Rule Summary and Fiscal Analysis
Part A - General Questions

Rule Number: 173-39-02.1

Rule Type: New

Rule Title/Tagline: ODA provider certification: adult day service.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
   - A. **What is the rule's five year review date?**
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; 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 proposed new rule will exist to establish the requirements to become, and to remain, an ODA-certified provider of an adult day service.

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 to become, and to remain, an ODA-certified provider of an adult day service.

ODA proposes for this new rule to replace the current rule which ODA is simultaneously proposing to rescind to comply with the Legislative Service Commission's 50% guideline.

ODA proposes to achieve the following by adopting this proposed new rule to replace the current rule:

1. No longer offer in-home option in the definition of "adult day service" in paragraph (A) of this rule or refer an in-home option throughout this rule. ODA originally offered this option as a means to keep adult day providers from going out of business during the early stages of the COVID-19 public health emergency (PHE). ODA has no record of any providers currently using that option which was confirmed by stakeholders. (For more information, please review ODA's response to BIA question #11.)

2. Include references to rule 173-39-02.18 of the Administrative Code instead of rule 173-39-02.13 of the Administrative Code because ODA rescinded rule 173-39-02.13 of the Administrative Code on July 1, 2023.

3. No longer include the misplaced requirement for a case manager to conduct an assessment, because this rule regulates certified providers, but does not regulate case managers.

4. No longer include the requirement for providers to complete performance reviews of each staff member.

5. Use significantly fewer regulatory restrictions (e.g., "shall") to comply with R.C. §§ 106.03 and 121.951. This proposal includes some of the substantive changes noted above. This proposal also includes numerous non-substantive changes that account for a majority of the differences between this proposed new rule and the current rule.

6. Make non-substantive improvements to the rule.

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 refiled this rule to correct ODA's response to question #13 of this rule summary and fiscal analysis (RSFA). Before refiling, the response said, "Please review ODA's responses to BIA questions #11, #15, #16, and #17 for details on the cost of compliance." After refiling, the response said, "Please review ODA's responses to BIA questions #10, #15, #16, and #17 for details on the cost of compliance."

09/28/2023 In response to testimony presented at the public hearing, ODA refiled this rule to reconsider the use of "staff member" and similar terms throughout this rule. As a result, ODA proposes the following revisions to the proposed new rule:

1. Replace "Functional and cognitive profiles that identify the ADLs and IADLs that need the attention or assistance of the provider's staff members" in paragraph (B)(2)(b)(ii)(a) of this rule with "The individual's functional, cognitive, and social needs." This paragraph refers to an assessment of the individual and does not need to say which staff member provides which activity because that is the purpose for an activity plan, not an assessment.

2. Replace "staff member" with "employee" when the context refers to the provider's option to obtain the services of a healthcare professional whether the professional is or is not the provider's employee. This applies to paragraphs (B)(2)(c), (B)(2)(d), and (B)(2)(f)(iii) of this rule.

3. Replace "staff members" in paragraph (B)(2)(f)(ii) of this rule with "staff."

4. Replace "The provider shall have at least two staff members present whenever more than one individual is present, including one who is a paid staff member who provides hands-on activities and one who is certified in CPR." in paragraph (B)(4)(a) of this rule with "The provider shall have at least two staff members present, with at least one of those staff members having a certification in CPR, when more than one individual is present in the center." The use of "staff members" in this paragraph could include PCAs, RNs, activity directors, activity assistants, or other staff members.

5. Replace "staff member who provides hands-on activities" in paragraph (B)(5)(b)(iv) with "PCA."

6. Replace both uses of "staff member" in paragraph (B)(5)(b)(v) of this rule with "person" and, in the same paragraph, insert "for the provider" after "individuals."

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 G.A.).

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 BIA questions #11, #15, #16, and #17 for details on the cost of compliance.

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 BIA question #15 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