

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-06.5

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: personal care.

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?** 3/26/2024
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 33 - 135 - Edwards
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 121.36, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.9
5. **What statute(s) does the rule implement or amplify?** 121.36, 173.39, 173.392; 42 U.S.C. 3025, 3030d; 45 C.F.R. 1321.9, 1321.73
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 establish requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) for personal care that are paid, in whole or in part, with Older Americans Act funds.

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

This rule establishes requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) for personal care that are paid, in whole or in part, with Older Americans Act funds. ODA proposes to amend this rule to achieve the following:

1. Ease qualifications for PCAs. House Bill 33 (135th GA) enacted RC §173.525, which limits the amount of "pre-service training" that ODA may require of a PCA when being paid by the PASSPORT Program to 30 hours. Although RC §173.525 does not apply to Older Americans Act programs, ODA voluntarily proposes to apply the PCA qualifications to this rule to make the requirements uniform between ODA's programs because many providers serve consumers in both the PASSPORT Program and the Older Americans Act's supportive services and National Family Caregiver Support Program. Because this rule does not require any pre-service training, there is no pre-service training to limit. Instead, this rule establishes 5 ways that any person may qualify to be a PCA. Two of the ways qualify do not involve training (Medicare-certified competency evaluation and previous experience). Two of the ways to qualify require successfully completing a training and competency evaluation program that lasted at least 60 hours (vocational programs and other programs). In the "spirit" of RC §173.525, ODA voluntarily proposes to reduce the hours from 60 to 30 for vocational programs and other programs. Without this amendment, a provider may have PCAs who qualify to provide personal care to individuals enrolled in the PASSPORT Program, but not to consumers of the same service when provided through an Older Americans Act program.

2. Replace the training topic "basic infection control" with "standard precautions for infection control" and change from a training topic for qualifying to be a PCA to an orientation topic.

3. Reduce annual in-service training hours: RC §173.525 limits the amount of annual in-service training that ODA may require of a PCA when being paid by the PASSPORT Program to 6 hours. Although RC §173.525 does not apply to Older Americans Act programs, ODA voluntarily proposes to reduce annual in-service training hours from 8 to 6 to make the requirements uniform between ODA's programs for the reasons cited in 1. above.

4. Ease the qualifications for PCA supervisors. Because RC §4723.01(F) allows an LPN to be under the direction of an RN, physician, physician assistant, dentist, podiatrist, optometrist, or chiropractor; and because RC §173.525 does not apply to the Older Americans Act programs, ODA proposes to give providers the flexibility to use an LPN as a PCA supervisor if the LPN is supervised by any healthcare professional listed in RC §4723.01(F).

5. Indicate that a provider may retain evidence that a PCA supervisor conducted a by telephone or video conference instead of obtaining a unique identifier of the individual. Examples of such evidence may include a report generated by telehealth software, phone records, or a clinical summary of the visit.

To review this rule in context, please review ODA's response to question #8 on the RSFA for rule 173-39-02.11 of the Administrative Code for an overview of this rule package.

9. **Does the rule incorporate material by reference? No**
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.**

Not Applicable

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

ODA revised this rule to indicate in the definition that this service is a "case-managed" service.

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

Amending this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in House Bill 33 (135th GA).

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

ODA estimates that adopting the proposed amendments to this rule will reduce the cost of compliance to providers. Please review ODA's response to questions #15, #16, and #17 for detailed information.

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**

ODA estimates that adopting the proposed amendments to this rule will reduce the cost of compliance to providers. Please review ODA's response to questions #15, #16, and #17 for detailed information.

- 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**
- ### **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? No

A. How many new regulatory restrictions do you propose adding to this rule?

Not Applicable

B. How many existing regulatory restrictions do you propose removing from this rule?

Not Applicable

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

Not Applicable

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable