

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

Agency Name

Division

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173-3-06.5

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Personal care.**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: **121.36, 173.01, 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 (October 1, 2012 edition)**

5. Statute(s) the rule, as filed, amplifies or implements: **121.36, 173.04, 173.392, Section 321(a)(5)(C) 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:

Section 119.032 of the Revised Code requires ODA to review rules 173-3-06.2, 173-3-06.3, 173-3-06.4, and 173-3-06.5 of the Administrative Code no later than the rules' assigned review dates. Accordingly, ODA has reviewed the rules before their review dates and is now proposing to amend the rules.

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:

In comparison to the rule of the same number that ODA is simultaneously proposing to rescind, ODA is proposing to adopt this new rule to:

- * Make minor amendments to unify the definition of "personal care" in this rule with the comparable definition in rule 173-39-02.11 of the Administrative Code.
- * Insert into paragraph (A)(1) of this rule, "that is" before "comprised," "The tasks include routine meal-related tasks, routine household tasks, and routine transportation tasks" after the sub-paragraph on components of a homemaker service, replacing "assisting" with "assist," and shortening the definition of "PCA" to "'PCA' means 'personal care aide.'"
- * Reference the requirements for all providers found in rule 173-3-06 of the Administrative Code.
- * Reform the PCA qualifications so that the rule no longer requires any job experience for graduates of a NATCEP. Instead of requiring 24 months of consecutive employment as a home health aide, ODA now proposes to require providers to retain records to show that the PCA has performed Medicare home health aide work at least once during the 24-month period before the provider used the person as a PCA. Please see the business impact analysis for detailed information.
- * No longer require the provider to conduct a test to evaluate the competency of a would-be PCA if the NATCEP the would-be PCA completed was operated by the provider. That would eliminate an old requirement to test the person two times in a row.
- * Replace the "monitoring" language in paragraphs (B)(6), (B)(6)(a), and (B)(6)(b) of the with a new paragraph (B)(6)(a) of the rule. The proposed new paragraph would say, "To effectively monitor the delivery of services by its employees, each provider that is an agency provider shall use a monitoring system that complies with section 121.36 of the Revised Code." ODA's previous two paragraphs were intended to summarize the requirements for providers under section 121.36 of the Revised Code. However, it seems more helpful to refer providers to the actual mandate in section of the Revised Code rather than to summarize it. Referencing the Revised Code would minimize the risk that ODA may inadvertently mislead a

provider into believing that ODA's summary represented the totality of what section 121.36 of the Revised Code has required since H.B.95 (125th G.A) enacted on September 26, 2003, and required to take effect one year later (on September 26, 2004).

- * Replace outdated "document maintenance" language with "service verification" and "records retention" language that is found in more-recently filed rules. In doing so, ODA would no longer appear to require paper records to verify that the services were performed pursuant to the rules.

- * Add language to (1) allow electronic records and (2) reference the rule that says for how long the provider must retain records. The proposed new language makes the rule uniform with rules 173-3-06.2 and 173-39-02.11 of the Administrative Code, as well as other more-recently adopted rules.

- * Remove language, in paragraph (B)(3) of the rule, that requires a provider to publish a written manual of its policies and procedures. This involves replacing "employee manual" with "policies and procedures." This includes removing "a written manual of" before "policies and procedures."

- * Clarify to whom the provider must make its policies and procedures available.

- * Use uniform terminology between this rule and rule 173-3-06.4 of the Administrative Code regarding policies and procedures. This would involve replacing "employee code of ethics" in rule 173-3-06.4 of the Administrative Code with "employee ethical standards." It also involves replacing "company policies" in rule 173-3-06.5 of the Administrative Code with "its policies."

- * Replace the option for qualifying to be a PCA by being listed on the Ohio Dept. of Health's Nurse Aide Registry. The registry lists all state-tested nurse aides--even those not in good standing. Therefore, ODA is proposing to say that a way to qualify to be a PCA is for the Ohio Dept. of Health to list a person as active on its state-tested nurse aide registry. ODA then, will provide a URL so the provider may easily find the registry online.

- * Replace, in paragraph (A)(2) of the rule, "'Personal care aide' ('PCA') means the person who performs the activities of a personal care service," with, "'PCA' means 'personal care aide.'"

- * Replace "personal care service" with "personal care" throughout the rule because "service" is redundant of "care."

- * Add the edition citation to the C.F.R. cited in the "statutory authority" section after the rule language to comply with Section 121.75 of the Revised Code. ODA does not need to fully cite the Older Americans Act in the rules because, in rule 173-3-01 of the Administrative Code, ODA fully cites "Older Americans Act" in its definition for the term which applies to all uses of "Older Americans Act"

throughout Chapter 173-3 of the Administrative Code.

* Make non-substantive amendments.

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 rule references the Code of Federal Regulations regarding Medicare NATCEPs.

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 file the text of the Code of Federal Regulations electronically because ODA merely made a citation to the CFR and CFRS are generally available to the public through the U.S. Government Printing Office's website.

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 September 3, 2013, ODA revise-filed the rule to revise the public hearing notice and this RSFA.

On October 28, 2013, ODA refilled the rule to:

1. Replace "434.36" in paragraph (B)(2)(a) of the rule with "484.36."
2. Replace "the s name, the consumer's name, the consumer's signature, and the PCA supervisor's signature" in paragraph (B)(4)(d) of the rule with "the PCA supervisor's name and signature, and the consumer's name and signature."

3. Revise 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 estimates that the proposed adoption of this new rule would have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 59 (130th G.A.).

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

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

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:

For detailed information on the cost of compliance, please see the business impact analysis (BIA)--especially the details under questions #14 and #15 of the BIA.

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**

To be reimbursed for providing personal care through the Alzheimer's Respite Program or an Older Americans Act Program, a provider must agree to provide care that complies with this rule. One requirement of this rule is to enter into a provider agreement with an area agency on aging that includes the mandatory clauses in rule 173-3-06 of the Administrative Code.

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 provider must retain records to verify how it provided personal care to each consumer and to verify that each PCA is qualified for his or her job position.