

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?** 1/4/2024
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, 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 C.F.R. 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?**

This rule exists to establish the general requirements to become, and to remain, an ODA-certified provider.

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

This rule establishes the general requirements to become, and to remain, an ODA-certified provider. ODA proposes to amend this rule to replace the paragraph on legally-responsible family members with a reference to rule 5160-44-32 of the Administrative Code, which establishes the allowable relationships for all Medicaid-waiver-authorized programs. Additionally, doing so will reduce the use of an unnecessary regulatory restriction ("shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Please review the additional amendments listed in ODA's response to question #11 on this RSFA.

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 refiled this rule to achieve the following:

1. Indicate in paragraph (A)(8) of this rule that rule 5160-1-40 of the Administrative Code establishes the requirements for electronic visit verification (EVV) until July 1, 2024 and that Chapter 5160-32 of the Administrative Code establishes the EVV requirements on and after July 1, 2024.

2. Restate the exception for assisted living providers in paragraph (B)(3)(d) of this rule by moving it to a subparagraph that refers to paragraph (D)(4)(d) of this rule.

3. Replace uses of "statement" and "statements" throughout this rule with "written or electronic attestation" and "written or electronic attestations" to clarify that ODA is not establishing a requirement for paper documents and is not requesting copies of income tax returns.

4. Stop requiring agency providers in paragraph (C)(1)(b)(i) of this rule to provide a statement on the purpose of the provider's business.

5. Clean up paragraph (D)(4)(d) of this rule so that [1] terminating a Medicaid provider agreement and [2] planning to stop providing services appears in the "if" clause and the "then" clause.

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

Amending this rule will not impact the biennial budget that the Ohio General Assembly established for ODA in House Bill 33 (135th G.A.).

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

The costs of compliance for an ODA-certified provider are meeting the general requirements to become and to remain an ODA-certified provider. These include compliance with (1) requirements established in rule 173-39-02 of the Administrative Code (e.g., providing ODA with contact information), (2) requirements on topics (e.g., background checks) that are referenced in rule 173-39-02 of the Administrative Code, but established outside of that rule (e.g., R.C. §§ 173.38 and 173.381), and (3) requirements on topics (e.g., records retention) that are established in rule 173-39-02 of the Administrative Code and also outside of the rule (e.g., 45 C.F.R. 75.361). For more information, please review ODA's response to question #18 of this RSFA and questions #15, #16, and #17 of the BIA.

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? Yes

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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?** No

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?** 1

1. (B)(5) The provider SHALL NOT provide a service to an individual if the provider is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative

- 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