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# OHIO LEGISLATIVE SERVICE COMMISSION

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134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Ginter and Fraizer

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### SUMMARY

#### Home health service provider licensing

- Requires home health agencies that provide skilled home health services and nonmedical home health services through one or more employees to be licensed.
- Requires nonagency providers who provide skilled home health services and nonmedical home health services to be licensed.
- Establishes standards for license application and review.
- Requires an applicant who was not providing direct care immediately prior to the effective date of this bill to acquire a surety bond.
- Requires the Department of Health to review license applications and issue licenses.
- Requires the Department of Health to adopt rules for the implementation of the licensure requirements.
- Establishes criminal penalties for a home health agency or person who provides skilled or nonmedical home health services without a license.

#### Expedited licensing inspections for residential care facilities

- Specifies that an existing licensed residential care facility may request an expedited licensing inspection from the Director of Health when the facility is seeking approval to make changes for which a licensing inspection is required.

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## DETAILED ANALYSIS

### Home health services

#### License required

Starting one year after the bill's effective date, the bill requires a license for any home health agency or nonagency provider offering skilled home health services or nonmedical home health services.<sup>1</sup> Skilled home health services include skilled nursing care, physical therapy, occupational therapy, speech-language pathology, medical social services, home health aide services, and any other services the Director of Health specifies by rule. Nonmedical home health services include bathing or bathing assistance; assistance with dressing, walking, and toileting; catheter care (but not insertion), meal preparation and feeding; personal care services; and any other services the Director of Health specifies by rule.<sup>2</sup>

A home health agency is any business or government entity, other than a nursing home, residential care facility, hospice care program, pediatric respite care program, or immediate family member, that provides skilled home health services or nonmedical home health services at a patient's place of residence.<sup>3</sup> Nonagency providers are people who provide care to individuals on a self-employed basis and do not directly or contractually employ other people to provide services.<sup>4</sup> An immediate family member providing care is not a nonagency provider.<sup>5</sup>

Skilled home health services licenses and nonmedical home health services licenses are valid for three years.<sup>6</sup>

#### Skilled home health services license requirements

The bill requires skilled and nonmedical home health services licenses for agencies and independent providers, but not employees of agencies. Current law specifies criminal records check and database review requirements for employees of home health agencies.<sup>7</sup>

An applicant for a skilled home health services license must submit an application including evidence that the agency or nonagency provider is one of the following: (1) certified for participation in the Medicare program, (2) accredited by an approved national accreditation agency, (3) certified by the Department of Aging to provide community-based long-term care or

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<sup>1</sup> R.C. 3722.02.

<sup>2</sup> R.C. 3722.01(N) and (S).

<sup>3</sup> R.C. 3722.01(G).

<sup>4</sup> R.C. 3722.01(M).

<sup>5</sup> R.C. 3722.01(M).

<sup>6</sup> R.C. 3722.05(A).

<sup>7</sup> R.C. 3701.881 (3722.11), conforming changes in R.C. 109.57, 109.572, 173.38, 173.381, 1337.11, 2133.01, 2317.54, 3701.362, 3701.916, 4715.36, 4719.01, 4723.431, 4729.43, 5101.63, and 5164.34.

certified by the Department of Developmental Disabilities to provide supported living, to the extent authorized by Department of Health rules, or (4) otherwise meets Medicare conditions of participation but not certified for participation in the Medicare program.<sup>8</sup>

The application fee and renewal fee for a skilled home health services license is \$250.<sup>9</sup> An applicant for a new license who was not providing direct care immediately prior to the effective date of this bill must provide evidence of a \$50,000 surety bond issued by a company licensed to do business in Ohio.<sup>10</sup>

Skilled home health services licenses are inclusive of nonmedical home health services. A home health agency or nonagency provider who holds a skilled home health services license may provide nonmedical home health services without obtaining a nonmedical home health services license.<sup>11</sup>

### **Nonmedical home health services license requirements**

An application for a nonmedical home health services license must include: (1) fingerprints from the primary owner of the home health agency or of the nonagency provider, (2) copies of any documents filed and recorded with the Secretary of State, (3) a notarized affidavit verifying the identity of the applicant, (4) a copy of the home health agency's criminal records check policy (not applicable to nonagency providers), (5) a statement identifying the applicant's days and hours of operation, (6) a description of the nonmedical home health services to be provided and any relevant policies or procedures, and (7) identification of the applicant's primary place of business and geographic area served.<sup>12</sup> The Director of Health may adopt rules to waive any of these requirements if the home health agency or nonagency provider is certified by the Department of Aging to provide community-based long-term care or certified by the Department of Developmental Disabilities to provide supported living.<sup>13</sup>

The application fee and renewal fee for a nonmedical home health services license is \$250.<sup>14</sup> An applicant for a new license who was not providing direct care immediately prior to the effective date of this bill must provide evidence of a \$20,000 surety bond issued by a company licensed to do business in Ohio.<sup>15</sup>

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<sup>8</sup> R.C. 3722.03(A)(1)(a).

<sup>9</sup> R.C. 3722.03(A)(1)(c) and 3722.05(A).

<sup>10</sup> R.C. 3722.03(A)(1)(b).

<sup>11</sup> R.C. 3722.03(B)(2).

<sup>12</sup> R.C. 3722.03(B)(1)(a) to (g).

<sup>13</sup> R.C. 3722.03(B)(3).

<sup>14</sup> R.C. 3722.03(B)(1)(i) and 3722.05(A).

<sup>15</sup> R.C. 3722.03(B)(1)(h).

## Duties of Department of Health

### Licensing

Under the bill, the Department of Health is responsible for reviewing all applications for skilled home health services licenses and nonmedical home health services licenses. If the applicant has not had a site visit in the five years prior to submitting an application, the Department's review must include a site visit to verify that Medicare conditions of participation are met.<sup>16</sup>

The Department is responsible for issuing licenses if the applicant has paid the application fee and meets other licensing requirements.<sup>17</sup> The Department has the power to refuse to issue a license or refuse to renew or reinstate a license holder's license for reasons it establishes by rule. It may also impose limitations on a license, revoke or suspend a license, place a license holder on probation, or otherwise reprimand the license holder.<sup>18</sup>

The bill allows the Department to adjust an initial license renewal date to align renewal of a license with the renewal of a certification or accreditation that is a condition of licensure.<sup>19</sup>

### Rulemaking

The Director of Health is responsible for adopting rules to implement the new licensing requirements. These rules must address the following:<sup>20</sup>

- Initial license application forms and procedures;
- License renewal application forms and procedures;
- The extent to which certifications issued by the Department of Aging to provide community-based care satisfy requirements for licensure;
- The extent to which certifications issued by the Department of Developmental Disabilities to provide supported living satisfy requirements for licensure;
- The documentation that must be provided to demonstrate that Medicare conditions of participation are met if the applicant is not certified for participation in the Medicare program;
- Reasons the Department of Health may take disciplinary action on a license.

When adopting rules, the Director of Health must consult with the Director of Aging, the Director of Developmental Disabilities, and the Medicaid Director.<sup>21</sup>

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<sup>16</sup> R.C. 3722.04.

<sup>17</sup> R.C. 3722.04.

<sup>18</sup> R.C. 3722.07(A).

<sup>19</sup> R.C. 3722.05(B).

<sup>20</sup> R.C. 3722.10(A).

## **Criminal penalties**

The bill establishes that if a person or agency provides skilled home health services or nonmedical home health services without a license issued by the Department of Health, that person or agency is guilty of a misdemeanor of the second degree on the first offense. For each subsequent offense, the penalty increases to a misdemeanor of the first degree.<sup>22</sup>

## **Expedited licensing inspections**

Nursing homes, residential care facilities, homes for the aging, and veterans' homes (collectively referred to as homes) must be inspected at least once by the Director of Health before the Director issues the home a license.<sup>23</sup> Current law permits an applicant for licensure to request an expedited licensing inspection from the Director. If, before receiving a license, a home requests an expedited licensing inspection, the Director is required to conduct the inspection not later than ten days after receiving the request.<sup>24</sup>

With respect to existing homes that are licensed as residential care facilities (also known as assisted living facilities), the bill permits these facilities to request an expedited licensing inspection from the Director when a facility is seeking approval to increase or decrease its licensed capacity or to make any other change for which the Director requires a licensing inspection to be conducted.<sup>25</sup> Under current rules adopted by the Director, the expedited licensing inspection process is not available to existing residential care facilities requiring an inspection for these types of changes.<sup>26</sup>

The bill provides that any rules adopted by the Director to implement the bill's requirements for existing residential care facilities seeking an expedited licensing inspection are not subject to the law that requires a state agency to remove two or more existing rules when simultaneously adopting a new rule.<sup>27</sup>

## **Obsolete procedures and terms**

The bill eliminates provisions of law describing (1) a process by which a home may request that the Director review plans for a building that is to be used as a home to determine compliance with applicable state and local building and safety codes and (2) authority to collect

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<sup>21</sup> R.C. 3722.10(B).

<sup>22</sup> R.C. 3722.99.

<sup>23</sup> R.C. 3721.02(B)(1).

<sup>24</sup> Ohio Administrative Code (O.A.C.) 3701-16-03.1.

<sup>25</sup> R.C. 3721.02(B)(2).

<sup>26</sup> O.A.C. 3701-16-03.1(D).

<sup>27</sup> R.C. 3721.02(B)(2)(a); R.C. 121.95(F), not in the bill.

fees for reviewing the plans.<sup>28</sup> According to representatives of the Department of Health, this process for reviewing plans is not currently used by the Department.

The bill also replaces the following terms that are no longer used to refer to certain types of long-term care facilities: rest home and adult care facility.

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## HISTORY

Action	Date
Introduced	03-04-21

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H0179-I-134/ec

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<sup>28</sup> R.C. 3721.02(B)(2)(b) and (c).