

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-38-04

Rule Type: Rescission

Rule Title/Tagline: Assisted living program (medicaid-funded): provider certification.

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?** 4/13/2023
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, 173.391, 173.54
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.54; 42 C.F.R. 441.352
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?**

Rule 173-38-04 of the Administrative Code exists to refer readers to the requirement under R.C. §173.39 for the Assisted Living Program to only pay a provider for providing

a service to an individual who is enrolled in that program if the provider is certified by ODA under §173.391. This enables a provider who reads the chapter of rules on the Medicaid-funded component of the Assisted Living Program (Chapter 173-38 of the Administrative Code) to find a reference to the certification requirement and the rules on certification in Chapter 173-39 of the Administrative Code.

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

Rule 173-38-04 of the Administrative Code refers to the requirement under R.C. §173.39 for the Assisted Living Program to only pay a provider for providing a service to an individual who is enrolled in that program if the provider is certified by ODA under §173.391.

ODA proposes to replace the current version of this rule with a substantially-similar new rule. In doing so, ODA proposes to reduce the use of unnecessary regulatory restrictions (e.g., shall) in this rule to comply with R.C. §§ 106.03 and 121.951. Because ODA's proposal will result in amending approximately more than 50% of the rule, ODA proposes to rescind the rule and to adopt a new rule in its place to comply with the 50% guideline in §4.3.1 of LSC's Rule Drafting Manual.

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.

Not Applicable

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

Replacing the current version of this rule with a substantially-similar new rule will not affect the biennial budget that the Ohio General Assembly established for ODA.

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

There is no adverse impact other than what is already established under §173.39.

A provider does not need a certification from ODA to operate in its line of business. Additionally, providers are not required open a new line of business by providing services to individuals who are enrolled in the Assisted Living Program.

Providers who want to expand their lines of business to receive payments from the Assisted Living Program for providing services to individuals who are enrolled in that program as subject to the requirement under R.C. §173.39 to obtain certification from ODA under §173.391.

This rule merely refers to a requirement under R.C. §173.39.

The cost of being certified under R.C. §173.391 is the cost of meeting the qualifications to become certified under Chapter 173-39 of the Administrative Code. At this time, ODA does not charge the certification fee under R.C. §173.391. Additionally, the Assisted Living Program pays certified providers for providing services, so the provider experiences a return on any investment involved in qualifying for certification.

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

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- 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? 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? 1**

An RCF seeking to become an assisted living provider certified by ODA to provide goods and services according to rules 173-39-02.16 and 173-39-02.17 of the Administrative Code SHALL apply to become so according to rule 173-39-03 of the Administrative Code.

- 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