

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** OHIO DEPARTMENT OF AGING

**Package Title:** STATE LONG-TERM CARE OMBUDSMAN PROGRAM: BED FEE RULE

**Rule Number:** OAC173-14-27 (which will change to OAC173-14-28)

**Date:** March 24, 2017

**Rule Types:**

- ☒ 5-Year Review
- ☒ Rescinded
- ☒ New
- ☐ Amended
- ☐ No change

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 regulations in plain language.

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

#### OVERVIEW

The rule implements the bed fee requirements of ORC§173.26. In doing so, it establishes deadlines for nursing homes and residential care facilities (RCFs) to pay an annual \$6 per bed fee ("bed fee"). The state treasurer deposits bed fees into the State Long-Term Care Ombudsman Program Fund which ORC§173.26 dedicates to paying the operating costs for Ohio's regional long-term care ombudsman programs.

#### SPECIFIC AMENDMENTS

ODA proposes to change the rule number from 173-14-27 to 173-14-28. Because the electronic rule filing (ERF) system does not presently allow state agencies to amend rule numbers, ODA must rescind the current rule and adopt a new rule under the new number. (ODA has attached to this BIA an amended version of the rule to make it easier to see proposed changes. ODA has also attached the rule to rescind and the proposed new rule.)

ODA proposes for the new rule (OAC173-14-28), in comparison to the current rule it would replace (OAC173-14-27), to have the following differences:

- The new rule would no longer require nursing homes and RCFs to pay the long-term care ombudsman because such facilities must pay the state treasurer.

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- ORC§[173.26](#) requires ODA to establish the deadlines for nursing homes and RCFs to pay the annual \$6 per bed fee ("bed fee"). The section requires ODA to establish a deadline for paying the bed fee on time. The section requires ODA to double the fee if not paid before 90 days after deadline.

Part of establishing the deadline is determining when to certify (i.e., report) to the Ohio Attorney General that his office must collect an overdue bed fee obligation. The current rule requires ODA to certify for collection from the Ohio Attorney General bed-fee obligations unpaid 45 days after the invoice date. In the new rule, ODA proposes to extend the time between the invoice date and the day it certifies from 45 after the deadline (i.e., 75 days after the invoice date) to 120 days after the invoice date.

- The new rule would have basic language improvements such as the following:
  - Consistently use *invoice*, not *invoice* and *billing statement*.
  - In (C), replace *a required payment* with *the bed fee*. Also, at the end of the sentence, replace *payment* with *amount*.
  - In (D), replace *payment* with *bed fee*.
  - Delete last 3 paragraphs of (D) for redundancy. ORC§[131.02](#) covers these topics.

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

ORC§§ [173.01](#), [173.02](#), and [173.26](#).

## 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.*

- §305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016 ("the Act"), authorizes ODA, as the state's designated sole state agency (*cf.*, ORC§173.01), to adopt policies to be responsible for "policy development ... of all State activities related to the objective of [the] Act."
- §712(a)(5)(D) of the Act requires ODA to adopt rules to implement the state's policies for the state long-term care ombudsman program.
- 45 CFR 1321.11 authorizes ODA to adopt policies to implement the provisions of the Older Americans Act.
- 45 CFR 1324.15 requires ODA to adopt the state's policies for the Ombudsman program.

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

The rules don't exceed the requirements of the Ohio Revised Code or the Older Americans Act.

## 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)?

The rule implements the bed fee requirements of ORC§173.26. In doing so, it establishes deadlines for nursing homes and RCFs to pay the bed fee. No other rule or statute establishes the deadlines.

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

The SLTCO office will monitor the receipt of bed fees from nursing homes and RCFs.

### **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 23, 2017, ODA emailed Academy of Senior Health Sciences, Inc., LeadingAge Ohio, National Church Residences, Ohio Assisted Living Association, and Ohio Health Care Association asking for their thoughts on the following.

ODA hopes to start an online public-comment period tomorrow for amendments to ODA's bed fee rule. (OAC[173-14-27](#))

ODA's proposals for amending the rule:

- Delete requirement for nursing homes and RCFs to pay the **long-term care ombudsman** because such facilities must pay the **state treasurer**.
- Change date on which ODA certifies bed fees not received to the Attorney General from **45 days** after the payment deadline (i.e., 75 days after the invoice date) to **120 days** after the invoice date.
- Make basic language improvements such as the following:
  - Consistently use *invoice*, not *invoice and billing statement*.
  - In (C), replace *a required payment* with *the bed fee*. Also, at the end of the sentence, replace *payment* with *amount*.
  - In (D), replace *payment* with *bed fee*.
  - Delete last 3 paragraphs of (D) for redundancy. ORC§[131.02](#) covers these topics.

Please let us know your thoughts on these proposals. Please also let us know if you recommend amending the rule in ways we haven't mentioned.

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

In response to the March 23 emails, ODA received the following emails:

- Chris Murray of the Academy of Senior Health Sciences, Inc. said "I don't see a problem with these changes and appreciate the extended time for providers to pay."
- Jean Thompson of the Ohio Assisted Living Association said, "The changes seem beneficial...for example, the move from [45] to 120 days for AG notification."

**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 rule 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 formally consider an alternative.

**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.*

The rule implements the bed fee required by ORC§173.26 and used for the State Long-Term Care Ombudsman Program. The program advocates for people receiving long-term care in nursing homes, RCFs, and in their own homes. Advocacy and collecting fees to support an advocacy program are not topics that easily translate to performance-based regulations.

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

ORC§173.01 says ODA is “the sole state agency to administer funds granted by the federal government under the [the Act].” Additionally, ODA is the sole state agency to regulate the Office of the State-Long-Term Care Ombudsman. Therefore, no other state agency has authorization to adopt such a regulation.

**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.**

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;**

This rule impacts Ohio’s nursing homes and RCFs. Presently, Ohio has almost 1,000 nursing homes<sup>1</sup> and over 600 RCFs.<sup>2</sup>

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

One adverse impact is the fee itself. ORC§[173.26](#) requires nursing homes and RCFs to pay an annual \$6 per bed fee.

Another adverse impact is the doubling of the bed fees if not paid before the 90<sup>th</sup> day after the payment deadline (i.e., 120 days after the invoice date).

Another adverse impact is the effect of collections activities required by ORC§[131.02](#). The current rule requires ODA to certify for collection from the Ohio Attorney General bed-fee obligations unpaid 45 days after the payment deadline (i.e., 75 days after the invoice date). ODA proposes to extend the time between the invoice date and the day it certifies to 120 days after the invoice date.

**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.*

The adverse impact of the annual \$6 per bed fee is simply \$6 per bed. The table below shows how much the Treasurer of Ohio has deposited into the State Long-Term Care Ombudsman Program Fund in recent fiscal years.<sup>3</sup>

FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual
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<sup>1</sup> Long-Term Care Consumer Guide, OHIO DEPT. OF AGING, <http://ltc.ohio.gov/NursingHomes.aspx>, (Last visited on Mar. 24, 2017).

<sup>2</sup> Long-Term Care Consumer Guide, OHIO DEPT. OF AGING, <http://ltc.ohio.gov/AssistedLiving.aspx>, (Last visited on Mar. 24, 2017).

<sup>3</sup> Catalog of Budget Line Items, 2016 edition, OHIO LEGISLATIVE SERVICE COMMISSION, 40, <http://www.lsc.ohio.gov/fiscal/cobli/2016/age.pdf> (Last visited on Mar. 24, 2017).

## Business Impact Analysis

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\$852,072	\$830,208	\$939,741	\$907,714	\$823,088
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The adverse impact of missing a deadline may involve financial penalties, including doubling of the fees pursuant to ORC§[173.26](#) and interest assessed by the Ohio Attorney General pursuant to ORC§[131.02](#). Nursing homes and RCFs only incur such penalties if they miss deadlines to pay the annual bed fees. Because ODA proposes to extend the time between the invoice date and the date it certifies an unpaid bed-fee obligation to the Ohio Attorney General for collection from 45 days after the payment deadline (i.e., 75 days after the invoice date) to 120 days after the invoice date, less nursing homes and RCFs are likely to incur as many penalties.

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

The regulatory burden upon nursing homes and RCFs is reasonable because it is required by ORC§173.26 and because it funds the regional long-term care ombudsman program, which investigates and attempts to resolve resident complaints about long-term care in those nursing homes and RCFs.

### **Regulatory Flexibility**

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

This rule treats all nursing homes and RCFs the same regardless of workforce size. Additionally, nursing homes and RCFs are typically small businesses, as defined by ORC§[119.14](#).

**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?**

The state long-term care ombudsman office and regional long-term care ombudsman offices are available to help nursing homes and RCFs with their questions. Additionally, any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about rules.

Plus, ODA maintains an [online rules library](#) to help nursing homes and RCFs find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

173-14-27

**Bed fee collection guidelines.**

- (A) The department of aging shall collect an annual bed fee of six dollars for each bed maintained for resident use by each of the facilities listed in division (A) of section 173.26 of the Revised Code.
- (B) Annually, the department shall provide each of the facilities described in paragraph (A) of this rule with ~~a billing statement~~ an invoice requesting payment of the bed fee. The ~~billing statement~~ invoice shall include all the following information:
- (1) The time period covered by the ~~billing statement~~ invoice;
  - (2) The basis for calculating the amount owed by the facility;
  - (3) The deadline for receipt of payment, which shall be thirty days after the mailing date indicated on the invoice;
  - (4) ~~A statement indicating that payment shall be made in the form of a check or money order made payable to the office of the long-term care ombudsman of the Ohio department of aging~~ The available methods of payment;
  - (5) The address ~~to~~ where ~~the~~ payment shall be ~~sent~~ submitted; ~~and,~~
  - (6) The consequences of non-payment.
- (C) ~~Full payment of the bed fee shall be made to the department within thirty days of the date on which the billing statement was sent to the facility. The department may extend the due date as the department deems appropriate. In accordance with division~~ Division (A) of section 173.26 of the Revised Code; requires a facility that fails, within ninety days after the ~~established~~ deadline for receipt of payment, to pay ~~a required payment~~ the bed fee shall to be assessed at two times the original ~~payment~~ amount.
- (D) ~~In accordance with~~ For purposes of section 131.02 of the Revised Code, the department shall certify to the attorney general ~~the amount of~~ any payment not received by the department within ~~forty-five~~ one hundred and twenty days after the ~~final due~~ mailing date indicated on the invoice.

~~The attorney general shall give immediate notice by mail or otherwise to the indebted party of the nature and amount of the indebtedness.~~

~~The attorney general shall collect the claim or secure a judgment and issue an execution for its collection.~~

~~Each claim shall bear interest, from the day on which the claim became due, at the base rate per annum for advances and discounts to member banks in effect at the federal reserve bank in the second federal reserve district. The attorney general and the department may adjust any claim in such manner as is equitable. They may extend the time of the payment of a claim or judgment for such period of time not to exceed one year as is best for the interests of the state, and they may require and take security for its payment.~~

173-14-28

**Bed fee collection guidelines.**

(A) The department of aging shall collect an annual bed fee of six dollars for each bed maintained for resident use by each of the facilities listed in division (A) of section 173.26 of the Revised Code.

(B) Annually, the department shall provide each of the facilities described in paragraph (A) of this rule with an invoice requesting payment of the bed fee. The invoice shall include all the following information:

(1) The time period covered by the invoice.

(2) The basis for calculating the amount owed by the facility.

(3) The deadline for receipt of payment, which shall be thirty days after the mailing date indicated on the invoice.

(4) The available methods of payment.

(5) The address where payment shall be submitted.

(6) The consequences of non-payment.

(C) Division (A) of section 173.26 of the Revised Code requires a facility that fails, within ninety days after the deadline for receipt of payment, to pay the bed fee to be assessed at two times the original invoiced amount.

(D) For purposes of section 131.02 of the Revised Code, the department shall certify to the attorney general any payment not received by the department within one hundred and twenty days after the mailing date indicated on the invoice.