



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPT. OF AGING

Rule Contact Name and Contact Information: Tom Simmons rules@age.ohio.gov

Regulation/Package Title (a general description of the rule's substantive content):

SENIOR FACILITIES PROGRAM

This rule regulates the application process for the Senior Facilities Program.

Rule Number(s): 173-11-03

Date of Submission for CSI Review: August 24, 2021

Public Comment Period End Date: September 6, 2021 at 11:59PM.

Rule Type/Number of Rules:

☐ New/ 0 rules

☒ Amended/ 1 rule (FYR? ☒)

☐ No Change/ 0 rules (FYR? ☐)

☐ Rescinded/ 0 rules (FYR? ☐)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

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The rule(s):

- ☐ a. Require a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

This rule regulates the application process for the Senior Facilities Program.

In 1978, H.B.1084 (112th G.A.) established the Senior Facilities Program and, in 1980 and 1984, H.B. 827 (113th G.A.) and H.B. 660 (115th G.A.) modified the program. However, since 2001, the General Assembly has stopped funding the program. Additionally, no person or organization has awarded a grant or gift to the program. As a result, it has been dormant since 2001.

In 2013, ODA worked with the Common-Sense Initiative (CSI) to reduce Chapter 173-11 of the Administrative Code to this rule. For more information, please review CSI's recommendation on Nov. 14, 2013.

ODA now proposes to simplify this rule by removing requirements for outdated modes of communication that would be required if the program was funded and an application process was available.

3. Please list the Ohio statutes that authorize the agency, board or commission to adopt the rule(s) and the statutes that amplify that authority.

R.C. §§ [121.07](#), [173.01](#), [173.02](#), and [173.11](#).

4. 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.

This rule does not implement federal requirements.

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

This rule exists to comply with the state laws mentioned in ODA's response to #2, which require ODA to adopt rules necessary on applying to participate in the Senior Facilities Program.

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6. 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)?

This rule exists to comply with the state laws mentioned in ODA's response to #2.

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

NA (The program is dormant.)

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. 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.

ODA's guide [Participating in ODA's Rule Development](#) and [this webpage](#) on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so. As of the date of this BIA, ODA's policy development manager has received no requests to amend this rule since the last time ODA adopted an amendment to it.

On July 12, 2021, ODA sent an email to the following stakeholders to request their recommendations for improving the current version of this rule, including their recommendations for removing any requirements for outdated modes of communication:

- Academy of Senior Health Sciences, Inc.
- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Association of Area Agencies on Aging (O4A).
- Ohio Assisted Living Association.
- Ohio Association of Medical Equipment Suppliers.
- Ohio Association of Senior Centers.
- Ohio Health Care Association.
- Ohio Council for Home Care and Hospice.
- Ohio Jewish Communities.

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- State Long-Term Care Ombudsman.

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

ODA received no recommendations for improving this rule in response to its July 12, 2021 email.

11. 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 this rule based upon scientific data.

12. 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?

The alternative would be to retain language in this rule that would require all applications to be paper applications.

13. 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 regulation for this rule, which establishes an application process.

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

R.C. [§173.11](#) authorizes only ODA to adopt rules for the program. ODA's search of the Administrative Code found that no other state agency had adopted a rule regulating the program.

15. 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 proposed amendment takes effect, ODA will post the amended rule on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rule.

Adverse Impact to Business

16. 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; and

Counties, townships, municipal corporations, existing senior centers, or other local non-profit organizations.
(*cf.*, R.C. [§173.11](#))

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

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If this program becomes funded, counties, townships, municipal corporations, existing senior centers, or other local non-profit organizations who want funds, would need to apply to receive those funds.

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 cost of applying to receive funds cannot be calculated because there is presently no application for such funds. Additionally, the award of funds would offset any costs incurred while applying for those funds.

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

No funds currently exist for this program. If funds become available, counties, townships, municipal corporations, existing senior centers, and local non-profit organizations would not be required to take any action unless they voluntarily decide to apply to ODA to receive funds. Receiving funds through the program would justify any expense involved in applying for those funds.

Regulatory Flexibility

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

This rule treats all providers the same, regardless of their size.

19. 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?

NA (This rule establishes an application process.)

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

ODA is available to help counties, townships, municipal corporations, existing senior centers, or other local non-profit organizations of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about this rule.

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