

## Rule Summary and Fiscal Analysis

### Part A - General Questions

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

**Rule Type:** New

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

**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 of the Administrative Code primarily exists to comply with R.C. §173.391, which requires ODA to adopt rules to establish certification requirements and standards. This rule exists to establish the requirements for structural compliance reviews of ODA-certified providers. This rule also exists to implement the requirement the requirement in 42 CFR 441.352 to provide satisfactory assurance to the Centers for Medicare and Medicaid Services (CMS) at the United States Department of Health and Human Services (HHS) that ODA implemented the requirements in the approved Medicaid waiver applications for the PASSPORT and Assisted Living Programs.

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

This proposed new rule will establish the requirements for structural compliance reviews of ODA-certified providers.

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:

- Reduce the required frequency of compliance reviews for providers of most services from every year (under the current rule) to every three years. This proposal will have the effect of (1) reducing the number of compliance reviews for providers, and (2) reducing the number of compliance reviews that ODA's designees need to conduct.
- Require ODA's designee to retain a request for an extension of their deadline to review a provider in the PASSPORT information management system (PIMS).
- Move the requirements for ODA's designees regarding (1) which designee is responsible to review certain providers, (2) the type of review that it shall conduct, and (3) the scope of that review from the text of the rule to table format in Appendix A.
- Clarify that ODA's designee is required to conduct an introductory conference with the provider to explain the purpose and scope of a review before conducting that review. This was implied, but not clearly required, in the current version of this rule.
- Move the table on sample sizes from the rule text to Appendix B.
- Require ODA's designees to email providers of the results of the review if the provider is not available for an exit interview. This proposal will have the impact of not requiring providers to participate in exit interviews when they are unavailable to do so.

- Replace the requirement to demonstrate compliance in 7 days with a requirement to do so in 5 days. This proposal will align with the deadline to demonstrate compliance in rule 173-39-05 of the Administrative Code.

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, ODA proposes for the new rule to contain fewer regulatory restrictions than in the current version of 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.**

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

1. Replace "shall" in paragraph (F)(1) of this rule with "is responsible to."
2. Delete "required" from paragraph (G)(6)(e) of this rule.
3. Insert "this determination" into paragraph (G)(6)(f) of this rule between "issue" and "by notice."
4. Update this RSFA.

## **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

Replacing the current version of this rule with a proposed new rule will not impact 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?**

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? No**

**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 R.C. §173.391 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? No**

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 reach 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? No

- A. How many new regulatory restrictions do you propose adding to this rule?

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable