

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?** 4/14/2023
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 9 - 134 - McColley, Roegner
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 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?**

Each rule in Chapter 173-39 of the Administrative Code primarily exists to comply with R.C. §173.391, which requires ODA to adopt rules to establish certification requirements and standards. This rule also exists to implement the requirement in R.C. §121.36 on monitoring systems and the requirement in 42 CFR 441.352 to provide satisfactory assurance to the Centers for Medicare and Medicaid Services (CMS) at the United States Department of Health and Human Services (HHS) that ODA implemented the requirements in the approved Medicaid waiver applications for the PASSPORT and Assisted Living Programs.

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

This proposed new rule will establish the requirements for ODA-certified providers of personal care.

The proposed new participant-directed provider service will replace the choices home care attendant service in the current version of rule 173-39-02.4 of the Administrative Code and participant-directed personal care under this rule.

ODA proposes to transfer the requirements for agency providers in rule 173-39-02.21 of the Administrative Code to this rule.

Senate Bill 9 (134th G.A.) requires state agencies to reduce the unnecessary use of regulatory restrictions ("may not," "must," "prohibit," "require," "shall," and "shall not") in rules which may prevent artificial intelligence from interpreting Ohio's rules to create an unfavorable business climate based on the volume of regulatory restrictions used in rules rather than the substantive content of those rules. Accordingly, ODA proposes to remove 20 unnecessary regulatory restrictions from this rule.

Other requirements in this proposed new rule directly relate to the provision of personal care.

See rule 173-39-02 of the Administrative Code for requirements on records retention, including service verification. This proposed new rule does not repeat those requirements, but does list mandatory reporting items for service verification.

- 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.**

ODA made a revised filing of this rule to achieve the following:

1. Remove "as defined in section 4723.01 of the Revised Code" from paragraph (C)(2)(b) of this rule because ODA already defines "RN" and "LPN" in rule 173-39-01 of the Administrative Code.
2. Correct the spelling of "during" in paragraph (C)(2)(b) of this rule.
3. Update this RSFA.

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 not impact the biennial budget that the Ohio General Assembly established for ODA.

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

The cost of compliance to an ODA-certified provider is the costs of providing personal care according to this rule's requirements for availability, qualifications for PCAs, continuing education/in-service training, and supervisory visits.

- 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

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

See R.C. §173.391 and rule 173-39-05 of the Administrative Code.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

This rule establishes qualifications for hiring PCAs and requirements for orientation and annual in-service training. The rule also establishes requirements for verifying PCA qualifications. Other requirements in this proposed new rule directly relate to the provision of the service itself.

See rule 173-39-02 of the Administrative Code for the primary requirements on records retention, including service verification and employee qualifications. The proposed amendments to this rule do not repeat those requirements. Instead, the resulting rule will establish requirements for verifying PCA qualifications and list mandatory reporting items for meeting the service-verification requirements in rule 173-39-02 of the Administrative Code.

The amount the PASSPORT and Assisted Living Programs pay providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus employee-related costs. The costs incurred as a result of this rule are likely calculated as part of a provider's operational budget—the cost of doing business and clerical jobs, such as retaining records and updating policies and procedures.

Providers set the prices they bill to the PASSPORT and Assisted Living Programs. In turn, the PASSPORT and Assisted Living Programs pay each

provider the amount the provider bills, so long as the price billed does not exceed the maximum that the Ohio Dept. of Medicaid (ODM) allows per unit. In the appendix to rule 5160-1-06.1 of the Administrative Code, ODM establishes the units of service for the PASSPORT Program and the maximum-allowable payment for each unit. In the appendix to rule 5160-1-06.5 of the Administrative Code, ODM establishes the units of service for the Assisted Living Program and the maximum-allowable payment for each unit.

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? Yes

This language on agency providers that ODA proposes to transfer from rule 173-39-02.21 of the Administrative Code to this rule will continue to prohibit ODA-certified agency providers from accepting referrals if those providers do not have adequate staffing to provide the personal care.

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? Yes

A. How many new regulatory restrictions do you propose adding to this rule? 0

B. How many existing regulatory restrictions do you propose removing from this rule? 20

1. (C)(1)The provider SHALL comply with the requirements for every ODA-certified agency provider in rule 173-39-02 of the Administrative Code.

2. (C)(3)(a) The provider SHALL only allow a person to serve as a PCA if the person meets at least one of the following qualifications....

3. (C)(3)(f) Additionally, the provider SHALL also record the following information for each PCA, and retain it, if it does not appear on the PCA's certificate of completion (or if the PCA did not receive a certificate of completion):

4. (C)(4)(a) The provider SHALL only allow an RN (or LPN under the direction of an RN) to be a PCA supervisor.

5. (C)(6)(a) The provider SHALL comply with section 121.36 of the Revised Code.
6. (C)(6)(b) For each episode of personal care a PCA provides, the provider SHALL retain a record of the activities provided and comply with the requirements for EVV in rule 5160-1-40 of the Administrative Code.
7. (D) Every ODA-certified participant-directed provider of personal care SHALL comply with the following requirements:
 8. (D)(1) General requirements: The provider SHALL comply with the requirements for every ODA-certified participant-directed provider in rule 173-39-02 of the Administrative Code.
 9. (D)(2) The provider SHALL provide personal care as agreed upon with the individual and as authorized in the individual's service plan.
 10. (D)(3) The individual SHALL develop his or her own activity plan with the provider.
 11. (D)(3) The individual and the provider SHALL date and sign a copy of the plan.
 12. (D)(3) The provider SHALL retain a copy of the plan.
 13. (D)(5)(a) A provider SHALL only begin to provide personal care if the individual complies with paragraph (C)(1)(a) of rule 173-42-06 of the Administrative Code and the provider meets the following requirements and retains records to show that he or she meets the following requirements:
 14. (D)(5)(a)(i) The provider SHALL meet at least one of the following qualifications:
 15. (D)(5)(b) The provider SHALL only continue to provide personal care if the provider successfully completed at least twelve hours of in-service training during the previous twelve months on a subject related to the individual's activity plan.
 16. (D)(6)(a) Until rule 5160-1-40 of the Administrative Code requires a provider of this service to use EVV, the provider SHALL complete the time sheets the individual provides through the FMS,...

17. (D)(6)(a) ...which SHALL include the date the provider provided personal care, a description of the activities the provider provided, the individual's name, the unique identifier of the individual, the provider's name, the provider's arrival and departure times, and the provider's unique identifier to verify the accuracy of the record.

18. (D)(5)(a)(i)(a) ..., which the provider SHALL verify by retaining a copy of the search results from ODH's nurse aide registry (<https://nurseaideregistry.odh.ohio.gov/Public/PublicNurseAideSearch>) to verify the registry listed the person as "active," "in good standing," or "expired."

19. (D)(5)(a)(iv) The provider successfully demonstrated his or her competence or mastery of an activity in a specific area in which the individual may REQUIRE the provider to demonstrate the competence or mastery.

20. (D)(6)(c) The provider SHALL retain records required under this rule and provide access to those records for monitoring according to rule 173-39-02 of the Administrative Code.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable