

Rule Summary and Fiscal Analysis (Part A)**Department of Aging**

Agency Name

Division

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173-39-02.1

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Adult day service.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.02, 173.391**

5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.431**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The proposed adoption of this new rule to replace a rule of the same number is part of larger package of rules. Through that larger rule package, ODA is proposing to rescind several rules of the Administrative Code and replace them with rules of the same number. In doing so, ODA has five basic goals:

1. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.

2. To comply with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires each state

agency to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. As a result, ODA's proposed new or amended language:

a. Complies with the Legislative Service Commission's "Rule Drafting Manual" as found on http://www.lsc.state.oh.us/rules/rdm06_06.pdf

b. Incorporates the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007)

c. Incorporates the recommendations of "Plain English Writing Tips" as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.

3. To reformat certain sections of the rule. As ODA continues to work with other agencies that participate in the consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S, we see the benefit of formatting our rules in the same way, rule after rule, and also presenting some topics clearly. These changes should not present any new requirements to a provider. This includes more standardized language regarding service verification.

4. To reformat certain sections of the rule, in the same spirit as #3, to match companion rules for ODA's non-Medicaid-funded programs under Chapter 173-3 of the Administrative Code, whenever there is a companion rule in Chapter 173-3 of the Administrative Code.

5. To replace "document-maintenance" language in the rules with "records-retention" language.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule regulates the adult day service for any provider who provides the service as a certified provider in a Medicaid-funded program under Chapter 173-39 of the Administrative Code. (Rule 173-3-06.1 of the Administrative Code regulates the adult day service for any provider who provides the service as a provider who has entered a provider agreement for a non-Medicaid-funded program under Chapter 173-3 of the Administrative Code.)

In comparison to the rule of the same number that ODA is proposing to replace with this new rule, ODA's specific goals are:

1. To present the components of the service in the same order as they appear in rule 173-3-06.1 of the Administrative Code to ease the burden on a provider who provides ADS under ODA's PASSPORT program and also the programs regulated

by rule 173-3-06.1 of the Administrative Code. Additionally, ODA is proposing to present the components of the service in a table, much like in rule 173-3-06.1 of the Administrative Code.

2. To correct typographical errors, including to replace "IADLS" with "IADLs" and "173-39-03-13" with "173-39-02.13."

3. To replace the sub-heading "consumer service management" with "provider's initial assessment," because that is similar to the term used in the language under that sub-heading and because that's the language used in rule 173-3-06.1 of the Administrative Code.

4. To call the plan in paragraph (B)(1)(f) of the rule an "activity plan" although, in rule 173-3-06.1 of the Administrative Code, we call the plan an "individualized care plan." "Activity plan" is the term ODA is using in other rules in Chapter 173-39 of the Administrative Code. (cf., proposed new rule 173-39-02.20 of the Administrative Code)

5. To state that a provider is only required to furnish a lunchtime meal or snacks to a consumer if the consumer is present during lunchtime or snacktime. (The current rule requires the provider to procure and prepare a noon meal and snacks, but doesn't say for whom and implies that it is for every consumer, even if the consumer is not present for the mealtime.)

6. To replace the language regarding the provision of meals (including meals with a therapeutic diet) with a requirement to comply with the meal requirements (minus the delivery requirements) under proposed new rule 173-39-02.14 of the Administrative Code, which is ODA's soon-to-be-adopted rule for PASSPORT's home-delivered meal service. This also services to reduce the size of this rule. Some of the nutritional-adequacy provisions of rule 173-39-02.14 of the Administrative Code include requiring each meal to meet ??? of the DRIs, not ??? of the Dietary Guidelines for Americans because ODA wants each meal to meet 1/3 of the DRIs. ODA's rationale for this is that one provider may not be able to ensure, by averaging, that the meals-in-the-aggregate, so ODA wants each meal to be nutritionally adequate. A given consumer may not receive home-delivered meals seven days a week and may receive some meals from an adult day service provider and other meals from another source. ODA strongly believes that each meal needs to be nutritionally adequate. Additionally, it is much easier to monitor whether providers delivery nutritionally-adequate meals to consumers if each meal they deliver is required to contain 1/3 of the DRIs. Yet, the proposed new rule allows the provider to use flexibility in how it determines nutritional adequacy. It could use nutritional analysis software or another method, so long as each meal meets 1/3 of the DRIs.

7. To replace the "physician-authorization" language with "physician-order" language in regards to a physician's order for a therapeutic diet etc. to match the

language in proposed new rule 173-39-02.14 of the Administrative Code, which is ODA's soon-to-be-adopted rule for PASSPORT's home-delivered meal service. A meal with a therapeutic diet is a meal that a physician orders for a consumer for with to treat the consumer's disease or clinical condition, or to eliminate, decrease, or increase certain substances in the consumer's diet. The proposed new rule continues to allow a provider to serve a meal with a therapeutic diet to a consumer so long as the physician's authorization is no older than 90 days old.

8. To replace "American With Disabilities Act accessibility guidelines (28 CFR Part 36) issued by the department of justice" with "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R., Part 36."

9. To require the provider to develop and annually review a "fire inspection and emergency safety plan," which is also a requirement in rule 173-3-06.1 of the Administrative Code. The current version of rule 173-39-02.1 of the Administrative Code only requires the provider to develop and annually review an emergency safety plan.'

10. To require the provider to conduct, at least quarterly, an evacuation drill from the center "while consumers are present." The current version of rule 173-3-06.1 of the Administrative Code requires consumers to be present, but the current version of rule 173-39-02.1 of the Administrative Code does not.

11. To state that "expectations of employees" comes from this rule, not rule 173-39-03 of the Administrative Code.

12. To rename "code of conduct" "ethical standards," because that is the term ODA uses in rule 173-39-02 of the Administrative Code.

13. To require the provider to conduct performance reviews of each staff member. (The current version of rule 173-39-02.1 of the Administrative Code only requires a provider to document performance appraisals, but never required the appraisals themselves.)

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was

infeasible for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

On November 18, 2010, ODA revise-filed this rule to upload a revised public hearing notice into the Electronic Rule Filing system and to revise this RSFA.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the proposed adoption of this new rule to replace a rule of the same number will have no impact upon the biennial budget that the General Assembly established for ODA.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-423 Long-Term Care Budget - State.

3C40-490-623 Long-Term Care Budget.

4J40-490-610 PASSPORT/Residential State Supplement.

4U90-490-602 PASSPORT Fund.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

ODA estimates that the proposed adoption of this new rule to replace a rule of the same number will have no cost of compliance to any directly-affected person.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**