

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-02.11

**Rule Type:** Amendment

**Rule Title/Tagline:** ODA provider certification: personal care.

**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?** 1/18/2022
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, 121.36, 173.01, 173.02, 173.391, 173.52, 173.522, 173.54, 173.543
5. **What statute(s) does the rule implement or amplify?** 121.36, 173.39, 173.391, 173.52, 173.522; 42 CFR 441.352
6. **What are the reasons for proposing the rule?**

Each rule in Chapter 173-39 primarily exists to comply with section 173.391 of the Revised Code, which requires ODA to adopt rules to establish the requirements and standards for certified providers.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule establishes the requirements to become, and to remain, an ODA-certified provider of personal care.

ODA proposes to amend this rule to achieve the following:

1. Give providers the following flexibilities during a state of emergency declared by the governor or a federal public health emergency: (A) Flexibility to conduct the initial supervisor's visit by telephone, video conference, or in person. (B) Flexibility to conduct subsequent supervisor's visits by telephone, video conference, or in person, depending upon the individual's needs, but only if at least two of the supervisor's visits per year are conducted in person. (C) Flexibility to verify that they have conducted initial and subsequent visits without collecting a unique identifier of the individual or the individual's caregiver.
2. Give agency providers flexibility to ensure that its employees successfully complete orientation, rather than require the providers to provide that orientation.
3. Give agency providers flexibility to ensure each PCA successfully completes any required additional training and competency evaluation, rather than require the provider to conduct that training.
4. Indicate that any training successfully completed through <https://mylearning.dodd.oho.gov/> or <https://collinslearning.com/home-health-care/> is approved.
5. Allow the portions of training that are not competency evaluation to occur online.
6. Establish a standard for initial qualification that requires the portion of a PCA's competency evaluation that involves return demonstration to be in person.
7. Require the provider to comply with the requirements for EVV in rule 5160-1-40 of the Administrative Code.
8. Indicate that a person may qualify to be a participant-directed provider if the person is listed in the nurse aide registry as "expired."
9. Add "or electronic" after "written" so the rule does not appear to require outdated modes of communication.

ODA also proposes to make non-substantive amendments to this rule.

- 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.

*Not Applicable*

## 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

Adopting the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

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

Adopting the proposed amendments to this rule will not create a cost of compliance to any directly-affected person or organization.

- 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

Providers voluntarily apply for ODA certification. Certification is not required to provide a service unless a provider wants a government program that requires certification (e.g. the PASSPORT Program) to pay the provider. Please review the BIA for additional information.

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 ODA-certified agency providers of personal care to hire qualified staff (e.g., PCAs and PCA supervisors) and requires participant-directed providers to qualify. This rule also requires ODA-certified agency and participant-directed providers to retain records on the activities provided to individuals during each episode of service.

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? 0

B. How many existing regulatory restrictions do you propose removing? 5

1. (C)(3)(d) Agency- and program-specific orientation SHALL NOT count toward the eight hours.

2. (C)(4)(b) The provider SHALL ensure that a PCA supervisor is available to respond to emergencies when the PCAs are scheduled to work.
3. (B)(4)(c)(ii) The PCA supervisor SHALL discuss recommended modifications to the care plan with the case manager and PCA.
4. (B)(4)(c)(ii) The PCA supervisor SHALL document these visits, including the date of the visit, the PCA supervisor's name, the individual's name, the individual's signature, and the PCA supervisor's signature. [Note: ODA proposes to move and combine 2 similar sentences--one from (B)(4)(c)(i) and one from (B)(4)(c)(ii)--into (B)(4)(c)(iii). In doing so, ODA will not be retaining one of the regulatory restrictions. This deletion represents the one that ODA will not be retaining.]
5. (B)(6)(b) A provider that does not use an electronic verification system SHALL also obtain the individual's signature for each episode of personal care.