

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-02.1  
**Rule Type:** Rescission  
**Rule Title/Tagline:** ODA provider certification: adult day service.  
**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?** 8/18/2023
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; 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 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 rule establishes the requirements to become, and to remain, an ODA-certified provider of an adult day service. ODA proposes to rescind this rule and to simultaneously adopt a proposed new rule in its place to comply with the Legislative Service Commission's 50% guideline.

Please review the RSFA for the proposed new rule for details on the differences between this rule and the proposed new rule.

**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.**

The rule mentions form ODA1200, which is readily available to the general public on the forms webpage of ODA's website (<https://aging.ohio.gov/agencies-and-service-providers/rules-and-forms/forms>). The proposed new rule that will replace this rule will no longer mention, nor require, using the form.

**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 refileing, the response said, "Please review ODA's responses to BIA questions #11, #15, #16, and #17 for details on the cost of compliance." After refileing, the response said, "Please review ODA's responses to BIA questions #10, #15, #16, and #17 for details on the cost of compliance."

## **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

Rescinding 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 #10, #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? 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? 31**

1. (B) Every ODA-certified provider of ADS SHALL comply with the following requirements:

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

3. (B)(2)(b)(i) The case manager SHALL assess each individual's needs and preferences then specify which service level will be approved for each individual.

4. (B)(2)(b)(ii) The provider SHALL retain records to show that it provides the service at the level that the case manager authorized.

5. (B)(2)(c)(ii)(a) Functional and cognitive profiles that identify the ADLs and IADLs that REQUIRE the attention or assistance of the provider's staff members.

6. (B)(2)(d) ...or SHALL...

7. (B)(2)(d) ...REQUIRE a staff member who is such a licensed healthcare profession to perform a health assessment of each individual.

8. (B)(2)(d) ...and SHALL Identify the individual's risk factors, diet, and medications.

9. (B)(2)(e) ...or the provider SHALL...

10. (B)(2)(e) ...REQUIRE a staff member who is such a licensed healthcare professional to draft an activity plan for each individual.

11. (B)(2)(e) The plan SHALL describe the individual's:

12. (B)(2)(f) Instead, the provider SHALL comply with the diet-order requirements for therapeutic diets under rule 5160-44-11 of the Administrative Code.

13. (B)(2)(g)(ii) The provider SHALL invite any licensed healthcare professional who does not work for the provider, but who provided the provider with a health assessment of the individual or an activity plan for the individual, to participate in the conference.

14. (B)(2)(g)(ii) If the individual has a caregiver, the provider SHALL invite the caregiver to the conference.

15. (B)(2)(g)(ii) The provider SHALL also invite the individual to the conference.

16. (B)(2)(g)(ii) The provider SHALL invite the case manager, licensed healthcare professional, caregiver, or individual by providing the date and time to the case manager at least seven days before the conference begins.

17. (B)(2)(g)(iii) ...or SHALL...

18. (B)(2)(g)(iii) ...REQUIRE a staff member who is such a licensed healthcare professional to revise the activity plan accordingly.

19. (B)(2)(g)(iv) Records: The provider SHALL retain records on each conference's determinations.

20. (B)(3)(g) If the center seeks certification to provide intensive ADS, the center has bathing facilities suitable to the needs of individuals who REQUIRE intensive ADS.

21. (B)(4)(c) ,,available to provide nursing services that REQUIRE the skills of an RN, or LPN under the direction of an RN, and that are based on the needs of the individuals and within the nurse's scope of practice.

22. (B)(5)(a)(i) A provider SHALL only provide the service if ODA certifies the provider as an agency provider.

23. (B)(5)(b)(i) RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, licensed dietitian, occupational therapist, occupational therapy assistant, or other licensed professional planning to practice in the adult day center SHALL possess a current, and valid license to practice in their profession.

24. (B)(5)(b)(ii) Each activity director SHALL possess at least one of the following:

25. (B)(5)(b)(iii) Each activity assistant SHALL possess at least one of the following:

26. (B)(5)(b)(iv) Each staff member who provides hands-on activities SHALL possess at least one of the following:

27. (B)(5)(b)(v) Each staff member who provides transportation to individuals SHALL comply with all requirements under rule 173-39-02.13 of the Administrative Code.

28. (B)(5)(b)(vi) The provider shall retain records to show that each staff member who has in-person interaction with individuals meets the staff qualifications under paragraph (B)(5)(b) of this rule for their job position.

29. (B)(5)(d)(i) The provider SHALL complete a performance review of each staff member in relation to the staff member's job description.

30. (B)(5)(d)(ii) The provider SHALL retain records to show that it complies with paragraph (B)(4)(d)(i) of this rule.

31. (B)(6) By one of the following two methods, the provider SHALL verify that each ADS session for which it bills was provided:

**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