

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-02.21

Rule Type: Rescission

Rule Title/Tagline: ODA provider certification: scheduling personal care aides and participant-directed providers.

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?** 4/14/2023
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 9 - 134 - McColley, Roegner
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. **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?**

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 certification requirements and standards. This rule exists to prohibit (1) ODA-certified agency providers from accepting referrals if they do not have adequate staffing to provide the personal care and (2) ODA-certified participant-directed providers from providing services to more than 4 individuals (i.e., employers) per week, from working more than 40 hours per week for any single individual (except in emergencies), and from working more than 56 hours per week for 2-5 individuals. This rule also exists to comply with 42 CFR 441.352, which requires ODA to provide satisfactory assurance to CMS that ODA has implemented certification requirements for providers as a condition to the authorization of the PASSPORT Program.

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

This rule prohibits ODA-certified agency providers from accepting referrals if they do not have adequate staffing to provide the personal care. This rule also prohibits ODA-certified participant-directed providers, who are employees of the individuals receiving services, from providing services to more than 5 individuals (i.e., employers) per week, from working more than 40 hours per week for any single individual (except in emergencies), and from working more than 56 hours per week for 2-5 individuals.

ODA proposes to rescind this rule and to transfer its requirements for participant-directed providers to rule 173-39-02.4 of the Administrative Code and its requirement for agency providers to rule 173-39-02.11 of the Administrative Code. This will not result in any new requirements.

Senate Bill 9 (134th G.A.) requires state agencies to reduce the unnecessary use of regulatory restrictions ("may not," "must," "prohibit," "require," "shall," and "shall not") in rules which may prevent artificial intelligence from interpreting Ohio's rules to create an unfavorable business climate based on the volume of regulatory restrictions used in rules rather than the substantive content of those rules. Accordingly, ODA proposes to remove 3 unnecessary regulatory restrictions when transferring the requirements from rule 173-39-02.21 of the Administrative Code to rules 173-39-02.4 and 173-39-02.11 of the Administrative Code.

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

Rescinding this rule will not impact the biennial budget that the Ohio General Assembly established for ODA.

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

This rule limits a participant-directed provider to providing services to no more than 5 individuals per week, from working more than 40 hours per week for any single individual (except in emergencies), and from working more than 56 hours per week for 2-5 individuals.

- 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

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

See section 173.391 of the Revised Code and rule 173-39-05 of the Administrative Code.

- C. **Does this rule require specific expenditures or the report of information as a condition of compliance?** No

- 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?** Yes

This rule prohibits ODA-certified agency providers from accepting referrals if they do not have adequate staffing to provide the personal care. This rule also prohibits ODA-certified participant-directed providers, who are employees of the individuals, from providing services to more than 5 individuals per week, from working more than 40 hours per week for any single individual (except in emergencies), and from working more than 56 hours per week for 2-5 individuals.

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? 3

1. (A) No agency SHALL accept a referral to provide personal care to an individual unless it has adequate staffing levels of PCAs and PCA supervisors to provide the number of hours ODA's designee authorized for each individual.
 2. (B) No participant-directed individual provider SHALL provide the choices home care attendant service and....
 3. (B) ...no participant-directed personal care provider SHALL provide personal care if in excess of the following limits:
- 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