

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-02.10

**Rule Type:** Amendment

**Rule Title/Tagline:** ODA provider certification: nutritional consultations.

**Agency Name:** Department of Aging

**Division:**

**Address:** 246 N. High St. 1st floor Columbus OH 43215-2046

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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?** 10/26/2020
2. **Is this rule the result of recent legislation?** No
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, 173.52, 173.522
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.391, 173.52, 173.522; 42 C.F.R. 441.352
6. **What are the reasons for proposing the rule?**

ODA proposes to amend this rule as part of a larger rule package of rules from Chapter 173-39 of the Administrative Code that implements amendments related to the COVID-19 state of emergency and other matters.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule establishes the requirements for any provider of nutritional consultations who wants to be certified by ODA.

ODA proposes to amend this rule to do the following:

Move paragraphs (B)(3)(b) and (B)(3)(e) of the rule to the definition of "nutritional consultation" in paragraph (A) of the rule and to modify the limitation when the individual receives a similar services under Chapter 173-39 of the Administrative Code to a limitation when the individual receives a similar service paid (in full or in part) by Medicare, state plan Medicaid, or another third-party payer.

Replace occurrences of "nutrition assessment" with "nutritional assessment" to align the terminology with rule 4759-2-01 of the Administrative Code.

Delete paragraph (B)(3)(c) of this rule because paragraph (B)(11)(d) of rule 173-39-02 of the Administrative Code already requires the same.

Delete paragraph (B)(3)(d) of this rule because paragraphs (B)(11)(c) and (B)(11)(d) of rule 173-39-02 of the Administrative Code already require the same.

Replace "face-to-face" in paragraph (B)(4) of the rule with "in person" and to replace "telecommunications system" with "telephone" and "video conference." This will align the terminology with other rules in Chapter 173-39 of the Administrative Code.

Allow providers, in paragraph (B)(4) of the rule, to provide an initial consultation by telephone or video conference during a state of emergency declared by the governor. This will allow for social distancing during the state of emergency.

Replace the language in paragraph (B)(8)(b) of the rule on a handwritten signature with language on a unique identifier.

Indicate in paragraph (C)(1) of the rule that a unit of service is 15 minutes of session time.

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

- 10. 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 revised filing of this rule to replace "Wednesday" with "Monday" on the public hearing notice. In doing so, ODA did not revise the rule.

## **II. Fiscal Analysis**

- 11. 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

ODA's proposed amendment of this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. 166 (133rd G.A.).

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

ODA's proposed amendment of this rule will create no new cost of compliance to the providers affected by this rule. Instead, it will give providers flexibility to maintain social distancing. For more information, please review the business impact analysis.

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

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

- 15. 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**

- 16. Was this rule filed with the Common Sense Initiative Office? Yes**

- 17. 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

This rule requires providers to comply with requirements that are common to providers of nutrition consultations, including verifying that they provided the sessions for which they bill ODA. For more information, please review the business impact analysis.

- 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 Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

18. **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?** 1

(B)(3) Before the provider provides a consultation to an individual or to the individual's authorized representative or caregiver, the provider SHALL obtain an order for the consultation from a licensed healthcare professional whose scope of practice includes ordering consultations.

- B. **How many existing regulatory restrictions do you propose removing?** 6

(B)(3) Orders and limits: The PASSPORT program SHALL only pay for consultations under the following circumstances:

(B)(3)(b) The provider SHALL NOT provide a consultation to an individual's authorized representative or caregiver unless the licensed healthcare professional ordered the consultation to improve the individual's well-being.

(B)(3)(c) The provider SHALL NOT provide consultations to an individual in excess of what the case manager authorizes in the individual's service plan.

(B)(3)(d) The provider SHALL only bill ODA's designee for a consultation if the case manager identifies the provider in the service order for the individual.

(B)(3)(e) The provider SHALL NOT provide consultations to an individual if the individual is receiving a similar service under Chapter 173-39 of the Administrative Code.

(B)(4)(b) For subsequent consultations, the dietitian SHALL only provide the consultations if the consultations occur on a face-to-face basis or by a telecommunication system.