

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-45-09

**Rule Type:** New

**Rule Title/Tagline:** Long-term care consumer guide: fees, invoices, and penalties.

**Agency Name:** Department of Aging

**Division:**

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#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 49 - 132  
- Rep. Smith
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02, 173.49; 42 U.S.C. 1396a(a)(9)(D).
5. **What statute(s) does the rule implement or amplify?** 173.48; 42 U.S.C. 1396a(a)(9)(D).
6. **What are the reasons for proposing the rule?**

ODA operates the Long-Term Care Consumer Guide (Guide). It is available to the public at no cost to the public.

ORC §173.48 is the basis for this rule. It authorizes ODA to charge nursing homes and residential care facilities (RCFs) annual fees for the operation of the Guide.

This proposed new rule will implement the annual fees, their invoicing, and certifying cases of unpaid fees to the Ohio Attorney General for collection purposes. Because Am. Sub. House Bill No. 49 of the 132nd General Assembly (HB49) implemented new penalties for unpaid fees in ORC §173.48, the proposed new rule will also contain penalty language.

Because amendments to the current rule would have comprised more than 50% of the rule, ODA proposes to rescind the current rule and simultaneously adopt this proposed new rule in its place to comply with the LSC's 50% guideline.

**7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Again, this proposed new rule will implement ODA's statutory authority to charge nursing homes and residential care facilities (RCFs) to annual fees for the operation of the Guide.

Beginning on September 29, 2017, ORC §173.48, as amended by HB49, has authorized ODA to assess "late penalties" to late payments of annual fees. The statute (1) authorizes ODA to establish a deadline to pay the annual fee and (2) stipulates the penalty is a doubling of the fee if not paid 90 days after the deadline ODA establishes. ODA proposes to establish the deadline in (B)(2) as 30 days after the date on which ODA mailed the invoice to a facility. ODA proposes to insert (C)(1) to incorporate the penalty language HB49 added to ORC §173.48.

Additionally, ODA is reorganizing and revising this new rule in the same manner it recently reorganized and revised the bed-fee rule. As such, this proposed new rule, in comparison to the current rule it will replace, has the following differences:

1. This proposed new rule will no longer require nursing homes and RCFs to mail payment of fees to the Long-Term Care Consumer Guide Fund because such facilities must pay the state treasurer. Instead, it requires ODA's invoice to indicate the available methods of payment. This will also negate the need to include the mailing address in this proposed new rule, because available methods of payment may not involve mailing a check or may have different mailing addresses.

2. This proposed new rule will use "invoice" instead of "billing statement."

3. This proposed new rule will use "deadline for receipt of payment," which ODA will define in (B)(3) as "thirty days after the date on which ODA mailed the invoice to the facility." (C)(1) and (C)(2) will refer back to this date.

8. **Does the rule incorporate material by reference? No**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

On March 6, 2018, ODA made a revised filing to correct the date of the public hearing in the Register of Ohio. In doing so, ODA did not revise the text of the rule.

## **II. Fiscal Analysis**

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will increase revenues.

\$33,300.00

ODA estimates the adoption of this proposed new rule to replace the rule ODA is simultaneously proposing to rescind will result in a revenue increase of approximately \$33,300.00 for the 2nd year of the current biennium and ever year thereafter. ODA bases its estimate upon the following recent experiences:

In 2016, ODA certified 74 outstanding accounts to the Ohio Attorney General's Office for collection. If statute and this rule had required doubling the fee, ODA would have certified for an additional \$39,300.

In 2017, ODA certified 70 outstanding accounts to the Ohio Attorney General's Office for collection. If statute and this rule had required doubling the fee, ODA would have certified for an additional \$37,700.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

ODA estimates the cost of compliance to a nursing home or RCF which pays the fee on time is no more than the cost of the fee established by ORC §173.48.

ODA estimates the cost of compliance to a nursing home or RCF which pays late is a doubling of the fee.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No

### **III. Common Sense Initiative (CSI) Questions**

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **Does this rule have an adverse impact on business?** Yes
  - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** No
  - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?** Yes

If a nursing home or RCF fails to pay the annual fee, this proposed new rule will (1) implement the new authority under ORC §173.48 to double the fee and (2) continue to require ODA to certify the outstanding account to the Ohio Attorney General's office for collection.

- C. **Does this rule require specific expenditures or the report of information as a condition of compliance?** Yes

This proposed new rule will continue to require nursing homes and RCFs to pay an annual fee.