

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

Agency Name

Division

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**173-39-02.1**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**ODA provider certification: 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, 173.391, 173.52, 173.522.**
5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:  

ODA is filing the rule to correct a mistake and to update terminology.
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 lists the requirements a provider of shared living must meet in order to

become (and to remain) an ODA-certified provider of adult day services (ADS).

ODA proposes to replace the unfortunate occurrence of "meal delivery" in (B)(6)(a) with "ADS session."

ODA also proposes to replace "ODA (or ODA's designee)" in (B)(6)(a)(iii) with "ODA or its designee." This follows a pattern for updating the term in recent ODA rule filings.

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](http://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:

*Not Applicable.*

12. Five Year Review (FYR) Date: **11/30/2016**

(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

ODA estimates its proposed amendments to this rule would not impact the biennial budget the Ohio General Assembly established for ODA because the General Assembly did not authorize ODA to exceed its appropriations.

Additionally, ADS is a service offered through the PASSPORT Program, but the program is not funded by an ODA appropriation. Since H.B.153 (129th G.A.), funding for both components of the program was transferred to a budget line item of the Ohio Dept. of Medicaid (ODM). Therefore, ODA also estimates its proposed amendments to the rule would not impact the biennial budget the General Assembly established ODM.

Lastly, the amendments are not substantive and would not change ODA's or ODM's budgetary needs during the biennium.

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

GRF-651-525 Medicaid/Health Care 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:

Providers who want to become certified by ODA to provide ADS to individuals enrolled in the PASSPORT Program must comply with the rule. Please review the

BIA for detailed information.

ODA's proposed amendments would not cause any directly-affected person to experience a new cost to comply with the rule. The amendments are not substantive and would not change a provider's practice or costs.

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 requires every ADS provider wanting to be paid for providing ADS to individuals enrolled in the PASSPORT Program to be certified by ODA. (Cf., ORC §§ 173.39, 173.391)

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? **Yes**

If the ODA-certified ADS provider fails to comply with the rule, the provider may receive disciplinary actions, which could lead to losing its certification with ODA. (Cf., ORC§173.391)

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

The rule requires providers to retain records on employee training and on service verification. The rule allows this to be kept electronically. ODA or its designees may request the records as part of its routine (or non-routine) monitoring of the provider's compliance.