Ohio Department of Aging

John Kasich, Governor
Bonnie K. Burman, Sc.D., Director

MEMORANDUM of RESPONSE

LONG-TERM CARE CONSUMER GUIDE

To: Mark Hamlin, Director of Regulatory Policy, CSIO
Sydney King, Regulatory Policy Advocate, CSIO

From: Tom Simmons, Policy Development Manager

Date: September 03, 2015, *Revised* October 20, 2015.

Thank you for reviewing ODA's proposals for Chapter 173-45 of the Administrative Code. Because CSIO is recommending that ODA proceed without any further amendments, ODA will file the rules with JCARR to begin the legislature's portion of the rule-review process.

On October 20, 2015, ODA refiled rules 173-45-05, 173-45-07, and 173-45-10 of the Administrative Code.

For rule 173-45-05 of the Administrative Code, ODA proposed the following changes to the previous rule filing:

- Replace "criteria" in paragraph (A) of the rule with "requirements."
- No longer replace paragraph (B)(2) of the rule with paragraph (C). Instead, paragraph (B)(2) would say that the Guide will publish the quality measures described in rule 173-45-07 *or an electronic link to the CMS website where the Guide's viewers may access the quality measures.*

For rule 173-45-07 of the Administrative Code, ODA proposed the following changes to the previous rule filing:

- Insert a new paragraph that says the Guide shall publish CMS's quality measures *or an electronic link the CMS website where the Guide's viewers may access the quality measures.*
- Delete all paragraphs because the ability to provide a link to the CMS website eliminates the need for the other paragraphs.

For rule 173-45-10 of the Administrative Code, ODA proposed the following changes to the previous rule filing:

- Discontinue proposing to insert “that is” into the 3 definitions.
- Delete the unnecessary use of “required” before “under section 173.47 of the Revised Code.” In page (A)(1) of the rule.
- In paragraph (B)(2) of the rule, insert “do the following” after “shall.”
- Spell out the numbers in paragraph (B)(2)(a) of the rule to comply with LSC’s Rule Drafting Manual (2006).
- Delete the unnecessary use of “or vice versa” in paragraph (D) of the rule.
- Eliminate ODA’s previous plans to add “ODA may” before the first words in paragraphs (D)(1), (D)(2), and (D)(3) of the rule.
- Eliminate ODA’s plan to insert new paragraph (G) of the rule. This paragraph would have required supplying ODA with residents’ contact information to facilitate surveying each resident.

The amendments made in the refiling would not affect the adverse impact of the rule package.

*** DRAFT - NOT YET FILED ***

173-45-05 **Display of comparative information following the execution of a search query.**

(A) Following a search query for long-term care providers, the guide shall present a list of all providers that meet the ~~criteria~~ requirements specified in the search.

(B) For each provider listed, the guide shall present all comparative measures, electronic links to definitions and descriptions of the measures, and ~~to~~ further detailed information about the ~~measure~~ measures, to the extent ~~it~~ the information is available to ODA. For each provider, the guide shall include the following information:

(1) The aggregate responses made by a facility's residents/consumers or their family members to all measures of customer satisfaction~~;~~.

(2) In the case of nursing facilities, the ~~facility's scores on the~~ quality measures described in rule 173-45-07 of the Administrative Code or an electronic link to the CMS website where the guide's viewers may access the quality measures~~;~~.

(3) The date of the facility's most recent ODH survey, if applicable~~;~~.

(4) The survey data provided pursuant to rule 173-45-08 of the Administrative Code~~;~~.

(5) An electronic link for each provider on the list allowing the public to gain access to information on the provider maintained in accordance with rule 173-45-06 of the Administrative Code~~; and~~,.

(6) Other comparative measures derived from data specified in Chapter 173-45 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates: 09/03/2015

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.49; 42 USC 1396a(a)(9)(D)
Rule Amplifies:	173.46; 42 USC 1396a(a)(9)(D)
Prior Effective Dates:	173-45-06: 01/21/2001, 09/21/2005. 173-45-05: 09/07/2006, 08/30/2010

*** DRAFT - NOT YET FILED ***

173-45-07 **Quality measures for nursing facilities.**

For each nursing facility for which data is available, ODA shall include in the guide the nursing facility's scores on each quality measure, as calculated by CMS, and the statewide average score on each quality measure, as calculated by CMS; or, ODA shall present an electronic link where the guide's users may access the quality measures.

~~(A) Definitions: ODA shall define each quality measure in the guide and indicate which quality measures are risk adjusted and which quality measures constitute sentinel health events.~~

~~(B) Quality measures: For each nursing facility for which data is available, ODA shall include in the guide the nursing facility's scores on each quality measure, as calculated by CMS, and the statewide average score on each quality measure, as calculated by CMS. ODA shall present the scores as percentages. This allows the public to compare scores between facilities and to statewide averages.~~

~~(C) Disclaimers: ODA shall include in the guide a disclaimer indicating that lower scores may not indicate that a nursing facility provides inadequate care. A nursing facility's scores on the quality measures serve as a flag to prompt further inquiry about the care and services the nursing facility provides. Therefore ODA shall also include in the guide an automatic link to the nursing facility's related survey findings and to a list of issues to consider when choosing a nursing facility.~~

~~(D) Updates: ODA shall update quarterly the quality measure data displayed in the guide by using the most recent CMS data.~~

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*** DRAFT - NOT YET FILED ***

173-45-10 **Consumer satisfaction surveys.**

(A) Definitions for this rule:

(1) "Consumer satisfaction survey" means the customer satisfaction survey ~~required~~ under section 173.47 of the Revised Code.

(2) "Domain" means a subset of a survey question identified by the survey administrator as an area of interest to long-term care facility consumers.

(3) "Survey administrator" means a designee of ODA responsible for implementing a consumer satisfaction survey.

(B) Survey information: The guide shall include the following information that is derived each year from an annual consumer satisfaction survey of each long-term care facility conducted by ODA or a survey administrator pursuant to section 173.47 of the Revised Code:

(1) A description of the survey and of the calculation methods used~~;~~.

(2) Item scores for each facility, which are calculated by averaging the numerical response for each item on all returned surveys pertaining to a particular facility. Each survey administrator shall do the following:

(a) Determine an item score by assigning a number in the range of ~~0~~ zero to ~~100~~ one hundred~~;~~.

(b) Exclude a response from the calculation of an item score whenever the respondent did not respond to an item or when the respondent believes the item is not applicable, which is indicated by responses such as "I don't know" or "This does not apply to me"~~; and,~~.

(c) Exclude a returned survey if fewer than ten per cent of the survey items are completed or if the survey was incomplete due to a resident's inability to respond to the survey questions.~~.~~

(3) Statewide item scores for all items of the survey, calculated by averaging all item scores for all facilities for which enough surveys were returned to be within a ten per cent margin of error~~;~~.

(4) Domain scores for each facility, which are calculated by averaging the facility item scores in a domain for all returned surveys ~~with responses to~~ on which the consumer omitted ~~at least all but~~ no more than two items in that domain~~;~~.

(5) Statewide domain scores, which are calculated as the average of all facility domain scores~~;~~.

(6) Facility response rate for a satisfaction survey of a sample of consumers conducted by mail, which is calculated by dividing the number of surveys returned by the number of surveys issued to consumers.

(a) The number of surveys issued to facility consumers should reflect both of the following:

(i) A generally accepted response rate for similar surveys~~; and,~~.

(ii) The most recent available estimate of the occupancy of that facility.

(b) A survey audit form will be used to confirm the occupancy of a facility and the number of surveys that were distributed to the consumers of that facility.

(7) A facility response rate for a satisfaction survey of a whole population of a facility's consumers is calculated by dividing the number of surveys returned by the number of consumers surveyed.

(8) A statewide response rate, which is calculated as the average of all facility response rates~~;~~.

(9) An overall facility satisfaction score, which is calculated by averaging all item scores on all returned surveys pertaining to a particular facility. If the survey administrator determines that there are not enough returned surveys from that facility to be within a ten per cent margin of error, then no overall satisfaction survey score will be displayed~~;~~.

(10) A statewide satisfaction score, which is calculated by averaging all overall facility satisfaction scores for facilities for which enough surveys were returned to be within a ten per cent margin of error~~;~~.

(11) The total number of surveys returned statewide~~;~~.

(12) Statewide high and low item scores, which are obtained by identifying the highest and lowest item score among all facilities that have enough returned surveys to be within a ten per cent margin of error~~; and,~~.

(13) Statewide high and low domain scores, which are obtained by identifying the highest and lowest domain score among all facilities that have enough returned surveys to be within a ten per cent margin of error.

(C) Confidentiality: To protect the privacy of the survey's respondents, the long-term care consumer guide shall not report the results from any facility for which no more than two surveys were returned.

(D) Invalid surveys: An invalid survey includes a survey that is completed by a person other than a consumer (e.g., completed by a member of the facility's staff) or involves surveying the wrong population (e.g., surveying the resident instead of the family ~~or vice versa~~). If ODA's review of any survey indicates that the survey is invalid, ODA may take one or more of the following actions:

(1) Remove invalid scores from the calculation of the overall satisfaction scores~~;~~.

(2) Remove the facility's scores from the long-term care consumer guide and any published reports of the survey results~~; or,~~.

(3) Refer the facility with invalid scores to the appropriate investigatory agency.

(E) Margin of error: The number of completed surveys considered necessary for a facility to not exceed a ten per cent margin of error is based on the size of the facility and shall be governed by Table 1 to this rule.

Table 1

NUMBER OF RESIDENTS OF A FACILITY	NUMBER OF RESIDENT SURVEYS NEEDED TO NOT EXCEED A 10% MARGIN OF ERROR
3-5	All
6-10	5
11-12	6
13	7

14-15	8
16-18	10
19-23	11
24	12
25-26	13
27-28	14
29-31	15
32-63	16
34-35	17
36-37	18
38-45	19
46	20
47-55	21
56	22
57-67	23
68-80	24
81-86	25
87-91	26
92-111	27
112-134	28
135-155	29
156-177	30
178-238	31
239-312	32
313 or more	33

(F) Quality assurance: Any survey administrator conducting a consumer satisfaction survey on behalf of ODA shall take quality-assurance measures such as inter-rater reliability testing.

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