

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

Agency Name

Division

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**173-3-06.1**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Adult day service.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

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: **173.02; 173.04; 173.392; Section 305 (a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11**

5. Statute(s) the rule, as filed, amplifies or implements: **173.04; 173.392, ; Section 321 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing this new rule as part of a larger effort to codify ODA's standards for agreements between AAAs and providers who are not providing services under a Medicaid-funded program (i.e., providers who are non-certified providers under

section 173.392 of the Revised Code). This effort will bring ODA into compliance with sections 173.04 and 173.392 of the Revised Code, Section 305 (a)(1)(C) of the Older Americans Act, and 45 C.F.R. 1321.11.

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:

This proposed new rule regulates adult day service for non-certified providers paid through means of a provider agreement entered into with an AAA. Specifically, the rule:

1. Defines terms used in the rule;
2. Itemizes the minimum requirements for an adult day service; including general requirements (e.g., conduct an initial assessment, conduct a health assessment, provide transportation to and from the facility, draft a care plan, obtain physician authorizations, interdisciplinary care conference, provide activities, provide lunch and snacks), facilities requirements (e.g., separate space for adult day services from other services in the same facility, compliance with the Americans with Disabilities act, a storage space for medications, a storage space for toxic substances, a toilet for every ten adult-day-service consumers present, a bathing facility, an emergency safety plan, evacuation drills, fire extinguishers, and smoke alarms), and staff requirements (e.g., staffing levels, activities staff, qualifications, initial training, continuing education, and performance reviews for the staff of a provider); and,
4. Establishes the units of an adult day service.

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:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

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:

*This response left blank because filer specified online that the rule does not*

*incorporate a text or other material by reference.*

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:

On November 26, 2008, ODA revised the proposed new rule to:

1. Change "no" to "yes" in the enhanced ADS column of Table 1 at the skilled nursing row and to add skilled nursing services to the list of enhanced ADS in paragraph (B)(1)(a)(ii) of the proposed new rule. Also, in the same paragraph, remove "hands-on" from the phrase "hands-on assistance with medication administration."
2. Change "during all times that any consumer in the ADS facility requires the services" in paragraph (B)(6)(c) of the proposed new rule to "for a minimum of eight hours per month plus any additional time required for a consumer who requires the services."
3. Delete "or," from the end of paragraph (B)(7)(b)(ii) of the proposed new rule.
4. Update this RSFA.

On January 5, 2009, ODA refiled the proposed new rule to:

1. Replace "ordered" in paragraph (A)(1) of the rule with "provided."
2. Add a definition of "skilled nursing" that says, "'Skilled nursing' has the same meaning as in section 3721.01 of the Revised Code."
3. Change "yes" to "no" in the enhanced ADS column of Table 1 at the skilled nursing row and to remove skilled nursing services from the list of enhanced ADS in paragraph (B)(1)(a)(ii) of the proposed new rule. (This change reverses the revision made on November 26, 2008.)
4. Replace "The provider shall invite the consumer to the conference. If the consumer has a family caregiver, the provider shall invite the family caregiver to the conference. If the AAA is providing care coordination services to the consumer, the provider shall also invite a representative from the AAA to participate in the conference" in paragraph (B)(1)(g) of the rule with "The provider may invite the consumer to the conference. If the consumer has a family caregiver, the provider

may invite the family caregiver to the conference. If the AAA is providing care coordination services to the consumer, the provider shall also invite a representative from the AAA to participate in the conference."

5. Delete "and," from paragraph (B)(1)(e)(iii) of the rule. Replaces the period at the end of paragraph (B)(1)(e)(iv) of the rule with "and,". Then, insert a new paragraph numbered (B)(1)(e)(v) of the rule, that says, "Ability to sign his/her signature versus alternate means for a consumer signature."

6. Add "and," to the end of paragraph (B)(6)(a), then replace paragraphs (B)(6)(b) and (B)(6)(c) of the rule, which said, "If the provider offers basic ADS, the provider shall have one RN or LPN under the direction of an RN present for a minimum of eight hours a month; and," and "If the provider offers enhanced or intensive ADS, the provider shall have one RN or LPN under the direction of an RN present when consumers are in attendance for a minimum of eight hours per month plus any additional time required for a consumer who requires the services of an RN or LPN under the direction of an RN for a service that is under the scope of practice for the RN or LPN under the direction of an RN" with "The provider shall have one RN or LPN under the direction of an RN present when a consumer is present to provide services within the nurse's scope of practice." (This change alters the revision made on November 26, 2008.)

7. Update this RSFA.

## 12. 119.032 Rule Review Date:

(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

ODA does not anticipate that the proposed adoption of this new rule would have any impact on the biennial budget established for ODA by the General Assembly because this proposed new rule should not create any expenses unforeseen when the General Assembly appropriate funds to ODA in Am. Sub. H. B. No. 119 (127th G. A.).

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

322-490-618 Federal Aging Grants.

3M3-490-611 Federal Aging Nutrition.

3M4-490-612 Federal Independence Services.

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

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:

ODA estimates that there will be no cost of compliance to any directly-affected person as a result of the adoption of this rule. A consumer is not required to pay for an adult day service and thus has no cost of compliance. A provider who enters into a provider agreement under Chapter 173-3 of the Administrative Code to provide an adult day service is reimbursed for his/her fully-allocated costs, meaning any costs incurred by complying with this rule are compensated by funds administered under the chapter. Additionally, the provider sets the rate of reimbursement since he/she bids on the opportunity to win a provider agreement through a competitive-bidding process.

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**