

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-39-04

**Rule Type:** Rescission

**Rule Title/Tagline:** ODA provider certification: structural compliance reviews.

**Agency Name:** Department of Aging

**Division:**

**Address:** 246 N. High St. 1st Floor Columbus OH 43215-2046

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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 requirements for structural compliance reviews. 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 requirements for structural compliance reviews. ODA proposes to rescind this rule and to simultaneously replace it with a proposed new rule of the same number.

- 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

Not Applicable

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

This rule requires compliance reviews, which involve a review of records and, in some circumstances, a provider's place of business. Although these requirements are primarily on ODA and its designees, providers must make their records and facilities available for review.

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

See section 173.391 of the Revised Code and rule 173-39-05 of the Administrative Code.

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

Rule 173-39-02 of the Administrative Code establishes the primary requirements for certified providers to retain records, to participate in compliance reviews, and to provide ODA or its designee, HHS, the state auditor's office, or ODM with access to its business site(s) during the provider's

normal business hours, a place to work in its business site(s), and access to its policies, procedures, and records of each unit of service billed.

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- 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?** 3

1. (A) First review: No later than three hundred sixty-five days after the date of ODA's initial certification, ODA's designee SHALL conduct the first review of each provider.

2. (B)(1) ODA's designee SHALL conduct subsequent reviews of providers of personal emergency response systems; home maintenance and chores; home medial equipment and supplies; home modification; non-emergency medial transportation; or non-medial transportation no later than seven hundred thirty days after the date of the previous review.

3. (B)(2) No later than three hundred sixty-five days after the date of the previous review, ODA's designee SHALL conduct subsequent reviews of providers of services not listed in paragraph (B)(1) of this rule.

- 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

