

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:

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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, 173.391, 173.52, 173.522
5. **What statute(s) does the rule implement or amplify?** 121.36, 173.39, 173.391, 173.52, 173.522, 173.525; 42 CFR 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?**

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

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

OVERVIEW

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

Effective October 3, 2023, Am. Sub. HB 33 (135th GA) enacted RC§173.525. ODA proposes to amend the rules in this package primarily to implement this bill's new requirements.

The new law establishes a new requirement for a person to successfully complete 30 hours of pre-service, ODA-acceptable training to qualify to be a personal care aide (PCA).

Currently, rule 173-39-02.11 of the Administrative Code does not require any pre-service, ODA-acceptable training. Instead, it establishes the following 5 ways for a person to qualify to be a PCA for an ODA-certified provider:

1. State-Tested Nurse Aide (STNA)—a person qualifies to be a PCA if the person qualifies, or once qualified, to be a STNA and is listed on the nurse aide registry as "active," "in good standing," or "expired."
2. Medicare HHA—a person qualifies to serve as a PCA if the person qualifies to be a home health aide (HHA) under 42 CFR 484.80 and 484.115.
3. Previous Supervised Experience—1 year.
4. Vocational Training, including training obtained before a person applies to be a PCA.
5. Other—at least 60 hours of training on a list of topics.

Of these 5 ways to qualify, only 3 inherently involve training: STNA, vocational training, and DIY. The previous-supervised-experience way to qualify may not involve training. The Medicare way to qualify may not involve training because 42 CFR 484.80(a) allows a person who successfully passes competency evaluation to qualify to be a HHA without successfully completing any or all of the 75 hours of supervised practical training under 42 CFR 484.80(b).

ODA proposes to implement RC§173.525 in a way that does not cause job loss for PCAs who qualified by the previous-supervised-experience way or the Medicare HHA way. ODA also proposes to implement the new law in a way that does not require PCAs who qualified by the previous-supervised-experience way or the Medicare way to complete 30 hours of new training to retain their jobs. ODA proposes to achieve both goals by considering any person who meets one of the 5 ways to qualify as having successfully completed the 30 hours of training required under RC§173.525, even if the way to qualify did not involve any training.

ODA's proposal will also keep the ways to qualify to be a PCA uniform between the PASSPORT Program and the Older Americans Act programs (cf., rule 173-3-06.5 of the Administrative Code). For providers who serve consumers of both the PASSPORT Program and Older Americans Act programs, this will continue to all allow the provider's PCAs to qualify to serve consumers under either program.

Because RC§173.525 applies to PCAs in the PASSPORT Program without limiting its application to personal care, it will also apply to PCAs who provide enhanced community living under rule 173-39-02.20 of the Administrative Code.

RC§173.525 also established a new 6-hour limit on in-service training for PCAs in the PASSPORT Program. ODA proposes to amend rule 173-39-02.11 of the Administrative Code to reduce the hours required every twelve months from 8 to 6. This will also apply to PCAs who provide enhanced community living. ODA voluntarily proposes to implement the same 6-hour limitation into rule 173-3-06.5 of the Administrative Code to maintain uniformity between the PASSPORT Program and Older Americans Act programs.

RC§173.525 also established requirements for pre-service and in-service training for persons serving as home health aides (HHAs) under the PASSPORT Program. Because the PASSPORT Program does not pay for home health, this will have no impact upon ODA's rules.

Furthermore, because ODA's rules require more hours of annual in-service training for homemaker aides than RC §173.525 requires for PCAs, ODA voluntarily proposes to reduce the annual in-service training for homemaker aides to 6 hrs./yr. for both the PASSPORT and Older Americans Act programs.

PROPOSED AMENDMENTS FOR THIS RULE:

1. Remove respite as an activity of personal care because the Centers for Medicare and Medicaid Services (CMS) informed ODA that respite cannot be part of Medicaid-

funded personal care. [For more information on other respite options, please see ODA's response to the stakeholder input listed in ODA's response to question #10 of this BIA.]

2. Declare that ODA considers any person who meets one of the 5 ways to qualify to be a PCA as having successfully completed the 30 hours of pre-service ODA-acceptable training required under RC§173.525, even if the way to qualify did not involve any training.

3. Reduce the minimum number of training hours in the "other" way to qualify to be a PCA from 60 to 30 hours.

4. Replace the orientation topic of "universal precautions for infection control" with "standard precautions for infection control."

5. Reduce annual in-service, ODA-acceptable training hours for a 12-month period from 8 hours to 6 hours to comply with the limitation in RC§173.525.

6. Retain current qualifications to be PCA supervisor: Because RC§173.525 limited those who qualify to be a PCA supervisor to (1) registered nurses (RNs) and (2) licensed practical nurses (LPNs) under the direction of RNs, ODA must retain its current standard that only (1) and (2) qualify to be a PCA supervisor. ODA proposes to cite RC§173.525 in paragraph (C)(4)(a) of this rule so that readers can connect the standard to the statute.

7. Indicate that a provider may retain evidence that a PCA supervisor conducted a visit 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.

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

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