

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

Agency Name

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173-39-02.9**AMENDMENT**

Rule Number

TYPE of rule filing

Rule Title/Tag Line

Minor home modification, maintenance, and repair services.**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

OAC173-39-02.9 regulates providers when they provide minor home modification, maintenance, or repair to individuals enrolled in the PASSPORT Program.

ODA conducted a 5-year review of the rule.

SPECIFIC AMENDMENTS

ODA proposes to rearrange the topics in the rule to reflect the order of topics in most other rules regulating services in OAC Chapter 173-39. The pattern begins with definitions under (A); provider requirements under (B) beginning with general requirements, then provider qualifications, then service verification; and units and rates under (C).

ODA proposes to consolidate the definition of minor home modification, maintenance, and repair in (A), with (A)(1) stating what jobs are included in the definition and (A)(2) stating what jobs are not included in the definition.

ODA proposes to insert a paragraph that would function like a sub-heading to indicate where in the rule requirements for the provider begin. This merely adds clarity to the rule. All paragraphs occurring after this sub-heading would be indented underneath. This appears in (B).

ODA proposes to insert a general requirement to comply with the requirements for every ODA-certified provider in OAC173-39-02. Without this amendment, ODA-certified providers would still be required to comply, but may not be aware of the need to do so. This language now appears in (B)(1)(a).

ODA proposes to delete paragraphs requiring authorization from ODA's designee or a case manager because it duplicates requirements for all ODA-certified providers in OAC173-39-02.

ODA proposes to expound on the property owner's responsibilities. The current rule says a "written consent of the property owner...the property will be left in the modified state after the consumer vacates the premises." The proposed new rule adds clarity by acknowledging the individual is sometimes the homeowner and by stating the property owner is responsible for uninstalling any modifications the property owner finds undesirable, but only after the individual vacates the home or no longer requires the modification. The proposed consent-agreement language also incorporates an item previously in (A) to this paragraph. It says the consent agreement should indicate the property owner is aware that modifications are to help the individual function safely in the home, not to improve property value. This language now appears in (B)(2).

ODA proposes to retain the requirement for providers to secure permits before beginning jobs when required by other laws, but also proposes to require permits before beginning jobs when required by a homeowners' association. The provider would be bound to the homeowners' association requirements if not mentioned by the rule; however, mentioning this may prevent any misconception that this rule may override a homeowners' association and authorize a job without first seeking the association's permit. This language now appears in (B)(3).

ODA proposes to require providers to obtain any pre-job inspections required by other laws before beginning a job. This would highlight what is already required by other laws. For example, before digging holes in a yard for a wheelchair ramp's footers, a provider must wait for OUPS to inspect the yard to identify the location of underground utilities. This language now appears in (B)(3).

ODA proposes to retain the requirement for providers to undergo post-job inspections after completing a job if required by other laws, but also proposes to require inspections after completing a job if required by a homeowners' association. The provider would be bound to the homeowners' association requirements if not mentioned by the rule; however, mentioning this may prevent any misconception that this rule may override a homeowners' association's authority. This language now appears in (B)(4).

ODA proposes to limit the requirement in (B)(5) to inform the individual and ODA (or its designee) of health and/or safety risks to (1) only requiring informing if a health and/or safety risk exists and (2) if that risk is a risk to the individual. This also limits the need to coordinate.

In (B)(5), ODA proposes to replace "...assist the consumer and case manager to coordinate dates of times of work to assure minimal risk of hazard to the consumer" with "...coordinate with the individual and ODA (or its designee) to provide the job on dates and times that minimize those risks. "

ODA proposes to continue requiring providers to provide warranties covering their workmanship and materials; however, ODA proposes to make 2 reasonable amendments: (1) The warranty should last at least one year. (2) A warranty is only necessary if generally-accepted industry standards for a specific job are to offer warranties. For example, if a provider only changes a furnace filter, and the generally-accepted industry standard for replacing furnace filters is to not offer a warranty, there is no expectation to offer a warranty. This language now appears in (B)(6).

In (B)(8), ODA proposes to replace "...and any incidental damages have been repaired" with "...and repaired any damages incidental to the job."

In (B)(9), ODA proposes to say, "If a provider is in the process of completing a job and identifies an unforeseen issue necessitating a revision to the job authorization or negotiated rate, prior authorization from Oda (or its designee) shall be obtained before completing the job," instead of "In cases where a provider is already in a consumer's home and identifies additional problems...obtains authorization to complete the additional work."

Additionally, in (B)(9), ODA proposes to remove all occurrences of the word "fix, " because they imply the unforeseen issue could only be a repair. ODA does not intend to limit providers to only working on (and being paid for) addressing unforeseen issues that are repairs. An unforeseen issue could also be an unforeseen need for additional modification (e.g., widening a 2nd doorway so an individual's wheelchair may pass through both).

ODA proposes to add 2 standard paragraphs to (C) which do not add new requirements to the rule. One identifies the Ohio Dept. of Medicaid (ODM) rule establishing the rates of payment for jobs of minor home modification, maintenance, or repair. The other says rates are subject to an ODM rate-setting rule. Without inserting these paragraphs, readers of this rule on ODA-certified providers may not know that 2 ODM rules affect their rates.

ODA also proposes to update the rule's terminology in the following ways:

- * Adding "ODA provider certification" to the beginning of the rule's title.
- * Using "job" consistently to refer to a unit of minor home modification, maintenance, or repair instead of "task," "work," or "job order."
- * Using "home" consistently instead of also using "property," "household," and "place of residence."
- * Replacing uses of "consumers" with "individuals."
- * Removing unnecessary occurrences of "that."
- * Replace lists in the format of run-on sentences with lists either (1) appearing in one sentence in one paragraph, or (2) in separate paragraphs in bullet-point format (i.e., being separated by periods, not semicolons).
- * Replacing uses of "will" and "must" with "shall."
- * Replacing uses of "furnish" with "provide."
- * Replacing "prior to" with "before."
- * Replacing "long-term care agency providers" with "ODA-certified agency providers."
- * Replacing "ODA's designees" with "its designees" when the term occurs after "ODA."
- * Deleting occurrences of "but is not limited to" as they occur after "includes," because the extra words do not change the meaning of "includes."

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:

Not Applicable.

12. Five Year Review (FYR) Date: **8/31/2017**

(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 and the August 23, 2017 addendum to the BIA, which is attached to the BIA as filed with this rule.

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? **Yes**

If another law requires a professional to be licensed etc. before providing a home modification, maintenance, or repair, this rule requires the person to have the license before providing the home modification, maintenance, or repair requiring a license.

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**

For detailed information, please review ODA's response to #14 on the BIA. ODA's proposed amendments to the rule no longer require providers to report on health and/or safety hazards related to a job unless (1) such a hazard exists and (2) the hazard is to the individual.