



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

## Business Impact Analysis

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

**Rule Contact Name and Contact Information:** Tom Simmons [rules@age.ohio.gov](mailto:rules@age.ohio.gov)

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

### STATE LONG-TERM CARE OMBUDSMAN PROGRAM: BED FEE

This rule implements R.C. §173.26, which requires ODA to adopt a rule to establish deadlines for nursing homes and residential care facilities to pay an annual \$6 per bed fee.

**Rule Number(s):** 173-14-28

**Date of Submission for CSI Review:** September 3, 2021

**Public Comment Period End Date:** September 16, 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☐ Rescinded/ 0 rules (FYR?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?

The rule(s):

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- ☐ 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 implements R.C. [§173.26](#), which requires ODA to adopt a rule to establish deadlines for nursing homes and residential care facilities<sup>1</sup> to pay an annual \$6 per bed fee. The state treasurer deposits bed fees into the State Long-Term Care Ombudsman Program Fund which §173.26 earmarks for the operating costs for Ohio's regional long-term care ombudsman programs.

ODA proposes to amend this rule to give facilities flexibility to pay the bed fee (1) through ODA's online payment portal or (2) by mailing a check or money order to ODA.

ODA also proposes to delete an unnecessary use of the word "written."

#### **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 [173.26](#).

#### **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.*

[42 U.S.C. 3025](#) says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and [42 U.S.C. 3058g](#) requires ODA to establish policies for monitoring regional programs.

Additionally, [45 C.F.R. 1321.11](#) requires ODA to "develop policies governing all aspects of [Older Americans Act] programs" and [45 C.F.R. 1324.15](#) requires ODA to adopt Ohio's policies for the ombudsman program.

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

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<sup>1</sup> In this business impact analysis, "facilities" means "nursing homes and residential care facilities," unless the immediate context clearly indicates a different meaning.

This rule exists to comply with the state laws mentioned in ODA's response to #2, which generally require ODA to adopt rules for the ombudsman program and specifically require ODA to adopt a rule to establish deadlines for paying the bed fee.

**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, which generally require ODA to adopt rules for the ombudsman program and specifically require ODA to adopt a rule to establish deadlines for paying the bed fee.

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

The state long-term care ombudsman (SLTCO) office monitors the receipt of bed fees from facilities.

**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 it was adopted.

On August 4, 2021, ODA emailed the stakeholders listed below to announce plans to indicate in this rule that facilities have flexibility to pay the bed fee (1) through ODA's online payment portal or (2) by mailing a check or money order to ODA. ODA also requested their recommendations for any other improvements to this rule.

- Academy of Senior Health Sciences, Inc.
- LeadingAge Ohio.
- Ohio Assisted Living Association.
- Ohio Health Care Association.

**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 August 4, 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?**

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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?**

R.C. §173.26 requires ODA to adopt a rule to establish deadlines for paying the bed fee. Therefore, ODA did not consider alternatives to adopting this rule.

**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.***

This rule is performance-based in the sense that facilities paying their annual bed fees before the 90<sup>th</sup> day after the deadline will not incur the doubling of the fee pursuant to R.C. §173.26. Likewise, facilities paying their annual bed fees before the 120<sup>th</sup> day after the deadline will not incur the effects of collections activities by the Ohio Attorney General under R.C. §131.02.

As previously stated, ODA proposes to amend this rule to give facilities flexibility to pay the bed fee (1) through ODA's online payment portal or (2) by mailing a check or money order to ODA.

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

R.C. §173.26 authorizes only ODA to adopt a rule to establish deadlines for paying the bed fee. ODA's search of the Administrative Code found that no other state agency had adopted a rule to establish deadlines for paying the bed fee.

**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.**

ODA will email subscribers of our rule-notification service to announce the rule.

R.C. §173.26 establishes the bed fee at \$6 for each licensed/authorized bed in the facility and establishes the rate of payment as annual. This rule reflects this. Therefore, the calculation for the amount of the bed fee is consistent from one facility to the next and an annual fee is predictable from one year to the next.

**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**

R.C. §173.26 requires every nursing home and residential care facility in Ohio to pay the bed fee.

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

One adverse impact is the fee itself. R.C. §173.26 requires facilities to pay an annual \$6 per bed fee.

R.C. §173.26 also requires doubling the bed fee for a facility that does not pay before the 90<sup>th</sup> day after the deadline.

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Another adverse impact is the effect of collections activities by the Ohio Attorney General (*cf.*, R.C. §[131.02](#)) upon a facility that does not pay before the 120<sup>th</sup> day after the deadline.

**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 fee of \$6 per bed is simply \$6 per bed.

The adverse impact of missing a deadline may involve financial penalties, including doubling of the fees pursuant to R.C. §173.26 and interest assessed by the Ohio Attorney General pursuant to R.C. §131.02. Facilities only incur such penalties if they miss deadlines to pay the annual bed fees.

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

The regulatory burden upon facilities is reasonable because it is required by R.C. §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 facilities.

**Regulatory Flexibility**

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

This rule treats all facilities 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?**

R.C. §173.26 requires doubling the bed fee for a facility that does not pay before the 90<sup>th</sup> day after the deadline.

R.C. §131.02 requires the Ohio Attorney General to charge interest upon the unpaid fee of a facility that does not pay before the 120<sup>th</sup> day after the deadline.

**20. 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 facilities with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about this rule.