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Hearing Date: 9/19/2023

Today's Date: 9/28/2023

Agency: Ohio Department of Aging

Rule Number(s): 173-39-02.1

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. OhioAging and Area Agency on Aging 7

2. LeadingAge Ohio

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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

OhioAging and AAA7 requested a reconsideration of the use of “staff member” and related terms throughout the rule.

LeadingAge Ohio made the following three requests:

1. Revise the staffing ratio from 1:6 to 1:8 (staff to individuals served).
2. Create a new standard to allow an adult day center to operate with only 1 staff member during the first and last hour of the day if only one individual is present during those hours.
3. Create a standard similar to “bed hold days” for nursing homes that would require the PASSPORT Program to pay adult day providers for days when an individual does not arrive at the adult day center due to a hospital admission, etc.

Hearing Summary Report

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

ODA responded to OhioAging's and AAA7's testimony by reconsidering the use of "staff member" and related terms throughout the rule, then refiling the rule to make the following revisions:

1. Replace "Functional and cognitive profiles that identify the ADLs and IADLs that need the attention or assistance of the provider's staff members" in paragraph (B)(2)(b)(ii)(a) of this rule with "The individual's functional, cognitive, and social needs." This paragraph refers to an assessment of the individual and does not need to say which staff member provides which activity because that is the purpose for an activity plan, not an assessment.
2. Replace "staff member" with "employee" when the context refers to the provider's option to obtain the services of a healthcare professional whether the professional is or is not the provider's employee. This applies to paragraphs (B)(2)(c), (B)(2)(d), and (B)(2)(f)(iii) of this rule.
3. Replace "staff members" in paragraph (B)(2)(f)(ii) of this rule with "staff."
4. Replace "The provider shall have at least two staff members present whenever more than one individual is present, including one who is a paid staff member who provides hands-on activities and one who is certified in CPR." in paragraph (B)(4)(a) of this rule with "The provider shall have at least two staff members present, with at least one of those staff members having a certification in CPR, when more than one individual is present in the center." The use of "staff members" in this paragraph could include PCAs, RNs, activity directors, activity assistants, or other staff members.
5. Replace "staff member who provides hands-on activities" in paragraph (B)(5)(b)(iv) with "PCA."
6. Replace both uses of "staff member" in paragraph (B)(5)(b)(v) of this rule with "person" and, in the same paragraph, insert "for the provider" after "individuals."

ODA responded to LeadingAge Ohio's testimony as follows:

1. At this time, ODA proposes to make no changes to the current staffing ratio for the following reasons:
 - a. ODA's requirement to maintain a ratio of 1 staff for every 6 individuals aligns with the national average cited in the 2010 MetLife study. According to a NASUAD survey in 2017, staffing ratios ranged from 1:3 to 1:7 with 1:5 and 1:6 identified as most common.
 - b. The Ohio Department of Medicaid will soon release its proposed rate increases for services. The new rates will help providers to attract and retain a quality workforce.
2. At this time, ODA proposes to maintain its current two-employee minimum standard. The Ohio Department of Medicaid will soon release its proposed, new, increased rates for services. The new rates will help providers to attract and retain a quality workforce.

Hearing Summary Report

3. There is no statute in the Ohio Revised Code that authorizes “bed hold days” for an adult day service. ODA does not have authority to pay providers for not providing services.