

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT of AGING (ODA)

Regulation/Package Title: NURSING HOME QUALITY INITIATIVE

Rule Number(s): RULES 173-60-01 to 173-60-04
of the ADMINISTRATIVE CODE

Date: JUNE 19, 2014, REVISED ON JULY 23, 2014

Rule Type:

<input checked="" type="checkbox"/> New	<input type="checkbox"/> 5-Year Review
<input type="checkbox"/> Amended	<input type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

H.B.59 (130th G.A.) enacted section 173.60 of the Revised Code to create the Nursing Home Quality Initiative (NHQI). The section requires nursing homes to participate in quality improvement projects every two years.

ODA proposes to adopt chapter 173-60 of the Administrative Code. The new chapter would do the following:

- Proposed rule 173-60-01 of the Administrative Code would introduce the chapter and define “nursing home.”
- Proposed rule 173-60-02 of the Administrative Code would establish the criteria for becoming an ODA-approved quality improvement project.

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Business Impact Analysis

- Proposed rule 173-60-03 of the Administrative Code would establish the approval and rescission process for quality improvement projects.
- Proposed rule 173-60-04 of the Administrative Code would require the publication of quality improvement projects on the Ohio Long-Term Care Quality Initiative Website.

Each nursing home may choose to participate in any of the projects that ODA lists on the Ohio Long-Term Care Quality Improvement Website.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 173.60 of the Revised Code authorizes ODA to adopt rules for the NHQI.

3. 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.

No federal requirement requires a program like NHQI. No federal law authorizes or prohibits ODA from adopting rules to implement NHQI.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

State law, not federal law, created NHQI. Section 173.60 of the Revised Code authorizes ODA to adopt the proposed new rules.

5. 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)?

Without the proposed new rules, Ohio law would not do the following:

- Establish the criteria for becoming an ODA-approved quality improvement project.
- Establish the approval and rescission process for quality improvement projects.
- Require the publication of quality improvement projects on the Ohio Long-Term Care Quality Initiative Website.

Therefore, ODA has determined that adopting the proposed new rules is vital to the success of NHQI.

Business Impact Analysis

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

Through the website reporting module required by proposed new rule 173-60-05 of the Administrative Code, ODA will have records to show the volume of ODA-approved quality-initiative projects that have been substantially initiated in Ohio.

Development of the Regulation

7. 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.

September 3, 2013: Erin Pettegrew asked OHCA, LeadingAge Ohio and the Academy of Senior Health Sciences via email for their suggestions for a representative for development of the Quality Improvement Project list.

September 17, 2013: Learning & Action Network Partners Meeting. Erin Pettegrew from ODA's state long-term care ombudsman office (SLTCO) shared preliminary framework documents with stakeholders including the Ohio KePRO, the designated Quality Improvement Organization, OHCA, the Academy of Senior Health Sciences, LeadingAge Ohio and Ohio Department of Health. (See BIA item #8 below for more information.)

October 15, 2013: Erin Pettegrew shared an updated version of the Quality Improvement Projects preliminary framework document with partners including the Ohio KePRO, the designated Quality Improvement Organization, the Academy of Senior Health Sciences, LeadingAge Ohio and Ohio Department of Health.

November 8, 2013: The Quality Improvement Projects framework was an agenda item at the Ohio Person-Centered Care Coalition membership meeting. Providers, ombudsmen and other stakeholders were given the opportunity to comment and ask questions about the proposed framework. The group agreed to create their own quality improvement project to offer for the list of approved projects and created a committee task force to work on it.

November 15, 2013: The framework was shared via the Person-Centered Care Coalition listserv with 100s of providers and advocate stakeholders.

March 5 and 6, 2014: Erin Pettegrew presented NHQI background during panel session at Respecting Choices conferences. Respecting Choices is an OHCA/LeadingAge collaborative person-centered care group.

June 25, 2014: ODA posted this BIA and the proposed new rules on ODA's website for an online public-comment period that ended on July 13, 2014.

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Business Impact Analysis

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

September 17, 2013: The OHCA suggested the addition of the AHCA Gold, Silver and Bronze awards which are based on quality improvement projects and LeadingAge suggested using the tools from INTERACT. Those suggestions were adopted and included in later framework document drafts. The Academy questioned whether a nursing home's independent project would count under the provision of the law that included a 'health care entity.' ODA later included an independent QAPI project as a result.

JULY 23, 2014: During ODA's online public-comment period (June 25 to July 13), ODA received 2 comments. ODA has compiled the public comments below along with ODA's responses to those comments.

CHAPTER 173-60 NURSING HOME QUALITY INITIATIVE	
COMMENTS	ODA's RESPONSES
<p>How would these changes affect a vet or his/her family? By reading the material I do not see any reference to VA services. Will these be included in your questions?</p> <p>Susan Schurman 230 W Woodside Terrace Holland, OH. 43528</p> <p>419-868-2826 susan.Schurman@Hotmail.com</p>	<p>The Nursing Home Quality Initiative seeks to improve nursing homes for all residents, including residents who are veterans. In addition to the general improvements the Nursing Home Quality Initiative will make, our long-term care ombudsmen are reaching out to veterans living in nursing homes who are not part of the veteran's long-term care system in partnership with the Ohio Department of Veterans' Services and the Ohio Department of Medicaid. Our ombudsmen are explaining to the veterans their rights and benefits that would be available to them through the veteran's long-term care system, and in cases where the nursing home residents are interested, our ombudsmen are connecting them to the veteran system for next steps.</p>
<p>Hello,</p> <p>The Rules at 173-60-01 through 04, proposed as the <i>Nursing Home Quality Initiative</i>, attempt to create a list of projects – offered for consideration by “sponsoring entities” (presumably outside of nursing homes?) – that would be approved or disapproved by ODA for use by nursing homes. Several thoughts come to mind in this regard:</p> <ul style="list-style-type: none"> Given that most nursing homes are already subject to QAPI through CMS, and must develop and utilize Quality Assurance and Improvement systems as a matter of course anyway, these new rules would create an unnecessary and highly <u>prescriptive</u> layer of quality improvement project work that may not meet nursing homes' specific needs. If the prescriptive nature of an “approved list” 	<p>When the Ohio General Assembly enacted House Bill 59 with its mandate to create the Nursing Home Quality Initiative (NHQI), it inherently created a new quality-improvement program for Ohio's nursing homes in addition to The federal Affordable Care Act's QAPI and any other pre-existing programs. The General Assembly made several changes to licensure including the elimination of overhead paging, previously an optional quality incentive formula measure, and requiring quality improvement projects approved by the ODA. While QAPI, once promulgated by CMS, may allow nursing homes to implement projects of their own choosing, ODA's rules would also require the nursing homes to choose from a list of approved projects so that ODA can assure that NHQI improves the quality of nursing homes statewide. If a nursing home chooses to kill two birds with one stone, it is free to choose an ODA-approved quality improvement project for the NHQI that would</p>

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Business Impact Analysis

CHAPTER 173-60 NURSING HOME QUALITY INITIATIVE	
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<p>through the Ohio Long-Term Care Quality Initiative does remain, there is also likely to be a limited number of relevant project choices (for example, if there are projects around eliminating overhead paging, and the home already doesn't do overhead paging).</p> <ul style="list-style-type: none"> Not to mention, a limited prescriptive list has the potential to stifle the very thing that QAPI promotes – self assessment of current environment and innovation to make quality changes. It would make more sense to allow each nursing home to identify their <u>own</u> individualized quality improvement projects so that the two quality initiatives (CMS and ODA) dovetail. Each nursing home's project could still be subject to Department approval and oversight, but would be more relevant to that nursing home's situation. <p>Sincerely,</p> <p>Diana M. Grover Director of Quality Improvement & Corporate Compliance Life Enriching Communities Twin Towers Senior Living 5343 Hamilton Avenue Cincinnati, OH 45224 Direct: (513) 853-2094 Diana.Grover@lec.org</p>	<p>also satisfy its project for QAPI. Of course, a nursing home is also free to go the extra mile by choosing an ODA-approved quality improvement project for the NHQI and to seek further improvements by implementing another project for QAPI.</p>

9. 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 is used to develop the quality-improvement projects that ODA approves for NHQI. For example, the Ohio Bureau of Workers' Compensation supplied ODA with statistics to document the prevalence of back injuries in long-term care settings. Those statistics are the basis for ODA to develop a quality-incentive project to reduce back injuries in long-term care settings.

By contrast, scientific data was not used to develop proposed new Chapter 173-60 of the Administrative Code.

10. 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?

ODA's goal is to implement the legislation, not to consider alternative regulations.

Business Impact Analysis

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

ODA's goal is to implement the legislation.

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

Section 173.60 of the Revised Code authorized only ODA to adopt rules to implement that section of the Revised Code into the Administrative Code.

- 13. 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.**

ODA publishes all its rules in its online rules library so that nursing homes and other providers may have quick, reliable access to the laws that regulate them.
<http://aging.ohio.gov/information/rules/default.aspx>

Additionally, ODA publishes a helpful website for the Ohio Long-Term Care Quality Initiative. <http://aging.ohio.gov/ltcquality/>

Through the website for the Ohio Long-Term Care Quality Initiative, ODA also publishes a link that presents "technical assistance recourses to assist in meeting quality incentive goals. The link leads to this crosswalk:¹
http://www.ohiokepro.com/shopping/pdfs/Qlccrosswalk_508.pdf.

ODA will provide assistance to special focus facilities to help them avoid being terminated by the Ohio Dept. of Medicaid. (Cf., Section 5165.771 of the Revised Code.)

Finally, nursing homes may contact ODA at any time with questions about the rules or NHQI.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**

All of Ohio's nursing homes.

¹ Ohio Long-Term Care Quality Initiative. "Technical Assistance." From <http://aging.ohio.gov/ltcquality/>, as viewed on February 26, 2014.

Business Impact Analysis

- b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Fees: Sponsors of some quality improvement projects may charge nursing homes fees for participating in their projects.

Administrative Time: Another adverse impact is the administrative time necessary to implement a project.

Return on Investment: Some quality initiatives reduce a nursing home's expenses and are, therefore, not adverse.

- c. **Quantify the expected adverse impact from the regulation.**

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.

Fees: As previously mentioned, one adverse impact is the cost charged by the agency that sponsors a quality improvement project. The cost may vary from project to project. To avoid high fees, a nursing home may choose from less-expensive projects. The following examples illustrate the cost parameters:

- At the high end of the fee spectrum is the AHCA Quality Awards Project. It is the most expensive of ODA's currently-approved quality-improvement projects. Its application fees range from \$425 to \$1,100.
- At the low end of the fee spectrum are the free projects. One free project is offered by the Quality Care Collaborative. The project offers:
 - Free enrollment.
 - Free access to all printed materials.
 - Free technical assistance/consultations.
 - Free continuing education credits (when available).
 - Free attendance at webinars.
 - Free attendance at in-person events (no reimbursement for mileage, meals, or other travel costs).
- Also at the low end of the fee spectrum is a project that ODA and the Ohio Bureau of Workers' Compensation are developing. The project will reduce back injuries in nursing homes. It will be free to nursing homes that want to participate.

Business Impact Analysis

Administrative Time: Another adverse impact is the administrative time necessary to implement a project. That may involve staff training, the redevelopment of policies and employee manual, and the cost of hiring consultants or trainers. The amount of administrative time would vary from project to project depending on the degree of change required in a given nursing home to achieve the goals of the project. A higher-quality nursing home may require less administrative time to reach goals. As a result, the higher-quality nursing home should experience lower administrative costs with the implementation of the quality-improvement projects.

Return on Investment: Some quality initiatives reduce a nursing home's expenses and are, therefore, not adverse. A lower-quality nursing home is likely to see a greater return on investment from implementing a quality-improvement project than would a higher-quality nursing home that has less room for improvement.

ODA has listed examples below of quality-improvement projects that would reduce nursing home operational costs:

Example 1: A quality-initiative project to have consistent assignments reduces staff burnout and increases staff retention. As follows:²

Consistent assignments allow staff to get to know the residents, their wants and needs and preferences for daily routines. This allows staff to more easily plan their workload and schedule during their shift and anticipate the residents' needs.

Consistent assignments also allow staff to get to know the usual condition or status of the residents. This can help staff to pick up on subtle changes in a resident's condition before a crisis occurs, reducing the chance that a change in resident condition can occur without the staff's knowledge.

Many nursing homes use the practice of rotating assignments, citing issues of fairness and preventing burnout ("[A Case for Consistent Assignment](#)," Farrell et al, Provider magazine). While burnout is an important consideration, the cause of burnout must be understood if it is to be addressed. According to Dr. Bill Thomas, "The true cause of burnout is the deadening effect of closing one's emotions to people who are in obvious need of a human connection." ("What Are Old People For? How Elders Will Save The World" William H. Thomas, Vanderwyk & Burnham, 2004). When staff assignments are rotated, it is difficult for them to have a "set routine" for individual residents. The workflow changes with each new assignment. Consequently, rotated staff try to get through basic care and compliance with facility procedures for documentation, and there is often not enough time in a shift to make a "human connection" with the residents. This can lead to burnout, which can further lead to staff turnover, increased tardiness and call-offs, low staff morale, etc.

A high degree of consistent staff assignment is associated with "lower citations on quality of life deficiency citations (resident), quality of life deficiency citations

² Ohio Long-Term Care Quality Initiative. "Relative Advantage." From <http://aging.ohio.gov/ltcquality/nfs/staffing/default.aspx#measure1>, as viewed on February 26, 2014.

Business Impact Analysis

(staffing), quality of life deficiency citations (facility) and quality of care deficiency citations.") [The Influence of Consistent Assignment on Nursing Home Deficiency Citations](#), Nicholas G. Castle, PhD, The Gerontologist, November 2011)

Example 2: ODA is presently developing a quality-initiative project to reduce back injuries in the long-term care setting. Most back injuries in Ohio result from lifting human beings, particularly in the long-term care setting. ODA's project will offer measure to assist consumers that do not result in back injuries. The return on investment for a nursing home will be a reduction in claims to the Bureau of Workers' Compensation and longevity in the nursing home's workforce (*i.e.*, a decreased turnover rate).

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

Improving the conditions for consumers in long-term settings is one of ODA's primary missions. The NHQI's rules would achieve this mission. Because the ODA-approved quality-initiative projects would create a return on investment for nursing homes, there is actually a negative "adverse" impact (*i.e.*, a positive impact) for the nursing homes that choose to increase their quality through NHQI.

Regulatory Flexibility

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

ODA has already developed a list of ODA-approved projects so that nursing homes may comply with the rules once they are adopted, even if they are involved in a quality improvement project before the rules take effect.

17. 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?

If certain nursing homes do not participate in ODA-approved quality improvement projects, no amount of reporting errors will allow ODA to waive penalties that ODH surveyors may issue the non-compliant nursing homes.

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

ODA does not regulate a nursing home differently depending upon the size of its workforce. For the assistance that ODA offers all nursing homes, please see #13 of this BIA.

173-60-01

Introduction and definition.

(A) Beginning on July 1, 2013, division (B) of section 3721.072 of the Revised Code requires every nursing home to participate in a quality improvement project at least once every two years. Pursuant to Section 173.60 of the Revised Code, the Ohio department of aging (ODA) has adopted Chapter 173-60 of the Administrative Code to establish the criteria for becoming an ODA-approved quality improvement project, the approval and rescission process for quality improvement projects, the publication of quality improvement projects on the "Ohio Long-Term Care Quality Initiative" website, and the required use of ODA's electronic system for submitting evidence of project participation.

(B) Definition for Chapter 173-60 of the Administrative Code: "nursing home" has the same meaning as in section 3721.01 of the Revised Code

173-60-02

Quality improvement projects: criteria for ODA approval.

To be included in ODA's list of approved quality improvement projects, the project shall meet the following criteria:

(A) The project shall improve the quality of a nursing home.

(B) The project shall have elements that include a plan, action aimed at improving quality, evaluation of the action, and new action resulting from the evaluation.

173-60-03

Quality improvement projects: approval and rescission processes.

(A) Approval:

(1) An entity that sponsors a quality improvement project may propose that ODA approve its project by sending a description of the project to the email inbox that ODA provides on the "Ohio Long-Term Care Quality Initiative" website.

(2) In the description, the sponsoring entity shall include the following information:

(a) The project's name.

(b) The project's focus and expected quality improvement.

(c) The project's dates of availability for nursing homes.

(d) The contact information for the project's sponsoring entity.

(e) The expected activities the nursing home would undertake as part of the quality improvement project.

(f) The quality improvements that the sponsoring entity predicts nursing homes would experience if they participate in its project.

(g) The evidence that a participating nursing home would provide to the Ohio department of health to demonstrate participation.

(3) ODA shall deny a proposed project if the email in paragraph (A)(1) of this rule does not contain all the information required under paragraph (A)(2) of this rule.

(4) ODA, in consultation with the state long-term care ombudsman, shall review a proposed project, then decide whether to approve or deny the project.

(B) Rescission: If a quality-improvement project no longer meets the criteria in rule 173-60-02 of the Administrative Code, ODA will remove it from the "Ohio Long-Term Care Quality Initiative" website.

173-60-04

Quality improvement projects: online publication of approved projects.

On the "Ohio Long-Term Care Quality Initiative" website, ODA shall list the following:

(A) Each quality improvement project that it has approved.

(B) A description of the evidence that participating nursing homes shall produce for the Ohio department of health surveyors to demonstrate compliance.