

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-06.1

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: adult day service.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 10/14/2022
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 9 - 134 - McColley, Roegner
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 42 U.S.C. 3025, 3030d, 3032c; 45 C.F.R. 1321.11, 1321.65
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

This rule exists to comply with R.C. §173.392 and 45 C.F.R. 1321.11. The primary purpose of this filing is to reduce regulatory restrictions.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule establishes requirements applying only to agreements for the adult day service. ODA proposes to amend this rule to achieve the following:

1. Delete unnecessary regulatory restrictions. This includes deleting paragraphs (B)(2)(g), (B)(5)(b)(vi), (B)(5)(d)(ii), and (B)(6)(b) of this rule, because they duplicate paragraph (B)(9) of rule 173-3-06 of the Administrative Code.
2. Replace the consumer's ADS...needs in Table 2 with the consumer's ADL...needs.
3. Delete therapeutic diets from the phrase the diet-order requirements for therapeutic diets in paragraph (B)(2)(f) of this rule, because the rule also covers food for special dietary use and medical food, and because referring to diet-order requirements suffices.
4. Replace the orientation requirements for PCAs with a cross-reference to the orientation requirements for PCAs under rule 173-3-06.5 of the Administrative Code.
5. Replace the requirements on verifying PCA qualifications with a cross-reference to the requirements for verifying PCA qualifications under rule 173-3-06.5 of the Administrative Code.
6. Allow the provider to collect either the unique identifier of the consumer or the consumer's caregiver to attest to receiving the service and exempt the requirement for doing so during a state of emergency declared by the governor or a federal public health emergency.

9. Does the rule incorporate material by reference? Yes

10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

This rule references "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R. Part 36, which the public may find on <https://www.ecfr.gov/>.

- 11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

ODA made a refiled filing of this rule to eliminate the in-home option from the definition of "adult day service" in paragraph (A) of the rule. ODA originally offered this option as a means to keep adult day providers from going out of business during the early stages of the COVID-19 public health emergency. It is no longer relevant. ODA also removed the related phrase "(if the service is provided in the center)" from paragraphs (B)(6)(a)(iii) and (B)(6)(a)(iv) of the rule since all services would be provided in the center if there is no in-home option.

(Please also see ODA's response to #18D.)

II. Fiscal Analysis

- 12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

Not Applicable

- 13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Please review the BIA for details.

- 14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

- 15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

- 16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? Yes

- 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

Please review the BIA for details.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

ODA's proposal to eliminate the in-home option from the definition of "adult day service" should have no impact upon any provider of an adult day service. Every AAA in Ohio informed ODA that no adult day center being paid with Older Americans Act funds in Ohio is using the in-home option. Likewise, the Ohio Adult Day Healthcare Association informed ODA that the organization is unaware of any adult day center using the in-home option. Additionally, if a provider of an adult day service wanted its personal care aides to provide activities in consumers' homes, the provider could enter into an agreement with an AAA to provide personal care in consumer's homes under rule 173-3-06.5 of the Administrative Code.

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding to this rule? 0
- B. How many existing regulatory restrictions do you propose removing from this rule? 30

(B) Every AAA-provider agreement for ADS that is paid, in whole or in part, with Older Americans Act funds SHALL comply with the following requirements:

(B)(1) In the AAA-provider agreement, the AAA SHALL....

(B)(2)(d) and SHALL....

(B)(2)(e) ...or the provider SHALL....

(B)(2)(e) The plan SHALL describe the consumer's:

(B)(2)(f) Instead, the provider SHALL comply....

(B)(2)(g)(ii) The provider SHALL invite....

(B)(2)(g)(ii) ..., the provider SHALL invite....

(B)(2)(g)(ii) The provider SHALL also invite....

(B)(2)(g)(ii) The provider SHALL invite....

(B)(2)(g)(iii) ...or SHALL....

(B)(2)(g)(iv) The provider SHALL retain records....

(B)(3)(a) If the center is housed in a building with services or programs other than ADS, the provider SHALL assure that a separate, identifiable space and staff are available for ADS activities during all hours in which the provider provides ADS in the center.

(B)(3)(b) The center SHALL comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R. Part 36.

(B)(3)(c) The center SHALL have at least sixty square feet per individual that it serves, excluding hallways, offices, rest rooms, and storage areas.

(B)(3)(d) The provider SHALL store consumers' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.

(B)(3)(e) The provider SHALL store toxic substances in an area that is inaccessible to consumers.

(B)(3)(f) The center SHALL have at least one toilet for every ten individuals present that it serves and at least one wheelchair-accessible toilet.

(B)(3)(g) If the center provides intensive ADS, the center SHALL have bathing facilities suitable to the needs of consumers who require intensive ADS.

(B)(5) A provider SHALL only provide ADS if the provider is an agency provider.

(B)(5)(b)(i) Every RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, dietitian, occupational therapist, occupational therapy assistant, or other licensed professional planning qualifies to practice in the adult day center SHALL possess a current and valid license to practice in their profession.

(B)(5)(b)(ii) The activity director SHALL possess at least one of the following:

(B)(5)(b)(iii) Each activity assistant SHALL possess at least one of the following:

(B)(5)(b)(iv) Each PCA SHALL possess at least one of the following:

(B)(5)(b)(v) The provider SHALL retain records to show that each staff member who has in-person interaction with consumers meets the staff qualifications under paragraph (B)(5)(b) of this rule for their job position.

(B)(5)(c)(iv) In doing so, the provider SHALL list the instructor's title, qualifications, and signature; date and time of instruction; content of the instruction; and name and signature of ADS personal care staff completing the training.

(B)(5)(d)(ii) The provider SHALL retain records to show that it complies with paragraph (B)(5)(d)(i) of this rule.

(B)(6)(a) The provider SHALL verify that each episode of adult day service for which it bills was provided by one of the following two methods:

(B)(6)(b) In the AAA-provider agreement, the AAA SHALL NOT...

(B)(6)(b) ...PROHIBIT a provider from using an electronic system or daily attendance roster (if the service is provided in the center) to collect and retain the records this rule requires.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable