

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-06.1

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: adult day service.

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?** 10/16/2020
2. **Is this rule the result of recent legislation?** No
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, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 42 U.S.C. 3025, 3030d, 3032c; 45 C.F.R. 1321.11, 1321.65
6. **What are the reasons for proposing the rule?**

ODA proposes to amend this rule as part of a larger rule package to implement amendments related to the COVID-19 state of emergency and other matters.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Section 173.392 of the Revised Code requires ODA to adopt rules to establish requirements for AAA-provider agreements. This rule establishes requirements applying only to AAA-provider agreements for an adult day service (ADS).

On June 11, 2020, ODA adopted one or more emergency amendment(s) into this rules to allow providers to decide whether, during the state of emergency, to collect a unique identifier of the consumer (e.g., a handwritten signature) to verify that an activity or unit of service was provided. This allowed the provider and consumer to maintain social distancing. Through this rule package, ODA proposes to allow providers to decide whether, during any state of emergency declared by the governor, to collect a unique identifier of the consumer to verify that an activity or unit of service was provided.

On June 11, 2020, ODA adopted an emergency amendment to this rule's definition of "adult day service." The amendment gave ADS providers temporary flexibility to provide ADS activities in consumer's homes. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis, but limit its effectiveness to states of emergency declared by the governor.

ODA proposes to move language that defines "adult day service" under paragraph (B) (2) of the rule, plus Table 1 to the rule, to the definition under paragraph (A) of the rule and to replace occurrences of "components" in the definition with "activities," and to delete all uses of "shall" in the definition since defining a term does not require a regulatory restriction.

ODA proposes to replace a reference to section 102 of the Older Americans Act with a reference to 42 U.S.C. 3002, which is the codified version of section 102. This will help readers who want to follow the cross reference because the federal government publishes the United States Code, but does not publish an amended version of the act.

ODA proposes to replace reference to "the meals service requirements of rule 173-4-05 of the Administrative Code" with "paragraphs (A)(7) to (A)(12) of rule 173-4-05 of the Administrative Code and paragraph (E) of rule 173-4-05.1 of the Administrative Code."

ODA proposes to replace "personal care staff member" with "PCA."

ODA proposes to replace "present" regarding nurse staffing to "available."

8. Does the rule incorporate material by reference? No

9. **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

10. **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

11. **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

The proposed amendment to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 166 (133rd G.A.).

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

ODA's proposed amendments to this rule will not increase the cost of compliance for providers. One of the proposed amendments will give ADS providers flexibility to maintain social distancing during a state of emergency declared by the governor. Another will give ADS providers a new revenue stream during a state of emergency declared by the governor that will be particularly valuable if adult day centers are closed during the state of emergency. For more information, please review the business impact analysis.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
15. **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

16. Was this rule filed with the Common Sense Initiative Office? Yes

17. 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? No

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

This rule requires providers to comply with requirements that are common to ADS and verify that they provided the services for which they bill ODA. For more information, please review the business impact analysis.

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

One of the proposed amendments will give ADS providers a new revenue stream during a state of emergency declared by the governor that will be particularly valuable if adult day centers are closed during the state of emergency. For more information, please review the business impact analysis.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. 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? 0

B. How many existing regulatory restrictions do you propose removing? 3

(B)(2)(a)(i) Basic ADS SHALL include structured activity programming, health assessments, and the supervision of one or more ADL.

(B)(2)(a)(ii) Enhanced ADS SHALL include the components of basic ADS, plus hands-on assistance with one or more ADL (bathing excluded), supervision of medication administration, assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status, and hands-on assistance with personal hygiene activities (bathing excluded).

(B)(2)(a)(iii) Intensive ADS SHALL include the components of enhanced ADS, plus hands-on assistance with two or more ADLs, regular monitoring of health status, hands-on assistance with personal hygiene activities (bathing included, as needed), social work services, skilled nursing services (e.g., dressing changes), and rehabilitative services, including physical therapy, speech therapy, and occupational therapy.