

## 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

**Contact:** Tom Simmons **Phone:** 614-202-7971

**Email:** tsimmons@age.ohio.gov

#### 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 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 rule establishes the requirements for structural compliance reviews of ODA-certified providers. 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.**

ODA made a revised filing of this rule (proposed for rescission) to 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? 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 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? 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.

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.

- 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?** 25

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.

4. (D)(1) In any of the following situations, ODA's designee SHALL conduct an on-site review....

5. (D)(1)(a) ...ODA's designee SHALL conduct an on-site review of each business site.
6. (D)(1)(d) ...ODA's designee in each region SHALL conduct an on-site review.
7. (D)(2) ODA's designee SHALL conduct a desk review of each provider in the designee's region....
8. (D)(2)(a) In such cases, ODA's designee SHALL review the following:
9. (D)(2)(b) In such cases, ODA's designee SHALL review the following:
10. (E)(6)(a) If non-compliance is identified, ODA or its designee may expand the sample size, expand the time period the review covers or REQUIRE an independent audit to be conducted at the provider's expense.
11. (E)(6)(c) ...ODA or its designee SHALL expand its review to include previous calendar quarters beginning from the date of the last completed review....
12. (E)(6)(e)(i) ...ODA or its designee SHALL expand its review to include previous calendar quarters....
13. (E)(6)(f) ...the total sample SHALL equal the sample size....
14. (E)(8) An individual's authorization to conduct the review at an alternate location and to not be present SHALL be obtained by ODA's designee for each review.
15. (G)(1)(a)(i) ODA's designee SHALL notify ODA within one business day.
16. (G)(1)(a)(ii) The provider SHALL demonstrate compliance within seven days after receiving notification from ODA's designee.
17. (G)(1)(a)(iii) ODA or its designee SHALL determine...
18. (G)(1)(a)(iii) ...if an immediate disciplinary action SHALL be imposed....
19. (G)(1)(d) The repayment SHALL be completed using appropriate auditing procedures.
20. (G)(2)(a) ...ODA SHALL notify the provider and ensure all of the following occur:

21. (G)(2)(a)(i) The provider SHALL demonstrate compliance within seven days after receiving notification from ODA.

22. (G)(2)(a)(ii) ODA SHALL determine if an immediate disciplinary action...

23. (G)(2)(a)(ii) ...SHALL be imposed....

22. (K) ...all providers SHALL retain records to verify each episode of service delivery.

25. (K) Providers SHALL provide such records and documentation to ODA, its designee, the secretary of HHS, the auditor of state and ODM upon request.

**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