

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-02.1
Rule Type: Amendment
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?** 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, 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 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 an adult day service who wants to be certified by ODA.

On June 11, 2020, ODA also adopted an emergency amendment to the definition of "adult day service." The amendment temporarily gave ADS providers flexibility to provide ADS activities in individual's homes. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis.

Move the text that defines the levels and activities of ADS from a paragraph under paragraph (B) of the rule, which should be reserved for requirements for certified providers, to under paragraph (A) of the rule, which is the paragraph that defines "adult day service." In doing so, ODA proposes to no longer include the long-form text that itemizes what Table 1 to the rule conveys with much less text.

Add Table 2 to the rule to define which individuals are eligible to receive ADS activities in their homes, which ADS activities are allowable in their homes, and the allowable duration or frequency of allowable ADS activities in their homes.

Replace a reference to requirements for therapeutic diets in rule 173-39-02.14 of the Administrative Code, to requirements for therapeutic diets in rule 5160-44-11 of the Administrative Code, since the requirements for therapeutic diets are no longer in rule 173-39-02.14 of the Administrative Code. Similarly, ODA also proposes to add rule 5160-44-11 of the Administrative Code to a reference to requirements for home-delivered meals in rule 173-39-02.14 of the Administrative Code.

Transform the requirement in paragraph (B)(3)(a) of the rule from a list of requirements for a provider's adult day center to a list of specifications an adult day center must meet to qualify to be a center where an ODA-certified provider may be paid to provide ADS.

Replace "paid personal care staff member" in paragraph (B)(4)(a) of the rule with "paid staff member who provides hands-on activities."

Replace "on sit at the ADS center" in paragraph (B)(4)(c) of the rule with "available," which would make it possible to provide ADS in an individual's home without having an RN, or LPN under the direction of a RN, on site at the ADS center.

Change the staffing ratios in paragraph (B)(4)(b) of the rule from 1:6 to 1:10.

Add "based on the needs of the individual and" to paragraph (B)(4)(c) of the rule.

Replace "acting as a personal care staff member" from paragraph (B)(5)(b)(i) of the rule with "planning to practice in the adult day center." This will align the wording with a similar paragraph in rule 173-3-06.1 of the Administrative Code. It would also remove language that appears to require licensure when a licensed professional practices personal care, which is not a service that requires licensure.

Delete "to verify each ADS session" from paragraph (B)(6)(a) of the rule because it duplicates language in paragraph (B)(6) of the rule.

Require providers to complete form ODA1200 when providing ADS activities in individuals' homes.

On June 11, 2020, ODA adopted one or more emergency amendment(s) into this rule to temporarily allow providers to decide whether to collect a unique identifier of the individual (e.g., a handwritten signature) to verify that an activity or unit of service was provided. This has been allowing the provider and individual to maintain social distancing. Through this rule package, ODA proposes adopt this on an ongoing basis.

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 no longer proposes to replace the 1:6 staffing ratio with a 1:10 ratio.

ODA deleted the top row of Table 2.

ODA made the following non-substantive revisions:

(B)(2)(a): Replace "that complies" with "complying."

(B)(2)(a): Replace "enters into a contract" with "subcontracts."

(B)(2)(a): Replace "who complies" with "complying."

(B)(2)(i)(i): Delete "that" as it occurs between "Each meal" and "the provider provides."

(B)(2)(i)(i): Replace "snacktime" with "snack time."

(B)(2)(i)(ii): Replace "that pertain" with "pertaining."

(B)(3)(a)(iv): Delete "that" as it occurs between "a locked area" and "the provider maintains."

(B)(3)(a)(iv): Replace "that meets" with "complying with."

(B)(3)(a)(v): Replace "that" with "which."

(B)(3)(a)(vi): Replace "it" with "the center."

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

On the public hearing notice, ODA replaced "Wednesday" with "Monday."

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 an adult day service, including verifying that they provided the service 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? 8

(B)(3)(a) Specifications: The provider SHALL only provide ADS in a center with the following specifications:

(B)(3)(a)(i) If the center is housed in a building with other services or programs other than ADS, the provider SHALL assure that a separate, identifiable space and staff is available for ADS during all hours that the provider provides ADS in the center.

(B)(3)(a)(ii) The center SHALL comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in Appendix A to 28 C.F.R. Part 36 (July 1, 2015).

(B)(3)(a)(iii) The center SHALL have at least sixty square feet per individual that it services..., excluding hallways, offices, rest rooms, and storage areas.

(B)(3)(a)(iv) The provider SHALL store individuals' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.

(B)(3)(a)(v) The provider SHALL store toxic substances in an area that is inaccessible to individuals.

(B)(3)(a)(vi) The center SHALL have at least one working toilet for every ten individuals present that it services...and at least one wheelchair-accessible toilet.

(B)(3)(a)(vii) ODA SHALL only certify the provider to provide intensive ADS if the center has bathing facilities suitable to the needs of individuals who require intensive ADS.