

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-02

**Rule Type:** Amendment

**Rule Title/Tagline:** ODA provider certification: requirements for providers to become, and to remain, certified.

**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?** 6/29/2020
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?** 121.07, 173.01, 173.02, 173.391, 173.52, 173.522, 173.54, 173.543
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.391, 173.52, 173.522, 173.54, 173.543; 42 CFR 441.352
6. **What are the reasons for proposing the rule?**

ODA proposes to amend this rule as part of a list of amendments it proposes to make to the rules of Chapter 173-39 of the Administrative Code.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule establishes the requirements to become, and to remain, an ODA-certified provider. ODA proposes to amend this rule to do the following:

- (1) Replace "qualifications" in (A)(1)(a) and (A)(1)(B) with "qualification."
- (2) Simply require a valid telephone number in (A)(3).
- (3) Replace "services" with "service" in (B)(6).
- (4) Clarify in (B)(8)(f) that engaging in distracting activity applies "while providing s service" and replace "services," with "the service."
- (5) Consolidate all prohibitions against engaging in the unethical, unprofessional, disrespectful, and illegal behaviors as into (B)(8), which makes the same list of prohibitions apply to every provider type. This involves moving the content under (D)(1)(b) to under (B)(8), deleting (D)(2)(b), and revising cross-references throughout the rule.
- (6) Indicate that the prohibition on taking an individual to the provider's business site does not apply if the business site is a residential care facility (RCF).
- (7) Clarify in (B)(12) that a provider's subcontractor is subject to the same laws and rules as the provider.
- (8) Replace ", including complying" in (C)(4)(b) with "and comply."
- (9) Delete (D)(4)(b) because (B)(3)(a) already covers this topic.
- (10) Delete "charge the individual an additional fee" from (D)(4)(c)(ii).
- (11) Indicate in (D)(3)(b) that the records-retention requirement is in addition to the records-retention requirements under (B)(10)(a).

**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. 121.75, 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.**

ODA refiled this rule to do the following:

1. Add ", including the requirement under 45 C.F.R. Part 162 to have a national provider identifier (NPI), if applicable." to paragraph (A)(1)(b) of the rule.

2. Revise the plan to only require the provider to have a valid telephone number in paragraph (A)(3) of this rule to a requirement to have a valid telephone number and a valid email address.

3. Add the following to the end of paragraph (B)(2) of this rule: "If the provider's only means to comply with service-verification requirements in those rules is to collect the individual's handwritten or electronic signature (or electronic or handwritten initials), the provider may collect the individual's handwritten or electronic signature (or electronic or handwritten initials) on a date later than the date of service. If there is any conflict between this paragraph and a rule in this chapter, this paragraph overrides the conflicting requirement in another rule of this chapter."

4. Reword paragraph (B)(3)(a) of this rule to delete an unnecessary regulatory restriction. (There is no reason to use "shall" to highlight that a provider is subject to a state law.)

5. Reword paragraph (B)(4) of this rule to delete an unnecessary regulatory restriction. (There is no reason to use "shall" to highlight that a provider is subject to other state and federal laws.)

6. Add the following to the end of paragraph (B)(5) of this rule: "During a state of emergency declared by the governor, a provider may provide a service to an individual if the provider is the individual's spouse, parent, or step-parent. The period in which a spouse, parent, or step-parent is qualified to provide a service to an individual ends when the provider's medicaid provider agreement is terminated."

7. Add the following under paragraph (B)(8) of this rule: "Treating ODA and its designee disrespectfully."

8. Adding a new paragraph [(B)(13)] to require providers to subscribe to receive email updates on ODA's rules. On June 11, 2020, ODA adopted this in an emergency amendment. ODA now intends to adopt this on an ongoing basis to ensure that providers are informed about changes in rules and opportunities to comment on rules.

9. Add to paragraph (E) of this rule between "ODA" and "shall": "may certify a provider that was previously certified by ODA, but voluntarily withdrew its certification, but"

*07/01/2020 ODA made a revised filing of this rule to reschedule the public hearing and to upload a new public hearing notice into the Register of Ohio. In doing so, ODA did not make any revisions to the rule.*

## **II. Fiscal Analysis**

- 11. 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

ODA's proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 166 (133rd G.A.).

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

Please review ODA's response to question #16 on the business impact analysis (BIA) for the answer to this question.

- 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**

- 15. 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**

- 16. Was this rule filed with the Common Sense Initiative Office? Yes**

- 17. 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**

A provider may operate without ODA's certification. A provider only needs ODA's certification if the provider wants the PASSPORT or Assisted Living Programs to pay for covered services that it provides.

- 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**

R.C. §173.391 and rule 173-39-05 of the Administrative Code establish the consequences for non-compliance.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

Please review the list of requirements in ODA's response to BIA question #16b.

- 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? No**

**IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

- 18. 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? 0**

- B. How many existing regulatory restrictions do you propose removing? 6**

(D)(1)(b): The provider SHALL NOT engage in the following behaviors in addition to those in....

(D)(2)(b): Ethical, professional, respectful, and legal service provision: In addition to the list of unethical, unprofessional, disrespectful, or illegal behaviors in ..., the provider SHALL also not engage in the behaviors listed in....

(D)(4)(b): Abuse, neglect, or exploitation: The provider SHALL report when it has reasonable cause to believe an individual suffered abuse, neglect, or

exploitation to ODH, as required by rule 3701-64-02 of the Administrative Code.

(D)(4)(b): The provider SHALL also notify ODA or its designee.

(B)(3)(a): As applicable, the provider SHALL report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the local adult protective services program, as required by section 5101.63 of the Revised Code.

(B)(4): The provider SHALL comply with all state and federal laws and regulations governing individual confidentiality including sections 5160.45 to 5160.481 of the Revised Code, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. parts 160, 162, and 164.