

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:

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?** 3/26/2024
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 33 - 135
- Edwards
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, 173.525; 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 specific requirements to become, and to remain, an ODA-certified provider of enhanced community living (ECL).

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule establishes the specific requirements to become, and to remain, an ODA-certified provider of ECL. ODA proposes to amend this rule to achieve the following:

1. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in the rule to comply with RC §§ 106.03 and 121.951. This may account for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

2. Remove the portion of the definition of "ECL" that indicates ECL excludes respite from the indication that personal care is part of ECL because the Centers for Medicare and Medicaid Services (CMS) informed ODA that respite cannot be part of Medicaid-funded personal care and because is simultaneously removing respite as an activity of personal care. [For more information on other respite options, please see ODA's response to the stakeholder input listed in ODA's response to question #10 of this BIA.]

8. Ease qualifications for PCAs. House Bill 33 (135th GA) enacted RC §173.525, which limits the amount of "pre-service training" that ODA may require of a PCA when being paid by the PASSPORT Program to 30 hours. ODA proposes to maintain a provision in this rule that requires PCAs for ECL to meet the qualifications to be a PCA in paragraph(C)(3)(a) of rule 173-39-02.11 of the Administrative Code, which requires complying the standards in paragraph (C)(3)(e) of the same rule. ODA is simultaneously amending paragraph (C)(3)(e) of that rule to declare that ODA considers any person who meets one of the 5 ways to qualify to be a PCA as having successfully completed the 30 hours of pre-service ODA-acceptable training required under RC §173.525, even if the way to qualify did not involve any training. Thus, the easing of qualifications to be a PCA in rule 173-39-02.11 of the Administrative Code will also ease the qualifications to be a PCA in this rule.

3. Reduce annual in-service training to 6 hours per year. RC §173.525 limits the amount of annual in-service training that ODA may require of a PCA when being paid by the PASSPORT Program to 6 hours. ODA proposes to maintain a provision in this rule that requires PCAs for ECL to comply with the annual in-service training requirements for PCAs in rule 173-39-02.11 of the Administrative Code, which ODA is simultaneously amending to reduce from 8 to 6 hours.

4. Retain current qualifications to be PCA supervisor: Because RC §173.525 limited those who qualify to be a HHA or PCA supervisor to (1) registered nurses (RNs) and

(2) licensed practical nurses (LPNs) under the direction of RNs, ODA must retain its current standard that only (1) and (2) qualify to be a PCA supervisor. ODA proposes to cite RC §173.525 in paragraph (C)(4)(a) of this rule so that readers can connect the standard to the statute.

5. Divide the two sentences of the current paragraph on the primary team [(B)(4)(b)(iii)] into separate paragraphs [(B)(3) and (B)(4)(g)].

6. Delete the permission to use electronic systems and the requirement to retain records because rule 173-39-02 of the Administrative Code cover this topic for every service and ODA does not need to repeat them in a rule that applies to only one service.

7. Make additional non-substantive improvements to this rule.

To review this rule in context, please review ODA's response to question #8 on the RSFA for rule 173-39-02.11 of the Administrative Code for an overview of this rule package.

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.**

Not Applicable

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 GA).

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

ODA estimates that adopting the proposed amendments to this rule will reduce the cost of compliance to providers. Please review ODA's response to questions #15, #16, and #17 for detailed information.

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

ODA estimates that adopting the proposed amendments to this rule will reduce the cost of compliance to providers. Please review ODA's response to questions #15, #16, and #17 for detailed information.

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? 9

1. (B): Every ODA-certified provider 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)(c): The provider SHALL retain a record of the person-centered activity plan,....

4. (B)(4) [now (B)(5)]: A provider SHALL only provide ECL if both of th following conditions are met:

5. (B)(4)(b)(i) [now (B)(5)(b)(i)]: The provider SHALL only employ a person as a PCA supervisor if the person meets the qualifications in....

6. (B)(4)(b)(ii) [now (B)(5)(b)(ii)]: The provider SHALL only employ a person to serve as a PCA if the person meets at least one of the qualifications under....

7. (B)(4)(c)(i) [now (B)(5)(c)(i)]: Before allowing any PCA to have direct, in-person contact with an individual, the provider SHALL comply with the orientation requirements in....

8. (B)(4)(c)(ii) [now (B)(5)(c)(ii)]: Each PCA SHALL comply with the in-service training requirements in....

9. (B)(5)(a) [now (B)(6)]: The provider SHALL develop and retain a daily activity record for each individual that includes all of the following:

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