

Rule Summary and Fiscal Analysis (Part A)**Department of Aging**

Agency Name

Division

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173-3-06.1

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Adult day service.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 70 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (July 1, 2016).**
5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Section 321 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Amending this rule is part of a larger nutrition rule project. (Adult day services include meal provision.) For more information, please review the business impact analysis (BIA).

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule regulates AAA-provider agreements for adult day services when those services are paid, in full or in part, with Older Americans Act funds. Please review the BIA and its appendices for detailed information.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

The rule references the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities in Appendix A to 28 C.F.R. Part 36. All rules in the Code of Federal Regulations are readily available free of charge to the general public on federal websites.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

ODA did not attach the ADA accessibility guidelines to the rule because the guidelines are readily available to the general public, free of charge, on the U.S. Government Publishing Office's website (www.ecfr.gov).

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each

specific paragraph of the rule that has been modified:

On May 2, 2016, ODA made a revised filing of this rule to (1) update references to the Act in the "statutory authority" and "rule amplifies" sections after the rule text and (2) upload a revised public hearing notice for a public hearing on the same date and time and in the same location.

On May 3, 2016, ODA made a revised filing of this rule to replace the comma after "173.392" in the "statutory authority" section after the rule text with a semicolon. Also on May 3, 2016, ODA made a subsequent revised filing because ERF did not show that the CSIO documents were uploaded in the previous filing.

On July 20, 2016, ODA refiled the rule. In doing so, ODA proposed the following amended language in response to testimony provided at ODA's May 25, 2016 public hearing:

* ODA proposed requiring (vs., permitting) providers to invite consumers to participate in the inter-disciplinary care conferences about the consumer's care.

* ODA proposed standardizing the qualifications various ways a person may qualify to be an activities director for an adult day center when the services are paid by funds from the Older Americans Act or PASSPORT Programs. For example, if a person qualifies, under OAC3701-17-07 to be an activity director in a nursing home, ODA's current rules for the Older Americans Act program deem the person to also be qualified to be an activity director in an adult day center. Meanwhile, ODA's current certification rules (which apply to the PASSPORT Program) would require the person to qualify by other means because it makes no mention of the ODH rule. The proposed amendment would allow any person who qualifies to be an activity director under the ODH rule to do so in both the Older Americans Act and PASSPORT Programs without meeting any additional qualifications.

ODA also proposed converting all remaining uses of "furnish" to "provide."

After "Statutory Authority," ODA also proposed changing the date of the reference to 45 C.F.R. 1321.11 to July 1, 2016 to reflect the latest version of the federal rule. (Cf. Administration for Community Living. Final Rules. Federal Register. Vol. 81. No. 107. Friday, June 3, 2016. Pp. 35644-35648.) This would have no effect on the rule's content.

For more information on the amendments in the July 20 refiling of the rule, please review the hearing summary report and revised memorandum of response to CSIO.

12. Five Year Review (FYR) Date: 4/18/2016

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

Adopting the rule would not impact the biennial budget the Ohio General Assembly established for ODA.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-411 Senior Community Services.

3220-490-618 Federal Aging Grants.

3M40-490-612 Federal Independence Services.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

There is no cost of compliance directly associated with ODA's proposed amendments to this rule. ODA's proposed amendments are likely to reduce the cost of compliance. For more information, please review (1) the BIA and its appendices, especially Appendix K, the appendix on diet orders; and (2) the memorandum of response to CSIO.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

The rule regulates AAA-provider agreements which are necessary to provide adult day services paid, in whole or in part with Older Americans Act funds.

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**

The rule requires documentation, service verification, and records retention.