

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-02.9

Rule Type: New

Rule Title/Tagline: ODA provider certification: minor home modification, maintenance, and repair.

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?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02, 173.391, 173.52, 173.522.
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.391, 173.431, 173.52, 173.522; 42 CFR 441.352(a)(1), (a)(2).
6. **What are the reasons for proposing the rule?**

On August 31, 2017, ODA made an original filing of this rule as an amended rule.

On September 7, 2017, ODA withdrew the filing and replaced it with this filing to comply with the 50% guideline in LSC's Rule Drafting Manual. ODA is now proposing to simultaneously rescind the rule and adopt this new rule in its place as part of its 5- year review of the rule.

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

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.

UPDATES IN THE NEW RULE COMPARED TO THE RULE ODA PROPOSES TO RESCIND

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 improvements: (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. Does the rule incorporate material by reference? No

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

Not Applicable

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

On September 19, 2017, ODA made a revised filing to insert "the individual's" before "health and safety" in (A) and to split 2 sentences in (C)(3) into sub-paragraphs of (C) (3).

II. Fiscal Analysis

11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates the proposed adoption of this new rule would have no impact upon the biennial budget the Ohio General Assembly established for ODA, especially because it would replace a substantially similar rule of the same number which ODA simultaneously proposes to rescind.

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

ODA estimates there is no cost of compliance directly associated with the adoption of this new rule to replace the current 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 package.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

III. Common Sense Initiative (CSI) Questions

15. Was this rule filed with the Common Sense Initiative Office? Yes

16. 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? 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

Compared to the rule ODA proposes to rescind, the new rule would 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. For detailed information, please review ODA's response to #14 on the BIA.