C.F.R. 484.36 (June 18, 2001);
- (3) Except as provided in paragraph (E)(5) of this rule, staff members employed by a residential care facility, or part thereof, that admits or retains residents with late-stage cognitive impairment with significant ongoing daily living assistance needs, or cognitive impairments with increased emotional needs or presenting behaviors that cause problems for the resident or other residents, or both, ~~shall~~ are obligated to have:
  - (a) Two hours of initial training in the care of such residents within fourteen days of the first day of work; and
  - (b) Four hours of continuing education in the care of such residents annually. The four hours of continuing education may count towards the continuing education ~~requirement of~~ obligated by paragraph (E)(7) of this rule.
- (4) Except as provided in paragraph (E)(5) of this rule, staff members employed by a residential care facility, or part thereof, that admits or retains residents with diagnoses of serious mental illness ~~shall~~ are obligated to have:
  - (a) Two hours of initial training in the care of such residents within fourteen days of the first day of work; and
  - (b) Four hours of continuing education in the care of such residents annually. The four hours of continuing education may count towards the ~~of~~ continuing education ~~requirement of~~ obligated by paragraph (E)(7) of this rule.
- (5) Staff members employed by a residential care facility, or part thereof, that admits or retains residents with late-stage cognitive impairment with significant ongoing daily living assistance needs, or cognitive impairments with increased emotional needs or presenting behaviors that cause problems for the resident or other residents, or both, and that admits or retains residents with diagnoses of serious mental illness, ~~shall~~ are obligated to have:
  - (a) Four hours, divided in equal proportions for each population, of initial training in the care of such residents within fourteen days of the first day of work; and
  - (b) Eight hours, divided in equal proportions for each population, of continuing education in the care of such residents annually. The eight hours of continuing education may count towards continuing education ~~requirement of~~ obligated by paragraph (E)(7) of this rule
- (6) Staff members serving special populations not identified in paragraphs (E)(3) and (E)(4) of this rule ~~shall~~ are obligated to have:

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(a) Two hours of initial training in the care of such residents within fourteen days of the first day of work;  
and

(b) Four hours of continuing education in the care of such residents annually. The four hours of continuing education may count towards the ~~of continuing education requirement of~~ obligated by paragraph (E)(7) of this rule.

(7) Successfully complete at least eight hours of continuing education annually.

(F) Staff members whose job responsibilities will include providing therapeutic diets, other than special diets, ~~shall~~ are obligated to be trained by a dietitian prior to performing this responsibility.

(G) The initial training ~~required~~ obligated by paragraphs (E)(3) to (E)(6) of this rule ~~must~~ is to be conducted by a qualified instructor for the topic covered. The annual continuing education ~~requirements of~~ obligated by paragraphs (E)(3) to (E)(6) of this rule may be completed online or by other media provided there is a qualified instructor present to answer questions and to facilitate discussion about the topic at the end of the lesson.

(H) The administrator ~~shall~~ is obligated to:

(1) Be licensed as a nursing home administrator under Chapter 4751. of the Revised Code; or

(2) Meet one of the following criteria at the time of employment:

(a) Has three thousand hours of direct operational responsibility for a senior housing facility, health care facility, residential care facility, adult care facility or any other group home licensed or approved by the state;

(b) Has successfully completed one hundred credit hours of post high school education in the field of gerontology or health care;

(c) Holds a baccalaureate degree; or

(d) Is a licensed health professional as that term is defined in rule 3701-17-07.1 of the Administrative Code.

(3) The administrator ~~shall~~ is obligated to receive ~~annually~~ at least nine hours of continuing education annually in the fields of gerontology, health care, business administration, or residential care facility operation. Successful completion of course work at an accredited college or university, or of courses approved by the following entities, may be used to demonstrate compliance with this paragraph:

(a) The Ohio state bar association;

(b) The Ohio state board of executives of long-term services and supports;

(c) The Ohio state board of nursing;

(d) The Ohio state board of pharmacy;

(e) The Ohio state board of psychology;

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(f) The Ohio state medical board; or

(g) Any other health-related state board organized pursuant to Title 47 of the Revised Code.

- (I) The operator or administrator ~~shall~~is obligated to ensure that each staff member, other than a volunteer who does not provide personal care services, receives and completes orientation and training applicable to the staff member's job responsibilities within three working days after beginning employment with the residential care facility. A staff member ~~shall~~is not allowed to not stay alone in the residential care facility with residents until the staff member has received the orientation and training ~~required-obligated by~~ under this paragraph and the general staff training in fire control and evacuation procedures ~~required-under~~ obligated by paragraph (P) of rule 3701-16-13 of the Administrative Code. The orientation and training ~~required-mandated~~ by this paragraph ~~shall~~will include at least:
- (1) The physical layout of the residential care facility;
  - (2) The staff member's job responsibilities;
  - (3) The residential care facility's policies and procedures;
  - (4) How to secure emergency assistance; and
  - (5) Residents' rights.
- (J) All individuals used by the residential care facility who function in a professional capacity ~~shall~~are obligated to meet the standards applicable to that profession, including but not limited to, possessing a current Ohio license, registration, or certification, if ~~required-obligated~~ by law.
- (K) Each residential care facility ~~shall~~is obligated to provide appropriate staff training to implement each resident right under division (A) of section 3721.13 of the Revised Code on an annual basis and additionally as needed. The training ~~required-obligated~~ by this rule ~~shall~~will include, but not be limited to, an explanation of:
- (1) The residents' rights and the staff's responsibility in implementation of the rights; and
  - (2) The staff's obligation to provide all residents who have similar needs with comparable service.
- (L) No residential care facility ~~shall~~is allowed to employ a person for a position that involves the provision of direct care to an older adult, if the person:
- (1) Has been convicted of or pleaded guilty to an offense listed in division (C)(1) of section 3721.121 of the Revised Code, unless the individual is hired under the personal character standards set forth in rule 3701-13-06 of the Administrative Code;
  - (2) Fails to complete the form(s) or provide fingerprint impressions as ~~required-obligated~~ by division (B)(2) of section 3721.121 of the Revised Code;
  - (3) Is the subject of a finding of abuse or neglect of a resident or misappropriation of the property of a resident on the nurse aide registry, established pursuant to section 3721.32 of the Revised Code;

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- (4) Is the subject of a finding of abuse or neglect of a resident or misappropriation of the property of a resident on the nurse aide registry established by another state where the home believes or has reason to believe the person resides or resided; or
  - (5) Have had a disciplinary action taken against a professional license by a state licensure body as a result of a finding of abuse, neglect, mistreatment of residents or misappropriation of resident property.
- (M) For purposes of this rule, "annual" means a calendar year. The training hours ~~required~~obligated by this rule may be pro-rated from the employee's date of hire.

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**3701-16-07 Resident agreement; other information to be provided upon admission; risk agreements.**

- (A) A residential care facility ~~shall not admit~~ is not allowed to admit an individual who ~~requires~~ is in need of services or accommodations beyond that which a residential care facility is authorized to provide under paragraph (D) of rule 3701-16-02 of the Administrative Code or beyond that which the specific facility provides.
- (B) A residential care facility ~~shall not admit~~ is not allowed to admit a resident prior to searching for the individual on the Ohio sex offender registry as ~~required~~ obligated by section 3721.122 of the Revised Code.
- (C) Except for residents receiving hospice care, no residential care facility ~~shall~~ is allowed to admit or retain an individual who:
- (1) ~~Requires~~ Needs skilled nursing care that is not authorized by section 3721.011 of the Revised Code or is beyond that which the specific facility can provide;
  - (2) ~~Requires~~ Needs medical or skilled nursing care at least eight hours per day or forty hours per week;
  - (3) ~~Requires~~ Needs chemical or physical restraints as defined in paragraph (L) of rule 3701-16-09 of the Administrative Code;
  - (4) Is bedridden with limited potential for improvement;
  - (5) Has stage III or IV pressure ulcers. For purposes of this rule, "pressure ulcers" means any lesion caused by unrelieved pressure, or pressure in combination with shear and/or friction, which results in damage to the underlying tissue. Pressure ulcers ~~must are to~~ be staged in accordance with ~~the "Updated Staging System"~~ current staging definitions issued by the "National Pressure Ulcer Advisory Panel" (2007); or
  - (6) Has a medical condition that is so medically complex or changes so rapidly that it ~~requires~~ necessitates constant monitoring and adjustment of treatment regimen on an ongoing basis.
- (D) A residential care facility ~~shall~~ is obligated to enter into a written resident agreement with each prospective resident prior to beginning residency in the residential care ~~facility and~~. ~~The agreement shall be signed and dated by the operator, administrator, or acting administrator and the prospective resident or, if the prospective resident is physically or cognitively unable to sign and consents, another individual designated by the prospective resident. The facility shall provide both the prospective resident and any other individual signing on the resident's behalf with a copy of the agreement and shall explain the agreement to them.~~
- (1) The agreement needs be signed and dated by the operator, administrator, or acting administrator and the prospective resident or, if the prospective resident is physically or cognitively unable to sign and consents, another individual designated by the prospective resident are obligated to sign the agreement;
  - (2) The facility is obligated to provide both the prospective resident and any other individual signing on the resident's behalf with a copy of the agreement and explain the agreement to them; and
  - (3) In the event that a durable power of attorney for healthcare is enacted or when the physician determines that the resident is no longer able to make reasoned decisions to the agreement, the facility is obligated

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to provide a copy of the agreement to the individual designated by the resident to make decisions and consent on the resident's behalf, if any.

- (E) The agreement ~~required~~obligated by paragraph (D) of this rule ~~shall~~is obligated to include at least the following items:
- (1) An explanation of all charges to the resident including security deposits, if ~~any are required~~applicable;
  - (2) A statement that all charges, fines, or penalties that ~~shall~~will be assessed against the resident are included in the resident agreement;
  - (3) A statement that the basic rate ~~shall~~will not be changed unless thirty days written notice is given to the resident or, if the resident is unable to understand this information, to his or her sponsor;
  - (4) An explanation of the residential care facility's policy for refunding charges in the event of the resident's absence, discharge, or transfer from the facility and the facility's policy for refunding security deposits;
  - (5) An explanation of the services offered by the facility, the types of skilled nursing care that the facility provides or allows residents to receive in the facility, the providers that are authorized to render that care, and the limitations of the type and duration of skilled nursing care that is offered;
  - (6) An explanation of the extent and types of services the facility will provide to the resident and who is responsible for payment; and
  - (7) A statement that the facility ~~must~~is obligated to discharge or transfer a resident when a resident needs skilled nursing care beyond the limitations identified in paragraph (E)(5) of this rule.
- (F) Prior to admission or upon the request of a prospective resident or prospective resident's sponsor, the residential care facility ~~shall~~is obligated to provide the resident or resident's sponsor with a copy and explain the contents of the following policies:
- (1) The facility's residents' rights policy and procedures ~~required~~mandated by section 3721.12 of the Revised Code;
  - (2) The facility's smoking policy ~~required~~mandated by paragraph (W) of rule 3701-16-13 of the Administrative Code;
  - (3) The facility's ~~policy~~policies regarding advance directives and do not resuscitate (DNR) orders, and an explanation of the rights of the resident under state law concerning advance directives and DNR orders. A residential care facility ~~may not require~~is barred from mandating the execution of an advance directive or DNR order as a condition for admission;
  - (4) The definition of skilled nursing care from rule 3701-16-01 of the Administrative Code;
  - (5) For individuals seeking residency on a special care unit, the facility's policy on care for residents in the special care unit. The policy ~~shall~~is obligated to include:
    - (a) A statement of mission or philosophy that reflects the needs of the special population;

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- (b) Admission criteria to the special care unit, including screening criteria, if applicable;
  - (c) Transfer and discharge criteria and procedures;
  - (d) A weekly staffing plan for the special care unit, if applicable, including:
    - (i) A statement of how this plan differs from the staffing plan for the remainder of the facility; and
    - (ii) The necessary increase in supervision, due to decreased safety awareness or other assessed condition, of residents with cognitive impairments or serious mental illness in the special care unit;
  - (e) A description of activities offered, including frequency and type, and how the activities meet the needs of the type of residents in that special care unit, including how these activities differ from those offered in the remainder of the facility, if applicable;
  - (f) A listing of the costs of the services provided by the facility to the resident;
  - (g) Specialized staff training and continuing education practices;
  - (h) The process used for assessment and the provision of services, including the method for altering services based on changes in condition;
  - (i) If necessary, how the facility addresses the behavioral healthcare needs of residents;
  - (j) The physical environment and design features to support the functioning of residents;
  - (k) The involvement of families and the availability of family support programs for residents; and
  - (l) Any services or other procedures that are over and above those provided in the remainder of the facility, if applicable;
- (6) An explanation of the facility's ability to accommodate disabled residents or potentially disabled residents and the facility's policy regarding transferring residents to units that accommodate residents with disabilities; and
- (7) Any other facility policies that residents ~~must~~are obligated to follow.
- (G) A residential care facility may enter into a risk agreement with a resident or the resident's sponsor with the consent of the resident. 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 ~~shall~~is obligated 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. The residential care facility ~~shall~~is obligated to maintain a copy of any risk agreement in the resident's record.
- (H) Each residential care facility that has a policy of entering into risk agreements ~~shall~~is obligated to provide each prospective resident, or the prospective resident's sponsor with the consent of the resident, 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~~is obligated to obtain a statement signed by the individual receiving

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the information acknowledging that the individual received the information. The facility ~~shall~~is obligated to maintain the signed statement on file. Any waiver of the resident's rights under section 3721.13 of the Revised Code contained in the risk agreement is void.

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**3701-16-08 Resident health assessments.**

- (A) The residential care facility, in accordance with this rule, ~~shall require~~ will ensure that written initial and periodic health assessments of prospective and current residents are conducted. The different components of the health assessment may be performed by different licensed health professionals, consistent with the type of information ~~required~~ bring collected and the professional's scope of practice, as defined by applicable law. In conducting the assessment, the licensed health professional may use resident information obtained by or from unlicensed staff as long as the licensed health professional evaluates such information in accordance with their applicable scope of practice. The residential care facility ~~shall~~ is obligated to ensure that all components of the assessments ~~required~~ obligated by this rule are completed and that residents do not ~~require~~ need accommodations or services beyond those that the residential care facility provides. Each residential care facility ~~shall~~ is obligated to, on an annual basis, offer to each resident a vaccination against influenza and a vaccination against pneumococcal pneumonia as ~~required~~ obligated by section 3721.041 of the Revised Code.
- (B) Each resident ~~shall~~ is obligated to be initially assessed within forty-eight hours of admission, except that paragraphs (C)(11) and (C)(12) of this rule ~~shall~~ are obligated to be performed within fourteen days after admission. If the resident had an assessment meeting the ~~requirements of~~ criteria set forth in paragraph (C) of this rule performed no more than ninety days before beginning to reside in the residential care facility, the resident ~~is~~ does not ~~require~~ need to obtain another initial assessment.
- (C) The initial health assessment ~~shall~~ is obligated to include documentation of the following:
- (1) Preferences of the resident including hobbies, usual activities, bathing, sleeping patterns, socialization and religious;
  - (2) Medical diagnoses, if applicable;
  - (3) Psychological, intellectual disabilities, and developmental diagnoses history, if applicable;
  - (4) Health history and physical, including cognitive functioning and sensory and physical impairments, and the risk of falls;
  - (5) Prescription medications, over-the-counter medications, and dietary supplements;
  - (6) Nutrition and dietary ~~requirements~~ needs, including any food allergies and intolerances, food preferences, and need for any adaptive equipment, and needs for assistance and supervision of meals;
  - (7) Height, weight, and history of weight changes;
  - (8) A functional assessment which evaluates how the resident performs activities of daily living and instrumental activities of daily living. For the purposes of this paragraph, "instrumental activities of daily living" means using the telephone, acquiring and using public and private transportation, shopping, preparing meals, performing housework, laundering, and managing financial affairs;
  - (9) Type of care or services, including the amount, frequency, and duration of skilled nursing care the resident needs as determined by a licensed health professional in accordance with the resident's assessment under paragraph (C) of this rule;

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- (10) A determination by a physician or other licensed healthcare professional working within their scope of practice, as to whether or not the resident is capable of self-administering medications. The documentation ~~also shall~~ will specify what assistance with self-administration, as authorized by paragraph (F) of rule 3701-16-09 of the Administrative Code, if any, is needed or if the resident needs to have medications administered in accordance with paragraphs (G) and (H) of rule 3701-16-09 of the Administrative Code;
- (11) If skilled care is provided to the resident by staff members, a determination by a physician or other licensed healthcare professional working within their scope of practice of:
- (a) Whether the resident's personal care needs have been affected by the skilled nursing care needs, other than the administration of medication or supervision of special diets; and
  - (b) Whether any changes are ~~required~~ necessary in the manner personal care services are provided. The individual conducting the assessment ~~shall~~ is obligated to establish the extent, if any, of the changes ~~required~~ necessary.
- (12) If skilled nursing care is provided to the resident by staff members, the resident's attending physician or other licensed healthcare professional working within their scope of practice, ~~shall~~ will sign orders documenting the need for skilled nursing care, including the specific procedures and modalities to be used and the amount, frequency, and duration. This care ~~shall~~ is obligated to be provided and reviewed pursuant to paragraph (B) of rule 3701-16-09.1 of the Administrative Code.
- (13) If the resident has been determined to have medical, psychological, or developmental or intellectual impairment, the assessment ~~must~~ is obligated to include:
- (a) A plan for addressing the resident's assessed needs;
  - (b) The need for physical environment and design features to support the functioning of the resident; and
  - (c) The need for increased supervision, due to decreased safety awareness or other assessed condition.
- (D) Subsequent to the initial health assessment, the residential care facility ~~assess~~ will assess each resident's health at least annually unless medically indicated sooner. The annual health assessment ~~shall~~ is obligated to be performed within thirty days of the anniversary date of the resident's last health assessment. ~~This health assessment shall~~ and include documentation of at least the following:
- (1) Changes in medical diagnoses, if any;
  - (2) Updated nutritional ~~requirements~~ needs, including any food allergies and intolerances;
  - (3) Height, weight and history of weight changes;
  - (4) Prescription medications, over-the-counter medications, and dietary supplements;
  - (5) A functional assessment as described in paragraph (C)(8) of this rule;
  - (6) If the resident has been determined to have medical, psychological, or developmental or intellectual

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impairment, an assessment as described in paragraph (C)(13) of this rule;

- (7) Type of care or services, including the amount, frequency, and duration of skilled nursing care, the resident needs as determined by a licensed health professional in accordance with paragraph (D) of this rule;
- (8) A determination by a physician or other licensed healthcare professional working within their scope of practice, as to whether or not the resident is capable of self-administering medications. The documentation ~~also shall will~~ specify what assistance with self-administration, as authorized by paragraph (F) of rule 3701-16-09 of the Administrative Code, if any, is needed or if the resident needs to have medications administered in accordance with paragraphs (G) and (H) of rule 3701-16-09 of the Administrative Code; and
- (9) If skilled care is provided to the resident by staff members, a determination by a physician or other licensed healthcare professional working within their scope of practice, of:
- (a) Whether the resident's personal care needs have been affected by the skilled nursing care needs, other than the administration of medication or supervision of special diets; and
  - (b) Whether any changes are ~~required~~necessary in the manner personal care services are provided. The individual conducting the assessment ~~shall will~~ establish the extent, if any, of the changes ~~required~~necessary.
- (E) The residential care facility ~~shall will~~ require ~~ensure that~~ each resident's health ~~to be~~ is assessed if a change in condition or functional abilities warrants a change in services or equipment. The assessment ~~shall is~~ obligated to include, as applicable, documentation of paragraphs (D)(1) to (D)(9) of this rule. The facility ~~shall is obligated to~~ make a good faith effort to obtain information from residents about assessments independently obtained outside the facility.
- (F) Prior to admitting or transferring a resident to a special care unit that restricts the resident's freedom of movement, the residential care facility ~~shall is obligated to~~ ensure that a physician or other licensed healthcare professional working within their scope of practice, has made a determination that the admission or transfer to the special care unit is needed. ~~This~~ The facility is obligated to update this determination ~~shall be updated~~, to include both improvement and decline, during the periodic reassessment ~~required~~ obligated by paragraph (D) of this rule. Prior to admission to the special care unit, the residential care facility ~~shall is~~ obligated to provide the resident with an updated resident agreement ~~required~~ obligated by rule 3701-16-07 of the Administrative Code and with the facility's policy on care of residents by means of a special care unit ~~required~~ obligated by paragraph (E)(5) of that rule. No resident ~~shall is allowed to~~ be admitted to a secured special care unit based solely on his or her diagnosis.
- (G) If a resident needs services or accommodations beyond that which a residential care facility is authorized to provide or beyond that which the specific facility provides, refuses needed services, or fails to obtain needed services for which the resident agreed to be responsible under the resident agreement ~~required~~ obligated by rule 3701-16-07 of the Administrative Code, the residential care facility ~~shall is obligated to~~ take the following action:

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- (1) Except in emergency situations, the residential care facility ~~shall~~is obligated to meet with the resident, and, if applicable, the resident's sponsor and discuss the resident's condition, the options available to the resident including whether the needed services may be provided through a medicaid waiver program, and the consequences of each option;
- (2) If the lack of needed services has resulted in a significant adverse change in the resident, the residential care facility ~~shall~~is obligated to seek appropriate intervention in accordance with paragraph (A) of rule 3701-16-12 of the Administrative Code. If an emergency does not exist the facility ~~shall~~is obligated to provide or arrange for the provision of any needed services that the resident has not refused until the resident is discharged or transferred or the resident and the facility have mutually resolved the issue in a manner that does not jeopardize the resident's health or the health, safety or welfare of the other residents. This paragraph does not authorize a facility to provide skilled nursing care beyond the limits established in section 3721.011 of the Revised Code; and
- (3) The residential care facility ~~shall~~is obligated to transfer or discharge the resident in accordance with section 3721.16 of the Revised Code and Chapter 3701-61 of the Administrative Code if the resident needs skilled nursing care or services beyond what the facility provides and the residential care facility, based on the meeting with the resident ~~required~~obligated by paragraph (G)(1) of this rule, determines that such action is necessary to assure the health, safety and welfare of the resident or the other residents of the facility. The residential care facility may retain a resident who refuses available services if doing so does not endanger the health, safety, and welfare of other residents and the resident does not ~~require~~need services beyond that which a facility is authorized to provide under Chapter 3721. of the Revised Code and rules 3701-16-01 to 3701-16-18 of the Administrative Code.

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**3701-16-09 Personal care services; medication administration; resident medications; application of dressings; supervision of therapeutic diets.**

(A) For the purposes of this rule;

- (1) Personal care services or skilled nursing care ~~shall be considered to be~~ are provided by a residential care facility when: 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 his or her sponsor is a party.

(a) They are provided by a person:

(i) Employed by the facility;

(ii) Associated with the facility; or

(iii) Who is a related party to the facility;

(b) By another person pursuant to an agreement to which neither the resident nor their sponsor is a party;

(c) By another person pursuant to an agreement the facility requires a resident or their sponsor to contract with a person to receive services; or

(d) The resident does not have free choice of service provider.

For purposes of this rule “related party” means an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the owner or operator of the residential care facility

- (2) A residential care facility may provide the skilled nursing care authorized by paragraphs (J) and (K) of this rule through the following arrangements as long as the residential care facility complies with the applicable provisions of this rule:

(a) Qualified staff members of the residential care facility; or

(b) Through agreements or contractual arrangements, including but not limited to, contracts with a home health agency certified under Title XVIII of "the Social Security Act", 42 U.S.C. 301, as amended (1981), or a licensed hospice care program, licensed under Chapter 3712. of the Revised Code.

(B) Each residential care facility ~~shall~~ is obligated to:

- (1) Specify in its policies and the resident agreements, ~~required~~ obligated by rule 3701-16-07 of the Administrative Code, the extent and types of personal care services it provides; and

- (2) Provide personal care services to its residents who ~~require~~ are in need of those services, unless the resident and the facility have entered into a risk agreement under rule 3701-16-07 of the Administrative Code or the resident has refused services, and may provide personal care services to other residents upon request.

Nothing in this paragraph ~~shall~~ is to be construed ~~to as permit~~ permitting personal care services to be imposed upon a resident who is capable of performing the activity in question without assistance unless

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requested.

(C) If a resident requires certain personal care services that the residential care facility does not offer:

- (1) The facility ~~shall~~is obligated to comply with paragraph (G) of rule 3701-16-08 of the Administrative Code; and
  - (a) Arrange for or allow the resident to arrange for the services to be provided; or
  - (b) Transfer the resident to an appropriate setting or discharge the resident in accordance with section 3721.16 of the Revised Code and Chapter 3701-61 of the Administrative Code; or
- (2) The facility and the resident may enter into a risk agreement in accordance with paragraphs (F) and (G) of rule 3701-16-07 of the Administrative Code, if the facility has a policy of entering into such agreements.

(D) Each residential care facility ~~shall~~is obligated to ensure that personal care services are provided to residents:

- (1) In accordance with acceptable standards of care;
- (2) By staff members meeting the training ~~requirements~~standards of rule 3701-16-06 of the Administrative Code; and
- (3) That meet the needs of residents as determined in the resident assessments ~~required~~obligated under by rule 3701-16-08 of the Administrative Code and consistent with the resident agreements under rule 3701-16-07 of the Administrative Code.

(E) A residential care facility may provide for the administration of medication to residents in accordance with division (B) of section 3721.011 of the Revised Code and this rule.

- (1) All medication taken by residents of residential care facilities ~~shall~~will be self-administered, and members of the staff of a residential care facility ~~shall not administer~~are barred from administering medication to residents, except that medication may be administered in accordance with division (B) of section 3721.011 of the Revised Code and paragraphs (G) and (H) of this rule.
- (2) A residential care facility may admit or retain an individual requiring medication only if the individual is capable of taking ~~his or her~~their own medication and biologicals, as determined in writing by the person's attending physician or other licensed healthcare professional working within their scope of practice, or if the facility provides for the administration of medication by:
  - (a) A home health agency certified under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981);
  - (b) A hospice care program licensed under Chapter 3712. of the Revised Code; or
  - (c) A member of the staff of the residential care facility who is qualified to perform medication administration.

(F) Staff members may assist with self-administration of medication by doing any of the following once they have received training in providing the services, as ~~required~~obligated by paragraph (E) of rule 3701-16-06 of the

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- (1) Remind a resident when to take medication, and watch to ensure that the resident follows the directions on the container;
  - (2) Assist a resident in self-administration of medication by taking the medication from the locked area where it is stored and handing it to the resident. If the resident is physically unable to open a container, a staff member may open the container for the resident. The staff member ~~shall~~is obligated to check the name on the prescription label and verify that the resident's name on the prescription label corresponds to the resident requesting the medication before handing it to the resident. The staff member may read the label and directions on the medication container to the resident upon request. The staff member also may remind the resident and any other individual designated by the resident when prescribed medication needs to be refilled. Staff members are ~~shall~~ not allowed to assist a resident with self-administration of a prescription medication that belongs to another resident;
  - (3) Assist a physically impaired but mentally alert resident such as, but not limited to, a resident with arthritis, cerebral palsy, or Parkinson's disease, upon that resident's request, 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 the resident is physically unable to place a dose of medicine to ~~his or her~~their mouth without spilling it, a staff member may place the dose in a container and place the container to the mouth of the resident. As used in this paragraph, "topical medication" means:
    - (a) Eye, nose, or ear drops excluding irrigations; and
    - (b) Medication used in the treatment of a skin condition or minor abrasion, excluding debriding agents; and
  - (4) Assist a resident with organizing the resident's medications in a weekly pill organizer if the resident is able to differentiate between pills and actively participates in the organization. Nothing in this rule ~~shall~~is to be construed ~~to as allow~~allowing staff members to fill a weekly pill organizer for a resident.
- (G) Medication ~~shall~~are obligated to be administered in accordance with accepted standards of practice to a resident in a residential care facility only by the following persons authorized by law to administer medication:
- (1) A registered nurse;
  - (2) A licensed practical nurse holding proof of successful completion of a course in medication administration approved by the Ohio board of nursing pursuant to Chapter 4723. of the Revised Code who ~~shall~~is allowed to administer medication only at the direction of a registered nurse or physician;
  - (3) A physician; or
  - (4) A person authorized by law to administer medication.
- (H) Residential care facilities that administer medication ~~shall~~are obligated to comply with all of the following:

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- (1) No medication ~~shall~~ is allowed to be given to any resident unless ordered by a physician or individual authorized under state law to prescribe medications. Ordered medications ~~shall~~ are obligated to be administered unless the resident refuses or the resident exhibits symptoms that contraindicate medication administration. If a medication is not administered, the staff member responsible for administering the medication ~~shall~~ is obligated to document in the resident's record why the medication was not administered. Telephone orders ~~shall~~ are not allowed to be ~~not be~~ accepted by a person other than a licensed nurse, another physician or a pharmacist except that a licensed health professional may receive, document and date medication orders concerning ~~his or her~~ their specific discipline, to the extent permitted by applicable licensing laws. If orders are given by telephone, they ~~shall~~ are obligated to be recorded with the prescriber's name and the date, and the order signed by the person who accepted the order. All telephone orders ~~shall~~ are obligated to be signed by the physician who gave the order or other licensed health professional with prescriptive authority working under the supervision of or in collaboration with the physician within fourteen days after the order was given. The residential care facility may accept facsimile and electronic documentation of orders in accordance with paragraph (B)(4) of rule 3701-16-09.1 of the Administrative Code;
  - (2) All medications ~~shall~~ are obligated to be given only to the individual resident for whom they are prescribed, given in accordance with the directions on the prescription or the physician's or other authorized prescriber's orders, and recorded on the resident's medication record ~~required~~ obligated by paragraph (I)(7) of this rule;
  - (3) The person who administers the medication ~~shall~~ is obligated to observe the resident for adverse effects, contraindications, and medication effectiveness. Such person ~~shall~~ is obligated to notify the resident's attending physician or other licensed healthcare professional working within their scope of practice, of any undesirable effects and document these effects and the date and time of such notification in the resident's medication record;
  - (4) Only administer drugs bearing the American hospital formulary service therapeutic class 4:00, 28:16:08, 28:24:08, or 28:24:92 with the authorization of the attending physician, after personal examination of the resident and documentation of the medical condition being treated and reasons for use of the drug and when necessary to treat a resident's medical condition and to assist the resident to attain ~~his or her~~ their highest practicable physical, mental, and psychosocial well-being. Drugs used for this purpose are not considered chemical restraints as defined in paragraph (L) of this rule; and
  - (5) Ohio board of pharmacy and United States drug enforcement administration regulations.
- (I) Residential care facilities that handle residents' medication ~~shall~~ are obligated to:
- (1) Not stock or dispense medicines or drugs which may be sold only by prescription unless the facility has in its employ, on either a full-time or part-time supervisory and consulting basis, a pharmacist registered under Chapter 4729. of the Revised Code, who will be in complete control of such stock and the dispensing thereof;
  - (2) Keep all prescription medications in locked storage areas, including drugs requiring refrigeration, except

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medications of residents living in individual units who self-administer their own medications may be stored in the resident's unit if the resident and residential care facility take reasonable precautions to ~~prohibit~~ prevent access to the medications by other residents;

- (3) Assure that the labeling of prescription medicine and drugs meet the following criteria:
- (a) Every container of medicine and drugs prescribed for a resident for self-administration or assistance by non-licensed health care personnel, ~~shall~~ will be clearly labeled with the resident's name, the proprietary or generic name of the medication dispensed and its strength, the name and address of the dispensing pharmacy, the name or initials of the dispensing pharmacist, the prescription number, the date dispensed, the name of the prescribing physician or individual authorized under state law to prescribe medications, and the instructions for use including any cautions which may be ~~required~~ obligated by federal or state law. Containers too small to bear a complete prescription label ~~shall~~ will be labeled with at least the prescription number and the dispensing date and ~~shall~~ will be dispensed in a container bearing a complete prescription label;
  - (b) Medicines and drugs dispensed by a health care facility pharmacy for administration by a licensed nurse or physician to residents whereby the medicines and drugs are not in the possession of the resident prior to administration ~~shall~~ will be clearly labeled in accordance with rule 4729-17-10 of the Administrative Code;
  - (c) Not repackage or relabel resident medications; and
  - (d) Ensure over-the-counter medications that are either administered by an individual acting within their scope of practice and based on a prescriber's order, or given to residents capable of self-administration of medication, ~~shall~~ contain a United States food and drug administration label indicating, in part, the medication's:
    - (i) Name;
    - (ii) Strength;
    - (iii) Quantity;
    - (iv) Accessory instructions;
    - (v) Lot number; and
    - (vi) Expiration date;
- Over-the-counter medications kept by residents capable of self-administration do not need to meet the ~~requirements~~ criteria of this rule.
- (4) Send a resident's medication with him or her upon permanent transfer or discharge or destroy or dispose them with the consent of the resident in accordance with any applicable state or federal laws and regulations;
- (5) If controlled substances are used, order, dispense, administer, and dispose of controlled substances in

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accordance with state and federal laws and regulations and ensure policies and procedures are in place to prevent the misappropriation or theft of controlled substances;

- (6) Keep a written list of all medications prescribed for each resident and ~~shall~~are obligated to make a good-faith effort to keep the list current; and
- (7) Maintain an individual medication record for each resident to whom the residential care facility administers medications in which:
  - (a) Medication orders, including telephone, electronic, and facsimile orders, are recorded and signed by the prescriber; and
  - (b) All medications are recorded as given, documenting the name of the medication, date and time given, route of administration, and signed by the individual administering the medication.
- (J) Each residential care facility that provides for the application of dressings in accordance with division (A) of section 3721.011 of the Revised Code ~~shall~~is obligated to:
  - (1) Establish in writing the services pertaining to the application of dressings that are routinely managed by the facility. The determination of the type of applications of dressings that are managed by the facility ~~shall~~are ~~be~~ based on staff education, staff competence, the amount of staff experience with the listed types of applications of dressings, and support services available in the facility;
  - (2) Develop and follow policies and procedures which assure that the application of dressings are provided in accordance with acceptable standards of practice;
  - (3) Ensure that the application of dressings are provided only by individuals authorized under state law to provide the application of the dressing. Skilled nursing care may be delegated in accordance with Chapter 4723-13 of the Administrative Code;
  - (4) Evaluate each resident at least once every seven days to determine whether the resident should be transferred to a nursing home or other appropriate health care setting. The evaluation and determination ~~shall~~is obligated to be performed by the appropriate health care professional and documented in the resident's record;
  - (5) Document all applications of dressings that are provided by the residential care facility in the resident's record. Such documentation ~~shall~~is obligated to include, but not be limited to, treatment and medication orders issued by appropriate licensed health care professionals when needed to authorize provision of a service and nurse's notes indicating the nature of the service provided and the resident's status. The residential care facility may accept facsimile and electronic orders in accordance with paragraph (B)(4) of rule 3701-16-09.1 of the Administrative Code; and
  - (6) Ensure that a nurse coordinates the overall nursing care of each resident who receives applications of dressings.
- (K) Each residential care facility that provides supervision of therapeutic diets ~~shall~~is obligated to comply with the applicable provisions of rule 3701-16-10 of the Administrative Code. The residential care facility may

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accept facsimile and electronic documentation of therapeutic diet orders in accordance with paragraph (B)(4) of rule 3701-16-09.1 of the Administrative Code;

- (L) The residential care facility ~~shall not~~ is forbidden from physically, chemically, or through isolation, ~~restrain-restraining~~ residents.
- (1) For the purposes of this paragraph:
- (a) "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;
  - (b) "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 his or her highest practicable physical, mental, and psychosocial well-being~~ any drug that is used for discipline or staff convenience and not prescribed to treat medical symptoms; and
  - (c) "Freedom of movement" means the ability of the resident to move around within the context of the resident's functional capacity as assessed by the facility.
- (2) A residential care facility's use of the following items for the purposes stated in this paragraph ~~shall~~ will not be construed as physically or chemically restraining a resident or subjecting a resident to prolonged isolation:
- (a) Devices that assist a resident in the improvement of the resident's mental and physical functional status and that do not restrict freedom of movement or normal access to one's body;
  - (b) Medications that are standard treatment or a documented exception to standard treatment for the resident's medical or psychiatric condition which assist a resident in attaining or maintaining the resident's highest practicable physical, mental, and psycho-social well-being;
  - (c) Residency in a secured special care unit that restricts a resident's freedom of movement throughout the facility if;
    - (i) Care and services are provided in accordance with each resident's individual needs and preferences, not for staff convenience;
    - (ii) The need for continued residency in the secured special care unit is reviewed during each periodic assessment ~~required~~ obligated by rule 3701-16-08 of the Administrative Code;
    - (iii) The secured special care unit meets ~~the requirements of the~~ state building and fire ~~codes~~ code standards; and
    - (iv) Residency on the secured special care unit is not based solely on the resident's diagnosis.
  - (d) Notwithstanding paragraph (L)(2)(c) of this rule, a resident may choose to reside in the secured

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special care unit based upon ~~his or her~~ their specific circumstances, such as if ~~his or her~~ their spouse is a resident of the secured special care unit, or if the only room available in the facility is on the secured special care unit. A resident who chooses to reside in the secured special care unit ~~must~~ needs to be able to enter and exit the unit without assistance.

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**3701-16-09.1 Skilled nursing care.**

(A) Except as provided for in division (D) of section 3721.011 of the Revised Code, a residential care facility may admit or retain individuals who ~~require~~ are in need of skilled nursing care beyond the supervision of special diets, application of dressings, or administration of medication only if the skilled nursing 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 regardless of any transfer or discharge and readmission to the facility. A part-time, intermittent basis means that skilled nursing care is rendered for less than eight hours a day or less than forty hours a week. For the purposes of this provision:

- (1) The residential care facility ~~shall~~ is obligated to use the following criteria in tracking the one hundred and twenty days of part-time, intermittent skilled nursing care permitted under this paragraph:
  - (a) Self-care ~~shall~~ does not be counted count toward the allowable one hundred twenty days;
  - (b) Services provided by physical and occupational therapists and assistants licensed under Chapter 4755. of the Revised Code and speech-language pathologists licensed under Chapter 4753. of the Revised Code do not constitute skilled nursing care and ~~shall~~ are not to be counted;
  - (c) Only days on which skilled nursing care is performed ~~shall~~ are to be counted toward the allowable one hundred and twenty days; and
  - (d) Medication administration, supervision of therapeutic diets or application of dressings ~~shall~~ will be counted toward the allowable one hundred and twenty days, if the residential care facility does not provide for these services, pursuant to rule 3701-16-09 of the Administrative Code.
- (2) Skilled nursing care may be provided by one or more of the following:
  - (a) A home health agency certified under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended (1981);
  - (b) A hospice care program licensed under Chapter 3712. of the Revised Code;
  - (c) A member of the staff who is authorized under state law to provide skilled nursing care.

If a resident's condition ~~requires~~ is in need of more skilled nursing care than permitted under this paragraph, the residential care facility ~~shall~~ is obligated to transfer or discharge the resident in accordance with section 3721.16 of the Revised Code and Chapter 3701-61 of the Administrative Code.

- (B) Each residential care facility that provides skilled nursing care using staff members ~~shall~~ is obligated to:
- (1) Develop and follow policies and procedures which assure that the skilled nursing care is provided in accordance with acceptable standards of practice;
  - (2) Ensure that the skilled nursing care is provided in accordance with accepted standards of practice only by individuals authorized under state law to provide skilled nursing care. Skilled nursing care may be delegated in accordance with Chapter 4723-13 of the Administrative Code;

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- (3) Except for residents receiving medication administration, supervision of special diets, the application of dressings, or skilled nursing care permitted by paragraph (D) of this rule, evaluate each resident receiving skilled nursing care at least once every seven days to determine whether the resident should be transferred to a nursing home or other appropriate health care setting. The evaluation and determination ~~shall~~ is obligated to be performed by the appropriate licensed health care professional and documented in the resident's record;
- (4) Document all skilled nursing care provided by the residential care facility in the resident's record. Such documentation ~~shall~~ is obligated to include, but not be limited to, medication and treatment orders when needed to authorize provision of a service and nurse's notes indicating the nature of the service provided and the resident's status. All orders ~~shall~~ are obligated to be signed and dated by the licensed health professional who gave the order within fourteen days after the order was given;
- (a) Telephone orders ~~shall~~ are not allowed to ~~not~~ be accepted by a person other than a licensed nurse on duty, another physician or a pharmacist, except that a licensed health professional may receive, document and date medication and treatment orders concerning ~~his or her~~ their specific discipline for residents under their care, to the extent permitted by applicable licensing laws.
- (b) The residential care facility may accept signed treatment and medication orders issued by a licensed health professional by facsimile transmission if the facility has instituted procedural safeguards for authentication and maintaining confidentiality of the facsimile order, and for handling the order in an expedient and priority manner.
- (c) An entry that is an electronic record as defined in section 3701.75 of the Revised Code may be authenticated by an electronic signature in accordance with section 3701.75 of the Revised Code.
- (5) Meet the skilled nursing care needs of each resident receiving care as determined by the assessment ~~required~~ obligated by ~~under~~ rule 3701-16-08 of the Administrative Code and consistent with the resident agreement ~~required under~~ obligated by rule 3701-16-07 of the Administrative Code; and
- (6) Ensure that a nurse coordinates the overall nursing care of each resident who receives skilled nursing care from facility staff.
- (C) In addition to ~~the requirements of~~ paragraphs (A) and (B) of this rule, each residential care facility that provides enteral tube feedings on a part-time intermittent basis ~~shall~~ is obligated:
- (1) Establish in writing the types of enteral tube feedings that are routinely managed by the facility. The determination of the types of enteral tube feedings that are provided by the facility ~~shall~~ are to be based on staff education, staff competence, the amount of staff experience with the listed types of enteral tube feedings, and support services available in the facility;
- (2) Develop and follow policies and procedures which assure that enteral tube feedings are prepared and offered as ordered and that sanitary conditions are maintained in procurement, storage, preparation, and the administration of the enteral tube feedings;
- (3) Document the weight of the resident and the resident's acceptance and tolerance of the enteral tube

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feedings in accordance with policies and procedures developed by the dietitian and the nurse responsible for the overall nursing care of the resident; and

(4) Provide or arrange for a dietitian.

(D) A residential care facility may admit or retain an individual who ~~requires~~ is in need of skilled nursing care for more than one hundred twenty days in any twelve-month period only if:

(1) The facility has entered into a written agreement with each of the following:

(a) The individual, the individual's sponsor, or both;

(b) The individual's personal physician or other licensed health professional acting within their applicable scope of practice, unless either of the following apply:

(i) If the provision of the skilled nursing care is not overseen by the individual's personal physician, the provider of the skilled nursing care may enter into the agreement; or

(ii) 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 may enter into the agreement.

(2) The written agreement ~~required~~ obligated by this paragraph includes a statement signed by all parties acknowledging that they understand the agreement and that the individual's needs can be met at the facility. The agreement ~~shall is~~ not be considered complete without this signed statement. ~~Additionally, the agreement shall include and includes~~ 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. This determination ~~shall~~ is obligated to be made by the residential care facility, the individual's attending physician, and, if applicable, the provider of the skilled nursing care;

(b) That the individual will be retained in the facility only if periodic re-determinations are made that the individual's needs can be met at the facility;

(c) That the re-determinations will be made according to a schedule specified in the agreement and as the resident's condition ~~requires~~ necessitates, but no less frequently than every thirty days, except for hospice patients whose re-determinations ~~shall~~ are to be made be no less frequently than every fifteen days;

(d) Unless the individual is a hospice patient, the individual's personal physician has determined that the skilled nursing care the resident or prospective resident needs is routine. For purposes of this rule, "routine" does not include those conditions listed in paragraph (B) of rule 3701-16-07 of the Administrative Code; and

(e) 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.

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**3701-16-10 Dietary services; supervision of therapeutic diets.**

(A) Each residential care facility ~~shall~~ is obligated to specify in its residential care facility policies and the resident agreements, ~~required-established~~ by rule 3701-16-07 of the Administrative Code, the amount and types of dietary services it provides. The facility ~~shall~~ is obligated to elect to provide any of the following:

- (1) No meals;
- (2) One, two, or three daily meals;
- (3) Preparation of special diets other than therapeutic diets; one, two, or three daily meals; or
- (4) Preparation and supervision of therapeutic diets. Each facility that elects to supervise therapeutic diets ~~shall~~ is obligated to provide three daily meals and meet the ~~requirements-criteria~~ of this chapter of the Administrative Code for the supervision of therapeutic diets;

Each residential care facility that provides meals ~~shall~~ is obligated to include a variety of food accommodating religious restrictions and ethnic and cultural preferences of residents in accordance with the residential care facility's policy

(B) Each residential care facility that agrees to provide three daily meals for a resident ~~shall~~ is obligated to make available at least three nourishing, palatable, attractive and appetizing meals at regular hours comparable to normal mealtimes in the community. The meals ~~shall be capable of will providing~~ provide the dietary referenced intake of the "Food and Nutrition Board" of the "National Academy of Science", be based on a standard meal planning guide from a diet manual published by a dietitian, approved by a dietitian, or both. Food ~~shall~~ will be prepared and served in a form that meets the resident's individual needs based on the assessment conducted pursuant to rule 3701-16-08 of the Administrative Code. There ~~shall~~ will be no more than sixteen hours between the evening meal and breakfast. Each residential care facility that provides meals ~~shall~~ is obligated to offer a nourishing snack, consisting of a choice of beverages and a food item from a basic food group, after the evening meal. Food substitutes of similar nutritive value ~~shall~~ will be offered to residents who refuse the food served and serving size may be adjusted according to resident preference. The residential care facility ~~shall~~ is obligated to accommodate a resident's preference or medical need to eat at different intervals.

(C) All residential care facilities ~~shall~~ are obligated to provide safe drinking water ~~which shall be~~ that is accessible to residents at all times.

(D) Each residential care facility that does not provide any meals ~~shall~~ is obligated to ensure that each resident unit is appropriately and safely equipped with food storage and preparation appliances which the facility maintains in safe operating condition or that each resident has access to an appropriately and safely equipped food storage and preparation area. Each residential care facility that does not provide any meals ~~shall~~ is obligated to permit residents to store and prepare food in a safe manner in their resident units or in a resident food storage and preparation area.

(E) Each residential care facility that provides one or more meals and that does not permit residents to have food

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in their resident units ~~shall~~is obligated to make snacks available twenty-four hours a day.

- (F) Each residential care facility ~~shall~~is obligated to have a kitchen and other food service facilities that are adequate for preparing and serving the amount and types of meals the facility agrees to provide.
- (G) If applicable, the residential care facility ~~shall~~is obligated to have a food service operation license issued under Chapter 3701-21 of the Administrative Code.
- (H) Each residential care facility that provides meals is obligated to:
- (1) ~~Shall procure~~Procure, store, prepare, distribute, and serve all food in a manner that protects it against contamination and spoilage;
  - (2) ~~Shall, at all times, Maintain~~maintain at least a ~~one~~-week supply of staple foods and a two-day supply of perishable foods for residents at all times and the. ~~The~~ amount of such supplies ~~shall is to~~ be based on the number of residents and meals the facility provides daily;
  - (3) ~~Shall plan~~Plan all menus for meals at least one week in advance. ~~Food shall, provided food that varies~~ vary in texture, color and include seasonal foods. ~~Residential care facilities shall maintain records-~~ Records of dated menus, including therapeutic diets, as served, are to be maintained for at least three months. ~~and The make the~~ records ~~shall be made~~ available to the director upon request and indicate any food substitutions from the menu;
  - (4) ~~Shall observe~~Observe, supervise, and assist a resident in consuming meals if the resident needs observation, supervision, or assistance. ~~The residential care facility shall ensure that food texture is appropriate to the individual needs of each resident, except that residential care facility staff shall not perform syringe feedings;~~
- (5) Ensure that food texture is appropriate to the individual needs of each resident, except that residential care facility staff are not allowed to perform syringe feedings;
- ~~(5)-(6) Shall assure~~Ensure that the kitchen and dining areas are cleaned after each meal and ~~shall~~:
- (a) Transport meals in a sanitary manner to prevent contamination;
  - (b) Provide handwashing facilities, including hot and cold water, soap and individual paper towels in the food preparation and service area;
  - (c) Provide and maintain clean and sanitary kitchen and dining areas and a clean, sanitary and adequate supply of eating and drinking utensils, pots, and pans for use in preparing, serving, and eating appetizing meals and snacks; and
  - (d) Place food scraps and trash in garbage cans with tightfitting lids and bag liners and ~~shall~~empty garbage cans daily, or more often if needed. Nondisposable containers ~~shall are to~~ be cleaned frequently enough to maintain sanitary conditions. Disposable bags of garbage may be stored outside only in a non-absorbent container with a close-fitting cover. Liquid wastes resulting from compacting ~~shall are to~~ be disposed of as sewage;

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- ~~(6)~~(7) ~~May provide~~ Provide any format of meal service, which otherwise ~~meet~~ meets the ~~requirements-~~ criteria established by ~~of~~ this rule, with input from residents; and
- ~~(7)~~(8) ~~May provide~~ Provide a dining environment as natural and independent as possible, comparable with eating at home, with choices from a wide variety of food items tailored to the residents' wants and needs, which otherwise meet the ~~requirements-~~ criteria established by ~~of~~ this rule.
- (I) Each residential care facility that elects to prepare special diets other than therapeutic diets shallis obligated to:
- (1) Prepare and provide the special diets in accordance with the orders of a physician or other licensed health professional acting within their scope of practice, or a dietitian; and
  - (2) Adjust special diet menus as ordered by the resident's attending physician or other licensed health professional acting within their scope of practice, or a dietitian.
- (J) Each residential care facility which elects to supervise therapeutic diets shallis obligated to make available three daily meals in accordance with paragraph (B) of this rule and provide or arrange for a dietitian to plan, direct and implement dietary services that meet the residents' nutritional needs and comply with the ~~requirements-~~ criteria established by ~~of~~ this rule and for residents on therapeutic diets on an ongoing basis:
- (1) Determine that the diet ordered is appropriate according to the resident's individual nutritional assessment;
  - (2) Monitor the resident's nutritional intake and acceptance of the diet;
  - (3) Evaluate the home's compliance in the provision of the diet; and
  - (4) Adjust nutritional assessments and diets as needed.
- (K) If ~~required~~ obligated by paragraph (J) of this rules, the dietitian shallis obligated to oversee, monitor and assist in the training of food service staff in the preparation and serving of foods for therapeutic diets and consult quarterly with the food service staff. Trained unlicensed staff, including the dietary manager, may perform routine tasks that:
- (1) May be assigned pursuant to Chapter 4759. of the Revised Code and this rule; and
  - (2) Do not ~~require~~ necessitate professional judgment or knowledge.
- (L) Residential care facilities ~~shall not administer~~ are barred from administering parenteral nutrition and a. A \_ residential care facility may administer enteral tube feedings on a part-time intermittent basis in accordance with rule 3701-16-09.1 of the Administrative Code.
- (M) A hospice patient's diet shallis obligated to be planned by a dietitian, the hospice program, or both, as appropriate for that individual.

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**3701-16-11 Resident life enrichment; finances; pets; laundry.**

- (A) Each residential care facility ~~shall~~is obligated to encourage residents to participate in social, recreational, and leisure activities. The residential care facility ~~shall~~is obligated to, with consideration given to resident preferences, provide or arrange for varied activities of sufficient quantity so that residents' lives may be more meaningful, to stimulate physical and mental capabilities and to assist residents in attaining their optimal social, physical, and emotional well-being. The residential care facility ~~shall~~is obligated to provide, at minimum, all of the following:
- (1) One local daily newspaper either in digital or paper format, or current community activity brochures and advertisements;
  - (2) Information about activities in the community and the availability of transportation to community activities; and
  - (3) An opportunity for residents to engage in a variety of activities which may include, but ~~shall~~are not be limited to, internet, television, crafts, reading, or games.
- (B) A residential care facility ~~shall not~~is not allowed to coerce, induce, or prompt a resident to assign, transfer, give, or sign over to the facility money, valuables, insurance benefits, property, or anything of value other than payment for services rendered by the facility. A residential care facility ~~shall~~is not allowed to manage a resident's financial affairs unless authorized by the resident or a sponsor with power of attorney. Such authorization ~~shall~~is obligated to be in writing and ~~shall be~~ attested to by a witness who is not connected in any manner whatsoever with the residential care facility or its administrator. A facility that manages a resident's financial affairs ~~shall~~is obligated to:
- (1) Maintain accounts pursuant to division (A)(27)(b) of section 3721.13 of the Revised Code of resident funds and personal property or possessions deposited for safekeeping with the facility for use by the resident or resident's sponsor. The resident has the right to receive, upon written or oral request, an accounting statement of financial transactions made on the resident's behalf. This statement ~~shall~~is obligated to include a:
    - (a) Complete record of all funds, personal property, or possessions from any source whatsoever, that have been deposited for safekeeping with the facility for use by the resident or resident's sponsor; and
    - (b) Listing of all deposits and withdrawals transacted, ~~which shall be~~ substantiated by receipts that ~~shall be~~are available for inspection and copying by the resident or sponsor.
  - (2) 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 facility's operating accounts. Interest earned on the resident's funds ~~shall~~is obligated to 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.
  - (3) Purchase a surety bond or otherwise provide assurance satisfactory to the director to assure the security of all residents' funds managed by the facility.

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- (4) Upon the resident's transfer, discharge, or death, close all resident accounts, make a final accounting, and make provisions for the conveyance of any remaining funds to the resident or the resident's estate.
- (5) Allow the resident access to ~~his or her~~ their funds during normal bank business hours within the community.
- (6) Not ~~require~~ mandate that a resident ~~to~~ allow the facility to manage the resident's financial affairs as a condition of admission to the facility.
- (C) Neither the administrator of a residential care facility nor facility staff may serve as the guardian or attorney-in-fact of a resident unless related by blood, marriage, or adoption to that resident.
- (D) Residents may keep pets if allowed by facility policy. If a residential care facility allows residents to keep animals or pets, or has facility pets, the facility ~~shall~~ is obligated to, ~~in consultation~~ consult with a veterinarian licensed to practice veterinary medicine under Chapter 4741. of the Revised Code, establish and implement a written protocol regarding animals and pets that protects the health and safety of residents and staff members. At minimum, the written protocol ~~shall~~ is obligated to include:
- (1) An annual physical examination, including an examination for internal and external parasites;
  - (2) Vaccinations for common infectious agents, including rabies;
  - (3) Any other preventive care necessary to protect the health, safety and rights of residents;
  - (4) Procedure to follow if an animal:
    - (a) Bites a person; or
    - (b) Becomes ill or injured;
  - (5) For resident pets, if the resident is transferred, discharged or otherwise unable to care for the pet, responsibilities for care of the pet until a family member or sponsor can retrieve the pet;
  - (6) In the case of a facility pet, the name of the designated member or members of the staff responsible for the care of the animal and for maintaining the protocol, including medical records for the animal; and
  - (7) An evaluation of the medical needs of residents.
- (E) The residential care facility ~~shall~~ is obligated to specify in the resident agreements ~~required~~ established by rule 3701-16-07 of the Administrative Code what laundry services it provides. The residential care facility ~~shall~~ is obligated to launder or assist in arranging for the laundering of all clothing and bed and bath linen for residents who ~~require~~ are in need of laundry services as described in the resident agreement. The facility may provide a washer and dryer in the home for residents' use or may provide residents with transportation to and from a laundromat.

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**3701-16-12 Changes in residents' health status; incidents; infection control; tuberculosis control plan.**

- (A) In the event of a significant adverse change in residents' health status, the residential care facility ~~shallis~~ obligated to do all of the following:
- (1) Take immediate and proper steps to see that the resident receives necessary intervention including, if needed, medical attention or transfer to an appropriate medical facility;
  - (2) Make a notation of the change in health status and any intervention taken in the resident's record;
  - (3) Provide pertinent resident information to the person providing the intervention as soon as possible; and
  - (4) Notify the sponsor unless the resident refuses or requests otherwise.
- (B) As used in this paragraph, "incident" means any accident or episode involving a resident, staff member, or other individual in a residential care facility which presents a risk to the health, safety, or well-being of a resident. In the event of an incident, the facility ~~shallis~~ obligated to do both of the following:
- (1) Take immediate and proper steps to see that the resident or residents involved receive necessary intervention including, if needed, medical attention or transfer to an appropriate medical facility; ~~and~~
  - (2) Investigate the incident and document the incident and the investigation and include information that will enable staff to identify to the director upon request, the resident involved in an incident. The facility ~~shallis~~ obligated to maintain an incident log separate from the resident record which ~~shallis~~ be-accessible to the director and ~~shall-contains~~ contains the time, place, and date of the occurrence; a general description of the incident; and the care provided or action taken. The facility ~~shall-is~~ obligated to ~~maintain a notation~~ document ~~about~~ the incident in the resident's record.
- (C) Each residential care facility ~~shallwill~~ establish and implement appropriate written policies and procedures to ~~control~~ assure a safe, sanitary, and comfortable environment for the residents and to control the development and transmission of infections and diseases. Each residential care facility is obligated to establish an infection prevention and control program to monitor compliance with the home's infection prevention and control policies and procedures, to prevent, investigate, and control infections in the home, to institute appropriate interventions, and ensure all staff are appropriately trained on the home's infection prevention and control protocol. ~~which, at minimum, shall provide for the following~~ An effective infection control program includes:
- (1) Each residential care facility is obligated to designate one or more individuals as the infection prevention and control designee and provide that individuals name and contact information, including an electronic mail address, on an electronic system prescribed by the director no later than ten days after hiring or appointing the individual and no later than ten days after the individual's contact information changes or the designated individual is replaced. The infection control designee is responsible for the facility's infection prevention and control program. The infection prevention and control designee will have:
    - (a) Completed post-secondary education in a health-related field including but not limited to medicine, nursing, medical technology, laboratory technology, public health, epidemiology, or biology;

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- (b) Have education, training, or experience in infection control; and
  - (c) Work at least part-time at the facility or hold a contract to provide infection prevention and control at least part-time at the facility.
- (2) A tuberculosis control plan that is based on the an assessment of the facility and consistent with the United States centers for disease control and prevention "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings, 2005," MMWR 2005, Volume 54, No. RR-17 and "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and Centers for Disease Control and Prevention, 2019," MMWR May 17, 2019, 68(19);439-443.
- (3) A written surveillance plan outlining the activities for monitoring/tracking infections based on nationally-recognized surveillance criteria such as McGeer criteria and:
  - (a) Includes a surveillance system that includes a data collection tool;
  - (b) Uses surveillance data to:
    - (i) Implement timely corrective action when a greater than expected number healthcare-associated infections are detected; and
    - (ii) Implement timely corrective actions when transmission of targeted MDROs (e.g., CRE, Candida auris) are detected.
- (4) Written standards, policies, and procedures for the program, which must include, but are not limited to:
  - (a) Standard and transmission-based precautions to be followed to prevent spread of infections;
  - (b) When and to whom possible incidents of communicable disease or infections should be reported;
  - (c) When and how isolation should be used for a resident; including but not limited to:
    - (i) The type and duration of the isolation, depending upon the infectious agent or organism involved, and (B) A requirement; and
    - (ii) A requirement that the isolation should be the least restrictive possible for the resident under the circumstances.
- (5) Written standards, policies, and procedures under which the facility will prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease;
- (6) The hand hygiene procedures to be followed by staff involved in direct resident contact, including, but not limited to:
  - (a) Washing hands for twenty seconds with soap and water; or
  - (b) Cleaning of hands with an alcohol-based product used according to manufacturer's directions or other alternative methods accepted by the United States Centers for Disease Control and Prevention or US Food and Drug Administration, as being an effective alternative, or handwashing with soap and water.

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(7) Written standards, policies, and procedures for laundry to ensure personnel handle, store, process, and transport linens so as to prevent the spread of infection including:

(a) Handling soiled laundry as little as possible;

(b) Placing of laundry that is wet or soiled with body substances in impervious bags that are secured to prevent spillage; and

(c) Wearing of impervious gloves and impervious gowns by individuals performing laundry services, and, if handling soiled or wet laundry on the unit, the wearing of gloves and, if appropriate, other personal protective equipment;

~~(1) Individuals working in the facility shall wash their hands vigorously for ten to fifteen seconds before beginning work and upon completing work, before and after eating, after using the bathroom, after covering their mouth when sneezing and coughing, before and after providing personal care services or skilled nursing care, when there has been contact with body substances, after contact with contaminated materials, before handling food, and at other appropriate times;~~

~~(2) If the residential care facility provides any laundering services, the facility shall keep clean and soiled linen separate. Soiled laundry shall be handled as little as possible. Laundry that is wet or soiled with body substances shall be placed in moisture resistant bags which are secured or tied to prevent spillage. Laundry staff shall wear moisture resistant gloves, suitable for sorting and handling soiled laundry, and a moisture resistant gown or sleeved plastic apron if soiling of staff members' clothing is likely. The facility shall use laundry cycles according to the washer and detergent manufacturers' recommendations. Protective clothing shall be removed before handling clean laundry;~~

~~(3) Individuals providing personal care services or skilled nursing care that may result in exposure to body substances, shall wear disposable vinyl or latex gloves as a protective barrier and shall remove and dispose of the used gloves and wash hands before contact with another resident. If exposed to body substances, the individual who has been exposed shall wash his or her hands and other exposed skin surfaces immediately and thoroughly with soap and water. The facility shall provide follow-up consistent with the guidelines issued by the United States centers for disease control and prevention for the prevention of transmission of human immunodeficiency virus and hepatitis B virus to health care and public safety workers in effect at the time. Individuals providing personal care services or skilled nursing care shall wash their hands before and after providing the services or care even if they used gloves;~~

~~(4) Place disposable articles, other than sharp items, contaminated with body substances in a container impervious to moisture and manage them in a fashion consistent with Chapter 3734. of the Revised Code. Reusable items contaminated with body substances shall be bagged, then sent for decontamination;~~

~~(5) Wear a moisture resistant gown or other appropriate protective clothing if soiling of clothing with body substances is likely;~~

~~(6) Wear a mask and protective eye wear if splashing of body substances is likely or if a procedure that may create an aerosol is being performed; and~~

~~(7) Ensure that all hypodermic needles, syringes, lancets, razor blades and similar sharp wastes are disposed of by placing them in rigid, tightly closed puncture resistant containers before they are transported off~~

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~~the premises of the facility, in a manner consistent with Chapter 3734, of the Revised Code. The residential care facility shall provide instructions to residents who use sharps on the proper techniques for disposing of them.~~

~~For the purposes of this paragraph, "body substance" means blood, semen, vaginal secretions, feces, urine, wound drainage, emesis, and any other body fluids that have visible blood in them.~~

(D) Each residential care facility will establish and implement an effective water management program to identify hazardous conditions, and take steps to manage the risk of occurrence and transmission of waterborne pathogens, including but not limited to legionella, in building water systems in accordance with guidance from the United States centers for disease control and prevention (available at <https://www.cdc.gov/legionella/wmp/overview.html>) and recommendations of the United States centers for disease control and prevention healthcare infection control practices advisory committee, "Environmental Infection Control Guidelines" (2019) or its successors.

~~(D) Each residential care facility shall appoint an individual with knowledge of the facility's infection control plans to serve as a infection control designee and provide that individuals name and contact information, including a electronic mail address, on an electronic system prescribed by the director.~~

(E) If the residential care facility provides an adult day care program which is located, or shares space, within the same building as the residential care facility, shares staff between the program and the facility, or where the day care participants at any time intermingle with residents of the facility, the requirements of this rule are also applicable to participants of the adult day care program.

~~(E) Each residential care facility shall develop and follow a tuberculosis control plan that is based on the home's assessment of the facility. The control and annual assessment shall be consistent with the United States centers for disease control and prevention "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings, 2005," MMWR 2005, Volume 54, No. RR-17. The home shall retain documentation evidencing compliance with this paragraph and shall furnish such documentation to the director upon request.~~

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**3701-16-13 Building, plumbing, fire, ~~and~~ carbon monoxide safety, and disaster preparedness requirements standards.**

- (A) The building or buildings in which a residential care facility is located ~~shall~~are obligated to be approved by and have a certificate of occupancy for the appropriate use group designation issued by the local certified building department with jurisdiction over the area in which the building or buildings are located, or by the department of commerce if there is no local certified building department. In the case of a license renewal, if any alterations to the buildings have been made since the original license was issued or the license was last renewed, whichever is later, the residential care facility ~~shall~~is obligated to have a certificate of occupancy for the residential care facility issued by the department of commerce or a local certified building department.
- (B) The plumbing fixtures in a residential care facility ~~shall~~are obligated to conform to the applicable provisions of the Ohio plumbing code.
- (C) All plumbing ~~shall~~is to be installed in accordance with the Ohio plumbing code and maintained free of leakage and odors and have adequate water pressure to reasonably ensure resident health and safety protection. This includes, but is not limited to, plumbing in:
- (1) Water closets;
  - (2) Service sinks;
  - (3) Kitchens;
  - (4) Utility closets;
  - (5) Public and resident bathrooms;
  - (6) Shower and bathing areas; and
  - (7) Drinking fountains.
- (D) Lavatories, bathing facilities, and shower facilities ~~shall~~are to be provided with pressure balancing thermostatic mixing devices in accordance with the Ohio plumbing code to prevent unanticipated changes in hot water temperatures.
- (E) The water supply for a residential care facility ~~shall~~is to be taken from a public supply, if available. Each residential care facility using a water source other than a public water system ~~shall~~is obligated to comply with all applicable local and state regulations regarding the construction, development, installation, alteration, and use of private water systems.
- (F) Each residential care facility not using a public sewage disposal system ~~shall~~is obligated to comply with all applicable local and state regulations regarding the construction, development, installation, alteration, and use of household sewage disposal systems.
- (G) Each residential care facility ~~shall~~is obligated to comply with all the applicable state fire code standards of

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Chapter 1301:7-7 of the Administrative Code.

- (H) Each residential care facility ~~shall~~ is obligated to be inspected for fire safety in accordance with paragraph (A) of rule 3701-16-04 of the Administrative Code.
- (I) Each residential care facility ~~shall~~ is obligated to provide paths of clear and unobstructed access to egress exits. Additionally, the propping open of a door through the use of door stops, wedges, or other devices ~~shall be prohibited~~ is forbidden.
- (J) Each residential care facility ~~shall~~ is obligated to develop and maintain a written disaster preparedness plan to be followed in case of emergency or disaster. A copy of the plan ~~shall~~ is obligated to be readily available at all times within the residential care\_ facility and a copy of the disaster preparedness plan is to be maintained electronically to ensure off-site access in the event of emergency. ~~Such~~ The plan shall is obligated to include the following:
- (1) Procedures for evacuating all individuals in the residential care facility, which ~~shall~~ include the following:
    - (a) Provisions for evacuating residents with impaired mobility; and
    - (b) Provisions for transporting all of the residents of the residential care facility to a predetermined appropriate facility or facilities that will accommodate all the residents of the residential care facility in case of a disaster requiring evacuation of the residential care facility.
  - (2) A plan for protection of all persons in the event of fire and procedures for fire control and evacuation, including a fire watch and the prompt notification of the local fire authority and state fire marshal's office when a fire detection, fire alarm, or sprinkler system is impaired or inoperable. For purposes of this rule, "fire watch" means the process ~~required~~ set forth in the Ohio fire code for detecting and immediately alerting residents, staff, and the responding fire department of a fire or other emergency while the building's fire alarm or sprinkler system is impaired, inoperable or undergoing testing;
  - (3) Procedures for locating missing residents, including notification of local law enforcement;
  - (4) Procedures for ensuring the health and safety of residents during severe weather situations, such as tornadoes and floods, and designation of tornado shelter areas in the facility; and
  - (5) Procedures, as appropriate, for ensuring the health and safety of residents in residential care facilities located in close proximity to areas known to have specific disaster potential, such as airports, chemical processing plants, and railroad tracks.
  - (6) Each residential care facility will notify the director when there is an interruption of normal business services due to an emergency or a disaster involving the facility.
- (K) Each residential care facility ~~shall~~ is obligated to conduct the following drills unless the state fire marshal allows a home to vary from this ~~requirement~~ obligation and the residential care facility has written documentation to this effect from the state fire marshal:
- (1) Twelve fire exit drills, one conducted on each shift at least every three months to familiarize staff

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members and residents with signals, evacuation procedures and emergency ~~action required~~ actions that may be necessary under varied times and conditions. Fire exit drills ~~shall~~ will include the transmission of a fire alarm signal to the appropriate fire department or monitoring station, verification of receipt of that signal, and simulation of emergency fire conditions except that the movement of infirm and bedridden residents to safe areas or to the exterior of the structure is not ~~required~~ necessary for these drills. Drills conducted between nine p.m. and six a.m. may use a coded announcement instead of an audible alarm. Residential care facilities that have an alarm system that is not capable of sending a fire alarm signal if an audible alarm is not used ~~shall~~ are obligated to transmit a fire alarm signal and verify receipt of that signal no more than twelve hours after the coded announcement. Fire drills ~~shall~~ will meet the following ~~requirements~~ standards.

- (a) Each staff member ~~shall~~ is obligated to participate in at least one fire drill annually.
  - (b) One staff member with knowledge of the disaster preparedness plan and the fire evacuation routes ~~shall~~ is obligated to be designated to observe and evaluate each drill and ~~shall~~ not participate in that drill.
  - (c) Residents capable of self-evacuation ~~shall~~ are to be actually evacuated to safe areas or to the exterior of the residential care facility in at least two fire drills a year on each shift. Movement of non-ambulatory residents to safe areas or to the exterior of the facility is not ~~required~~ necessary for these drills.
- (2) At least two disaster preparedness drills per year, one of which ~~shall be~~ is a tornado drill which ~~shall occur~~ is conducted during the months of March through July.
- (3) The residential care facility ~~shall~~ will reset the alarms after each drill.
- (L) Each residential care facility ~~shall~~ is obligated to investigate and take corrective action for all problems encountered in the drills ~~required~~ obligated under paragraph (K) of this rule.
- (M) Each residential care facility ~~shall~~ is obligated to keep a written record and evaluation of each fire drill which ~~shall include~~ includes the date, time, staff member attendance, method of activation, effectiveness of the drill procedures, number of individuals evacuated, total time for evacuation, and the weather conditions during the evacuation, and of each tornado drill. ~~The records shall also describe any~~ Any problems encountered and the corrective actions taken are to be included in the written record. This record ~~shall is to be~~ on file ~~maintained~~ maintained in the facility for three years.
- (N) Each residential care facility ~~shall~~ is obligated to post in a conspicuous place in each section or floor of the residential care facility a correctly oriented wall-specific floor plan designating room use, locations of alarm sending stations, evacuation routes and exits, fire alarms and fire extinguishers, and flow of resident evacuation.
- (O) The buildings in which a residential care facility is housed ~~shall~~ are obligated to be equipped with both an automatic fire extinguishing system and fire alarm system. ~~Such systems shall~~ that conform to standards set

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forth in rules 4101:1-1 to 4101:1-35 and rules 1301:7-7-01 to 1301:1-7-47 of the Administrative Code. Records of the installation, testing and maintenance of both systems ~~shall~~ are to be kept maintained at the facility and produced for inspection upon request.

- (P) All staff members in each residential care facility ~~shall~~ are to be trained in fire control and evacuation procedures within three working days of beginning employment. A staff member ~~shall is not~~ allowed to stay alone in the residential care facility with residents until the staff member has received the training in fire control and evacuation procedures ~~required~~ established by this rule.
- (Q) Each residential care facility ~~shall is obligated to~~ provide for annual training in fire prevention for regularly scheduled staff members on all shifts to be conducted by the state fire marshal or township, municipal or local legally constituted fire department. Records of this training ~~shall~~ are to be kept maintained at the facility.
- (R) Each residential care facility ~~shall is obligated to~~ train all residents in the proper actions to take in the event of fire, tornado, disaster, or other emergency.
- (S) Each residential care facility ~~shall is obligated to~~ conduct at least monthly a fire safety inspection which ~~shall be is~~ recorded on forms provided by the department and kept on file in the facility for three years.
- (T) Each residential care facility is obligated to install carbon monoxide detectors in accordance with section 915. of the Ohio Fire Code.

~~(T) Each residential care facility licensed prior to the effective date of this rule with a permanently installed fuel-burning appliance(s) shall, within twelve months of the effective date of this rules, install and maintain carbon monoxide alarms or carbon monoxide detectors in accordance with manufacturer's directions. Carbon monoxide alarms or carbon monoxide detectors shall be installed in:~~

~~(1) Each room containing a permanently installed fuel-burning appliance; and~~

~~(2) A central location on every habitable level and in every heating/ventilation/air conditioning zone of the building.~~

~~(U) Each residential care facility licensed on or after the effective date of this rule with a permanently installed fuel-burning appliance(s) shall install and maintain carbon monoxide detectors in accordance with manufacturer's directions. Carbon monoxide detectors shall be installed in:~~

~~(1) Each room containing a permanently installed fuel-burning appliance; and~~

~~(2) A central location on every habitable level and in every heating/ventilation/air conditioning zone of the building.~~

~~(V) For purposes of this rule:~~

~~(1) "Carbon monoxide alarm" means a single or multiple station alarm tested to underwriters laboratory standard 2034, that is intended for the purpose of detecting carbon monoxide gas and alerting occupants by a distinct audible signal comprising an assembly that incorporates a sensor, control components, and an alarm notification appliance in a single unit operated from a power source either located in the unit or obtained at the point of installation;~~

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~~(2) "Carbon monoxide detector" means a device tested to underwriters laboratory standard 2075 that is intended to be connected to a carbon monoxide detection system for the purpose of detecting carbon monoxide gas and alerting occupants by a distinct and audible signal;~~

~~(3) "Carbon monoxide detection system means" a system of devices that consists of a control panel and circuits arranged to monitor and annunciate the status of carbon monoxide detectors and to initiate the appropriate response to those signal; and~~

~~(4) "Fuel burning appliance" means an appliance that emits carbon monoxide as a by-product of combustion of coal, kerosene, oil, wood, fuel gases or other petroleum or hydrocarbon products.~~

~~(W)~~ (U) Smoking, as defined in rule 3701-52-01 of the Administrative Code, which shall be ~~includes the use of an electronic smoking device and a vapor product, are~~ permitted only in properly designated areas which may include resident units with the approval of the administrator. No staff member, resident of a residential care facility or other persons in the facility ~~shall be is~~ permitted to smoke, carry a lighted cigarette, cigar, or pipe or use any spark or flame producing device in any room or area in the facility where oxygen is stored or in use. Approved terminals of a piped oxygen supply does not constitute storage. "No smoking" signs ~~shall are to~~ be posted in areas and on doors of rooms where oxygen is stored or in use. Each residential care facility ~~shall is obligated to~~ take reasonable precautions to ensure the safety of all residents when permitting residents to smoke. Ash trays, wastebaskets or containers into which burnable materials are placed ~~shall not cannot~~ be made of materials which are flammable, combustible, or capable of generating quantities of smoke or toxic gases and shall be used solely for that purpose. Such containers ~~shall are to be made be~~ readily available in all areas where smoking is permitted. Residential care facilities that allow outdoor resident smoking ~~shall are obligated to~~ make accommodations for residents during adverse weather conditions.

~~(X)~~ (V) Each residential care facility ~~shall is obligated to~~ maintain all electrical systems including, but not limited to, cords, switches, lighting fixtures, and lamps in good, safe operating condition and ensure that appliances are in good, safe operating condition;

~~(Y)~~ (W) Each residential care facility ~~shall is obligated to~~ report any incident of fire, damage due to fire and any incidence of illness, injury or death due to fire or smoke inhalation of a resident within twenty-four hours to the office of the state fire marshal and the department on forms provided by these entities.

~~(Z)~~ (X) Each residential care facility ~~shall is obligated to~~ maintain written transfer agreements with other facilities that can meet the needs of residents who ~~require are in need of~~ transfer because their health and safety is or potentially is adversely affected by conditions in the facility.

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**3701-16-14**      Space ~~requirements~~standards.

- (A) For purposes of this rule, "habitable floor area" means the clear floor area of a bedroom or resident unit and the floor area occupied by the usual room furniture, such as beds, chairs, sofas, dressers, and tables and does not include areas partitioned off in the bedroom or resident unit such as closets and toilet rooms.
- (B) Each residential care facility ~~shall~~is obligated to provide resident unit space for each resident which meets the following criteria:
- (1) Except as provided for in paragraphs (B)(1)(a) and (B)(1)(b) of this rule, in facilities which were licensed prior to December 22, 1964, and in continuous operation since that date, every single-occupancy bedroom ~~shall~~is obligated to have a habitable floor area of not less than eighty square feet and every multi-occupancy bedroom ~~shall~~is obligated to have a habitable floor area of not less than seventy square feet per person.
    - (a) Resident units added after December 22, 1964, ~~shall~~are obligated to comply with paragraph (B)(2) of this rule; and
    - (b) Any building licensed as a facility on or before December 22, 1964, that discontinued operating as a facility and later resumed facility operation ~~shall~~is obligated to comply with paragraph (B)(2) of this rule;
  - (2) For every building or addition to a building erected or converted to use or initially licensed as a facility after December 22, 1964, every single-occupancy resident unit ~~shall~~is obligated to have a habitable floor area of not less than one hundred square feet and every multi-occupancy resident unit ~~shall~~is obligated to have a habitable floor area of not less than eighty square feet per person;
  - (3) No resident unit, bedroom, or similar division used for sleeping purposes by residents ~~shall~~is allowed to be occupied by more than four residents;
  - (4) A resident unit ~~shall~~is not allowed to be used as a passageway to other areas of the residential care facility;
  - (5) Each resident ~~shall~~will have a resident-activated resident call system as defined by paragraph (~~DDFF~~) of rule 3701-16-01 of the Administrative Code, in good working order that, at minimum, provides for the transmission of calls from resident rooms and toilet and bathing facilities and cannot be deactivated from any location except from where the resident initiated the call, unless the staff is able to communicate with the resident;
  - (6) Resident units ~~shall~~are obligated to be separated from halls, corridors, and other rooms by permanent floor-to-ceiling walls. Temporary partitions ~~shall~~are not allowed to~~not~~ be used to separate resident units;
  - (7) Each resident bedroom ~~shall~~is obligated to have a minimum of one window opening to the outside or to an atrium with a curtain, shade, or other appropriate covering to assure privacy and a screen if the window

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is operable;

- (8) Each residential care facility ~~shall~~is obligated to ensure that each resident unit is equipped with the furnishings and supplies specified in paragraph (C) of rule 3701-16-15 of the Administrative Code; and
  - (9) Each residential care facility ~~shall~~is obligated to assign non-ambulatory residents to resident units on a floor that exits to ground level unless there is an elevator to accommodate movement of such residents to other floors of the facility.
- (C) Each residential care facility that provides meals ~~shall~~is obligated to have at least one room or suitable area with comfortable, safe, and functional furniture to be used by residents for dining purposes that comfortably accommodates the number of residents to whom the residential care facility provides meals. ~~All furniture shall be comfortable, safe, and functional.~~
- (D) As used in this rule, "bathroom" means a room or rooms including at least one toilet, one shower or bathtub, and one sink. Each residential care facility ~~shall~~is obligated to provide at least one toilet, one shower or bathtub, and one sink for every eight residents living in the residential care facility. Each residential care facility ~~shall~~is obligated to meet the following ~~requirements-standards~~ regarding bathroom facilities:
- (1) The bathrooms and all the facilities therein ~~shall~~are to be in good repair, in a clean and sanitary condition, free from filth and accumulation of waste;
  - (2) Bathrooms and all fixtures therein ~~shall~~ensure resident privacy and dignity. Where there are more than one toilet or more than one bathtub or shower in a bathroom, each toilet and each bathtub or shower ~~shall~~is to be enclosed in such a way as to maintain the privacy of each resident;
  - (3) Bathrooms ~~shall~~are obligated to conform to the Ohio building code;
  - (4) At all times, bathrooms~~Bathrooms~~ and all the facilities therein ~~shall~~are to at all times, be kept in good repair, in a clean and sanitary condition, and free from filth and accumulated waste, and ~~shall~~be provided with a supply of toilet tissue, unless provided by the resident as specified in the resident agreement. Each hand washing basin ~~shall~~will be provided soap and a self-draining device or other appropriate dispenser unless provided by the resident as specified in the resident agreement;
  - (5) Each bathtub and shower ~~shall~~will have a nonskid surfacing and handrails or grab bars. Each residential care facility ~~shall~~is obligated to ~~also~~provide handrails or grab bars near each toilet in resident units occupied by individuals who need assistance with activities of daily living or, if resident units do not have toilets, near a sufficient number of toilets on each floor of the facility to accommodate such individuals; and
  - (6) Each bathtub, shower, and sink ~~shall~~will have hot and cold running water. If the residential care facility is in control of the hot water temperature, the hot water ~~shall~~is to be at least one hundred five degrees fahrenheit and no more than one hundred twenty degrees fahrenheit at the point of use. If a resident is in control of the hot water temperature in ~~his or her~~their resident unit, the residential care facility ~~shall~~is obligated to ensure that the hot water is at a safe temperature sufficient to meet the preferences of the

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resident.

- (E) As used in this paragraph, "toilet room" means a room or rooms conforming to the Ohio building code, and including a water closet and a lavatory which is located in or adjacent to the room in which the water closet is located. The residential care facility ~~shall~~is obligated to provide toilet tissue, soap in a self-draining device or other appropriate dispenser, and individual paper towels or a hand dryer for all toilet rooms or bathrooms open to staff, visitors, or both.

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**3701-16-15 Building maintenance, equipment and supplies.**

- (A) Each residential care facility ~~shall~~is obligated to maintain heating, electrical, and other building service equipment in good working and safe condition. ~~Each residential care facility shall and~~ have its central heating system checked every two years by a heating contractor.
- (B) Each residential care facility ~~shall~~is obligated to maintain a clean, healthy environment by at minimum:
- (1) Establishing and implementing housekeeping and maintenance procedures to assure a clean, safe, sanitary environment;
  - (2) Providing durable garbage and refuse receptacles to accommodate waste. The residential care facility ~~shall~~is obligated to store all garbage and other refuse in leakproof containers with tight fitting covers until time of disposal, and dispose all waste in a satisfactory manner; and
  - (3) Eliminating any existing insects and rodents and taking effective measures to prevent the presence of insects and rodents in or around any building used for a residential care facility or part thereof. The extermination of insects and rodents ~~shall is to~~ be done in such a manner as not to create a fire or health hazard.
- (C) Unless the resident chooses to bring ~~his or her~~their own or as specified in the resident agreement, the residential care facility ~~shall~~is obligated to provide each resident with the following bedroom furnishings and supplies:
- (1) An individual bed equipped with springs that is sturdy, safe, and in good condition as well as ~~and~~ a clean comfortable flame resistant mattress or a clean comfortable mattress with a flame resistant mattress cover. ~~The bed shall be sturdy, safe, and in good condition.~~ Rollaway beds and cots, double deck beds, stacked bunk beds, hide-a-bed couches, or studio couches do not meet the ~~requirements~~standards of this rule. If the resident chooses to sleep on an alternate piece of furniture, such as a reclining chair, the facility is obligated to ensure that a bed meeting the standards of this rule remains available to the resident;
  - (2) Bed linen which ~~shall include~~includes at least two sheets, a pillow and pillow case, a bedspread, and one blanket that fit properly and are free of tears, holes, and excessive fraying or wear. The residential care facility ~~shall~~is obligated to:
    - (a) Ensure that the mattresses of incontinent residents are protected with an intact waterproof material unless contraindicated or otherwise ordered by a physician or other licensed healthcare professional working within their scope of practice; and
    - (b) Provide each resident with additional blankets and pillows upon request and ensure that two sets of bed ~~linen~~linens are available for each bed at all times. Residential care facilities ~~shall~~are obligated to ensure that bed linen is changed weekly and more often if soiled or requested by the resident;
  - (3) Closet or wardrobe space with a minimum width of twenty-two inches of hanging space sufficient in height and equipped for hanging full length garments and at least one shelf of adequate size within reach

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of the resident;

- (4) A bedside table, personal reading lamp, adequate bureau, dresser or equivalent space, a mirror appropriate for grooming, a waste basket with liners, and a chair with a padded back and seat, with arms for lateral support. If a resident has a wheelchair, the wheelchair may meet this ~~requirement~~ standard unless the resident indicates he or she wants a comfortable chair in addition to the wheelchair;
  - (5) Bath linen that includes at least two full towels, two face towels, and two washcloths;
  - (6) A shower curtain and appropriate hanging devices; and
  - (7) Basic toiletry items and paper products.
- (D) In meeting the ~~requirements~~ criteria set forth in paragraph (C) of this rule, residential care facilities may allow residents to provide all or part of the bedroom furnishings and supplies listed under paragraphs (C)(1) to (C)(7) of this rule if the bedroom furnishings and supplies meet the ~~requirements~~ criteria set forth in paragraphs (C)(1) to (C)(7) of this rule and there is sufficient space in the residential care facility. Residents who smoke ~~shall~~ are obligated to provide documentation that the mattress they bring to the residential care facility is flame resistant. Residents ~~shall~~ are to be permitted to bring personal furnishings and items in addition to the bedroom furnishings and supplies listed under paragraphs (C)(1) to (C)(7) of this rule if the personal furnishings and items do not create a safety hazard or infringe upon the rights of other residents.
- (E) A residential care facility ~~shall~~ is obligated to arrange for the provision of at least a double size bed, upon request of a married couple or other consenting adult residents sharing a room in accordance with the residential care facility's policy, unless there is an overriding documented medical reason that puts one of the consenting parties at risk of health and safety or there is a risk to other residents.
- (F) All residential care facilities ~~shall~~ are obligated to have the supplies and equipment necessary to provide the services needed by the residents admitted to or retained in the facility. The residential care facility ~~shall~~ is obligated to keep all equipment and supplies in the facility clean and usable and ~~shall store it~~ store them satisfactorily and safely when not in use.
- (G) Waste baskets or containers in common areas where burnable materials may be placed ~~shall~~ are forbidden from being ~~not be~~ made of materials which are flammable, combustible or capable of generating quantities of smoke or toxic gases.
- (H) Each residential care facility ~~shall~~ is obligated to provide at least one non-pay telephone to which residents ~~shall~~ have reasonable access at all times for making local calls. ~~The telephone shall be provided~~ in a location or manner which affords privacy. The residential care facility ~~shall~~ is obligated to arrange for a method by which residents can make long-distance calls from the residential care facility at the residents' expense.
- (I) Each residential care facility ~~also shall~~ is obligated to meet the following safety and maintenance ~~requirements~~ standards:
- (1) The residential care facility ~~shall~~ is obligated to keep floors in good repair. ~~Any and ensure that~~ rugs used in the facility ~~shall be~~ are secured in a manner that does not create a safety hazard;

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- (2) The residential care facility ~~shall~~is obligated to keep corridors, entrances, exits, fire escape routes and outside pathways in good repair, free of obstacles, and ice and snow. Buildings that are constructed or converted for use as residential care facilities after April 1, 2007, ~~must~~are obligated to have accessible means of egress that open to a hard surface leading to a public way;
- (3) Common areas and exits ~~shall~~will be well-lighted;
- (4) The residential care facility ~~shall~~is obligated to store poisonous and hazardous materials in clearly labeled containers, away from foodstuffs and medication. ~~Poisonous~~ and poisonous and hazardous materials shall be stored in accordance with the manufacturer's instructions and ~~the~~ applicable provisions of the Ohio fire code;
- (5) If resident units have locks, the residential care facility ~~shall~~is obligated to have duplicate keys or a master key available and readily accessible at all times to the staff members on duty or present in the facility for use in case of emergency;
- (6) The residential care facility ~~shall~~is obligated to maintain first-aid supplies in a closed but unlocked container which is easily accessible to the administrator and staff;
- (7) The residential care facility ~~shall~~is obligated to maintain its buildings and grounds in a clean and orderly manner; and
- (8) Residential care facilities ~~shall~~is not allowed to not require mandate that residents or staff members to obtain approval from the operator, administrator or staff member prior to telephoning for assistance in the event of an emergency. Each residential care facility ~~shall~~is obligated to prominently display emergency telephone numbers, such as the fire and police department numbers, at each telephone maintained by the residential care facility.

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**3701-16-16 Temperature regulation in residential care facilities.**

(A) For the purposes of this rule:

- (1) "Resident area" means any area within a residential care facility that is occupied at any time by a resident.
- (2) "Temperature range" means between seventy-one degrees Fahrenheit and eighty-one degrees Fahrenheit.

(B) Each residential care facility ~~shall~~is obligated to maintain the temperature range and humidity in resident areas at a safe and comfortable level and have a device, such as a hand held hygrometer or infrared thermometer, to check the ambient temperature of the rooms.

(C) Residents in rooms containing separate heating and cooling systems who are capable of controlling them may maintain the temperature of their rooms at any level they desire except the residential care facility ~~shall~~is obligated to take appropriate intervention if a resident's desired temperature level adversely affects or has potential for adversely affecting the health and safety of the resident or the health, safety and comfort of any other resident sharing the resident room.

(D) Each residential care facility, in consultation with a physician or an appropriate health care professional acting within the professional's scope of practice, ~~shall~~is obligated to develop written policies and procedures for responding to temperatures in resident areas that are outside the temperature range as defined in paragraph (A) of this rule. The policies and procedures ~~shall~~will include at least the following items:

- (1) An identification of available sites within or outside the residential care facility to which residents can be relocated temporarily and of other suitable health care facilities or facilities that provide personal care services that will be available to receive transfers of residents if the temperature level adversely affects or has potential for adversely affecting the health and safety of residents;
- (2) Measures to be taken to assure the health, safety and comfort of residents who remain in the facility when temperatures are outside the temperature range as defined in paragraph (A) of this rule; and
- (3) Identification of the circumstances that ~~require~~necessitate notification of the resident's attending physician or other licensed healthcare professional working within their scope of practice, or that ~~require~~necessitate medical examinations or other medical intervention and appropriate time frames for these actions.

(E) Whenever the temperature in any resident area is outside the temperature range as defined in paragraph (A) of this rule, the residential care facility immediately ~~shall~~is obligated to evaluate the situation, monitor residents, and take appropriate action to ensure the health, safety and comfort of its residents, including but not limited to implementation of the policies and procedures developed under paragraph (D) of this rule. The residential care facility ~~shall~~is obligated to document all action taken under this paragraph and ~~shall~~ maintain, on site, documentation of action taken during the current calendar year and during the preceding calendar year.

(F) Each residential care facility ~~shall~~is obligated to maintain appropriate arrangements with qualified persons that provide for emergency service in the event of an electrical, heating, ventilation or air conditioning

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failure or malfunction and ~~shall~~ maintain documentation of the arrangements such as employment or other written agreements. The residential care facility ~~shall~~is obligated to ensure that all necessary repairs are completed within forty-eight hours or less. If, for reasons beyond the facility's control, repairs cannot be completed timely, the residential care facility ~~shall~~is obligated to take any necessary action, as specified in paragraph (E) of this rule, and ~~shall~~ provide for the repairs to be completed as soon as possible.

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**3701-16-17 Records and reports.**

- (A) Each residential care facility ~~shall~~ is obligated to maintain records which ~~shall~~ are able to be made available for inspection at all times when requested by the director, including:
- (1) An individual record for each resident ~~which shall be~~ that is stored in a manner that protects and ensures confidentiality, except that information ~~shall be~~ is immediately accessible for an emergency;
- (a) Each resident record ~~shall~~ will be started immediately upon admission to the residential care facility and ~~shall~~ include the following:
- (i) The resident's name, previous address, date of birth, ~~sex~~ gender, race, religion; the date the resident began living at the residential care facility; the names, addresses, and telephone numbers of the resident's attending physician, nearest relative, current guardian, if any, and any other individuals the resident designates to be contacted, including individuals to be notified in the event of an emergency. If applicable, the contact information of the nearest relative or guardian is obligated to be reviewed and updated every six months to ensure appropriate notification in the event of an emergency, quarantine, or closure. The residential care facility ~~shall not coerce~~ is not allowed to coerce a resident to provide any of this information;
- (ii) Copies of the health assessments ~~required by~~ in accordance with rule 3701-16-08 of the Administrative Code;
- (iii) Notations about incidents and adverse changes in health status ~~required in accordance with~~ by rule 3701-16-12 of the Administrative Code;
- (iv) ~~The A~~ medication record ~~required by~~ in accordance with paragraph (I)(7) of rule 3701-16-09 of the Administrative Code as well as any medicare-D plan, if any, in which the resident is enrolled and receives prescription medication;
- (v) ~~Any documentation~~ Documentation required by in accordance with paragraph (J) of rule 3701-16-10 of the Administrative Code for residents on therapeutic diets;
- (vi) ~~The A~~ written resident agreement ~~required by~~ in accordance with rule 3701-16-07 of the Administrative Code;
- (vii) ~~The documentation~~ Documentation required by in accordance with paragraphs (J)(5) of rule 3701-16-09 and (B)(4) and (C)(3) of rule 3701-16-09.1 of the Administrative Code for residents receiving skilled nursing care provided by the residential care facility; and
- (viii) A copy of risk agreements entered into under paragraph (G) of rule 3701-16-07 of the Administrative Code and the signed statement ~~required under~~ in accordance with paragraph (H) of rule 3701-16-07 of the Administrative Code, if applicable;
- (2) ~~The An~~ incident log ~~required by~~ in accordance with paragraph (B)(2) of rule 3701-16-12 of the Administrative Code;

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- (3) Copies of all current licenses, approvals and inspections ~~required by~~ in accordance with rules 3701-16-01 to 3701-16-18 of the Administrative Code;
  - (4) A record of the name, address, working hours, medical statements, and training for staff members;
  - (5) Documentation of compliance with rule 3701-16-16 of the Administrative Code;
  - (6) Fire and evacuation procedures and records of fire drills ~~required by~~ in accordance with rule 3701-16-13 of the Administrative Code;
  - (7) Records of heating system checks ~~required by~~ in accordance with paragraph (A) of rule 3701-16-15 of the Administrative Code and fire extinguishing system checks;
  - (8) ~~All records~~ Records required in accordance with ~~by~~ state and federal laws and regulations as to the purchase, dispensing, administering, and disposition of prescription medications including unused portions;
  - (9) The residents' rights policies, procedures and records; and
  - (10) ~~All other~~ Other records ~~required by~~ in accordance with Chapter 3721. of the Revised Code and rules 3701-16-01 to 3701-16-18 of the Administrative Code.
- (B) All records and reports ~~required by~~ maintained in accordance Chapter 3701-13 of the Administrative Code ~~shall~~ are to be maintained and made available in accordance with that chapter.
- (C) The residential care facility ~~shall~~ is obligated to ~~maintain those records~~:
- (1) ~~Required by~~ Maintain records kept in accordance with paragraphs (A)(1) and (A)(2) of this rule, for seven years following the date of the resident's discharge except if the resident is a minor, such records ~~shall~~ are to be maintained for three years past the age of majority but not less than seven years; and
  - (2) ~~Required by~~ Maintain records kept in accordance with paragraphs (A)(3) to (A)(10) of this rule, for three years unless otherwise required by law.

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**3701-16-18 Variances.**

- (A) The director may grant a variance from the requirements of rules 3701-16-01 to 3701-16-18 of the Administrative Code unless required by statute if the operator or administrator shows that granting the variance will not jeopardize the health or safety of any resident and that:
- (1) Because of practical difficulties or other special conditions, strict application of the licensure requirement will cause unusual and unnecessary hardship; or
  - (2) An alternative to the licensure requirement, including new concepts, methods, procedures, techniques, or the conducting of pilot projects is in the interest of better health care or management.
- No variance ~~shall~~will be granted that will defeat the spirit and general intent of these rules or otherwise not be in the public interest.
- (B) A request for a variance from the requirements of the residential care facility licensure rules ~~shall~~is obligated to be made in writing to the director, specifying the following:
- (1) The rule requirement for which the variance is requested;
  - (2) The time period for which the variance is requested;
  - (3) The specific alternative action which the residential care facility proposes;
  - (4) The reasons for the request; and
  - (5) An explanation of the anticipated affect granting of the variance will have on residents;
- The director may request additional information from the residential care facility prior to making a determination regarding the request.
- (C) The director ~~shall~~is obligated to notify the operator, in writing, of the director's determination regarding a variance request. The director may establish conditions that the residential care facility ~~must~~is obligated to meet for a variance to be operative, a time frame for which the variance will be effective, or both.
- (D) The director ~~shall~~is obligated to notify the operator, in writing, of the director's determination to revoke a granted variance. The director may revoke a variance if the director determines that:
- (1) The variance is adversely affecting the health and safety of the residents;
  - (2) The residential care facility has failed to comply with the variance as granted;
  - (3) The operator or administrator notified the department that the owner or administrator wishes to relinquish the variance; or
  - (4) The variance conflicts with a statutory change thus rendering the variance invalid.
- (E) The refusal of the director to grant or revoke a variance or waiver, in whole or in part, ~~shall~~will be final and ~~shall~~will not be construed as creating any rights to a hearing under Chapter 119. of the Revised Code.



# Common Sense Initiative

Mike DeWine, *Governor*  
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Health

Rule Contact Name and Contact Information: Olivia Igel 614-420-5505

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

Residential Care Facility Licensure

Rule Number(s): 3701-16-01 and 3701-16-18

Date of Submission for CSI Review: 12/1/2023

Public Comment Period End Date: 1/1/2024

**Rule Type/Number of Rules:**

New/ X rules

No Change/      rules (FYR?     )

Amended/ X rules (FYR? X)

Rescinded/ X rules (FYR? X)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

- 2. Please briefly describe the draft regulation in plain language.**

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

Rules 3701-16-01 to 3701-16-18, collectively, serve to regulate residential care facilities (“RCF”). Such facilities provide care and services to adults who, by reason of age and/or infirmity elect to receive or require the provision of such care. RCFs can provide skilled nursing care that, with some exception, is limited to 120 days in a 365 day period. Exceptions to this include the: (1) supervision of special diets; (2) application of dressings; and (3) medication administration. Additionally, there are limited exceptions regarding the type of skilled care provided. These include the provision of “routine” skilled nursing care to residents and the provision of skilled nursing care to residents receiving hospice services. All rules have been revised to remove regulatory restrictive language per SB 9 of the 134<sup>th</sup> Ohio General Assembly.

3701-16-01

The rule lists the definitions of terms used in rules 3701-16-01 to 3701-16-18 of the Administrative Code. Amendments include adding, modifying, and updating terms to meet current professional standards, including “complex therapeutic diets,” “special diets,” and “therapeutic diets.” Statutory citations have been amended to meet Legislative Service

Commission rule drafting standards. The term “call signal system” has been replaced by the term “resident call system.”

### 3701-16-02

The rule establishes general requirements and prohibitions for residential care facilities, including, but not limited to, those pertaining to the provision of skilled nursing care, the admission of residents, and compliance with statutory residents’ rights provisions.

### Current 3701-16-03 (rescind)

### New Rule 3701-16-03

The rule describes the licensure application and renewal procedures for RCFs, the conditions for issuance of licenses, and the circumstances in which a license can be revoked. Revisions have been made to clarify the requirements for a Change of Operator application, the requirement for a statement of financial solvency, and additional contact methods such as electronic email address and telephone number for the applicant and other parties to the business. Additional revisions include a listing of who must be notified of a closing of a facility, including residents and their sponsors or legal representatives and the state long-term care ombudsman.

### 3701-16-03.1

The rule sets forth the requirements for submitting a request for an expedited initial survey to ODH and a timeframe in which ODH must complete the inspection upon receipt of all the required documentation and fees.

### 3701-16-04

The rule sets forth requirements that RCFs must follow during inspections and investigations conducted by the Ohio Department of Health.

### 3701-16-05

The rule sets forth the personnel requirements for residential care facilities, including, but not limited to, those pertaining to nursing, dietary, activities, and ancillary staff. Paragraph (L) was added to not allow RCF’s to admit residents in excess without a proper amount of nursing coverage and other appropriate staffing levels.

3701-16-06

The rule summarizes the qualifications and requirements for personnel working in residential care facilities, including those pertaining to tuberculosis testing. Paragraph (E)(c) has been added to allow an LPN to work under the direction of an RN for first-aid training.

3701-16-07

The rule sets forth admission and discharge criteria for residents, as well as the types of information that must be included in a resident agreement.

3701-16-08

The rule sets forth what is required in a resident assessment, and the timeframes for such assessments.

3701-16-09

The rule sets forth who may perform personal care services and who may perform medication administration, application of dressings and supervise special diets. Revisions have been made to clarify when personal care services are considered provided and require the RCF to have policies and procedures to prevent the misappropriation or theft of controlled substances. The definition of “chemical restraint” for purposes of this rule, has been revised to clarify that it means any drug that is used for discipline or staff convenience and not prescribed to treat medical symptoms.

3701-16-09.1

The rule describes the types of part-time skilled nursing care that may be provided in residential care facilities, as well as what types of care are counted towards the 120-day skilled nursing care limit.

3701-16-10

The rule sets forth the dietary standards that must be met for facilities that choose to provide meals to residents. Also included in this rule are the requirements for the supervision of special diets. The rule has been revised to clarify that the RCF will ensure that food texture is appropriate to the individual needs of each resident, except that residential care facility staff are not allowed to perform syringe feedings.

3701-16-11

The rule sets forth a variety of RCF requirements, such as those pertaining to laundry services, resident activities, the regulation of pets, and accounting practices.

### 3701-16-12

The rule sets forth the responsibilities of a residential care facility with regards to changes in a resident's health status and other incidents, as well as infection control. The rule has been revised to provide detailed infection control requirements including having an infection, prevention, and control coordinator that works at least part-time in the facility, a TB control plan, communicable disease restrictions, and a water management plan to prevent the transmission of waterborne pathogens.

### 3701-16-13

The rule sets forth building, plumbing, fire, carbon monoxide safety, and disaster preparedness standards for residential care facilities. The rule has been revised to require the RCF to notify ODH when there is an interruption of normal business due to a disaster or emergency, integrate the restriction of vapor products with the smoking prohibitions, and maintain a copy of the facility disaster preparedness plan electronically or offsite to ensure access during emergencies.

### 3701-16-14

The rule sets forth the space requirements for areas of a residential care facility, including dining and activity areas, and resident sleeping rooms.

### 3701-16-15

The rule sets forth requirements for building maintenance, equipment, and supplies. Paragraph (C)(1) allows residents to choose an alternative piece of furniture, such as a recliner, to sleep in.

### 3701-16-16

The rule sets forth requirements for temperature regulation in residential care facilities. Paragraph (B) now states that a device such as hand held hygrometer or infrared thermometer should be on hand to check the ambient temperature of rooms.

### 3701-16-17

The rule sets forth requirements for residential care facilities in keeping records and reports. Paragraph (A)(1)(i) was added if applicable, that contact information of nearest relative or guardian information be updated every six months to ensure notification in case of an emergency.

### 3701-16-18

The rule sets forth procedures with which a residential care facility may request a variance for the requirements of rules 3701-17-50 to 3701-17-67.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

3721.04, 3721.02

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

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

There are no federal requirements to provide these rules.

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

No

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

ODH is required by section 3721.04 of the Revised Code to develop rules for the licensure of Residential Care Facilities to ensure the health and safety of Ohio's long-term care consumers. These rules serve to protect the health and safety of Ohioans, who, by reason of age or infirmity, live in residential care facilities. The rules serve to ensure: that RCFs have minimum space requirements for occupants and equipping of the buildings in which homes are housed so that residents have healthful, safe, sanitary, and comfortable conditions; the number and qualifications of personnel, including management and nursing staff are appropriate for the population served; the medical, rehabilitative and recreational services are provided in accordance with acceptable standards; that dietary services are provided to ensure residents are offered the appropriate nutritional intake; the business and accounting practices followed are in accordance with accepted standards, and patient and business records are stored in accordance standards and kept for accepted timeframes.

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

Successful outcomes are measured through a standard survey (inspection) process. This process is generally conducted once every fifteen months. Successful outcomes would be indicated by a finding of compliance with Chapter 3701-16. Further evidence of success would be represented by the number of complaints received and the number of validated complaint surveys.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

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

No

### **Development of the Regulation**

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Leading Age  
OHCA  
Ohio Academy of Senior Health Sciences  
State Long-term Care Ombudsman  
Department Aging  
Attorney General  
Elder Care Systems  
Ohio Department of Medicaid  
OALA

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

A stakeholder meeting was held, and multiple drafts and recommended revisions were included. This includes infection control, the ability for a resident to choose an alternate piece of furniture for sleeping, modifications to the definition of “chemical restraint,” and allowing an LPN to work under an RN for CPR training.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Scientific data was not used in this review.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

ODH did not consider any alternatives to the proposed regulation. ODH is required to implement section 3721.04 of the Revised Code. The rules reflect the current statutory requirement. Regulatory language was added regarding infection control to assure a safe, sanitary, and comfortable environment.

**13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place for the licensure of RCFs.

**14. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

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

**Adverse Impact to Business**

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

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

All Residential Care Facilities – 794 facilities as of October 16, 2023.

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

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.*

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

Expedited Inspection fee - \$2250

Increase or decrease of bed expedited inspection - \$2250

Time for compliance:

The costs borne by the RCF can be assumed to include:

- Time and manpower necessary to prepare a waiver or variance request; both will be determined by the nature and complexity of the requirement.
- Time and manpower necessary to develop written plans for a Quality Assessment and Performance Improvement (QAPI) program and conduct meetings.
- Time to develop a clinical record and plan of care for each resident.
- Time and manpower necessary to develop policy and procedures pertaining to complaints.
- Time and manpower to complete applications and submit information.
- Time and manpower to conduct resident assessments.
- If the facility allows pets, time and manpower for policies and vetting.
- Time and manpower for preparation of special diets, infection control, training of personnel

All costs associated with records, plans of care, and policy and procedure development and training would be based upon the nature and complexity of the requirement and the staff chosen to perform the task. In most instances a physician or registered nurse would be responsible for this requirement, while training may be conducted by other health care practitioners.

Physician:

\$0.00 to an average of \$103.33 per hour\*.

Registered Nurse:

\$0.00 to an average of \$37.72 per hour.\*

Other Healthcare Practitioners:

\$20.01 per hour\*

Dietician

\$31.15 per hour\*

Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2022, using the codes for all health care practitioners and technical occupations (31-9099) physicians and surgeons, all others (29-1229), registered nurse (29-1141), dietician (29-1031).

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden*)**

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*may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

Regulatory restrictions have been removed in accordance with SB9.

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

ODH is required to implement ORC section 3721.04 by establishing licensing requirements for residential care facilities. The costs represented by the specific license and service standards set forth in rules 3701-16-01 through 3701-16-18 represent a general standard cost in terms of the administrative, personnel, and facility based requirements for the operation of a residential care facility and are considered to be acceptable within the industry. The requirements established in these rules provide the necessary framework for ODH to effectively and efficiently monitor and ensure the health and safety of Ohio's health care consumers.

**Regulatory Flexibility**

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

No. The rules apply to all residential care facilities regardless of the size of the business.

In rule 3701-16-18, there is an allowance for waiver variances.

**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ODH's Regulatory Ombudsman has set forth a policy for ODH to follow regarding the waiver of fines and penalties for paperwork violations and first-time offenders. ODH implements this policy as part of its business process. Information regarding this policy can be found online at: <https://odh.ohio.gov/wps/portal/gov/odh/about-us/offices-bureaus-and-departments/Office-of-General-Counsel/Statement-on-Paperwork-Violations/>

**20. What resources are available to assist small businesses with compliance of the regulation?**

The agency maintains program staff that can assist and provide guidance to licensees through the Bureau of Regulatory Operations and the Bureau of Survey and Certification.

<https://odh.ohio.gov/know-our-programs/residential-care-facilities-assisted-living/residentialcarefacilitiesassistedliving>