



Ohio Legislative Service Commission

Bill Analysis

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S.B. 283

131st General Assembly
(As Introduced)

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BILL SUMMARY

- Imposes mandatory disciplinary sanctions on residential care facilities that violate governing laws.
 - Specifies that the mandatory disciplinary sanctions are in addition to existing optional sanctions.
 - Requires the frequency of Ohio Department of Health inspections of residential care facilities to increase to every six (from every 15) months.
 - Requires the Director of Health to adopt rules providing for an approval process for memory care units.
 - Beginning one year after the bill's effective date, prohibits a person from operating a memory care unit that has not been approved by the Director of Health.
 - Establishes requirements for the operation of approved memory care units.
 - Makes an appropriation.
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CONTENT AND OPERATION

Mandatory disciplinary sanctions for residential care facilities

The bill generally requires the Director of Health, if the Director finds that a residential care facility violated governing laws, to impose certain disciplinary actions on the facility. The Director is not required to impose a disciplinary sanction specified

by the bill if the law violated is one governing memory care units (see "**Memory care units,**" below).¹

The disciplinary actions the Director must impose under the bill are in addition to the disciplinary sanctions the Director is permitted to impose on residential care facilities under current law.² Presently, the Director may deny a license to a facility or revoke the facility's existing license in accordance with the Administrative Procedure Act (R.C. Chapter 119.), or "issue orders to secure a facility's compliance." Existing law does not provide further details about the orders that may be issued.³

The disciplinary actions the Director must take under the bill are summarized in the following table.⁴

Mandatory Disciplinary Sanctions – Residential Care Facilities	
Violation	Sanction
Violation has not resulted in actual harm; has the potential to cause only minimal harm	Facility is issued an order requiring it to correct the violation.
Violation has not resulted in actual harm; has the potential to cause more than minimal harm that does not immediately jeopardize the health, safety, or welfare of the residents	<p><u>First or second offense:</u> (1) Facility must submit a plan of correction to the Department that details the actions the facility will take to ensure the health, safety, or welfare of the residents; and (2) Director must (a) appoint Department employees to conduct on-site facility monitoring and (b) require the facility to require its staff to attend a Director-approved training program.</p> <p><u>Subsequent offense:</u> Facility (1) is prohibited from accepting new residents until the violation is corrected and (2) must pay a civil penalty of between \$50 and \$3,000 per resident for each day the violation continues.</p>
Violation has resulted in actual harm that does not immediately jeopardize the health, safety, or welfare of one or more residents	Facility (1) is prohibited from accepting new residents until the violation has been corrected and (2) must pay a civil penalty of between \$50 and \$3,000 per resident for each day the violation continues.

¹ R.C. 3721.033(A).

² R.C. 3721.033(E).

³ R.C. 3721.03; Ohio Administrative Code (O.A.C.) 3701-17-52.

⁴ R.C. 3721.033(A).



Mandatory Disciplinary Sanctions – Residential Care Facilities	
Violation	Sanction
Violation has jeopardized or is likely to jeopardize the health, safety, or welfare of one or more residents	Director must (1) appoint a temporary resident safety assurance manager in the facility to take actions the Department determines are appropriate to ensure the health, safety, or welfare of the residents or (2) issue an order suspending the facility's license that is effective on a date specified in the order.

Regarding a Director-approved training program that an employee may have to attend, the bill requires the Director to approve a training program if the program sufficiently trains the staff to comply with the laws governing residential care facilities (R.C. Chapter 3721. and associated rules). The bill permits the Department to develop such a training program.⁵

On issuance of an order suspending a residential care facility's license, the bill requires the facility to take all actions necessary to cease operation of the facility for the duration of the suspension unless the Director, at the facility's request, grants an exemption from this requirement.⁶

All fines that are collected under the bill must be deposited in the state treasury to the credit of the General Operations Fund.⁷

Frequency of inspections

The bill increases the frequency at which the Director of Health must conduct inspections of residential care facilities. Under existing law, an inspection must occur at least once before issuance of a license and at least every 15 months thereafter. The bill does not modify the pre-licensure inspection requirement, but specifies that the periodic inspections must occur at least once every six months. Under law not modified by the bill, the Director must establish procedures to be followed in inspecting the facilities.⁸

⁵ R.C. 3721.033(C).

⁶ R.C. 3721.033(D).

⁷ R.C. 3721.033(F).

⁸ R.C. 3721.02(B)(1).

Memory care units

Approval process; prohibition

The bill requires the Director of Health to adopt rules in accordance with the Administrative Procedure Act providing for the approval of memory care units.⁹ Beginning one year after the bill's effective date, a person is prohibited from operating a memory care unit that is not approved by the Director.¹⁰ Under the bill, a "memory care unit" is a residential care facility, or portion of a residential care facility, that provides or proposes to provide specialized care and services for residents with Alzheimer's disease or other dementia.¹¹

The rules the Director adopts must address all of the following:¹²

--Application forms and procedures for applying for approval of a memory care unit;

--Standards and procedures for inspection of memory care units as part of the application process and while in operation;

--Disciplinary action for violating the laws governing memory care units, including monetary penalties not greater than \$5,000 per resident in a memory care unit for each day that a violation continues; and

--Any other matter the Director considers appropriate.

Applications

The bill requires a person who seeks to operate a memory care unit to apply to the Director of Health for approval. The application must be submitted in the form and manner prescribed by the Director in rules required by the bill and demonstrate that the unit complies with the bill's provisions and related rules governing memory care units.¹³

Once an application is received, the Director must consider it for approval. As part of that consideration, the Director must inspect each memory care unit at least once

⁹ R.C. 3271.37(C).

¹⁰ R.C. 3721.37(B).

¹¹ R.C. 3721.37(A).

¹² R.C. 3721.37(C).

¹³ R.C. 3721.38(A).



before approval. If the Director determines that the memory care unit complies with the bill's provisions and related rules governing memory care units, the Director must approve the memory care unit.¹⁴ If the Director determines that the memory care unit does not comply, the Director must notify the person making the application and specify the requirements the unit does not meet. If, after a period of time specified by the Director, the unit still does not meet the requirements, the Director must do either of the following:¹⁵

(1) If the person making the application alleges that the memory care unit was in operation on the bill's effective date, allow an additional three months to correct deficiencies and demonstrate to the Director that the unit complies with the bill's provisions and related rules governing memory care units; or

(2) If the person making the application does not allege that the memory care unit was in operation on the bill's effective date, deny the application.

If a person described in (1), above, fails to demonstrate compliance with the bill's provisions and related rules governing memory care units not later than three months after receiving the Director's notice of deficiencies, the Director must deny the application and order the person to cease operating the memory care unit.¹⁶

A person whose application was denied may appeal the denial in accordance with the Administrative Procedure Act.¹⁷

Physical space

The bill specifies that all of the following apply to a memory care unit regarding its physical space:¹⁸

--It must provide space for dining, group and individual activities, and visits;

--Not more than two residents may occupy a bedroom in the unit regardless of the room's size; and

¹⁴ R.C. 3721.38(B)(1).

¹⁵ R.C. 3721.38(B)(2).

¹⁶ R.C. 3721.38(B)(2)(b).

¹⁷ R.C. 3721.38(B)(3).

¹⁸ R.C. 3721.39(A).

--Doors equipped with electronic card operated systems or other locking systems that prevent immediate egress are permitted only if the memory care unit does both of the following:

(1) Obtains written approval from the Director of Health or the appropriate local building authority permitting the use of the locking system;

(2) Obtains a statement from the manufacturer that is specific to the residential care facility verifying that the locking system will shut down and all doors will open immediately and easily when (a) a signal is received from an activated fire alarm system or heat or smoke detector, (b) a power failure occurs, or (c) steps are taken to override the locking system by use of a key pad or other lock-releasing device.

Activities

The bill requires that a memory care unit offer the following types of activities at least weekly:¹⁹

--Gross motor activities such as stretching, exercising, and dancing;

--Self-care activities such as personal hygiene;

--Social activities such as games, music, and holiday and seasonal celebrations;

--Crafts;

--Sensory and memory enhancement activities such as review of current events, movies, pictures, storytelling, cooking, pet therapy, and reminiscing; and

--Outdoor activities as weather permits.

Assistance

The bill requires a memory care unit to provide each resident with at least two hours each day of assistance with activities such as the following (as appropriate and as needed by the resident): eating, drinking, transferring in and out of a bed or chair, proper turning and positioning in a bed or chair, ambulating, toileting, bladder and bowel management, personal hygiene, dressing, securing health care, managing health care, self-administering medication, doing laundry, shopping, securing and using transportation, managing finances, making and keeping appointments, caring for

¹⁹ R.C. 3721.39(B)(1).

personal possessions, communicating with others, engaging in social and leisure activities, and using prosthetic devices.²⁰

The bill specifies that a contract for services to a memory care unit resident must specify all of the services to be provided to the resident.²¹

Admissions

Pre-admission

The bill requires a memory care unit, before admitting an individual as a resident, to do all of the following:²²

--Consider other care options that may be available to the individual;

--Document that the individual, or a person legally responsible for the individual, does not object to the individual's admission or transfer to the memory care unit; and

--Not earlier than 72 hours prior to admitting an individual as a resident, (1) complete a written cognitive screening in collaboration with a physician and (2) complete a written support plan identifying the individual's physical, medical, social, cognitive, and safety needs and document the plan in the individual's record.

Support plan implementation

On an individual's admission to a memory care unit, a memory care unit must implement the completed support plan. A memory care unit must revise each resident's support plan at least quarterly and as the resident's condition changes. A memory care unit must assess each resident quarterly to determine whether the resident has a continuing need or desire for care from the memory care unit.²³

²⁰ R.C. 3721.39(B)(2).

²¹ R.C. 3721.39(B)(3).

²² R.C. 3721.39(C)(1).

²³ R.C. 3721.39(C)(2).

Inspections; disciplinary action

The bill requires the Director of Health to enforce bill's provisions and related rules governing memory care units. The Director must inspect all approved memory care units at intervals prescribed by the Director in rules.²⁴

The Director may take disciplinary action against memory care units as prescribed by rules adopted under the bill and may issue orders to secure compliance with bill's provisions and related rules governing memory care units (including orders revoking the Director's approval of a memory care unit). An order issued by the Director may be appealed in accordance with the Administrative Procedure Act.²⁵

Conforming changes

The bill makes conforming changes associated with the Director of Health's authority under the bill to suspend a residential care facility's license if a violation by the facility has jeopardized or is likely to jeopardize the health, safety, or welfare of one or more residents. The conforming changes apply to provisions governing nursing home residents' rights and challenges to a resident's transfer or discharge.²⁶

Background

A residential care facility is a type of "home" that provides either of the following:²⁷

(1) Accommodations for 17 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 existing law²⁸ (including supervision of special diets, application of dressings, and administration of medication).

²⁴ R.C. 3721.40.

²⁵ R.C. 3721.40.

²⁶ R.C. 3721.13(A)(30)(f) and 3721.16(D)(1).

²⁷ R.C. 3721.01(A)(7), not in the bill.

²⁸ R.C. 3721.011, not in the bill.



A "home" is an institution, residence, or facility that provides, for more than 24 hours, whether for compensation or not, accommodations for three or more unrelated individuals who are dependent on the services of others.²⁹

HISTORY

ACTION	DATE
Introduced	02-23-16

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²⁹ R.C. 3721.01(A)(1), not in the bill.

