

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-03.1

**Rule Type:** New

**Rule Title/Tagline:** ODA provider certification: federal heightened scrutiny of provider settings with institutional characteristics.

**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, 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?**

ODA proposes to adopt this new rule to address federal heightened scrutiny, which is part of the process for applying to become an ODA-certified provider if ODA presumes a provider's business site has the qualities of an institution.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The new rule outlines how federal heightened scrutiny fits into the process for applying to become a certified provider.

For more details, 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 regulation (42 C.F.R. 441.301), which is available to the general public free of charge on <https://www.ecfr.gov/>.

The proposed new rule also cites a form (ODM 10204), which is available to the general public free of charge on <http://medicaid.ohio.gov/resources/publications/medicaidforms.aspx>.

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

*Not Applicable*

## **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.).

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

If a provider has already applied for certification, but is now undergoing federal heightened scrutiny, the provider must wait for the U.S. Dept. of Health and Human Services to decide if ODA may certify the provider.

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 an assisted living or ADS provider applies for certification and ODA presumes the provider's business site to have the qualities of an institution, the provider must undergo federal heightened scrutiny before ODA may certify the provider.

- 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?** No