

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: LONG-TERM CARE CONSUMER GUIDE
5-YEAR RULE REVIEW, IMPLEMENT HB64

Rule Number(s): Chapter 173-45 of the Administrative Code

Date: July 6, 2015, Revised August 18, 2015

Rule Types:

- ☒ **5-Year Review:** Chapter 173-45 of the Administrative Code
- ☒ **New:** 173-45-01
- ☒ **Amended:** 173-45-03, 173-45-04, 173-45-05, 173-45-06, 173-45-06.1, 173-45-06.2, 173-45-07, 173-45-08, 173-45-09, 173-45-10
- ☒ **Rescinded:** 173-45-01
- ☐ **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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

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 facility 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 the Ohio Department of Aging to adopt rules to implement the Guide. Today, those rules comprise Chapter 173-45 of the Administrative Code.

To comply with 5-year review requirements, ODA has reviewed each rule that comprises the chapter and now proposes to make the following amendments:

- [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. ODA proposes to implement the fee increase into the rules.

- ODA proposes to no longer display facility accreditations in the Guide because facilities have not been supplying this information to ODA.
- For uniformity within the chapter, ODA proposes to match the outline of data that a person can query in the Guide (rule 173-45-04) to data that facilities must send to ODA (rule 173-45-06.1).
- To add conditional language to rule 173-45-07 of the Administrative Code so that ODA is only bound to display quality measures in the Guide, *if the Guide displays quality measures*. To date, the Guide does not display such measures.
- ODA proposes to amend rule 173-45-10 of the Administrative Code to require nursing facilities and residential care facilities to disclose resident information to ODA (or ODA's designee) including the name of each resident, whether the resident's status in the facility is short-term or long-term, the resident's room number, and the resident's primary contact person.
- ODA proposes to make other non-substantive improvements to the chapters. One such improvement involves rescinding rule 173-45-01 of the Administrative Code and adopting a new rule of the same number in its place. In the new rule, the definitions are organized alphabetically, but are no longer enumerated.

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

- Section [173.01](#) of the Revised Code gives ODA general authority to adopt rules to “govern the operation of services and facilities for the elderly that are provided, operated, contracted for, or supported by the department.”
- Section [173.02](#) of the Revised Code gives ODA general authority to adopt rules to regulate services provided through programs that it administers, including rules that “develop and strengthen the services available” for Ohio’s aging.
- Section [173.49](#) of the Revised Code gives ODA specific authority to adopt rules to “implement and administer” the Guide.

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.

Section 1902(a)(9)(D) of the Social Security Act, as amended by section 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 the Ohio Department of Aging to adopt rules to implement the Guide over a decade before the Affordable Care Act (2000).)

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

As stated in ODA's response to question #3, Affordable Care Act requires Ohio to "maintain a consumer-oriented website providing useful information to consumers regarding all skilled nursing facilities and all nursing facilities in the State...." The Affordable Care Act, however, does not specifically mandate the system of checking boxes that ODA implemented through rule 173-45-06.1 of the Administrative Code.

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:

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 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 facility 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 providers. Rule 173-45-06.1 of the Administrative Code allows ODA to alter the list of specialized services that the Guide says a nursing facility offers if ODA obtains documentation that shows the current listing in the Guide is incorrect.

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 June 23, ODA distributed an email asking the

Stakeholders:

ODA is required to review its administrative rules before each rule's deadline—which can be no later than five years after ODA last adopted the rules.

[Chapter 173-45 of the Administrative Code](#) regulates the Long-Term Care Consumer Guide. In its review of the chapter's rules, ODA identified a need for the following amendments:

- Incorporate HB64's new rates for RCFs, if the final version of HB64 includes the new rates.
- No longer display facility accreditations in the Consumer Guide because facilities have not been supplying this information.
- Make the outline data that a person can query in the Consumer Guide (rule 173-45-04) match the outline of data that facilities must send to ODA (rule 173-45-06.1).

Please let us know if you have any thoughts on ODA's proposed amendments or if you have other amendments that you would like to recommend for the chapter's rules. If possible, please share your thoughts on these matters with us by Monday, June 29.

Thank you for any time that you can devote to reviewing the rules.

The online public-comment period began on **July 6, 2015** and ended on **July 19, 2015**. ODA initiates its online public-comment periods by sending an email notice to its 1,755 listserv subscribers¹ for such notices.

¹ As of April 27, 2015.

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 June 23 responded to the request for input.

During the public-comment period, ODA received 2 comments from 1 organization:

PUBLIC COMMENTS	ODA's RESPONSES
<p>The Ohio Assisted Living Association would like to comment on the Ohio Department of Aging rule change, OAC 173-45-09 (A)(1) (b) Fees, as it relates to Assisted Living and the cost of the Long Term Care Consumer Guide and satisfaction surveys. The fee for Residential Care Facilities (Assisted Living) is being increased by \$50 effective July 1, 2016 to accommodate ODA's addition of an RCF Resident Family Satisfaction Survey. While the \$50 increase seems small; unlike nursing homes, licensed RCFs are not reimbursed for this expense by Medicaid. So, even though the amount is not dramatic, it is yet another expense for Assisted Living providers.</p> <p>Jean Thompson Executive Director Ohio Assisted Living Association</p>	<p>The rule complies with statute. We look forward to obtaining input from family members about their experience with residential care facilities.</p>
<p>The Ohio Assisted Living Association would like to comment on the Ohio Department of Aging's draft rule, OAC 173-45-10 (G). OALA has some concerns regarding the disclosing of resident information as described in OAC173-45-10 (G). Some residents and their contacts may not want this information shared with the Ohio Department of Aging. Residents' rights assure them of privacy. Therefore, we suggest ODA craft a letter Assisted Living communities can distribute stating that licensed Residential Care Facilities (RCFs) are now required to provide this information to ODA, unless the resident or contact sign a form refusing to provide it. OALA is not sure what instigated the need for a Resident Family Satisfaction survey, particularly given the high ranking assisted living communities received from residents on the last RCF Resident Satisfaction Survey and that the majority of residents in Assisted Living privately pay for their services.</p> <p>Jean Thompson Executive Director Ohio Assisted Living Association</p>	<p>The facilities themselves will be able to alert residents and their families or primary contact person if they have concerns about sharing contact information with the Ohio Department of Aging.</p> <p>In launching a family satisfaction survey in RCFs, we are complying with section 173.47 of the Revised Code, which requires ODA to conduct an annual consumer satisfaction survey in long-term care facilities covered by the Ohio Long-Term Care Consumer Guide. Annual consumer satisfaction surveys ensure data on the web site are more current and relevant to families and residents looking for quality residential care facilities.</p>

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?

To remain in compliance with Section 173.49 of the Ohio Revised Code and to implement the proposed new fee in HB64, ODA did not consider any alternative regulations.

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. Section 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

Rule 173-45-09 of the Administrative Code implements the fees authorized by Section 173.48 of the Revised Code.

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 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 may 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 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?

Section [119.14](#) of the Revised Code 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 section [119.14](#) of the Revised Code.

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’s policy development manager, with questions about the rules.

173-45-01

Introduction and definitions.

TO BE RESCINDED
(See proposed *new* version of rule 173-45-01)

(A) Introduction: This chapter governs the Ohio long-term care consumer guide that ODA electronically publishes to provide the public with detailed information on long-term care facilities, including nursing homes, residential care facilities, skilled nursing facility units of hospitals, and county homes certified to receive medicare and medicaid reimbursement. The information includes a facility's size, location, services offered, customer satisfaction data, regulatory compliance performance data, and, in the case of nursing facilities, quality measures. The guide's information allows the public to compare two or more facilities. The guide may also include detailed information about other types of long-term care providers.

(B) Definitions for this chapter:

- (1) "CMS" means "centers for medicare and medicaid services."
- (2) "Facility" means a nursing facility or a residential care facility.
- (3) "Guide" means the "Ohio long-term care consumer guide," which was created by ODA in accordance with section 173.46 of the Revised Code.
- (4) "Medicaid" has the same meaning as in section 5162.03 of the Revised Code.
- (5) "Medicare" has the same meaning as in 42 C.F.R. 400.200 (October 1, 2013 edition).
- (6) "Nursing facility" means either:
 - (a) A facility, or a distinct part of a facility, that is certified a nursing facility or a skilled nursing facility for purposes of the medicare or medicaid program; or,
 - (b) A nursing home licensed under section 3721.02 of the Revised Code that is not certified as a nursing facility or skilled nursing facility.
- (7) "ODA" means "the Ohio department of aging."
- (8) "ODH" means "the Ohio department of health."
- (9) "Quality measure" means an aspect of the physical or mental conditions of the residents of a nursing facility that is derived from the resident assessment instruments submitted by nursing facilities to CMS for the purposes of the

173-45-01

2

medicare and medicaid programs.

- (10) "Residential care facility" has the same meaning as in section 3721.01 of the Revised Code.

173-45-01

Introduction and definitions.

(A) Introduction: This chapter governs the Ohio long-term care consumer guide that ODA electronically publishes to provide the public with detailed information on long-term care facilities, including nursing homes, residential care facilities, skilled nursing facility units of hospitals, and county homes certified to receive medicare and medicaid reimbursement. The information includes a facility's size, location, services offered, customer satisfaction data, regulatory compliance performance data, and, in the case of nursing facilities, quality measures. The guide's information allows the public to compare two or more facilities. The guide may also include detailed information about other types of long-term care providers.

(B) Definitions for this chapter:

Definitions that are alphabetized, don't require enumeration.

"CMS" means "centers for medicare and medicaid services."

"Facility" means a nursing facility or a residential care facility.

"Guide" means the "Ohio long-term care consumer guide," which was created by ODA in accordance with section 173.46 of the Revised Code.

The current rule cites §5162.03. This amendment would correct the citation.

"Medicaid" has the same meaning as in section 5162.01 of the Revised Code.

"Medicare" has the same meaning as in 42 C.F.R. 400.200 (October 1, 2014 edition).

The current rule cites the 2013 edition. This amendment updates the citation.

"Nursing facility" means either of the following:

(1) A facility, or a distinct part of a facility, that is certified a nursing facility or a skilled nursing facility for purposes of the medicare or medicaid program.

(2) A nursing home licensed under section 3721.02 of the Revised Code that is not certified as a nursing facility or skilled nursing facility.

"ODA" means "the Ohio department of aging."

"ODH" means "the Ohio department of health."

"Quality measure" means an aspect of the physical or mental conditions of the residents of a nursing facility that is derived from the resident assessment instruments submitted by nursing facilities to CMS for the purposes of the medicare and medicaid programs.

"Residential care facility" has the same meaning as in section 3721.01 of the Revised Code.

173-45-03

Consumer guide content.

(A) General information: ODA shall include the following information in the guide:

(1) A description of the guide~~;~~.

Throughout the chapter, ODA is proposng to replace the semicolons at the end of paragraphs with periods.

(2) Disclaimers stating the limitations of the data included in the guide~~;~~.

(3) A recommendation for each individual who is considering an admission into a long-term care facility to visit any facility that he or she is considering~~;~~ ~~and~~.

(4) Electronic links to other information on the internet about selecting long-term care facilities and long-term care service providers, including information maintained by pertinent government agencies and private organizations and the telephone numbers for those agencies and organizations.

(B) Facility-specific information: ODA shall include the following information in the guide to help the public compare and select long-term care providers:

(1) Each nursing facility's consumer satisfaction survey data, quality measures, and regulatory survey data~~;~~.

(2) Each residential care facility's consumer satisfaction survey data and regulatory survey data~~;~~ ~~and~~.

(3) Other publicly-available information to help the public compare and select long-term care service providers, including, but not limited to, nursing home staffing information published by CMS.

173-45-04

Search queries.

(A) Nursing facilities: The search query page allows the public to search for nursing facilities [by](#) using the following criteria:

(1) Geographic location by city, county, ZIP code, or radius~~;~~.

(2) Source of payment accepted in addition to private sources:

(a) Medicaid~~;~~.

(b) Medicare~~;~~ ~~and~~~~;~~.

(c) Veteran's administration.

This list follows the corresponding list in rule 173-45-06.1.

(3) ~~Special care services~~ [Services for nursing facility residents](#):

(a) Alzheimer's disease/dementia care (secured or unsecured)~~;~~.

(b) Bariatric care~~;~~.

(c) Behavioral care~~;~~.

(d) Dialysis [on site](#)~~;~~.

~~(e) Formalized wellness programs;~~

~~(f)~~(e) Hospice care~~;~~.

[\(f\) Intensive rehabilitation services.](#)

~~(g) Pediatric care;~~

[\(g\) Respiratory care, including ventilator care.](#)

[\(h\) Respiratory care, not including ventilator care.](#)

~~(h)~~(i) Short-term stay for respite~~;~~.

~~(i)~~(j) Skin and wound care~~;~~.

~~(j)~~(k) Spinal cord injury care~~;~~.

173-45-04

2

~~(1)~~ Traumatic brain injury care; ~~and~~.

~~(1) Ventilator care.~~

(4) A keyword search of nursing facility page information; ~~and~~.

(5) Nursing facility name.

This list follows the corresponding list in rule 173-45-06.1.

(B) Services for Residential residential care ~~facilities~~ facility residents: The search query page allows the public to search for residential care facilities by using the following criteria:

(1) Geographic location by city, county, ZIP code, or radius;.

(2) ~~Source of~~ Medicaid waiver payment accepted in addition to private sources;.

~~(a) Medicaid waiver for services; and,~~

~~(b) Residential state supplement.~~

This would eliminate the ability to search for facilities by RSS.

(3) Services beyond basic personal care:

(a) Twenty-four hour licensed nursing;.

(b) Advanced skin care;.

(c) Alzheimer's disease/dementia care (secured or unsecured);.

(d) Assistance with self-administration of medication;.

(e) Formalized wellness programs;.

(f) Hospice care;.

(g) Medication administration;.

(h) Rehabilitative therapy (occupational, physical, speech);.

(i) Short-term stay for respite;.

- (j) Special diets~~;~~₂.
 - (k) Total incontinence care~~;~~₂.
 - (l) Transfer assistance (e.g., bed to chair)~~;~~~~and~~₂.
 - (m) Transportation (e.g., to appointments, outings).
- (4) A keyword search of residential care facility page information~~;~~~~and~~₂.
- (5) Residential care facility name.

173-45-05

Display of comparative information following the execution of a search query.

(A) Following a search query for long-term care providers, the guide shall present a list of all providers that meet the criteria specified in the search.

(B) For each provider listed, the guide shall present all comparative measures, electronic links to definitions and descriptions of the measures, and to further detailed information about the measure to the extent it is available to ODA. For each provider, the guide shall include the following information:

(1) The aggregate responses made by a facility's residents/consumers or their family members to all measures of customer satisfaction~~;~~.

~~(2) In the case of nursing facilities, the facility's scores on the quality measures described in rule 173-45-07 of the Administrative Code;~~

~~(3)~~(2) The date of the facility's most recent ODH survey, if applicable~~;~~.

~~(4)~~(3) The survey data provided pursuant to rule 173-45-08 of the Administrative Code~~;~~.

~~(5)~~(4) An electronic link for each provider on the list allowing the public to gain access to information on the provider maintained in accordance with rule 173-45-06 of the Administrative Code~~;~~ and~~;~~.

~~(6)~~(5) Other comparative measures derived from data specified in Chapter 173-45 of the Administrative Code.

(C) For each nursing facility listed, the guide may include the facility's scores on the quality measures described in rule 173-45-07 of the Administrative Code.

Paragraph (B)(2) would become paragraph (C) and be permissive (i.e., "may" instead of "shall").

173-45-06

Facility page.

(A) Facility page content: The guide includes an individual facility page for each facility that presents the following specific comparative information, if available:

(1) The facility's name; the facility's telephone number, mailing address, county in which the facility is located, ~~electronic-mail~~ [email](#) address, ~~web-site~~ [website](#) address, photograph of the facility, and electronic link to a mapping feature that allows an individual to pinpoint the facility's location.

(2) The name of the facility's owner and operator (if different from the owner), and the telephone number and mailing address of the facility's owner and operator (if different from the owner).

(3) If a nursing facility, the facility's certification status regarding medicare and medicaid.

Facilities haven't been supplying private-accreditation information, so ODA proposes to delete this paragraph.

~~(4) The facility's private accreditation, with a link to the accrediting body's website.~~

~~(5)~~(4) The number of beds in the facility; the number of single-occupancy and multiple-occupancy rooms in the facility; and, if a nursing facility, the number of beds in the facility that are certified for medicare or medicaid.

~~(6)~~(5) A checklist describing the services available through the facility, as provided in rule 173-45-06.1 of the Administrative Code.

~~(7)~~(6) The sources of payment the facility accepts and is eligible to receive.

~~(8)~~(7) Any religious or fraternal affiliation.

~~(9)~~(8) The facility's policies with regard to smoking, alcohol, pets, do not resuscitate orders, and advanced directives regarding nutrition, hydration, and life-sustaining care.

~~(10)~~(9) Specific information concerning staffing at the facility, as described in rule 173-45-06.2 of the Administrative Code.

~~(11)~~(10) The facility's private pay rate with a link to facility-provided information that describes what that rate includes.

~~(12)~~(11) The facility's occupancy rate with a link to facility-provided information describing specific bed availability.

173-45-06

2

(B) Updating content:

- (1) Each facility shall provide the information under paragraph (A) of this rule to ODA, except as otherwise provided in this chapter.
- (2) ODA shall provide each facility with access to its facility page and allow the facility to update the information on that page at any time. An automated date-stamping mechanism shall reflect the date of the most recent update.

Examples: (1) The U.S. Dept. of Health and Human Services' Nursing Home Compare supplies ODA with staffing information. (2) ODH supplies ODA with bed counts.

- (3) ODA may update a facility page with publicly-available information about the facility (e.g., bed count, website address, payment sources, etc.).
- (4) ODA shall prohibit the facility from updating information on the facility page if the information would conflict with information obtained from a state or federal government agency. If there is a need to update information that is reflected in a database or report from a state or federal government agency, the facility shall make the government agency that owns the database or report aware of the necessary update.

- (C) Disclaimer: ODA shall include a disclaimer on the facility page that explains that the information appearing on each facility's facility page is provided and updated by the facility described on the page, and that the accuracy of the information appearing on a facility page is not routinely verified by ODA.

173-45-06.1

Information on services provided by facilities.

(A) Checklist items: ODA shall include a checklist in the guide that describes the services provided by, or in affiliation with, each facility listed in the guide.

(1) Services for nursing facility residents: A nursing facility may check any of the following boxes that describes a specialized service the nursing facility offers:

(a) Alzheimer's disease/dementia care (secured or unsecured): A nursing facility may check the "Alzheimer's disease/dementia care (secured or unsecured)" box if it specializes in providing specialized care for residents with Alzheimer's disease/dementia such as environmental features; dining and activities designed and delivered for those with dementia; care planning and delivery and staffing supports appropriate for memory impairments; staff trained in symptoms, symptom management, interventions, person-centered care, and emotional support.

~~(b) Behavioral health care, non-dementia related: A nursing facility may check the "behavioral health care, non-dementia related" box if it provides for, or contracts for, mental health supports for those who need mental health care and have a mental illness such as schizophrenia and need nursing home level of care.~~

~~(e)~~(b) Bariatric care: A nursing facility may check the "bariatric care" box 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.

(c) Behavioral health care, non-dementia related: A nursing facility may check the "behavioral health care, non-dementia related" box if it provides for, or contracts for, mental health supports for those who need mental health care and have a mental illness such as schizophrenia and need nursing home level of care.

(d) Dialysis on site:

(i) A nursing facility may check the "dialysis on site" box if it specializes in providing dialysis to residents of the nursing facility on site with minimal travel on the nursing facility's campus.

(ii) A nursing facility may check an additional box if it specializes in peritoneal dialysis.

ODA proposes to place behavioral health care in alphabetical order after bariatric care.



(e) Hospice care:

- (i) A facility may check the "hospice" box if it specializes in providing hospice care, whether the facility provides the hospice care or contracts with a hospice provider to provide the hospice care.
- (ii) A facility may check an additional box if it offers additional end-of-life care so long as it describes the end-of-life care if offers.

(f) Intensive rehabilitation services:

- (i) A nursing facility may check the "intensive rehabilitation services" box if it specializes in providing services by occupational therapists, physical therapists, and speech therapists to assist in recovery from an accident, surgery, stroke, or other medical incident and if the service is provided by or coordinated by occupational therapists, physical therapists, or speech therapists.
- (ii) A nursing facility may check an additional box if its therapists who provide its intensive rehabilitation services are available seven days per week.
- (iii) A nursing facility may check an additional box if it consistently assigns residents to the same therapist.

(g) Respiratory care, including ventilator care:

- (i) A nursing facility may check the "respiratory care, including ventilator care" box if it specializes in providing chronic ventilator care, tracheal suctioning, and ventilator weaning. "Respiratory care, including ventilator care" may also include use of respirators/ventilators, oxygen, intermittent positive pressure breathing (IPPB), or other inhalation therapy, pulmonary care, humidifiers, and other methods to treat conditions of the respiratory tract.
- (ii) A nursing facility may check an additional box if it has a respiratory therapist on staff.

(h) Respiratory care, not including ventilator care:

- (i) A nursing facility may check the "respiratory care, not including ventilator care" box if it specializes in providing tracheal weaning and tracheal suctioning. "Respiratory care, not including ventilator care" may also include use of respirators, oxygen, intermittent positive pressure breathing (IPPB), or other inhalation therapy, pulmonary care, humidifiers, and other methods to treat conditions of the respiratory tract.
 - (ii) A nursing facility may check an additional box if it has a respiratory therapist on staff.
 - (i) Short-term stay for respite: A nursing facility may check the "short-term stay for respite" box if it specializes in providing respite services on short-term bases to individuals who are unable to care for themselves on short-term bases because of absences, needs, or relief of those persons who normally provide care to the individuals.
 - (j) Skin and wound care:
 - (i) A nursing facility may check the "skin and wound care" box if it specializes in care for clinically complex or multiple wounds. The care may include negative pressure ("wound vac"), debridement, and care by wound specialists on staff or under contract.
 - (ii) A nursing facility may check an additional box if it has wound-management staff certified by the american board of wound management.
 - (k) Spinal cord injury care: A nursing facility may check the "spinal cord injury care" box if it provides a special program for those with spinal cord injuries, including physical, speech, occupational, and vocational therapy; skin integrity management; pain management; and environmental accessibility.
 - (l) Traumatic brain injury care: A nursing facility may check the "traumatic brain injury care" box if it specializes in evaluating and treating brain injuries by providing care that includes physical, speech, occupational, and vocational therapy; behavioral and cognitive rehabilitation; pain management; and substance-abuse treatment.
- (2) Services for residential care facility residents: A residential care facility may check any of the following boxes that describes a specialized service the

residential facility offers that is beyond personal care:

- (a) Twenty-four hour licensed nursing.
 - (b) Advanced skin care.
 - (c) Alzheimer's disease/dementia care (secured or unsecured).
 - (d) Assistance with self-administration of medication.
 - (e) Formalized wellness programs.
 - (f) Hospice care.
 - (g) Medication administration.
 - (h) Rehabilitative therapy (occupational, physical, speech).
 - (i) Short-term stay for respite.
 - (j) Special diets.
 - (k) Total incontinence care.
 - (l) Transfer assistance (e.g., bed to chair).
 - (m) Transportation (e.g., to appointments, outings).
- (3) Services for nursing facility non-residents: A nursing facility may check any of the following boxes that describe a specialized service the residential care facility makes available to non-residents in affiliation with the nursing facility:
- (a) Adult day care.
 - (b) Assisted living on site.
 - (c) Home-delivered meals.

- (d) Home health care.
 - (e) Hospice services.
 - (f) Independent living housing on site.
 - (g) Outpatient therapy.
 - (h) Short-term stay for respite.
 - (i) Transportation (e.g., from homes to appointments).
 - (j) Any other community service the facility provides to non-residents that it specifically identifies.
- (4) Services for residential care facility non-residents: A residential care facility may check any of the following boxes that describe a specialized service the residential care facility makes available to non-residents in affiliation with the residential care facility:
- (a) Adult day care.
 - (b) Home health care.
 - (c) Hospice care.
 - (d) Independent living housing on site.
 - (e) Outpatient therapies (occupational, physical, speech).
 - (f) Short-term stay for respite.
 - (g) Skilled nursing facility on site.
 - (h) Transportation (e.g., from homes to appointments).
 - (i) Any other community service the facility provides to non-residents that it specifically identifies.

(B) Check boxes, attestations, and disclaimer:

(1) Check boxes: For the facility services specified in paragraphs (A)(1) and (A)(2) of this rule, ODA shall include check boxes to indicate if a facility provides specific services, and if the facility provides the services within a specific unit of the facility.

(2) Attestations:

(a) A nursing facility shall attest that any box it checks to indicate that it provides the specific service accurately represents a service that it provides by checking the box on the electronic guide below the following statement: "This facility asserts that it offers the service in the manner described, as certified/attested/confirmed by [insert name, title] on [insert date]." The facility shall make this attestation as part of the update procedures provided by paragraph (B)(2) of rule 173-45-06 of the Administrative Code.

(b) Upon request from consumers, ombudsmen, or surveyors, a nursing facility shall provide documentation to demonstrate how any specialized service that it attested that it provides meets the description of the specialized service under paragraph (A)(1) of this rule. If the nursing facility does not demonstrate how it provides a specialized service, ODA may remove the specialized service from the facility's listing in the guide.

(3) Disclaimer: ODA shall 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 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."

(C) Updating content: ODA shall obtain information regarding the services listed in paragraph (A) of this rule from the facilities themselves and may also obtain information from publicly-available sources, in accordance with paragraph (B) of rule 173-45-06 of the Administrative Code. Each facility may supplement the information required under paragraphs (A)(1) and (A)(2) of this rule in order to ensure an accurate description of services provided through the special care unit.

173-45-06.1

7

- (D) Definition: As used in this rule, "affiliation" means a connection between a facility and a provider that are operated by the same entity, or that have entered into a contract whereby the provider provides services on the property of the facility or in close proximity to the facility.

173-45-06.2

Facility staffing information.

(A) Nursing facilities: ~~To the extent each facility provides the relevant information to ODA, the~~ The facility page shall do the following for each nursing facility ~~shall that provides the relevant information to ODA:~~

(1) ~~Identify~~ The facility page shall identify the medical director, the licensed nursing home administrator, and the director of nursing; and a narrative description of their qualifications. ~~For the medical director, the licensed nursing home administrator, and the director of nursing, the~~ The narrative field shall include, at a minimum, ~~the person's~~ all of the following information about the medical director, the licensed nursing home administrator, and the director of nursing:

(a) Title (i.e., "medical director," "licensed nursing home administrator," or "director of nursing");

(b) Name;

(c) Educational degrees;

(d) Board certifications or other professional affiliations;

(e) Years employed in the long-term care field; ~~and,~~

(f) Years employed by the facility.

ODA can obtain this information from government agency websites.

~~(2) List the number of hours of care per resident day for all registered nurses, licensed practical nurses, and state-tested nurse aides, expressed individually, along with the statewide average and range for facilities. ODA may obtain this information from a publicly available source;~~

~~(3) List the number of hours per resident day for all activity staff, social workers, and therapy personnel along with the statewide average and range for facilities. ODA may obtain this information from a publicly available source;~~

~~(4)~~ (2) List The facility page shall list the percentage of agency pool staff used in providing care at the facility. ODA shall calculate the percentage as a percentage of the total care hours provided by the staff listed in paragraph (A)(2) of this rule;

~~(5)~~ (3) Indicate The facility page shall indicate if the nursing facility makes permanent staff-to-unit/resident assignments; ~~and,~~

~~(6)(4) Display~~ The facility page shall display staff-retention data ~~showing staff retention.~~

(B) Residential care facilities: ~~To the extent each facility provides the relevant information to ODA, the~~ The facility page shall do the following for each residential care facility ~~shall that provides the relevant information to ODA:~~

(1) ~~Identify~~ The facility page shall identify the administrator and director of clinical services, if applicable, and provide the facility with an opportunity to provide a narrative description of their qualifications. ~~For the administrator and director of clinical services, the~~ The narrative field shall include, at a minimum, the person's all of the following information about the administrator and director of clinical services:

(a) Title (i.e., "administrator" or "director of clinical services")~~;~~.

(b) Name~~;~~.

(c) Educational degrees and his or her experience~~;~~.

(d) Board certifications or other professional affiliations~~;~~.

(e) Years employed in the long-term care field~~;~~and;.

(f) Years employed by the facility.

(2) List the number of licensed nurses, direct care staff, and other staff typically on duty on day, evening, and night shifts, displayed separately for weekdays and weekends~~;~~and;.

(3) Display a narrative description of the facility's staffing information.

(C) Updating content:

(1) ODA shall provide each facility with an opportunity to submit the information that paragraphs (A) and (B) of this rule require. ODA shall collect the information in accordance with paragraph (B) of rule 173-45-06 of the Administrative Code. ODA shall use an automatic date-stamp mechanism to reflect the date of the facility's most recent update.

173-45-06.2

3

- (2) ODA shall recalculate the statewide averages and ranges that paragraph (A) of this rule requires at least quarterly.

173-45-07

Quality measures for nursing facilities.

Presently, the Guide does not publish quality measures. ODA's proposed amendments would make the requirements for quality measures conditional. See also rule 173-45-05.

- (A) Definitions: If the guide displays quality measures, ODA shall define each quality measure in the guide and indicate which quality measures are risk adjusted and which quality measures constitute sentinel health events.
- (B) Quality measures: ~~For~~ If the guide displays quality measures, for each nursing facility for which data is available, ODA shall include in the guide the nursing facility's scores on each quality measure, as calculated by CMS, and the statewide average score on each quality measure, as calculated by CMS. ODA shall present the scores as percentages. This allows the public to compare scores between facilities and to statewide averages.
- (C) Disclaimers: If the guide displays quality measures, ODA shall include in the guide a disclaimer indicating that lower scores may not indicate that a nursing facility provides inadequate care. A nursing facility's scores on the quality measures serve as a flag to prompt further inquiry about the care and services the nursing facility provides. Therefore, if the guide displays quality measures, ODA shall also include in the guide an automatic link to the nursing facility's related survey findings and to a list of issues to consider when choosing a nursing facility.
- (D) Updates: If the guide displays quality measures, ODA shall make ~~update quarterly~~ quarterly updates to the quality measure data displayed in the guide by using the most recent CMS data.

173-45-08

Regulatory survey data.

(A) Data to incorporate: ODA shall incorporate data derived from ODH's most recent survey of each facility in Ohio into the guide to allow the public to compare a facility to other facilities and to the statewide average. In doing so, ODA shall incorporate the following data into the guide:

- (1) The date of the facility's most recent survey~~;~~_.
- (2) Any non-compliance with regulatory requirements related to a facility's provision of care and services that ODH cites on all surveys at least ten or more times in the previous calendar year~~;~~_.
- (3) The number of the survey data tags ODH cited in the facility's most recent survey~~;~~_.
- (4) The statewide average number of survey data tags ODH cited on a survey~~;~~_.
- (5) The percentage of regulatory requirements each facility meets~~;~~_.
- (6) The statewide average percentage of the survey data tags for which all facilities were found to be in compliance during the most recent surveys~~;~~_.
- (7) The date each nursing facility achieved substantial compliance with medicare and medicaid certification requirements~~;~~_.
- (8) A notation if ODH determined, at any time during the previous eighteen months, that a nursing facility provided substandard care to its residents~~;~~_.
- (9) A notation if ODH determined, at any time during the previous eighteen months, that the care provided by a nursing facility placed its residents in immediate jeopardy or the care provided by the residential care facility placed its residents in real or present danger~~;~~~~and~~_.
- (10) The date ownership or management of the facility changed, if at all, since ODH's last survey of the facility.

(B) Links: ODA shall include the following links in the guide:

- (1) A link that allows the public to view an explanation submitted to ODA by a facility whose ownership or management has changed since ODH's last survey of the significance of that change to its current survey results~~;~~_.

173-45-08

2

- (2) A link that allows the public to view a current survey report, if available to ODA, and any plan of correction a nursing facility has filed with ODH that ODH has provided to ODA or that the facilities include in the guide~~;~~.
 - (3) A link that allows the public to view the report of the most recent licensure inspection conducted by the department of health for any facility that is licensed by ODH, but not certified for either medicare or medicaid, if the report is available to ODA~~;~~and.
 - (4) A link that provides facility visitation guidelines and suggestions.
- (C) Peer grouping: In the guide, ODA shall group facilities by peer groups that correspond ODH's health districts. For each peer group, ODA shall display a peer-group average.
- (D) Updates: ODA shall update, on a weekly basis, the data derived from ODH's surveys of nursing facilities and residential care facilities in Ohio, including licensure inspection reports for facilities not certified by medicare or medicaid, to the extent the updated information is available to ODA, and except as otherwise provided in this rule.
- (E) Data retention: ODA shall retain four years of regulatory data for each facility in the guide.
- (F) Disclaimer: ODA shall display the following disclaimer in the guide along with the display of data derived from surveys accompanied by ODH: "Surveys of facilities are conducted at periodic intervals. Conditions at a facility can change significantly between surveys and consumers considering admission are encouraged to visit any facility they are considering."
- (G) Definitions: As used in this rule, "deficiency," "immediate jeopardy," "standard survey," and "substandard care" have the same meanings as in section 5165.60 of the Revised Code.

173-45-09

Fees.

(A) Consumer guide fee:

~~(1) ODA shall collect an annual consumer guide fee of six hundred fifty dollars from each nursing facility, and three hundred dollars from each residential care facility in Ohio, for the publication of the guide.~~

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

If House Bill 64 passes into law with the proposed fee increase, ODA will propose this new paragraph.

(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~~;~~ and.

(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.

173-45-10

Consumer satisfaction surveys.

(A) Definitions for this rule:

- (1) "Consumer satisfaction survey" means the customer satisfaction survey that is required under section 173.47 of the Revised Code.
- (2) "Domain" means a subset of a survey question that is identified by the survey administrator as an area of interest to long-term care facility consumers.
- (3) "Survey administrator" means a designee of ODA that is responsible for implementing a consumer satisfaction survey.

(B) Survey information: The guide shall include the following information that is derived each year from an annual consumer satisfaction survey of each long-term care facility conducted by ODA or a survey administrator pursuant to section 173.47 of the Revised Code:

- (1) A description of the survey and of the calculation methods used~~;~~.
- (2) Item scores for each facility, which are calculated by averaging the numerical response for each item on all returned surveys pertaining to a particular facility. Each survey administrator shall:
 - (a) Determine an item score by assigning a number in the range of 0 to 100~~;~~.
 - (b) Exclude a response from the calculation of an item score whenever the respondent did not respond to an item or when the respondent believes the item is not applicable, which is indicated by responses such as "I don't know" or "This does not apply to me"~~;~~ ~~and~~.
 - (c) Exclude a returned survey if fewer than ten per cent of the survey items are completed or if the survey was incomplete due to a resident's inability to respond to the survey questions~~.~~.
- (3) Statewide item scores for all items of the survey, calculated by averaging all item scores for all facilities for which enough surveys were returned to be within a ten per cent margin of error~~;~~.
- (4) Domain scores for each facility, which are calculated by averaging the facility item scores in a domain for all returned surveys with responses to at least all but two items in that domain~~;~~.

- (5) Statewide domain scores, which are calculated as the average of all facility domain scores~~;~~.
- (6) Facility response rate for a satisfaction survey of a sample of consumers conducted by mail, which is calculated by dividing the number of surveys returned by the number of surveys issued to consumers.
 - (a) The number of surveys issued to facility consumers should reflect the following:
 - (i) A generally accepted response rate for similar surveys~~;~~ ~~and~~.
 - (ii) The most recent available estimate of the occupancy of that facility.
 - (b) A survey audit form will be used to confirm the occupancy of a facility and the number of surveys that were distributed to the consumers of that facility.
- (7) A facility response rate for a satisfaction survey of a whole population of a facility's consumers is calculated by dividing the number of surveys returned by the number of consumers surveyed.
- (8) A statewide response rate, which is calculated as the average of all facility response rates~~;~~.
- (9) An overall facility satisfaction score, which is calculated by averaging all item scores on all returned surveys pertaining to a particular facility. If the survey administrator determines that there are not enough returned surveys from that facility to be within a ten per cent margin of error, then no overall satisfaction survey score will be displayed~~;~~.
- (10) A statewide satisfaction score, which is calculated by averaging all overall facility satisfaction scores for facilities for which enough surveys were returned to be within a ten per cent margin of error~~;~~.
- (11) The total number of surveys returned statewide~~;~~.
- (12) Statewide high and low item scores, which are obtained by identifying the highest and lowest item score among all facilities that have enough returned surveys to be within a ten per cent margin of error~~;~~ ~~and~~.

173-45-10

3

- (13) Statewide high and low domain scores, which are obtained by identifying the highest and lowest domain score among all facilities that have enough returned surveys to be within a ten per cent margin of error.
- (C) Confidentiality: To protect the privacy of the survey's respondents, the long-term care consumer guide shall not report the results from any facility for which no more than two surveys were returned.
- (D) Invalid surveys: An invalid survey includes a survey that is completed by a person other than a consumer (e.g., completed by a member of the facility's staff) or involves surveying the wrong population (e.g., surveying the resident instead of the family or vice versa). If ODA's review of any survey indicates that the survey is invalid, ODA may take one or more of the following actions:
- (1) ~~Remove~~ ODA may remove invalid scores from the calculation of the overall satisfaction scores~~;~~.
 - (2) ~~Remove~~ ODA may remove the facility's scores from the long-term care consumer guide and any published reports of the survey results~~;~~ ~~or~~.
 - (3) ~~Refer~~ ODA may refer the facility with invalid scores to the appropriate investigatory agency.
- (E) Margin of error: The number of completed surveys considered necessary for a facility to not exceed a ten per cent margin of error is based on the size of the facility and shall be governed by Table 1 to this rule.

Table 1

NUMBER OF RESIDENTS OF A FACILITY	NUMBER OF RESIDENT SURVEYS NEEDED TO NOT EXCEED A 10% MARGIN OF ERROR
3-5	All
6-10	5
11-12	6
13	7
14-15	8
16-18	10

173-45-10

4

19-23	11
24	12
25-26	13
27-28	14
29-31	15
32-63	16
34-35	17
36-37	18
38-45	19
46	20
47-55	21
56	22
57-67	23
68-80	24
81-86	25
87-91	26
92-111	27
112-134	28
135-155	29
156-177	30
178-238	31
239-312	32
313 or more	33

(F) Quality assurance: Any survey administrator conducting a consumer satisfaction survey on behalf of ODA shall take quality-assurance measures such as inter-rater

reliability testing.

(G) Disclosing resident information: To facilitate surveying each resident, each nursing facility and residential care facility, upon ODA's (or ODA's designee's) request, shall disclose to ODA (or ODA's designee) the name of each resident, whether the resident's status in the facility is short-term or long-term, the resident's room number, the resident's primary contact person, and other requested information.