

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-03

Rule Type: Rescission

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?** Yes
 - A. **What is the rule's five year review date?** 4/14/2023
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 proposes to rescind this rule and to simultaneously replace it with a proposed new rule of the same number.

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, the proposed new version of this rule will not contain 13 unnecessary regulatory restrictions that ODA is removing from this rule.

Rather than remove or add a regulatory restriction, ODA proposes to move the 2nd regulatory restriction ("shall") in the current version of paragraph (D)(3) of this rule to paragraph (D)(2) of the proposed new 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 revised filing of this rule (proposed for rescission) 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

Rescinding this proposed new rule to replace it with a 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? 0**

- B. How many existing regulatory restrictions do you propose removing from this rule? 13**

1. (A)(1) The provider SHALL complete the application within ninety days after the provider starts the online application.

2. (A)(1) If the provider does not complete the application within ninety days, the application SHALL expire.

3. (A)(2) If an individual (i.e., participant) wishes to employ (i.e., direct) a provider as his or her participant-directed provider, the individual SHALL interview the provider before the provider completes an online application.

4. (C)(1)(e) ODA's designee may conduct the review of a participant-directed provider at the individual's home and the individual **MUST** be present for the review, unless the individual agrees, in writing, to an alternate location and to not participate.
5. (D) HCBS **SHALL** only be provided in an individual's residence or another setting meeting the HCBS settings requirements specified in 42 C.F.R. 441.301 and rule 5160-44-01 of the Administrative Code.
6. (D)(1) If ODA determines the setting is presumed to have the qualities of a HCBS setting, and the setting does not **REQUIRE** heightened scrutiny as described in rule 173-39-03.1 of the Administrative Code and ODA may certify the provider.
7. (D)(2) If ODA determines the setting is presumed to have the qualities of an institution, the setting **SHALL** undergo heightened scrutiny as described in rule 173-39-03.1 of the Administrative Code.
8. (D)(3) If paragraph (D)(2) of this rule requires a setting to undergo heightened scrutiny, ODA **SHALL** defer action on the application for certification until the conclusion of the review described in rule 173-39-03.1 of the Administrative Code.
9. (E) ODA **SHALL** base its final determination of whether to certify a provider based on the review of the application materials and the recommendation of ODA's designee.
10. (F)(1)(a) If ODA approves the application, ODA **SHALL** notify ODA's designee for the region in which the provider is being certified to provide services.
11. (F)(1)(b)(iii) The rate of payment per unit the provider is willing to accept, which **SHALL NOT** exceed any limits ODM establishes in rule 5160-31-07 of the Administrative Code and appendix A to rule 5160-1-06.1 of the Administrative Code for the PASSPORT program, and rule 5160-33-07 of the Administrative Code and appendix A to rule 5160-1-06.5 of the Administrative Code for the assisted living program.
12. (H)(2) If ODA denies a provider's application, ODA **SHALL** notify the provider of its final determination and any applicable hearing rights established in section 173.391 of the Revised Code.
13. (D) ODA **SHALL** use form ODM10172....

- 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