

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-03.2

Rule Type: Amendment

Rule Title/Tagline: ODA provider certification: changes of ownership interest or organizational structure.

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 specific processes related to changes of ownership interest or organizational structure.

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

This rule establishes specific processes related to changes of ownership interest or organizational structure. ODA proposes to amend this rule to achieve the following:

1. Replace the requirements for a provider to send a notarized statement to ODA on (1) a change of ownership interest or change of organizational structure and (2) continued compliance with 42 C.F.R. Part 441 with a requirement for a provider to send an original signed statement to ODA in both cases. These amendments are ODA's response to a request by the Common-Sense Initiative to reconsider the need for notarization.

2. Reduce, in response to stakeholder input, the impact of the discharge prohibition on assisted living providers by changing the end date of the prohibition on discharging residents from "until ODA makes a final determination regarding certification of the provider" to "until ODA submits the request to HHS for its review under 42 C.F.R. 441.301(c)(5)(v). This will accommodate the provider during the HHS heightened scrutiny review period.

3. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951. This accounts for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

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.

Not Applicable

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?**

Please review ODA's responses to questions #15, #16, and #17 of the BIA for details.

- 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**

Please review ODA's responses to questions #15, #16, and #17 of the BIA for details.

- 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

Please review ODA's responses to questions #15, #16, and #17 of the BIA for details.

- 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?** 10

1. [Introduction] This rule SHALL apply in all instances where there is a change of ownership interest involving an ODA-certified provider obtaining a new TIN....

2. (A)(1) The current owner(s) SHALL email their written notice to ODA at "provider_enrollment@age.ohio.gov."

3. (A)(1) In the notice, the current owner(s) SHALL include a notarized statement including all of the following information, as applicable and to the extent it is available to the current owner(s) at the time the notice is provided to ODA.

4. (A)(1) In the event information is not available at the time written notice is required, the current owner(s) SHALL supplement the written notice until all the following information is provided:

5. (A)(2) If IRS rules REQUIRE mandate a provider to obtain a new TIN, the provider's certification ends on the date the change is finalized.

6. (A)(2) The relinquishment of the provider's certification means a provider SHALL NOT bill ODA after the date the change is finalized.

7. (A)(3) If a provider with a new TIN intends to seek payment from ODA for services it provides after a change, the provider SHALL apply to become an ODA-certified provider according to the application process in rule 173-39-03 of the Administrative Code.

8. (A)(5) After an assisted-living provider has applied for new certification from ODA during a change, neither the current nor the new owner(s) SHALL discharge residents from the RCF for non-payment until ODA makes a final determination regarding certification of the provider.

9. (B)(1) Every provider shall maintain compliance with those requirements from the effective date of ODA certification and thereafter to maintain ODA certification.

10. (B)(2) When applying for ODA certification, the new owner(s) SHALL email a notarized statement demonstrating compliance with this requirement to ODA at "provider_enrollment@age.ohio.gov."

- 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