

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-02

Rule Type: New

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?** 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?** HB 49 - 132 - Smith
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, 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. **What are the reasons for proposing the rule?**

As part of a 5-year rule review, ODA proposes to adopt this new rule to replace a substantially-similar rule of the same number. Doing so will reduce the usage of "shall" in the rule from 127 times to 73 times.

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

This proposed new rule contains the requirements for every provider to become, or to remain, certified by ODA according to R.C. Â§173.391. Compared to the rule it will replace, it is significantly shorter because ODA proposes to restructure the rule to eliminate duplicated requirements. For more information on changes, please review ODA's response to BIA question #1.

8. Does the rule incorporate material by reference? Yes

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.

The proposed new rule cites a federal regulations, which are available to the general public free of charge on <https://www.ecfr.gov/>.

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

The Ohio Insurance Institute contacted ODA to offer technical assistance on insurance requirements in this rule. After dialogue with the institute, ODA refiled this rule to replace paragraphs (A)(4)(a) and (A)(4)(b) of this rule. Beforehand, the paragraphs read as follows:

(a) A minimum of one million dollars in commercial liability insurance. A non-agency provider may have a minimum of one million dollars in professional liability insurance in lieu of commercial liability insurance.

(b) Coverage for individuals' losses due to theft or property damage and written instructions any individual may use to obtain payment for a loss due to theft or property damage caused by the provider or, if applicable, the provider's employee.

As refiled, the paragraphs read as follows:

(a) A minimum of one million dollars in commercial liability insurance, which includes coverage for individuals' losses due to theft or property damage. In lieu of commercial liability insurance, a non-agency provider may have a minimum of one million dollars in professional liability insurance, which includes coverage for individuals' losses due to theft or property damage.

(b) Written instructions any individual may use to obtain payment for loss due to theft or property damage caused by the provider, or if applicable, the provider's employee.

04/12/2019 ODA made a revised filing to revise the following paragraphs:

(A)(3): to delete "(e.g., in the telephone book in the provider's area of business)."

(A)(5)(b): to insert "pursuant to rule 173-39-03 of the Administrative Code" at the end of the sentence.

(C)(1)(a): to replace "have" in the first sentence with "submit records verifying the provider has".

03/18/2019 ODA made a revised filing to (1) upload a memorandum of response to CSIO with a corrected date, and (2) correct ODA's response to #6 on this RSFA because ODA's proposed new rule represents a reduction in the usage of "shall" in the rule from 127 times to 73 (not 75) times.

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 that the proposed adoption of this new rule will have no impact upon the biennial budget the Ohio General Assembly established for ODA in H.B. 95 (132nd G.A.), especially because it will replace a substantially-similar rule of the same number.

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

For information on the cost of compliance, please review ODA's response to BIA questions #14 and #15.

- 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?** No

However, this rule lists the requirements for a provider to become, or remain, certified by ODA. For information, please review ODA's response to BIA questions #14 and #15.

- 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

(173-39-05 covers the topic of non-compliance with OAC Chapter 173-39.)

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

This rule requires notifying ODA of incidents, changes in contact information, etc. and retaining records for monitoring by ODA and other government agencies.