

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

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**173-39-01**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**ODA provider certification: introduction and definitions.****RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**2. Are you proposing this rule as a result of recent legislation? **No**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.391, 173.52, 173.522, 173.54, 173.543**5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.52, 173.522, 173.54, 173.543**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to amend this rule as part of a larger rule package involving rules 173-39-01, 173-39-02.22, 173-39-02.23, and 173-39-02.24 of the Administrative Code. ODA's filing of these rules is the result of a review of the rules that satisfies the requirement to review each rule at least once every 5 years.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule introduces Chapter 173-39 of the Administrative Code, a chapter on provider certification, and defines terms used in that chapter.

In the proposed new rule, compared to the rule of the same number which it would replace, ODA proposes to redefine the term "ODA's designee" in a way that would allow the 13 current PASSPORT administrative agencies to continue to be designees, but that also allows ODA to designate another entity if necessary. The current definition says the following: "'ODA's designee' has the same meaning as 'PASSPORT administrative agency' in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code plus 'Catholic Social Services of the Miami Valley.'"

ODA proposes for the new definition to say the following: "'ODA's designee' is an entity to which ODA delegates one or more of its administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and 'Catholic Social Services of the Miami Valley.'"

ODA also proposes to make the following non-substantive amendments to rule 173-39-01 of the Administrative Code:

> Because every rule in the chapter pertains to provider certification, ODA proposes to amend the rule from "introduction and definitions" to "ODA provider certification: introduction and definitions."

> ODA proposes to replace each occurrence of "consumer" with "individual," except in the term "consumer-directed...provider" Because ODA is not proposing to amend every rule in the chapter at once, ODA must retain an amended definition of "consumer" in rule 173-39-01 of the Administrative Code that would say that "consumer" has the same meaning as "individual." ODA also proposes to make this change in the remaining rules in the chapter on later dates.

> ODA proposes to replace the citation to the definition of "ADL" in rule 5160-3-06 of the Administrative Code with a citation to rule 5160-3-05 of the Administrative Code.

> ODA proposes to replace the citation to the definition of "IADL" in rule 5160-3-08 of the Administrative Code with a citation to rule 5160-3-05 of the Administrative Code.

> ODA proposes to increase the list of professions that the definition of "case manager" says can be a case manager from an RN or LSW to an RN, LSW, or

LiSW.

> ODA proposes to continue defining "plan of treatment" as the orders of a physician, but also define the term to include orders of other healthcare professionals who have treatment planning in their scopes of practice.

> See #11 below regarding the definition of "incident."

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

On September 17, 2015, ODA made a refiled filing of the rule.

In the original filing of the rule, ODA proposed to align ODA's definition of "incident" for providers with the Ohio Department of Medicaid's definition of 'incident' for case managers. In the refiled filing of the rule, ODA reverted to the current definition for providers.

In a separate, forthcoming rule project, ODA plans to propose a new rule for case

managers on incident handling. The rule would require case managers to handle incidents a certain way under certain deadlines. The result would be standardized handling of incidents statewide. The predictability that this would create should lower providers' administrative expenses.

Additionally, because reverting to the current definition of "incident" frees the rule from the extended, multi-paragraph nature of the previously-proposed new definition, ODA returned to a plan announced in the BIA during the online public comment period. The plan was to eliminate the numbering of the definitions so that alphabetical order alone arranges the definitions.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the adoption of this proposed new rule would create no impact upon the biennial budget that the Ohio General Assembly established for ODA.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-651-525 Medicaid/Health Care Services.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The rule introduces Chapter 173-39 of the Administrative Code and defines terms used in the chapter. The introduction does not regulate any provider. ODA does not intend to use definitions to regulate providers, nevertheless some definitions can limit providers.

Compared to the rule of the same number that ODA has proposed for rescission, ODA estimates that the adoption of the proposed new rule would have the following costs to directly-affected persons:

- > ODA's proposal to expand the definition of "plan of treatment" to include orders of other healthcare professionals who have treatment planning in their scopes of practice should make obtaining plans of treatment less costly and more available to individuals and providers.

- > ODA's proposal to align its definition of "significant change" with that of ODM reduces the need for providers to know which events to report to one state agency, but not the other. It makes reporting uniform between the two agencies.

- > Although the entities to which ODA designates to perform its administrative duties are not regulated by this chapter, and although the definition of "adverse impact" in section 107.52 of the Administrative Code would not apply to ODA's designees, ODA will report on the impact of redefining "ODA's designee." The proposed new definition would include the current area agencies on aging and Catholic Social Services of the Miami Valley. Therefore, these entities would not lose their designation and would still be performing administrative duties on ODA's behalf. But, if programmatic changes cause a backlog of work for the current designees, ODA could contract with another designee to expedite processing. For example, if a Medicaid waiver program merges into the PASSPORT Program, many providers who have only worked under the program-to-be-merged may need to become quickly ODA-certified. Allowing a new entity to tackle the matter may delay period of inactivity in a provider's business due to delays in processing applications for provider certification.

- > ODA's proposed amendment to include LiSWs in the definition of "case manager" should expand the talent pool from with ODA's designees may hire.

Some of the amendments to definitions would make the definitions uniform with those of ODM, thereby providing a consistent experience for providers who do business with both ODA and ODM. This could reduce any adverse impact created by diverse definitions between programs.

If ODA wanted to designate another entity to perform administrative duties, the adverse impact would be the entity that ODA didn't designate for to perform these duties. If ODA uses free and open competition to choose the "designee," the adverse impact would be the result of submitting a bid that was not the winning bid.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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? **No**