

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-02.20

Rule Type: Amendment

Rule Title/Tagline: ODA provider certification: enhanced community living.

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?** 1/18/2022
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 CFR 441.352
6. **What are the reasons for proposing the rule?**

Each rule in Chapter 173-39 primarily exists to comply with section 173.391 of the Revised Code, which requires ODA to adopt rules to establish the requirements and standards for certified providers.

7. **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 enhanced community living.

ODA proposes to amend this rule to achieve the following:

1. Reduce words that imply requirements for outdated modes of communication or in-person interaction with other words by referring to "unique identifier," which is a term defined in rule 173-39-01 of the Administrative Code.
2. Refer to personal care aides (PCAs) throughout the rule instead of "direct-service staff."
3. Require the provider to comply with the requirements and flexibilities in rule 173-39-02.11 of the Administrative Code regarding PCA supervisor qualifications.
4. Require the provider to comply with the requirements and flexibilities in rule 173-39-02.11 of the Administrative Code regarding PCA qualifications, orientation, and training.
5. Require the individual's caregiver (if the individual has a caregiver) to be part of the in-person review of the person-centered activity plan.
6. Delete a duplicate paragraph on adequate staffing levels.

ODA also proposes to make non-substantive amendments to this rule. For example, ODA proposes to comply the LSC's Rule Drafting Manual by eliminating the period in cross-references to chapters of the Revised Code.

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.**

Not Applicable

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

Adopting the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Adopting the proposed amendments to this rule will not create a cost of compliance to any directly-affected person or organization.

- 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**

Providers voluntarily apply for ODA certification. Certification is not required to provide a service unless a provider wants a government program that requires certification (e.g., the PASSPORT Program) to pay the provider. Please review the BIA for additional information.

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 ODA-certified providers of ECL to hire qualified staff (e.g., PCAs), to retain records on person-centered activity plans, and to retain records to verify that the provider provided the episodes of ECL for which it bills.

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? 4

1. (B)(3)(d) The provider SHALL maintain adequate staffing levels to provide each ECL activity.

2. (B)(3)(f) In doing so, the provider SHALL schedule adequate on-site nursing staff...

3. (B)(4)(c)(i)(b) An RN SHALL provide a basic overview of the chronic disease(s) or chronic health condition(s) of the individuals being served, the principles of self-managing chronic diseases or chronic health conditions, and a (sp) individual's right to assume responsibility for his or her own healthcare decisions.

4. (B)(4)(c)(i)(c) The provider SHALL orient the staff member with the housing site and introduce to the individuals he or she will serve.