

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-02.18

**Rule Type:** Amendment

**Rule Title/Tagline:** Non-medical transportation.

**Agency Name:** Department of Aging

**Division:**

**Address:** 30 E Broad St. 22nd Floor Columbus OH 43215-3414

**Contact:** Tom Simmons **Phone:** 614-202-7971

**Email:** tsimmons@age.ohio.gov

#### 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, 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, 4766.14, and 4766.15
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 requirements to become, and to remain, an ODA-certified provider of non-medical transportation.

**8. 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 non-medical transportation.

ODA proposes to rescind rule 173-39-02.13 of the Administrative Code and to amend rule 173-39-02.18 of the Administrative Code, and for the rescission and amendments to take effect on July 1, 2023, which is the anticipated effective date for the renewal application to the Centers for Medicare and Medicaid Services (CMS) for the PASSPORT Program to be a Medicaid-waiver program.

ODA proposes to rescind rule 173-39-02.13 of the Administrative Code because (1) CMS notified Ohio that it will no longer approve of offering NEMT as a service through the PASSPORT Program and (2) the PASSPORT Program is the only ODA-administered program that requires provider certification for NEMT.

CMS will no longer approve of offering NEMT through the PASSPORT Program because (1) 42 CFR 431.53 requires every state's Medicaid state plan to ensure necessary transportation for beneficiaries to and from [medical] providers; and (2) 42 CFR 441.350 limits the services offered through a 65+ Medicaid-waiver-authorized program (e.g., the PASSPORT Program) to services that are not covered under our Medicaid state plan.

Individuals who need NEMT may receive NEMT from the Medicaid state plan rather than from the PASSPORT Program.

The PASSPORT Program will continue to cover non-medical transportation, which CMS allows under 42 CFR 440.180(b).

ODA proposes to reduce the use of unnecessary regulatory restrictions (e.g., shall) in both rules in this package to comply with R.C. §§ 106.03 and 121.951. In 2019, ODA reduced the use of unnecessary regulatory restrictions by replacing the requirements in rule 173-39-02.18 of the Administrative Code that were identical to those in rule 173-39-02.13 of the Administrative Code with a requirement to comply with the requirements in the latter rule. Because ODA now proposes to rescind rule 173-39-02.13 of the Administrative Code, ODA proposes to transfer the requirements back to rule 173 39 02.18 of the Administrative Code. In doing so, ODA proposes to not transfer any unnecessary use of regulatory restriction words, resulting in a net

reduction in those words without making substantive changes to the requirements for providers.

ODA proposes to make the following additional non-substantive amendments to the requirements that it transfers from rule 173-39-02.13 of the Administrative Code to rule 173-39-02.18 of the Administrative Code:

- Reference R.C. §4756.02 in the definition of Boards of EMFTS.
- Refer to ODA-approved inspection forms rather than refer to each form by name, number, and version date. This will allow innovative providers to propose alternative electronic forms (or paper forms) that ODA can consider for approval in addition to the already-approved inspection forms.
- No longer duplicate the requirement in rule 173-39-02 of the Administrative Code (or the regulatory restriction words) to retain records to verify each service, but continue to list the mandatory reporting items for each trip.
- No longer duplicate the statement in rule 173-39-02 of the Administrative Code that gives providers flexibility to use an electronic system to retain records.

**9. Does the rule incorporate material by reference? Yes**

**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.**

Although ODA proposes to no longer reference specific vehicle inspection forms in this rule, and although ODA proposes to allow providers to request ODA's approval for alternate forms--even electronic alternatives, ODA has ODA-created, ODA-approved forms that meet this rule's requirements. They are form ODA0004, which is readily available to the general public on ODA's website, and new forms ODA0008 and ODA0011, which contain new language regarding biohazard kits that better complies with R.C. 4766.14(A)(2) and is similar to the biohazard kits required by the Board of EMFTS, which will make compliance easier for providers who are both licensed by that board and ODA-certified.

**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 insert "as amplified in paragraph (A) (8) of rule 4766-3-13 of the Administrative Code, " in paragraph (B)(3)(a) of this rule after "The provider may hire a person to be a driver only if the person meets all the requirements

for drivers under divisions (A)(3) and (B) of section 4766.14 of the Revised Code." This is in response to testimony provided by the Central Ohio Area Agency on Aging at the 05/16/2023 public hearing.

## 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?**

Please review ODA's responses to questions 15, 16, and 17 of the BIA for details.

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

Please review ODA's responses to questions 15, 16, and 17 of the BIA for details.

- 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