

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

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**173-45-06.1**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Information on services provided by facilities.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.49**

5. Statute(s) the rule, as filed, amplifies or implements: **173.46**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to adopt this new rule as part of a larger package of rules regarding the Long-Term Care Consumer Guide.

It is dangerous to mislead the public into believing that the Ohio Long-Term Care Consumer Guide, a State of Ohio publication, indicates that a nursing facility offers specialized services if the nursing facility 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 facility offers a specialized service if the nursing facility 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 could prevent a consumer with a specific healthcare need from entering a nursing facility that is willing to serve the consumer, but does offer a specialized service that corresponds to the consumer's specific healthcare need.

The primary rule in this rule package is rule 173-45-06.1 of the Administrative Code.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Proposed new rule 173-3-06.1 of the Administrative Code requires ODA to provide a checklist of boxes for each nursing facility and residential care facility in Ohio to check (or not check) so that the Guide will direct Ohioans who are searching for facilities with certain specializations to facilities that claim to offer those specializations.

ODA is proposing to make the following changes to rule 173-45-06.1 of the Administrative Code:

1. For nursing facilities (but not residential care facilities) ODA would propose the following regarding the checklist of specialized services:
2. Areas of specializations would contain details about what constitutes an area of specialization instead of just a term that represents the specialization without any qualifications. For example, "Bariatric care" in the current rule would be expanded to include detail, as follows: "Bariatric care: A nursing facility may check the 'bariatric care' checkbox if it specializes in bariatric care that includes dietetic and counseling services; equipment, including wheelchairs, beds, commodes, and lifts; exercise and therapy services to treat residents' obesity."
3. Specialized services formerly considered "ventilator care" would be expanded into two categories entitled (1) "respiratory care, including ventilator care" and (2) "respiratory care, not including ventilator care."
4. Two specialized service categories would be removed from the checklist: (1) Formalized wellness programs and (2) pediatric care.
5. For nursing facilities (but not residential care facilities) ODA would propose the following regarding attestation and disclaimer:
6. A requirement would be added for nursing facilities to attest that they offer the

specialized care they claim to offer in the Guide.

7. To any consumer, ombudsman, or surveyor who asks, there would be a requirement for nursing facilities to show documentation to demonstrate how the specific services that it attested that it provides meets the description of the services in the rule. This would be coupled with a statement that ODA may remove the listing of specific services from the nursing facility's listing in the Guide if it does not provide such documentation.

8. A requirement would be added for ODA to publish this disclaimer in the Guide: "This form is intended for consumers, ombudsmen, and other interested persons to use in comparing services offered at Ohio nursing facilities listed on the Ohio Long-Term Care Consumer Guide. The state does not offer any guarantee that the described services are available to residents because they are listed here. Residents and interested persons may use this information to compare facilities' services and capabilities. This information is not intended to take the place of visiting the facility, talking with residents, family members, or meeting one-on-one with facility staff."

9. ODA would make other non-substantive changes, such as replacing the semicolons at the end of paragraphs with periods, referring to items in the checklist as "boxes," referring to the action of indicating specialized services in the checklist as "checking a box," and stating that facilities may check the boxes.

Because ODA's proposed amendments to rule 173-45-06.1 of the Administrative Code would amend over 50% of the rule, ODA is proposing to rescind the current rule and to adopt a new rule of the same number.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the biennial budget that the Ohio General Assembly established for ODA in H.B.153 (129th G.A.) and modified in H.B.487 (129th G.A.) would not be impacted by ODA's proposed amendments to the rule.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

5K90-490-613 Long-Term Care Consumer Guide.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The only existing adverse impact caused by the implementation of rule 173-45-06.1 of the Administrative Code would be the time it takes for a nursing facility to complete a checklist to indicate their areas of specialization. The proposed new language in proposed new version of the rule would add more descriptions to each checkbox item, which should not create a substantial increase in the amount of time necessary for a nursing facility to complete the checklist. ODA is not proposing to change the language for residential care facilities at this time, so the proposed new language would not affect residential care facilities whatsoever.

If a nursing facility had previously used the checklist required by rule 173-45-06.1 of the Administrative Code to indicate that it offered an area of specialization such as traumatic brain injury care, but the kind of care that it would offer a resident does not meet the details in the rule's new language, the change to the rule could create an opportunity loss for the nursing facility because a person who is shopping in the Guide for a nursing facility that specializes in traumatic brain injury care would no longer see that nursing facility listed as specializing in traumatic brain injury care.

However, for a nursing facility that indicates that it offers an area of specialization according to the details listed in the proposed new rule, the facility would find that the Guide helps consumers with specialized needs to choose its facility. It is possible that if many consumers with specialized needs choose facilities that offer corresponding specialized services, the resulting concentration of consumers with specialized needs choosing facilities that offer corresponding specialized services would allow the facilities that offer the specialized services to focus on their areas of expertise. This, in turn, would result in higher rates of consumer satisfaction. This, in turn, would result in higher incentive payments for those nursing facilities.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

As stated in the business impact analysis, the only existing adverse impact caused by the implementation of rule 173-45-06.1 of the Administrative Code would be the time it takes for a nursing facility to complete a checklist to indicate their areas of specialization. The proposed new language in proposed new version of the rule would add more descriptions to each checkbox item, which should not create a substantial increase in the amount of time necessary for a nursing facility to complete the checklist. ODA is not proposing to change the language for residential care facilities at this time, so the proposed new language would not affect residential care facilities whatsoever.

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