

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-03

Rule Type: New

Rule Title/Tagline: ODA provider certification: applying for certification.

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? 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 CFR 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?

Each rule in Chapter 173-39 primarily exists to comply with section 173.391 of the Revised Code, which requires ODA to adopt rules to establish certification requirements and standards. This rule exists to establish the general application process for certification. This rule also exists to comply with 42 CFR 441.352, which requires ODA to provide satisfactory assurance to CMS that ODA has implemented certification requirements for providers as a condition to the authorization of the PASSPORT Program and the Assisted Living Program.

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

This rule establishes the general application process to become an ODA-certified provider.

ODA's proposals to amend this rule will result in amending approximately more than 50% of the rule, so ODA proposes to rescind the rule and to adopt a new rule in its place to comply with the 50% guideline in §4.3.1 of LSC's Rule Drafting Manual. In doing so, ODA proposes to achieve the following:

1. Delete the introductory paragraph.
2. No longer require the applicant to participate in an interview with the individual (future employer of record) before applying for certification. For more information, please review ODA's response to BIA questions #9 and #10.
3. No longer require an on-site review of the applicant's place of business before certifying an applicant to be a participant-directed provider. For more information, please review ODA's proposal for paragraph (A)(3) of rule 173 39-02 of the Administrative Code and ODA's response to BIA questions #9 and #10.
4. Shorten the processing time between the date an applicant submits a complete application and the date of certification by requiring ODA's designee to complete a pre-certification review within 60 days (instead of 90 days) after receiving a complete application from most providers and within 30 days (instead of 90 days) after receiving a complete application from an applicant to become a participant-directed provider. For ODA's designees, the trade off is the reduced frequency of reviews in rule 173-39-04 of the Administrative Code.
5. Add "ODA previously revoked the provider's certification" as a reason that ODA may deny a provider's application.

Senate Bill 9 (134th G.A.) requires state agencies to reduce the unnecessary use of regulatory restrictions ("may not," "must," "prohibit," "require," "shall," and "shall not") in rules which may prevent artificial intelligence from interpreting Ohio's rules to create an unfavorable business climate volume of regulatory restrictions used in rules rather than the substantive content of those rules. Accordingly, this proposed new rule will contain fewer regulatory restrictions than the current version of this rule.

- 9. Does the rule incorporate material by reference? Yes**
- 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.**

This rule refers to form ODM10172, which ODM publishes on its forms webpage (<https://medicaid.ohio.gov/stakeholders-and-partners/legal-and-contracts/forms/forms>). On that webpage, the form is readily available to the public free of charge.

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

ODA made a refiled filing of this rule to achieve the following:

1. Rework paragraph (A)(2)(a) of this rule so that it says, "ODA shall initiate the process for a pre-certification review if ODA determines that a provider submitted a complete application."
2. Rework paragraph (A)(2)(b) of this rule so that it says, "If ODA determines that the supporting records do not demonstrate that the provider submitted a complete application, then ODA shall email the provider to give the provider a deadline to submit supporting records that demonstrate that the provider meets the requirements for certification that is the earlier of thirty days after the email or the deadline in paragraph (A)(1) of this rule."
3. Delete paragraphs (A)(2)(b)(i) and (A)(2)(b)(ii) of this rule.
4. Indicate in paragraph (B)(1) of this rule that a provider may withdraw an application at any time before enrollment with ODM unless ODA issued a notice of denial of certification.
5. Indicate that the effective for a provider to be deemed an ODA-certified provider under paragraph (G) of this rule begins when the provider completes the deeming application process, has signed a provider agreement with ODA's designee, and ends

if the provider cannot comply with all the requirements of Chapter 173-9 of the Administrative Code and this chapter within sixty days after initial deeming or a medicaid provider agreement is terminated, whichever occurs first."

05/04/2023 ODA made a revised filing of this rule to remove attachments to this rule that were erroneously added in the original filing. The rule itself was not revised in this revised filing.

05/02/2023 ODA made a revised filing of this rule to achieve the following:

- 1. Delete "services" from "provider services management system" in paragraph (A) of this rule.*
- 2. Replace "or" with "for" in paragraph (B) of this rule.*
- 3. Update this RSFA.*

05/01/2023 ODA made a revised filing of this rule to improve this RSFA without revising the rule itself.

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

Adopting this proposed new rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA.

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

The cost of applying for certification is the act of applying for certification. 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

The "penalty" for not completing an application or not qualifying is not being certified.

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

To become certified, a provider must apply for the certification. The cost of applying for certification is the act of applying for certification.

- 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? 6

1. (A)(2) ODA SHALL review an application to determine if the application meets the requirements for the certification the provider is seeking.

2. (A)(2)(a) If ODA determines that a provider meets the requirements for certification, then ODA SHALL initiate the process for a pre-certification review.

3. (A)(2)(b) If ODA determines that the supporting records do not demonstrate that the provider meets the requirements for certification, then ODA SHALL email the provider to give the provider thirty days to submit supporting records that demonstrate that the provider meets the requirements for certification.

4. (A)(2)(b)(i) If ODA receives supporting records that demonstrate that the provider meets the requirements for certification within thirty days, then ODA SHALL initiate the process for a pre-certification review.

5. (A)(2)(b)(ii) If ODA does not receive supporting records that demonstrate that the provider meets the requirements for certification within thirty days, then ODA SHALL take no further action on the provider's application.

6. (C)(3) For participant-directed providers, ODA's designee SHALL conduct a pre-certification review within thirty days after receiving a complete application....

B. How many existing regulatory restrictions do you propose removing from this rule? 0

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

ODA proposes to remove twice as many regulatory restrictions from the current version of this rule, which ODA simultaneously proposes to rescind, than ODA proposes to add to this new rule.

D. Please justify the adoption of the new regulatory restriction(s).

ODA's 6 proposed new regulatory restrictions establish requirements for ODA or its designee, but do not create any requirements for providers.