

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Aging

Package Title: Long-Term Care Consumer Guide Fees

Rule Number(s): 173-45-09

Date: March 30, 2016, Revised April 12, 2016

Rule Types:

☒ **5-Year Review:** 173-45-09

☐ **Rescinded:** None

☐ **New:** None

☒ **Amended:** 173-45-09

☐ **No change:** None

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.

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Regulatory Intent

1. Please briefly describe the regulations in plain language.

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

The Ohio Department of Aging (ODA) publishes the Long-Term Care Consumer Guide (“Guide”) on www.ltc.ohio.gov and the Guide is available to the public at no cost.

The goal of the Guide is to provide timely, comparative information about Ohio’s nursing facilities, residential care facilities, and residential facilities that the Dept. of Mental Health regulates. The Guide provides information on each facility’s inspection report from the Ohio Department of Health along with statewide and district averages for comparison. The Guide provides consumer-satisfaction information, which is based on surveys of families and residents of nursing facilities and residents of residential care facilities. Additionally, nursing facilities can add information to the Guide about their specialized services, policies, staffing levels, quality, and bed capacities.

Two beneficiaries of the Guide are:

1. The public benefits from the Guide because any Ohioan may use it as an unbiased resource when shopping for nursing facilities and residential care facilities. Ohioans want to live in facilities that are best-suited to meet their healthcare needs or the healthcare needs of their loved ones.
2. The nursing facilities and residential care facilities listed in the Guide benefit from having their facilities published in the Guide, which is the state’s only one-stop, public, searchable database of such facilities. The Guide provides facilities with opportunities to highlight their specialized services, policies, staffing levels, quality, and bed capacities. The Guide is sort of a “matchmaker.” It helps consumers with special healthcare needs who are shopping for a nursing home to choose a facility based on the knowledge that some facilities offer specialized services that correspond to their special healthcare needs.

In 2000, House Bill 403 (123rd General Assembly) required ODA to adopt rules to implement the Guide. Today, those rules comprise OAC Chapter 173-45.

[Am. Sub. H.B. No. 64](#) (131st General Assembly) increased the fee for residential care facilities from \$300 per year to \$350 per year beginning on July 1, 2016. In 2015, ODA implemented the new fees into OAC173-45-09 with a sunrise provision for the \$350 fee.

To comply with 5-year review requirements, ODA reviewed OAC173-45-09 and proposes to make the following amendments:

- Correct the spelling of “residential.”
- Delete the language about fees before July 1, 2016 because the language will have sunset before the proposed amendment to delete can take effect.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

ORC §§ [173.01](#), [173.02](#), and [173.49](#).

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.

OAC Chapter 173-45 implements *federal* law.¹ OAC173-45-09, however, only implement *state* law—specifically ORC § [173.48](#).

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

ORC173-45-09 doesn't implement a federal requirement and doesn't exceed federal requirements.

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)?

There are at least four public purposes for OAC Chapter 173-45:

1. The rules exist to comply with state law.
2. The rules exist to comply with federal law.
3. The rules benefit the public because any Ohioan may use the Guide as an unbiased resource when shopping for nursing facilities and residential care facilities. Ohioans want to live in facilities that are best-suited to meet their healthcare needs or the healthcare needs of their loved ones.
4. The rules benefit nursing facilities and residential care facilities that are listed in the Guide. The Guide is the state's only one-stop, public, searchable database of such facilities. The Guide

¹ §1902(a)(9)(D) of the Social Security Act, as amended by §6102(d)(2)(D) of the Affordable Care Act [or 42 USC 1396a(a)(9)(D)], requires "that the State maintain a consumer-oriented website providing useful information to consumers regarding all skilled nursing facilities and all nursing facilities in the State, including for each facility, Form 2567 state inspection reports (or a successor form), complaint investigation reports, the facility's plan of correction, and such other information that the State or the Secretary considers useful in assisting the public to assess the quality of long term care options and the quality of care provided by individual facilities." House Bill 403 (123rd General Assembly) required ODA to adopt rules to implement the Guide over a decade before the Affordable Care Act (2000).

provides facilities with opportunities to highlight their specialized services, policies, staffing levels, quality, and bed capacities. The Guide is sort of a “matchmaker.” Merely being listed in the Guide could help consumers and facilities, because the Guide helps consumers choose facilities. Furthermore, because the Guide lists each facility’s specialized services, it helps consumers with special healthcare needs who are shopping for a nursing home to choose a facility based on the knowledge that some facilities offer specialized services that correspond to their special healthcare needs.

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

ODA’s Elder Rights Division monitors nursing homes and residential care facilities for compliance with OAC173-45-09.

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.

On March 18, 2016, ODA emailed Ohio Health Care Association, National church Residences, and Senior Health Sciences to offer an opportunity to provide early input on a variety of rule topics. One of the topics was listed as follows:

Schedule the removal of the language in OAC173-45-09 about Long-Term Care Consumer Guide fees for RCFs that expires on June 30 for July1 and correctly spell “*residential* care facility.”

ODA conducted an online public-comment period from March 31, 2016 to April 10, 2016.

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

No stakeholder contacted on March 18, 2016 offered early input on OAC173-45-09.

During the online public-comment period, no person submitted comments to ODA about the proposed amendments to OAC173-45-09.

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?

ODA is not proposing to amend the rules based upon scientific data.

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 did not consider alternative regulations because ORC§173.49 establishes the amount of the fees and requires payment of the fees.

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 did not consider performance-based regulations when considering whether to amend this rule.

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

The Ohio General Assembly authorized no other state agency to adopt rules to implement the Guide. (Cf., Sections 173.44 to 173.49 of the Revised 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 will publish the rules in the Register of Ohio. ORC§[119.037](#) of the Revised Code says publication of a newly-adopted rule in the Register of Ohio "is sufficient to give notice of the content of the document to a person who is subject to or affected by the content."

Additionally, before the rules would take effect, ODA will post them on ODA's [website](#). ODA also sends an email to subscribers of our rule-notification service to feature the rules.

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 facilities and residential care facilities are affected by the Guide and by the chapter.

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

OAC173-45-09 implements the fees authorized by ORC§173.48.

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.

Nursing facilities must to pay \$650/year to be published in the Guide.

Currently, residential care facilities must pay \$300/year to be in the Guide. Pursuant to HB64, beginning on July 1, 2016, residential care facilities must pay \$350 to be published in the Guide.

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

As stated in ODA's response to question #1, it is dangerous to mislead the public into believing that the Guide, a State of Ohio publication, indicates that a nursing home offers specialized services, if the nursing home does not offer the specialized services. Thus, it is important for ODA to establish standards for the Guide to ensure that the Guide only indicates that a nursing home offers a specialized service if the nursing home does, in fact, offer that service. Ohioans search through the Guide to find nursing facilities that specialize in the services they, or their loved ones, need. Ensuring the veracity of this Guide may prevent a consumer with a specific healthcare need from entering a nursing home that is willing to serve the consumer, but does offer a specialized service that corresponds to their specific healthcare need.

Regulatory Flexibility

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

The chapter treats all providers the same, regardless of their size.

Virtually all nursing facilities and residential care facilities are small businesses.

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?

ORC§[119.14](#) establishes the exemption for small businesses from penalties for first-time paperwork violations.

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

ODA does not offer different discriminate between responsible parties, applicants, or employees based upon the size of the business or organization. In fact, the majority of businesses that this rule regulates are small businesses according to ORC§[119.14](#).

ODA maintains an [online rules library](#) to assist all providers (and the general public) to find the rules that regulate them. Providers (and the general public) may access the online library 24 hours per day, 365 days per year.

ODA is available to help facilities with their questions about the guide. Any facility may click the “contact consumer guide” button on the Guide’s [website](#).

Additionally, any person may contact [Tom Simmons](#), ODA’ policy development manager, with questions about the rules.

173-45-09

Fees.

(A) Consumer guide fee:

(1) For the publication of the guide, ODA shall collect the following annual consumer guide fees from facilities:

(a) From nursing facilities, ODA shall collect six hundred fifty dollars.

(b) From ~~resiential~~ residential care facilities, ~~ODA shall collect three hundred dollars until June 30, 2016. Beginning July 1, 2016,~~ ODA shall collect three hundred fifty dollars.

The proposed amendment would take effect after July 1, 2016.

(2) Each facility shall pay the consumer guide fee in full to ODA in fewer than thirty days after the date on which ODA mailed the billing statement to the facility.

(3) ODA shall certify to the Ohio attorney general the amount of any payment it does not receive from a facility in fewer than forty-five days after the date on which ODA mailed the billing statement to the facility.

(B) Billing statement: One time, every year, ODA shall bill each facility for the consumer guide fee. In each billing statement, ODA shall include the following:

(1) A description of the time period covered by the billing statement.

(2) A statement indicating that the facility shall pay ODA in fewer than thirty days after the date on which ODA mailed the billing statement to the facility.

(3) A statement indicating that the facility shall make the payment in the form of a check or money order payable to the "Long-Term Care Consumer Guide Fund".

(4) The address to which the facility shall mail the payment.

(5) A statement indicating that ODA may certify to the office of the attorney general for collection any fee that is not paid in fewer than forty-five days after the date on which ODA mailed the billing statement to the facility.