

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-39-05

Rule Type: Amendment

Rule Title/Tagline: ODA provider certification: disciplinary actions.

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 C.F.R. 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 disciplinary actions for non-compliant ODA-certified providers. 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 disciplinary actions for non-compliant ODA-certified providers.

ODA proposes to amend this rule to achieve the following:

- Insert new paragraph (F) of this rule to indicate that if any deadline in this rule occurs on a Saturday, Sunday, or legal holiday under R.C. §1.14, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday under R.C. §1.14.
- Delete "business" as it occurs before "days" in paragraph (B)(1)(b)(i) of this rule.

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 based on the volume of regulatory restrictions used in rules rather than the substantive content of those rules. Accordingly, ODA proposes to remove 2 unnecessary regulatory restrictions from this rule.

ODA also proposes to make non-substantive changes to improve 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 refiled filing of this rule to amend paragraph (D) of this rule. The paragraph currently says, "A provider is entitled to a hearing under Chapter 119. of the Revised Code if authorized pursuant to section 173.391 of the Revised Code." ODA proposes to amend the paragraph so that it says, "A provider may appeal a disciplinary action listed in column B of table 1 to this rule unless the reason for the disciplinary action is listed under division (E) of section 173.391 of the Revised Code. As used in table 1 to this rule, 'another sanction' does not include any of the disciplinary actions listed in column A of the table." Part of this amendment involves inserting table 1 to this rule.

05/18/2023 05/18/2023 ODA made a revised filing of this rule to replace paragraph (B)(2)(b) of this rule with a new paragraph of the same number that says, "Notify ODA of the disciplinary action via an ODA-approved method."

05/18/2023 ODA made a revised filing of this rule to replace paragraph (B)(2)(b) of this rule with a new paragraph of the same number that says, "Notify ODA of the disciplinary action via an ODA-approved method."

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

Amending this 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 disciplinary actions, which impact only non-compliant ODA-certified providers. For more information, please review 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
- 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? Yes
- This rule requires disciplinary actions for non-compliant ODA-certified providers.
- C. Does this rule require specific expenditures or the report of information as a condition of compliance? No
- 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? 2

1. (B)(3) ODA's designee SHALL NOT impose subsequent disciplinary action against a provider for the same episode of non-compliance.
 2. (E) To request a hearing under Chapter 119. of the Revised Code, the provider SHALL request a hearing within thirty days after the mailing date of the notice.
- 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