

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-02.4

Rule Type: New

Rule Title/Tagline: ODA provider certification: choices home care attendant service.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 8 - 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 establish the specific requirements to become, and to remain, an ODA-certified provider of the choices home care attendant service. 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.

Rule 173-39-02.4 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of the choices home care attendant service. The PASSPORT Program gives individuals enrolled in the program the option to hire their own employee to be their participant-directed provider. This often means hiring a family member.

ODA's proposals to amend this rule will result in amending approximately more than 50% of the rule, so ODA proposes to rescind the rule and to adopt a new rule in its place to comply with the 50% guideline in §4.3.1 of LSC's Rule Drafting Manual. In doing so, ODA proposes to achieve the following:

- Reorganize the list of activities that comprise the choices home care attendant service to follow the format and wording under rule 173-39-02.11 of the Administrative Code since 5 of the 7 activities are also personal care activities.
- Move the scheduling requirements for participant-directed providers from rule 173-39-02.21 of the Administrative Code to this rule.
- No longer require an interview with the individual in before providing the first episode of the service. For more information, please review ODA's response to BIA questions #9 and #10.
- Reorganize paragraphs to clarify that a provider needs a driver's license and insurance to qualify to transport an individual, not to qualify to be a participant-directed provider. For more information, please review ODA's response to BIA questions #9 and #10.
- Replace the requirements for specific initial training with requirements for the individual (as the employer of record) and ODA or its designee to confer with one another to determine what training or skills the individual deems as appropriate

for their participant-directed provider. For more information, please review ODA's response to BIA questions #9 and #10.

- Indicate that the individual (as the employer of record) determines what continuing education courses their participant-directed provider needs to meet the individual's needs and may seek assistance from ODA's designee to complete this responsibility.
- No longer require completing form ODA1042 regarding initial training. For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require completing form ODA1043 regarding continuing education.

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 for this new rule to not contain 17 of the regulatory restrictions that appeared in the current version of this rule, which ODA is simultaneously proposing to rescind. ODA proposes for this new rule to not contain any of the regulatory restrictions that appeared in rule 173-39-02.11 of the Administrative Code. ODA proposes to add 1 new regulatory restriction to summarize its new approach to initial training qualifications. (See the RSFA for ODA's proposal to rescind the current version of this rule for details on the removal of regulatory restrictions.)

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.**

ODA made a revised filing revise paragraphs (B)(4)(c) and (B)(4)(d) of this rule so that they establish requirements upon the provider rather than the individual, to refer to deadlines that the individual establishes for training, and to declare that a unit of training includes a course or training activity lasting up to an hour.

In a related revised filing of rule 173-42-06 of the Administrative Code, ODA incorporated standards for the individual that were in the original filing of this rule into rule 173-42-06 of the Administrative Code.

04/18/2023 ODA made a revised filing of this rule to delete "individual" from "participant-directed individual provider" in the last sentence of paragraph (B)(3) of this rule and to update this RSFA.

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

Replacing the current version of this rule with a proposed new 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 proposed new rule will have fewer requirements for participant-directed providers to meet. This proposed new rule will require providers to complete training if the individual and ODA's designee consider the training necessary to meet the individual's needs. This proposed new rule will not retain any of the additional training requirements in the current version of this rule or the current version of rule 173-39-02.11 of the Administrative Code.

The transfer of requirements from 173-39-02.21 of the Administrative Code to this rule means that this rule now establishes limits to the number of hours per week that a participant-directed provider may work and the number of individuals for whom a participant-directed provider may work.

Other requirements in this proposed new rule directly relate to the provision of the service itself.

See rule 173-39-02 of the Administrative Code for requirements on records retention, including service verification. This proposed new rule does not repeat those requirements, but does list mandatory reporting items for service verification.

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 R.C. §173.391 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? Yes**

This rule requires providers to complete person-centered training if the individual and ODA's designee consider the training necessary to meet the individual's needs. This rule also requires providers to complete annual continuing education. Other requirements in this rule relate to the provision of the service itself.

See rule 173-39-02 of the Administrative Code for the primary requirements to retain records.

The amount the PASSPORT and Assisted Living Programs pay providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus employee-related costs. The costs incurred as a result of this rule are likely calculated as part of a provider's operational budget—the cost of doing business and clerical jobs, such as retaining records and updating policies and procedures.

Providers set the prices they bill to the PASSPORT and Assisted Living Programs. In turn, the PASSPORT and Assisted Living Programs pay each provider the amount the provider bills, so long as the price billed does not exceed the maximum that the Ohio Dept. of Medicaid (ODM) allows per unit. In the appendix to rule 5160-1-06.1 of the Administrative Code, ODM establishes the units of service for the PASSPORT Program and the maximum-allowable payment for each unit. In the appendix to rule 5160-1-06.5 of the Administrative Code, ODM establishes the units of service for the Assisted Living Program and the maximum-allowable payment for each unit.

- 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**

The language that ODA proposes to transfer from rule 173-39-02.21 of the Administrative Code to this rule will continue to prohibit 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? 1**

(B)(4)(c) ODA or its designee SHALL confer with the individual to establish what training or skills the individual deems appropriate for each participant-directed provider.

- B. How many existing regulatory restrictions do you propose removing from this rule? 0**

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

The current version of rule 173-39-02.4 of the Administrative Code, which ODA proposes to rescind.

- D. Please justify the adoption of the new regulatory restriction(s).**

The proposed new regulatory restriction represents a requirement that will replace the initial training requirements found in the current version of the rule, which ODA is simultaneously proposing to rescind. Compared to the current requirements for initial training, the proposed new requirement for initial training is simplified and less of a burden to participant-directed providers.