

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

Agency Name

Division

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**173-39-02.20**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Enhanced community living service.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
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: **173.01, 173.02, 173.391, 173.52, 173.522.**
5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.431, 173.52, 173.522.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to amend the rule as part of its 5-year review of the rule.
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:

## OVERVIEW

OAC173-39-02.20 regulates providers when they provide enhanced community living (ECL) to individuals enrolled in the PASSPORT Program.

ODA conducted a 5-year review of the rule. ODA's proposed amendment to eliminate 2 requirements to qualify for certification as an ECL provider so long as (1) the provider is a legal entity distinct from the housing site owner and (2) safeguards are in place to prevent any unremedied conflict of interest. These changes should make it easier for more providers to qualify for certification. (For more information, see "SPECIFIC AMENDMENTS" below.) ODA's other proposed amendments will add clarity to the rule and update its terminology.

## SPECIFIC AMENDMENTS

ODA proposes to replace the current title with "ODA-provider certification: enhanced community living."

ODA proposes to move the limitation on ECL when other similar services are provided from (B)(5)(c) to (A)(1)(b), which makes it part of the definition of "ECL."

ODA proposes to use the standardized language in (B)(1) which it uses in other more-recently-amended rules when referring to requirements for every ODA-certified provider in OAC173-39-02.

ODA proposes to move the requirement for providers to maintain the "capacity" (i.e., "adequate staffing levels") to provide each ECL activity from (B)(1)(a) to (B)(3)(a), which places it in the rule's list of staffing-level requirements.

ODA proposes to delete a paragraph on not providing services in excess of what the case manager authorizes because it duplicates language in OAC173-39-02.

ODA proposes to delete a paragraph prohibiting providing the service if the provider is not listed in the service order because a similar prohibition appears in OAC173-39-02.

ODA proposes to delete at least one requirement to retain records for monitoring because the requirement for this also appears in OAC173-39-02.

Under (B)(4)(a), ODA proposes to eliminate the requirements for ODA-certified ECL providers to also be (1) certified Medicare providers and (2) certified Medicaid providers. This should make it easier for more providers to qualify for certification.

In (B)(4)(a)(ii), ODA proposes to require every provider to be a legal entity (vs., just an entity) distinct from the housing site owner and property manager so the site is not subject to ODH's nursing home licensure, ODH's RCF licensure, or

ODMHAS' residential facility licensure. ODA also proposes to require safeguards to be in place to prevent any unremedied conflict of interest.

ODA proposes to add a helpful paragraph informing readers that the rate-setting methodology is regulated by OAC5160-31-07, not this rule. This paragraph is commonly found in rules regulating services in this chapter.

ODA proposes to move all definitions in the rule to paragraphs under (A).

ODA also proposes to make basic terminology amendments, including the following:

- \* Adding "ODA provider certification" to the beginning of the rule's title.
- \* Deleting unnecessary uses of "that."
- \* Replacing uses of "consumers" with "individuals."
- \* Replacing "capacity with "adequate staffing levels."
- \* Replacing uses of "furnish" (and its derivatives) with "provide" (and its derivatives).
- \* Replacing uses of "components of the service " and "service plan" with "activities" and "activity plan."

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. If applicable, indicate each specific paragraph of the rule that has been modified:

On August 10, 2017, ODA made a revised filing to replace "adequat" with "adequate" in the rule.

On August 10, 2017, ODA made a revised filing to correct information on this document and on the public hearing notice.

12. Five Year Review (FYR) Date: **8/9/2017**

(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 its proposed amendments to this rule would have no impact upon the biennial budget the Ohio General Assembly established for ODA.

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

GRF-651-525 Medicaid/Health Care Services.

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 there is no cost of compliance directly associated with amending this rule. For a detailed cost analysis, please review ODA's response to questions #14 and #15 on the BIA.

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**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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**

The rule requires providers to use staff who qualify, have been through orientation, and who meet annual continuing-education requirements. For detailed information, please review ODA's response to #14 on the BIA.