

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? 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, 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; 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 personal care who wants to be certified by ODA.

ODA proposes to amend this rule to do the following:

On June 11, 2020, ODA also adopted an emergency amendment to the definition of "personal care" in this rule. The amendment temporarily gave providers flexibility to consider errands outside the presence of the individual (e.g., picking up a prescription) as part of "personal care." ODA proposes to adopt this amendment on an ongoing basis.

Insert "when authorized in a person-centered services plan" after "Personal care activities include the following" in paragraph (A)(1) of the rule. This amendment brings the definition into alignment with the person-centered planning requirements in rule 5160-44-02 of the Administrative Code.

Delete the definition of "PCA," because ODA is simultaneously proposing to add a definition of "PCA" to rule 173-39-01 of the Administrative Code that will apply to the entire chapter.

Replace occurrences of "continuing education and "in-service continuing education" with "in-service training."

Replace "training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each trainer and of each tester: in paragraph (B)(3)(e)(i) of the rule with "name of the school or training organization, name of the course, training dates, and training hours successfully completed.

Add "expired" as a valid option in paragraph (B)(3)(e)(ii) of the rule.

Delete the need to verify a person's name in paragraph (B)(3)(e)(iii) of the rule.

Add paragraph (B)(3)(f) of the rule to establish standards that remote training is acceptable, but skills testing by return demonstration is only acceptable if conducted in person.

Delete from paragraph (B)(5)(d) of the rule an obsolete paragraph citation from a reference to rule 173-39-02 of the Administrative Code.

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 to [1] insert "the individual complies with paragraph (C)(1)(a) of rule 173-42-06 of the Administrative Code and" after "if" in paragraph (D)(5)(a) of this rule and [2] delete paragraph (D)(5)(b)(i) of this rule, which involves combining paragraphs (D)(5)(b) and (D)(5)(b)(ii) of this rule and replacing the subheading "Continuing qualifications" with "In-service training."

10/27/2020 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 personal care, including verifying that they provided the personal care activities 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? 0
 - B. How many existing regulatory restrictions do you propose removing? 1

(D)(5)(b)(i) If the provider no longer meets these qualifications, the provider SHALL no longer provide personal care.