

**Public Hearing Comments**  
**Proposed Amendments of Rules 3701-17-01 to 3701-17-26**

Thank you for the opportunity to provide comments on proposed amendments of rules 3701-17-01 to 3701-17-26 of the Administrative Code pertaining to licensure of skilled nursing facilities (nursing homes).

We have the following concerns about a few of the rule amendments:

1. 3701-17-03(K)(4): This provision requires a SNF operator to supply a certificate of need approval or non-reviewability determination for any project that “alters [the SNF’s] physical facilities in a manner that affects bed capacity or proposes to relocate existing beds to a unlicensed portion of the facility.” We recommend changing the language of this paragraph (K)(4) to “If applicable, an approved certificate of need.” Mandating a reviewability determination for a project that does not require a CON is an excessive administrative burden, cost, and delay for the provider. The CON law does not require a non-review determination to undertake a non-reviewable project. It is an optional comfort letter that should not be required by the licensure rules. On the other hand, if the project is reviewable, it is reasonable to expect the operator to furnish evidence of compliance with the CON law. As the agency responsible for administering both the licensure rules and the CON law, ODH should have no problem detecting when a project under consideration for licensure requires a CON without further burdening the operator.
2. 3701-17-03(R): This rule requires various parties connected to a SNF’s ownership or operations to notify ODH if a legal action is filed against them that might result in the facility going into receivership. This provision is overbroad because until a motion for appointment of a receiver is filed, the facility owner or operator won’t know whether such a motion “could be” the result of the litigation. We recommend changing this paragraph to read, “Any person(s) identified in paragraph (A)(1)(a)(i) or paragraph (D)(1)(a)(i) of this rule will notify the director within ten days of the filing of a motion or other legal request seeking to place the nursing home or building housing the nursing home into receivership.”
3. 3701-17-03(S): This provision specifies that, “Beds in a home that has closed that are not subject to a certificate of need are considered surrendered to the department the three hundred sixty sixth day after the home has closed.” As written, this paragraph could be read as requiring that the CON must be granted within the one-year period after closure.

We recommend clarifying the language by adding “an application for” before “a certificate of need.”

4. 3701-17-05(C)(1)(c): The rule defines interference with a survey to include, “Delay of access to premises or records, including electronic and video records.” We suggest adding “, except as necessary for compliance with applicable law.” Examples of applicable law that might prevent access to records include HIPAA privacy and security requirements that would apply to off-site access to PHI by surveyors (not secure) and Esther’s Law (prohibitions on viewing certain video/audio recordings).
5. 3701-17-06(A)(3) and (B)(4): These provisions engender our most serious concerns in this rule set by greatly expanding the reporting burden on SNF operators and administrators. Current rules, mirroring federal requirements, mandate reporting of alleged or suspected abuse, neglect, and misappropriation. The proposal adds a litany of new reporting requirements: elopement; cash-on-delivery; contract or delivery cancellations; non-payment or delinquent payment of taxes; inadequate food, medical, durable medical equipment, incontinence, respiratory, or pharmaceutical supplies; interruption or potential interruption of essential services (including, but not limited to, therapy, phone, internet service provider, utilities, food delivery, fire alarm monitoring, and maintenance) because of non-payment; inadequate staffing based on the facility's assessment; and known changes in facility control, ownership, or operation or the company to which the administrator reports.

Our members are very concerned about the significant increase in administrative burden that would result from addition of so many new reporting requirements as well as the potential for failure-to-report citations in the absence of any negative outcome to residents. Moreover, some of the reporting requirements are unclear and could result in differing interpretations. The proposed requirement for administrators to notify ODH of changes of facility ownership or operation places a burden on administrators that duplicates existing CHOP notice provisions for entering operators. In short, we feel the new requirements are government overreach.

We request that the new notification requirements be removed and the language returned to the federally-mandated abuse, neglect, and misappropriation reporting.

6. 3701-17-19(A)(1)(a): This provision requires updating family contact information every 6 months. The rule creates another new administrative burden. We recommend every 12 months.