

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:
Address: 246 N. High St. 1st floor Columbus OH 43215-2046
Contact: Tom Simmons **Phone:** 614-728-2548
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?** 10/5/2021
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?**

Section 173.392 of the Revised Code requires ODA to adopt rules to establish requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds. The rules in Chapter 173-3 of the Administrative Code establish these requirements.

ODA proposes to amend this rule.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

Rule 173-3-06.1 of the Administrative Code establishes requirements applying only to AAA-provider agreements for an adult day service.

On June 11, 2020, Governor DeWine issued executive order 2020 23D which authorized ODA to adopt emergency amendments to these rules. The emergency amendments gave providers flexibility to conduct certain responsibilities by telephone, video conference, or in person. On December 31, 2020, ODA adopted amendments to this rule that gave providers flexibility to do the same during a state of emergency declared by the governor. On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order 2021-09D to authorize ODA to adopt emergency rule 173-1-04 of the Administrative Code, which declares that providers have the same flexibility until the end of the federal public health emergency. Through this rule package, ODA proposes to give providers these flexibilities until the end of federal public health emergency or on an ongoing basis, whether a state or federal emergency exists or does not exist (as is the case for an adult day service provided in a consumer's home). This involves adding Table 2 to this rule.

Additionally, ODA proposes to amend this rule to achieve the following:

1. Delete the reference to the definition of "case management service," since ODA is simultaneously proposing to define that term in rule 173-3-01 of the Administrative code.
2. Delete requirements related to fire safety. The state fire marshal established fire-safety requirements in the Ohio Fire Code (Chapter 1301:7-7 of the Administrative Code) and the Board of Building Standards established the building standards in the Ohio Building Code (Agency 4101:1 of the Administrative Code). Adult day centers are classified in those codes as "institutional group I-4."
3. Create a new avenue for a person to qualify to be an activity director in an adult day center by allowing the person to qualify if the person meets the requirements to be an activity director for a residential care facility under rule 3701-16-06 of the Administrative Code.
4. Deem that any successfully-completed continuing education or in-service training completed to maintain a professional license, certification, or registration counts toward the requirements for continuing education or in-service training in this rule if complete during the same calendar year.

5. Replace signature requirements with requirements to provide a "unique identifier," which is a term defined in rule 173-3-01 of the Administrative Code.

6. Allow providers to post monthly planned activities through various media instead of just posters.

7. Delete references to 45 C.F.R. 1321.65 since the AAA-provider agreement is required to comply with the entirety of 45 C.F.R. Part 1321.

ODA also proposes to make non-substantive amendments to this rule.

- 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.**

ODA made a revised filing of this rule to replace the timeframe for competing annual continuing education from "each calendar year" to "every twelve months."

10/06/2021 ODA made a revised filing of this rule to achieve the following:

- 1. Correct the misspelling of a word under paragraph (A).*
- 2. Replace "one" with "two" in paragraph (B)(2)(h) of this rule.*
- 3. Remove the proposed new option for a person to qualify to be an activities director if the person meets the requirements in rule 3701-16-06 of the Administrative Code for directing resident activities in a residential care facility because ODH does not establish such requirements in rule 3701-16-06 of the Administrative Code or any other rule of the Administrative Code.*
- 3. Replace each occurrence of "personal care aide" with "PCA."*
- 4. Make non-substantive improvements to punctuation.*

ODA also made a revised filing of this rule to upload a revised public hearing notice.

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

Adopting the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

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

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit {i.e., per job (e.g., home modification), per item (e.g., a meal), or per a period of time (e.g., personal care)}. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173-3-04 and 173-3-05 of the Administrative Code).

Please review the business impact analysis for more information.

- 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**

There is no requirement for a provider to enter into an AAA-provider agreement in order to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business, it must enter into an AAA-provider agreement in order for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs.

- 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**

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If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 C.F.R. 75.329 and rules 173-3-04 and 173-3-05 of the Administrative Code).

Please review the business impact analysis for more information.

- 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 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? 8

(B)(3)(a) "The provider shall only perform ADS in a center with the following specifications:"

(B)(3)(b)(i) "The provider shall develop and annually review a fire inspection and emergency safety plan."

(B)(3)(b)(ii) "The provider shall post evacuation procedures in prominent locations throughout the center."

(B)(3)(c)(i) "At least quarterly, the provider shall conduct an evacuation drill from the center while consumers are present."

(B)(3)(d)(i) "The provider shall have fire extinguishers and smoke alarms in the center...."

(B)(3)(d)(i) "...nd shall provide routine maintenance to them."

(B)(3)(d)(ii) "At least annually, the provider shall conduct an inspection of the fire extinguishers and smoke alarms...."

(B)(3)(d)(ii) "...and shall document the completion of each inspection."