

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Ohio Department of Aging (ODA)		
Regulation/Package Title:	Chapter 173-39 of the Administrative Code		
Rule Number(s):	173-39-01, 173-39-02, 173-39-02.3, 173-39-02.4, 173-39-02.5, 173-39-02.21, 173-39-02.22, 173-39-02.23, 173-39-02.24		
Date:	March 24, 2014 (Revised on April 14, 2014)		
Rule Types:			
X New:	173-39-01 173-39-02.4 173-39-02.22 173-39-02.23 173-39-02.24	X 5-Year Review:	173-39-01 173-39-02.3 173-39-02.4 173-39-02.5
X Amended:	173-39-02 173-39-02.3 173-39-02.5	X Rescinded:	173-39-01 173-39-02.4

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

INTRODUCTION

Provider Certification:

Chapter 173-39 of the Administrative Code pertains to provider agreements obtained through provider certification, not through open and free competition (*i.e.*, competitive bidding).¹ In general, provider certification allows any willing and qualified provider to furnish services to the consumers of ODA's programs.

Goals of Rule Proposals:

1. **Create Reciprocity for the Medicaid Waiver Programs:**

On March 1, 2014, a newly-approved CMS² Medicaid waiver took effect for the Choices Program. It allows the program to operate on a statewide basis instead of the limited regions under which it had operated. However, the current Choices Program will cease its operations on June 30, 2014. By that time, all consumers in the program will be enrolled in the PASSPORT Program or MyCare Ohio Program.

On July 1, 2014, the Medicaid waiver for the PASSPORT Program will include former Choices consumers. It will also cover waiver nursing, out-of-home respite, and home care attendant services. Additionally, on July 1, 2014, any service that is available to a consumer on the MyCare Ohio Program is available to a consumer on the PASSPORT Program. Instead of adopting new regulations for services, ODM requires providers to comply with ODA's rules in Chapter 173-39 of the Administrative Code. Likewise, instead of adopting new regulations for waiver nursing, out-of-home respite, and home care attendant services, ODA proposes to require providers to comply with ODM's rules for those services. However, a provider would still need to work under the case management, rates, and oversight of ODA and its designees.

Section 323.110 of Am. Sub. H.B. No. 59 (130th General Assembly) (HB59) requires ODA to keep the rule in "full force and effect on and after [the date the

¹ There are 2 routes for doing business with ODA. (1) A provider who provides goods or services to consumers who are enrolled in a Medicaid waiver program *must become certified* by ODA in order for ODA to reimburse the provider for its expenses. In order to become certified, the provider must comply with the conditions of participation listed in rule 173-39-02 of the Administrative Code. (2) A provider who provides services to consumers who are enrolled in ODA's non-Medicaid-funded programs (*e.g.*, Alzheimer's Respite or Older Americans Act Programs) *must enter into a provider agreement* with an area agency on aging in order for the programs to pay the providers for their expenses. Every provider agreement must contain the mandatory clauses in rule 173-3-06 of the Administrative Code (which are very similar to the conditions of participation in rule 173-39-02 of the Administrative Code). It is necessary to "win" a round of competitive bidding in order to enter into such a provider agreement. Many providers furnish goods and services to both consumers who are enrolled in Medicaid waiver programs and in non-Medicaid funded programs. Accordingly, many providers are simultaneously working under rules for certified providers and for providers under provider agreements.

² "CMS" means "Centers for Medicare and Medicaid Services."

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Choices Program ends], but solely for [the] purposes of concluding the [program's] operations, including fulfilling [ODM's and ODA's] legal obligations for claims arising from the component relating to eligibility determinations, covered medical assistance provided to eligible persons, and recovering erroneous overpayments.”

2. **Simplify the definitions and conditions of participation rules³:** Google analytics that ODA uses to analyze its website's traffic reveal every month that rule 173-39-02 of the Administrative Code is ODA's most-downloaded rule. In February, 2014, the rule was viewed by the general public 203 times for an average of 4 minutes and 36 seconds. No other rule of ODA's requires that much reading time. This implies that it is difficult to find requirements in the rule. Therefore, ODA has an interest in simplifying the rule.

To achieve this ODA proposes to do the following: (a) Replace specific references in rules 173-39-01 and 173-39-02 of the Administrative Code to other rules in the chapter—especially lists of references—with general references that should reduce future needs to amend the rules. (b) Relocate the unique requirements for consumer-directed individual providers in the conditions of participation to rule 173-39-02.4 of the Administrative Code. As a result, rule 173-39-02 of the Administrative Code should become much shorter and only contain requirements that are common to all provider types. Additionally, consumer-directed providers should find more of the regulations over them in one rule (173-39-02.4).

3. **Implement HB59's amendments:** HB59 renumbered many sections of the Ohio Revised Code that pertain to ODA. HB59 also removed the Office of Medicaid Administration from the Ohio Department of Job and Family Services to create the new Ohio Department of Medicaid. This also results in new rule numbers for ODM. Accordingly, ODA proposed to replace outdated references to the above with new references.
4. **Implement training requirements for consumer-directed providers:** Although ODA does not propose to increase the regulations on how a provider furnishes a Choices home care attendant service, ODA does propose to adopt new training requirements for the same providers.

This is in response to Section 323.234 of HB59, which created the Direct-Care Worker Advisory Workgroup. The workgroup's mission was to develop core competencies for direct-care positions.

On December 31, 2013, the workgroup released its report to the general assembly. The report recommended requiring ODA to establish criteria and procedures to assure that direct-care workers meet the standards of the following core competencies: (1) maintain clean and safe environment, (2) promote clients' development, (3) assist with activities of daily living, (4) communicate client

³ Rules 173-39-01 and 173-39-02 of the Administrative Code.

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information to authorized persons, (5) perform administrative tasks, and (6) participate in professional development [continuing education] activities. HB59 established the legislative intent of adopting the recommendations for an October 1, 2014 implementation.

Verification of the core competencies is likely to involve many hours of training, such as the 60 hours required by the state-tested nurse aide program. However, the report also said that “aides providing services to one ... consumer or up to three ... consumers residing in the same household through a consumer directed care option shall be exempt from the testing components” recommended by the report to verify core competencies. The report recommends requirements to have alternative means to document that the consumer-directed providers meet the core competencies.

This exception arose in the report because the consumer-directed providers are not career-path providers. Instead, they are generally family members that the consumer hires through ODA’s Choices Program (and now PASSPORT Program) to furnish the Choices home care attendant service. If the family member did not need care, the consumer-directed provider would not be a provider.

The exception also arose because of the long-held belief that the consumer who employs the consumer-directed provider is the one who provides the training and supervises the provider.⁴

ODA believes that now the better time to propose the new training requirements is now, rather than when new training requirements are proposed for other types of providers. That is because (1) consumer-directed providers currently have no training requirements at all unless the consumer requests training for the provider and (2) the service is now available on a statewide basis, which means that many people may want to become newly-certified consumer-directed providers. If ODA waits to propose the training requirements, the new providers would soon find themselves out of compliance. Proposing the requirements now as people apply to become certified as consumer-directed avoids this problem.

After the public-comment period, but before ODA filed the proposed new rule with JCARR, ODA revised the proposed new rule to allow consumer-directed providers that consumers hired before July 1, 2014⁵ to have until September 1, 2014 to comply with the initial training requirements. All consumer-directed providers that consumers hire on or after July 1, 2014 would still need to meet the initial training requirements before providing the first episode of service.

⁴ [Boston College School of Social Work: National Resource Center for Participant-Directed Services](#). “Do Participant-Directed Workers Require The Same Training As Agency Workers? Using Research to Inform Policy.” Issue Brief. October, 2009.

⁵ The projected effective date for rule 173-39-02.4 of the Administrative Code is July 1, 2014.

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5. **Make other updates:** In the rule-by-rule details below, ODA itemized other updates that it identified when reviewing the rules to comply with section 119.032 of the Revised Code.

RULE-BY-RULE DETAILS

173-39-01 Introduction and Definitions.

ODA proposes to rescind the rule and, simultaneously, to adopt a new rule of the same number. Compared to the rule that ODA proposes to rescind, in the new rule, ODA proposes to:

1. Create Reciprocity for the Medicaid Waiver Programs:

- a. ODA proposes to add language to the introductory paragraphs that explain that MyCare Ohio rules require compliance with Chapter 173-39 of the Administrative Code.
- b. Because providers occasionally ask if they are regulated by Chapter 173-3 (and 173-4 for nutrition services) *or* Chapter 173-39 of the Administrative Code, ODA proposes to clarify that it is possible for both sets of chapters to regulate a provider. It depends upon whether the provider participates in multiple ODA-administered programs that are regulated by differing chapters of the Administrative Code. Fortunately, ODA has adopted many uniform regulations for services between the chapters. (For example, compare the regulations for adult day services in rule 173-3-06.1 of the Administrative Code to the regulations in rule 173.39-02.1 of the Administrative Code.)
- c. ODA proposes to replace the definition for “authorized representative” with a reference to rule 5160:1-1-55.1 of the Administrative Code, which is a rule that regulates authorized representation for all Medicaid programs.

2. Simplify the rule:

- a. ODA proposes to remove from the definition of “certification” the specific references to all rules that regulate services in Chapter 173-39 of the Administrative Code with “one or more of the services that this chapter regulates.” This should reduce the number of times this rule requires updates.
- b. ODA proposes to reduce the definition for “provider” by only mentioning the five types of providers in the sub-paragraphs instead of the services that ODA may certify each provider type to furnish. This will reduce the number of times that ODA must amend this rule. Additionally, each rule in Chapter 173-39 of the Administrative Code that regulates a specific service states which types of providers may furnish the service. The exception is for the consumer-directed provider types. The service that

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consumer-directed provider furnishes (*i.e.*, either “Choices home care attendant service” or “personal care”) determines whether the consumer-directed provider is a consumer-directed individual provider or a consumer-directed personal care provider.

3. Implement HB59’s amendments:

- a. ODA proposes to replace the reference to rule 5101:3-3-06 of the Administrative Code with rule 5160-3-06 of the Administrative Code to reflect a change in rule numbers after HB59 created the Ohio Dept. of Medicaid.
- b. Replace the definitions for “case manager” and “consumer” with definitions that no longer mention section 173.40 of the Revised Code, which HB59 renumbered. Additionally, the definitions cite the programs to which these definitions apply with the following words: “ODA-administered programs that require provider certification under this chapter” This is simpler than the alternative of adding the state-funded component of the Assisted Living Program to the existing definition and simpler than itemizing all the programs that require case management and that are regulated Chapter 173-39 of the Administrative Code regulates (*i.e.*, the Medicaid-funded components of the Assisted Living and PASSPORT Programs, the Choices Program, and the state-funded components of the Assisted Living and PASSPORT Programs) Furthermore, the proposed amended definitions use the active voice, not the passive voice, to comply with §5.8.6 of the Rule Drafting Manual.⁶
- c. ODA proposes to replace the reference to section 5111.20 of the Revised Code with section 5165.01 of the Revised Code to reflect HB59’s renumbering of sections.
- d. ODA proposes to replace the reference to ODJFS with ODM to reflect HB59’s creation of the Ohio Dept. of Medicaid.

4. Make other updates:

- a. ODA proposes to delete the definition of “assessment,” because the term, as defined, refers to the financial and personal assessment of a person. Uses of “assessment” is used throughout the chapter in various ways and defined by its context. For example, in the rule on nutrition consultation services, the assessment is a nutrition assessment. Social workers have their own assessments in the social work counseling rule. The adult day service rule has three types of assessments: a case manager’s assessment, the provider’s initial assessment, and the health assessment.

⁶ “Rule Drafting Manual.” Legislative Service Commission. 4th ed. © May, 2006.

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- b. ODA proposes to replace the definition of “Assistance with self-administration of medication” with the following: “...has the same meaning as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is provided by an unlicensed person.” ODA will now cite the Ohio Board of Nursing’s rule, which is the state’s authority on what a licensed vs., unlicensed person can perform in this area. (ODA recently proposed a corresponding change to rule 173-3-01 of the Administrative Code.)
- c. ODA proposes to delete the definition of “case management,” because the term is not used in Chapter 173-39 of the Administrative Code.
- d. ODA proposes to replace, in the definition of “consumer’s signature,” the 2 occurrences of “acknowledgement” with “acknowledgment.”
- e. ODA proposes to delete the definition for “denial” because ODA does not use the term in the chapter.
- f. ODA proposes to delete the definition for “department,” because ODA uses “ODA” in the chapter instead of “department,” in part to easily help readers differentiate between the Ohio Department of Aging and other state departments that the rules mention.
- g. ODA proposes to replace, in the definition of “incident,” the acronym “PAA” with the words “ODA’s designee.” Rule project by rule project, ODA has systematically been replacing “PAA” with “ODA’s designee.”
- h. ODA proposes to remove the definition of “level of care,” because ODA does not use the term in the chapter.
- i. ODA proposes to remove from the definition of “nursing facility” the acronym “NF,” because ODA uses “nursing facility” instead of “NF” in the chapter.
- j. ODA proposes to correct the definition for “ODA’s designee” by no longer saying that it has the same meaning as in section 173.42 of the Revised Code. That section of Revised Code defines the term “PASSPORT Administrative Agency,” not “ODA’s designee.” Instead, the definition will refer to the sections definition for “PASSPORT Administrative Agency.” Additionally, to comply with §5.8.6 of the Rule Drafting Manual⁷, ODA proposes to use the active voice instead of the passive voice. The result is simply replacing “listed” with “that ODA lists.”
- k. ODA proposes to define “Older Americans Act” to comply with section 121.75 of the Revised Code, which requires properly referencing the act.

⁷ “Rule Drafting Manual.” Legislative Service Commission. 4th ed. © May, 2006.

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This is necessary because ODA provided a cross-reference to the act in paragraph (A) of the rule.

- l. ODA proposes to improve the definition of “service plan,” by inserting “the” before “services” and by clearly stating that case managers authorize the plans.
- m. ODA proposes to add a new definition of “services” that references the list of services in section 173.14 of the Revised Code to correspond to the definition in section 173.39 of the Revised Code.

173-39-02 Conditions of Participation.

ODA proposes to amend the rule to:

1. Simplify the rule:

- a. ODA proposes to replace specific references to rules in the chapter—especially lists of references—with general references that should reduce future needs to amend the rule. This would affect paragraphs (B)(1)(a), (B)(6)(a), (C)(1)(a), (C)(6)(a), (D)(1)(b), (D)(5)(6), (E)(1)(b), (E)(6)(a), (F)(1)(b), and (F)(4)(e) of the rule. This is part of ODA’s incremental step towards simplifying the rule.
- b. ODA proposes to relocate the unique requirements for consumer-directed individual providers under paragraph (D) of this rule to rule 173-39-02.4 of the Administrative Code. This is part of ODA’s incremental step towards simplifying the rule. The requirements include: (i) completing an application; (ii) being at least 18 years old; (iii) having a valid social security number at least one current, valid, government-issued ID; (iv) being able to read, write, and understand English; and, (v) being able to effectively communicate with the consumer.

2. Implement HB59’s amendments:

- a. ODA proposes to replace the references to ODJFS with ODM to reflect HB59’s creation of ODM.
- b. ODA proposes to replace the references to rules 5101:3-1-17.2 and 5101:3-1-27.2 of the Administrative Code with rules 5160-1-17.2 and 5160-1-27.2 of the Administrative Code to reflect a change in rule numbers after HB59 created ODM.

3. Make other updates:

- a. ODA proposes to update references to federal regulations that ODA incorporates by reference to comply with section 121.75 of the Revised

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Code. This prevents the rule from mandating compliance with older editions of the Code of Federal Regulations.

- b. ODA proposes to replace the references to ODJFS with ODM to reflect HB59's creation of ODM.
- c. ODA proposes to replace "contract" in paragraph (B)(4)(b) of the rule with "provider agreement" to use the terminology of section 173.391 of the Revised Code.
- d. ODA proposes to replace "rue" in paragraph (F)(5)(b) of the rule with "rule."
- e. ODA proposes to reduce the verbosity in paragraph (G) of the rule by replacing "meet or maintain any of the required conditions of participation under this rule" with "comply with this rule" and by deleting ", which include the denial or revocation of the provider's certification." The rule on disciplinary actions, rule 173-39-05 of the Administrative Code, provides such details. It's unnecessary to repeat them in this paragraph.
- f. ODA proposes to replace "sanction" in paragraph (G) of the rule with "discipline" to align the rule with the terminology in section 173.391 of the Revised Code and rules 173-3-05 and 173-3-05.1 of the Administrative Code.
- g. ODA proposes to correct the reference to rule 173-39-06 of the Administrative Code that occurs in paragraph (G) of the rule with references to rules 173-39-05 and 173-39-05.1 of the Administrative Code.

173-39-02.3 Pest Control.

ODA proposes to amend the rule to:

1. **Create Reciprocity for the Medicaid Waiver Programs:** ODA proposes to add language to this rule that allows pest control to be covered for consumers who are enrolled in the PASSPORT Program whether the service is consumer directed (as it has been in the Choices Program) or not consumer directed. In the PASSPORT Program, pest control has been covered as part of a chore service, but consumer direction of pest control has not been an option.
2. **Make other updates:**
 - a. ODA proposes to replace "pest control service" with "pest control" because "pest control" sufficiently indicates a service without adding the word "service" to the title.

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- b. ODA proposes to replace in paragraph (C)(1) of the rule, the word “estimate” with “cost estimate.” This makes it possible to eliminate “of the cost of the service” in two sub-paragraphs. Overall, this simplifies the rule.
- c. ODA proposes to relocate all items about billing to the sub-paragraphs of paragraph (D) of the rule.
- d. ODA proposes to refer to ODM’s rule on PASSPORT Program rates.

173-39-02.4 Choices Home Care Attendant Service.

ODA proposes to amend the rule to:

- 1. **Create Reciprocity for the Medicaid Waiver Programs:** Although ODA does not propose to change the regulations on how a consumer-directed provider furnishes the service, ODA does propose to change the training requirements for the same providers. See notes under introduction (above).
- 2. **Simplify the conditions of participation rules:** ODA proposes to relocate paragraphs on general requirements for consumer-directed providers from rule 173-39-02 to this rule. Those requirements include (1) completing an application, (2) age, (3) valid government-issued identification, (4) English proficiency, and (5) effective communication skills.
- 3. **Implement training requirements for consumer-directed providers:** See ODA’s responses in the introduction (above).
- 4. **Make other updates:** ODA proposes to add “consumer-directed” to the definition of the service.

173-39-02.5 Chore Service.

ODA proposes to amend the rule to:

- 1. **Create Reciprocity for the Medicaid Waiver Programs:** ODA is removing pest control as an activity of the chore service. See the notes for rule 173-39-02.3 of the Administrative Code for more information.
- 2. **Make other updates:**
 - a. ODA proposes to incorporate into the rule cost-estimate and price-quote language from rule 173-39-02.3 of the Administrative Code.
 - b. ODA proposes to incorporate into the rule the limitation found in rule 173-39-02.3 of the Administrative Code that the maximum amount allowable for a unit of service is the provider’s written price quite so long as the price does not exceed the maximum amount allowable by ODM’s rate rule for the PASSPORT Program.

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- c. Replace an occurrence of the verb “provide” with “furnish.”

173-39-02.22 Waiver Nursing.

Reciprocity: ODA proposes to implement reciprocity for the Medicaid Waiver programs by allowing services that CMS once authorized only for the Ohio Home Care Wavier Program to be available to consumers in the PASSPORT Program. Instead of adopting new regulations for waiver nursing, ODA proposes to require providers to comply with ODM's rules for those services. However, in doing so, ODA acknowledges that it must propose the following four amendments:

1. ODA proposes to require a provider to be certified by ODA before furnishing services to consumers in ODA's programs. The State's health and human services departments remain separate and distinct. While the Administration has recommended that providers of specific services that meet a set of core competencies be able to work in different systems, these providers will still need to become certified to work under specific state agencies. Certification continues to be necessary in order for state agencies to meet state and federal requirements for oversight of its providers, including monitoring, disciplining, and suspension.
2. ODA proposes to require the provider to submit all required documentation for authorizations to ODA (or ODA's designee). Without this amendment, rule 5160-46-04 of the Administrative Code would require attaining the authorization to furnish services from county departments of job and family services. Because the case managers for the consumers in ODA's programs work for ODA's designees, ODA must require attaining authorization from ODA's designees.
3. When a provider would furnish activities of waiver nursing, paragraph (A)(2) of rule 5160-46-04 of the Administrative Code would allow the provider to also furnish personal care to a consumer if the provider furnishes the personal care incidentally during the nursing visit. For ODA's programs, rule 173-39-02.11 of the Administrative Code would prohibit reimbursing a provider for furnishing the following personal care activities to a consumer: chore services, paying bills or assisting with personal correspondence, or accompanying or transporting the consumer or running errands on behalf of the consumer. Accordingly, ODA proposes to prohibit reimbursing a waiver nursing provider for furnishing the following personal care activities to a consumer: chore services, paying bills or assisting with personal correspondence, or accompanying or transporting the consumer or running errands on behalf of the consumer.⁸
4. ODA proposes to require all uses of “all services plan” in rule 5160-46-04 of the Administrative Code to be considered as a use of “service plan.” This is because the case managers at ODA's designees develop service plans while

⁸ ODA added this language to proposed new rule 173-39-02.22 of the Administrative Code after the public-comment period, but before the Common-Sense Initiative Office concluded its review of the proposed new rule.

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case managers at county departments of job and family services develop all services plans. The consumers who are enrolled in ODA's programs will have case managers at ODA's designees, not county departments.

173-39-02.23 Out-of-Home Respite.

Reciprocity: ODA proposes to implement reciprocity for the Medicaid Waiver programs by allowing services that CMS once authorized only for the Ohio Home Care Wavier Program to be available to consumers in the PASSPORT Program. Instead of adopting new regulations for out-of-home respite, ODA proposes to require providers to comply with ODM's rules for the service. However, in doing so, ODA acknowledges that it must propose the following three amendments:

1. ODA proposes to require a provider to be certified by ODA before furnishing services to consumers in ODA's programs. The State's health and human services departments remain separate and distinct. While the Administration has recommended that providers of specific services that meet a set of core competencies be able to work in different systems, these providers will still need to become certified to work under specific state agencies. Certification continues to be necessary in order for state agencies to meet state and federal requirements for oversight of its providers, including monitoring, disciplining, and suspension.
2. ODA proposes to require the provider to submit all required documentation for authorizations to ODA (or ODA's designee). Without this amendment, rule 5160-46-04 of the Administrative Code would require attaining the authorization to furnish services from county departments of job and family services. Because the case managers for the consumers in ODA's programs work for ODA's designees, ODA must require attaining authorization from ODA's designees.
3. ODA proposes to require all uses of "all services plan" in rule 5160-46-04 of the Administrative Code to be considered as a use of "service plan." This is because the case managers at ODA's designees develop service plans while case managers at county departments of job and family services develop all services plans. The consumers who are enrolled in ODA's programs will have case managers at ODA's designees, not county departments.

173-39-02.24 Home Care Attendant Service (HCAS).⁹

Reciprocity: ODA proposes to implement reciprocity for the Medicaid Waiver programs by allowing services that CMS once authorized only for the Ohio Home Care Wavier Program to be available to consumers in the PASSPORT Program. Instead of adopting new regulations for the home care attendant service, ODA proposes to require providers to comply with ODM's rules for the service. However, in doing so, ODA acknowledges that it must propose the following three amendments:

⁹ Unlike the Choices home care attendant service, the home care attendant service is not a consumer-directed service.

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1. ODA proposes to require a provider to be certified by ODA before furnishing services to consumers in ODA's programs. The State's health and human services departments remain separate and distinct. While the Administration has recommended that providers of specific services that meet a set of core competencies be able to work in different systems, these providers will still need to become certified to work under specific state agencies. Certification continues to be necessary in order for state agencies to meet state and federal requirements for oversight of its providers, including monitoring, disciplining, and suspension.
2. ODA proposes to require the provider to submit all required documentation for authorizations to ODA (or ODA's designee). Without this amendment, rule 5160-46-04 of the Administrative Code would require attaining the authorization to furnish services from county departments of job and family services. Because the case managers for the consumers in ODA's programs work for ODA's designees, ODA must require attaining authorization from ODA's designees.
3. ODA proposes to require all uses of "all services plan" and "5101-45-03" in rule 5160-46-04 of the Administrative Code to be considered as uses of "service plan" and "173-42-06" respectively. This is because the case managers at ODA's designees develop service plans while case managers at county departments of job and family services develop all services plans. The consumers who are enrolled in ODA's programs will have case managers at ODA's designees, not county departments.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

- Section 173.391 of the Revised Code requires ODA to adopt rules to do the following: (1) ensure that providers comply with the criminal records check statute, (2) evaluate the services that providers furnish, (3) determine when to take disciplinary actions against providers, and (4) determine what constitutes a disciplinary action.
- Section 173.01 of the Revised Code gives ODA general authority to adopt rules to "govern the operation of services and facilities for the elderly that are provided, operated, contracted for, or supported by the department."
- Section 173.02 of the Revised Code give ODA general authority to adopt rules to regulate services provided through programs that it administers, including rules that "develop and strengthen the services available" for Ohio's aging.
- Sections 173.52 and 173.54 authorize ODA to adopt rules to implement the PASSPORT and Assisted Living Programs. Chapter 173-39 of the Administrative Code regulates the services covered under those programs.

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- Section 323.110 of HB59.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Rule 173-39-02 of the Administrative Code requires, as conditions of participation, that all ODA-certified providers comply with the following:

- HIPAA regulations in 42 C.F.R. 431.300 to 431.307 and 45 C.F.R., parts 160, 162, and 164. (October 1, 2013 edition)
- The Equal Employment Opportunity Act of 1972.
- The non-discrimination rules resulting from the Civil Rights Act of 1964 that are found in 45 C.F.R. 80.4 (October 1, 2013 edition).

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Federal law has left the matter of training requirements for Medicaid waiver programs up to the states, except that CMS approves/disapproves of applications to amend or adopt new Medicaid waivers. The state must assure CMS that it will operate its programs in a way that complies with the Medicaid waiver applications that CMS approves.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules have multiple public purposes, including (1) increasing the quality of consumer-directed care, (2) preventing new consumer-directed providers from discovering that they will be out of compliance perhaps only a few months after they begin furnishing services, (3) implementing the recommendations of the Workgroup's report, (4) implementing the reciprocity between the MyCare Ohio and PASSPORT Programs, (5) simplifying the rules, (6) updating the rules.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The PAAs monitor the providers for compliance according to rules 173-39-04, 173-39-05, and 173-39-05.1 of the Administrative Code.

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Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On July 1, 2013, section 323.234 of HB59 created the Direct-Care Worker Advisory Workgroup. The legislation included not only ODA's director, but also two representatives from each of the following provider organizations: (a) The Ohio Council for Home Care and Hospice, (b) The Ohio Health Care Association, (c) The Ohio Provider Resource Association, (d) The Ohio Nurses Association, (e) The Midwest Care Alliance, (f) The Ohio Assisted Living Association, and (g) LeadingAge Ohio. The workgroup met multiple times between July 1 and the release of its final report on December 31, 2013.

On March 18, 2014, ODA asked three PASSPORT Administrative Agencies (5, 7, and 9) and three providers (Wood County Committee on Aging, the Licking County Aging Program, and Senior Resource Connection) if they envisioned any problems arising from allowing both pest control and chore services in the PASSPORT and Choices Programs by allowing both rules 173-39-02.3 and 173-39-02.5 of the Administrative Code to apply to both programs, but to remove the "pest control" references from rule 173-39-02.5 of the Administrative Code.

On March 21, 2014, ODA contacted the Ohio Council for Home Care and Hospice, the Ohio Nurses' Association, and Midwest Care Alliance. ODA announced that it would soon propose new rules to implement the PASSPORT Program's new waiver nursing, out-of-home respite, and home care attendant services. However, instead of adopting unique regulations for those services that might differ from those that ODM has adopted for the Ohio Home Care Waiver Program and MyCare Ohio, ODA proposes to require compliance with ODM's rules for the three new services.

Before ODA filed the rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, ODA published the rule proposals and this BIA on its website for a public-comment period. The period began on March 24, 2014 and ended on April 6, 2014. The responses appear in #8 of this BIA.

Additionally, to solicit the input of consumer-directed providers who have not before submitted comments through the online public-comment periods, used Survey Monkey to distribute the following 3-question email survey to all consumer-directed providers that provided ODA with valid email addresses.

- Would your consumer receive these benefits if you received training to be a paid caregiver?
[choose any that apply]
 - Improved health
 - Increased community involvement
 - Increased satisfaction with services

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- Which of the following topics would be of greatest benefit to the consumer you serve? [choose only one]
 - Helping your consumer reach his/her goals
 - Assisting your consumer with meeting everyday basic needs
 - Promoting a safe and healthy environment
- What is your preferred method to receive training? [choose only one]
 - On-line
 - In person

ODA distributed the survey on March 24, 2014 and placed an end on the ability to submit the survey as April 6, 2014. The responses appear in #8 of this BIA.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

On December 31, 2013, the Direct-Care Worker Advisory Workgroup, which included the Ohio Council for Home Care and Hospice, the Ohio Nurses' Association, and Midwest Care Alliance (among other provider associations) recommended implementing requirements to document core competencies for consumer-directed providers. See #1 in this BIA for more information.

On March 18, 2014, in response to the question about delineating the pest control and chore services, Denise Niese of Wood County Committee on Aging, Inc. said "I don't see where that would be a problem. Thanks for attempting to streamline language/ensure consistency." Dave Bibler of Licking County Aging Program said, "I agree with Denise that it makes sense to have consistency in rules across all ODA programs."

On March 19, 2014, Joyce Boling of Ohio District 5 Area Agency on Aging, Inc. said the following:

Thank you for the opportunity to comment. I have been looking at the "Choices" rules since the ODA Notice about opening these services to all PP consumers. I had some questions that I have posed to Tiffany Cooper; she indicated that responses will be forthcoming.

My major concerns were related to the immediate switch from current Chore to the Pest Control rule requiring an amendment to the current contract and billing codes to be used. I will wait for the definitive on that. However, the couple issues I would like to raise with you my concern that the current Pest Control sections (C)(1)(b) and (C)(2)(b) split out the agency from non-agency providers and how the service authorized, that is, one by the Case Manager and the other by the consumer. I do not understand the reasoning here. My other concern is, as I understand it, that the maximum reimbursement per unit for Pest Control is at \$800. Some services we have provided through pest control under chore have exceeded that amount. Perhaps there is a simple way to resolve this, but I know that our clinical supervisors have concerns.

The resulting rules for pest control and chore services now contain language that explains the (1) verbal estimates and written quote requirements for *both* services and (2) the maximum reimbursement rates are established by ODM's rule 5160-1-06.1 of the Administrative Code.

Business Impact Analysis

On March 23, 2014, Jeff Lycan of Midwest Care Alliance wrote the following:

Thanks for sending this around for comment, I do have a number of questions. Not being obstructive, just trying to clearly understand how these rules will affect current vs. future services. I have to admit that the language in the rules sound extremely limiting, especially regarding the choice that these consumers can make and in many ways I question whether or not it violates the initial communications regarding "MyCare Ohio" (ICDS) and a consumer's right to maintain their provider of choice at least for the first year that the consumer is in the waiver, once the waiver starts. Is this no longer the case? I have to also state that these consumer's end of life care is not addressed in any way in these rules and it leaves a large question mark around the ability of these consumers to receive hospice care. Are hospice providers to submit for authorization to ODA to treat PASSPORT consumers? If that is the intent then I don't believe it is well spelled out nor has it been communicated clearly. If that is also the intent then I would like to know how these patients are supposed to receive Medical Care as well from a physician, APN or PA? These service providers are also not mentioned in the rules but do provide direct care. How is it that they are able to provide care services and yet aren't listed in the rule set either. Will these consumers now be directed as to who they can see for medical services?

Another question I have is related to dual eligible patients who receive Medicare services, how will that be addressed? Am I reading more into this than I should or do these rules create another silo of consumers and services? In regards to the bullet points below:

- Only ODA-certified providers may provide the 3 services to PASSPORT consumers. Does not include or exclude hospice or home health providers from providing services to passport recipients. Which services are specifically targeted by the intention of "only ODA certified providers may provide the 3 services to passport consumers." Most hospices and many home health agencies are not ODA certified.
- Providers shall submit all required documentation for authorizations to ODA (not ODM) for PASSPORT consumers. This sounds reasonable. I am sure the ODA case managers do not want to lose control of their service plans.
- "All services plan" means "service plan" as the term is defined in rule 173-39-01 of the Administrative Code. What are you suggesting, just that the two terms are synonymous? If so, MCA would agree those two documents accomplish a similar purpose.
- Rule 5160-06.1 of the Administrative Code established the maximum rates of reimbursement for the service for the PASSPORT Program. Is this a proposed rule? MCA was not able to find it when googling the rule. [It should have been 5160-1-06.1]

First, a consumer in the PASSPORT Program would not lose any providers. Currently, no consumer in the PASSPORT Program is even eligible for waiver nursing, out-of-home respite, or home care attendant services. These services are new options for consumers.

For a provider that only serves consumers who are enrolled in Medicare, furnishing services to a consumer who is enrolled in the PASSPORT Program should provide a new field of customers. Such a provider would need to apply to ODA to become certified for this work. Only ODA's case managers at the PASSPORT administrative agencies may authorize a service. That's why it's important to for providers to send documentation to ODA and its designees, not ODM. The service plan that ODA's case managers develop indicates what services a provider may furnish. "All services

Business Impact Analysis

plan” is a nearly identical document, but one that has a name that indicates it is generated by ODM’s designees.

During ODA’s online public-comment period, ODA received the following comments.

PUBLIC COMMENT	ODA’S RESPONSE
<p>GENERAL: “I’d like to ask that when services are started, end, or are on hold that it be submitted to the provider in writing. Not with a phone call. I’m having trouble getting paid for services, because I’m getting one answer from a caseworker and another one from the billing department.”</p> <p>[Colleen Prikkel-Riley, Human Resources Manager for J&K In-Home Care, Inc.]</p>	<p>Thank you for your comment.</p> <p>Although the issue you bring up is not applicable to the rules under consideration, ODA will review the process to see if additional guidance needs to be provided to the PASSPORT Administrative Agencies (PAA). ODA will also forward your email to the Site Manager at the PAA serving Dayton for resolution.</p>
<p>GENERAL:</p> <p>OCHCH was given less than one business day to comment. However, within a short period of time we were able to obtain some comments from our members to share with the ODA’s policy manager & regulatory ombudsman but the proposed administrative rules were already in the process of being posted.</p> <p>Our members want to make sure that ODA understands that home health agencies must comply with numerous regulatory entities at both at the state and federal levels. Based on these regulations home health agencies set up their businesses in a way to be cost effect and minimize undue hardships in complying with these regulations. Since we have a very diverse membership of more than 500 home health agencies, we need to share how their business are set up and how there will be an increase cost for a large majority of the home health agencies.</p> <p>Medicare certified home health agencies must follow the Medicare conditions of participation (CoPs) that states no matter the patient’s payer source all regulations must be followed. For instance, if a Medicare certified home health agency is ODA certified to provide PASSPORT personal care services, the agency must do all of the following: the registered nurse must complete an initial comprehensive assessment, obtain physician’s order to develop the plan of care, and every sixty days repeat this process, in addition to on site aide supervisory visits every sixty days. The home health agency is only reimbursed for the personal care aide’s services. In addition to following the Medicare CoPs the home health agency must also follow the ODA CoPs.</p> <p>Because of the Medicare regulations many home health agencies have opened a separate “unskilled” home health agency that is certified by ODA. Since the ODA rules are not as stringent as Medicare’s, the cost to provide the PASSPORT personal care aide decreases.</p> <p>In order to provide Ohio Department of Medicaid (ODM) – administered waivers, Ohio Home Care and Transitions Carve-out, a home health agency must be Medicare certified or otherwise accredited. The nursing waiver services are provided under these home health agencies and are considered a skilled service. In addition to following the Medicare CoPs or the accreditation organization’s standards, the home health agency must also follow the ODM-administered CoPs.</p>	<p>Thank you for your comment.</p> <p>The State’s health and human services departments remain separate and distinct. While the Administration has recommended that providers of specific services that meet a set of core competencies be able to work in different systems, these providers will still need to become certified to work under specific state agencies. Certification continues to be necessary in order for state agencies to meet state and federal requirements for oversight of its providers, including monitoring, disciplining, and suspension.</p>

Business Impact Analysis

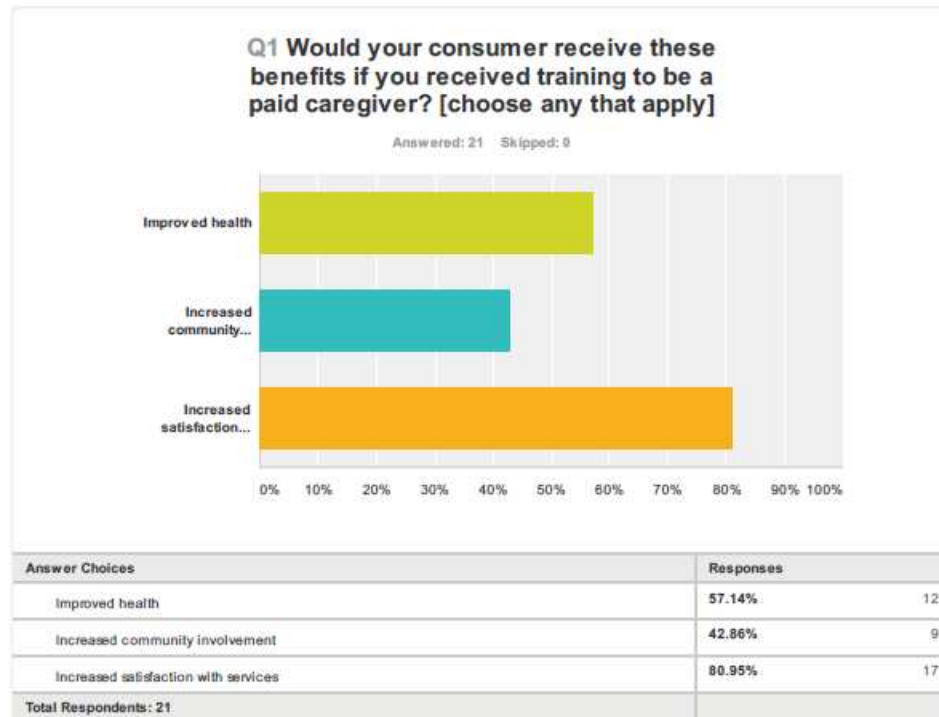
PUBLIC COMMENT	ODA'S RESPONSE
<p>So if a Medicare certified home health agency, which also provides ODM-administered skilled nursing waiver services and has a separate agency that provides PASSPORT, would not be able to provide nursing waiver services to their sister company's PASSPORT client because the Medicare certified home health agency is NOT ODA certified. This would increase the cost of providing services to become ODA certified under a Medicare certified home health agency.</p> <p>Also, if an ODA certified only agency is persuaded to become a Medicare certified or otherwise accredited home health agency in order to provide the nursing waiver services, the cost of providing services would increase. At this time to become Medicare certified or otherwise accredited the PASSPORT home health agency would have to contract with a Centers for Medicare & Medicaid Services' (CMS) approved accreditation organization. This process can take more than a year and is very costly!</p> <p>In order to take care of Ohio's aging and disabled and be good stewards of our Medicaid funds, home health agencies need to be able to provide the quality care that our Ohioans want and deserve in the comfort of their own homes where they want to be.</p> <p>Thank you for allowing OCHCH to participate in the ODA rule-development process."</p> <p>[Beth Foster, Director of Regulatory Affairs, Ohio Council for Home Care & Hospice]</p>	
<p>173-39-02.4: "Training should be readily available prior to making this training a requirement. Are IPs expected to use ODA approved home health care training? If so, there is only one site presently approved for all of northwest Ohio. This does not give reasonable access to this required training. Is there a plan to expand options for IPs to choose from? What other methods (for example: online trainings) are being made available so IPs can meet such a requirement?"</p> <p>[Pam Wilson, Area Office on Aging of Northwest Ohio.]</p>	<p>Thank you for your comment.</p> <p>ODA will expand training options throughout the state to make them readily available. Instead of dictating where a person must receive training, ODA will allow flexibility. A person who seeks to become a consumer-directed provider must have the core competencies that the rule would require. ODA will allow the provider to use certificates of completion for in-person or online training that verifies these competencies.</p> <p>ODA also wants to clarify that "IP" is not a proper designation for rule 173-39-02.4 of the Administrative Code. Only a consumer-directed provider may furnish a Choices home care attendant service.</p>
<p>173-39-02.4: "We feel [that] existing IPs should be pre-approved/grandfathered in regarding initial training requirements."</p> <p>[Pam Wilson, Area Office on Aging of Northwest Ohio.]</p>	<p>Before ODA files the proposed new rule with JCARR, ODA will revise the rule to allow consumer-directed providers that consumers hired before July 1, 2014¹⁰ to have until September 1, 2014 to comply with the initial training requirements. All consumer-directed providers that consumers hire on or after July 1, 2014 would still need to meet the initial training requirements before providing the first episode of service.</p>

¹⁰ The projected effective date for the rule.

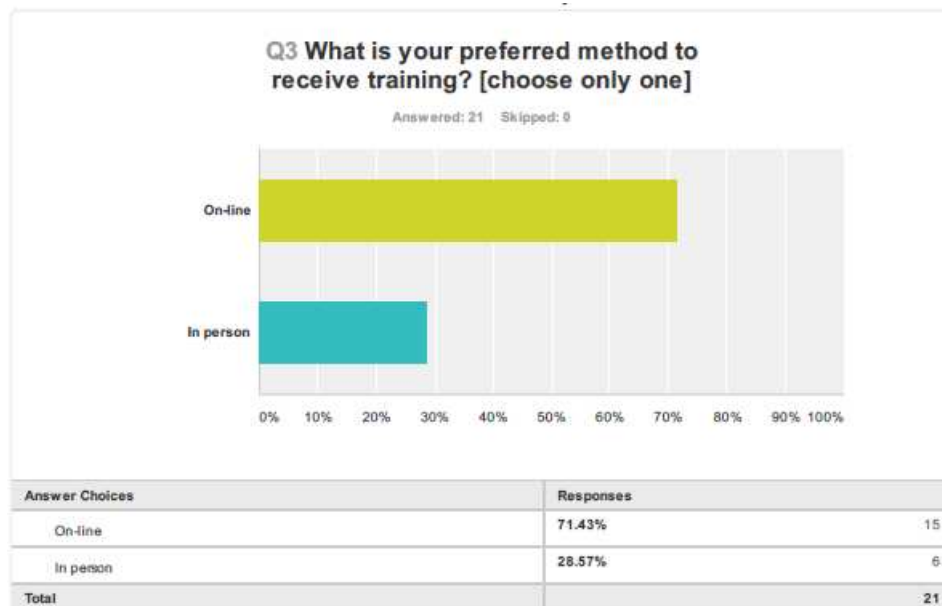
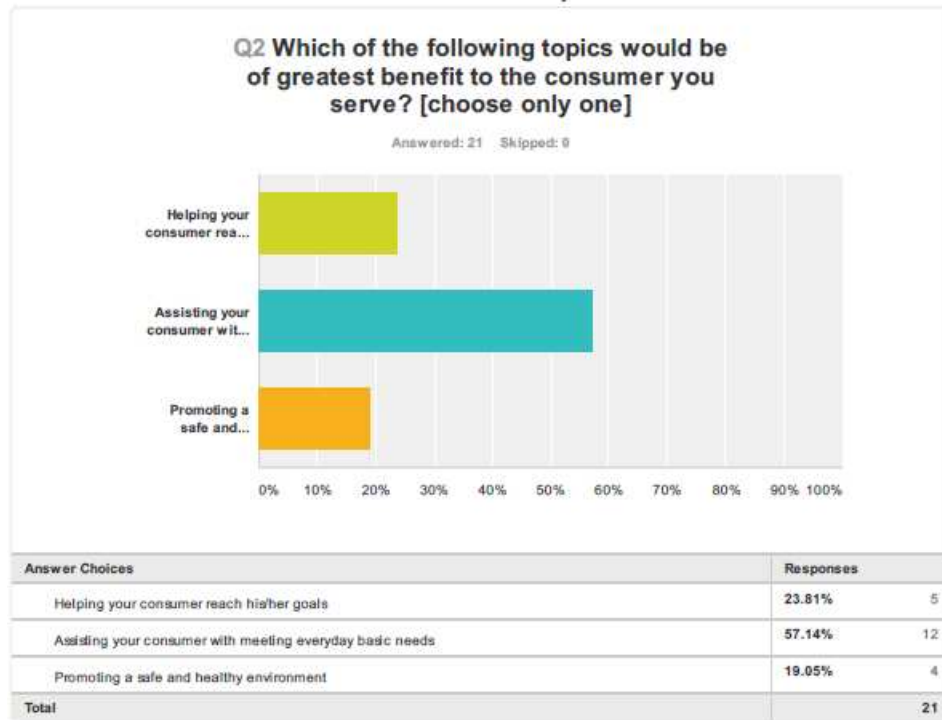
Business Impact Analysis

PUBLIC COMMENT	ODA'S RESPONSE
	ODA also wants to reiterate that "IP" is not a proper designation for rule 173-39-02.4 of the Administrative Code. Only a consumer-directed provider may furnish a Choices home care attendant service.

The responses to ODA's email survey of consumer-directed providers appear in the three sets of graphs and tables below.



Business Impact Analysis



9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Boston College School of Social Work: National Resource Center for Participant-Directed Services. "Do Participant-Directed Workers Require The Same Training As Agency Workers? Using Research to Inform Policy." Issue Brief. October, 2009.

Google Analytics on www.age.ohio.gov

Business Impact Analysis

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

ODA did not consider alternative language. The proposed training requirements for rule 173-39-02.4 of the Administrative Code are the alternative requirements of the aforementioned Workgroup.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

ODA did not consider performance-based regulation. However, consumer-directed providers can negotiate better rates with the consumers who employ them. The consumer establishes the rate per unit.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

ODA and ODM have been working together to create reciprocity between the MyCare Ohio and PASSPORT Programs. Historically, the agencies have adopted uniform rules to create a regulatory environment that allows a provider to easily move from one agency's programs to another agency's programs. This time, the agencies are proposing to require compliance with one another's rules. ODA proposes to adopt rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 while ODM has adopted rule 5160-58-04 of the Administrative Code.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

ODA posts all proposed and currently-effective rules on its website. (<http://aging.ohio.gov/information/rules/default.aspx>) Before a rule takes effect, ODA posts it on its website and sends an email to any subscriber of our rule notification service.

Through their regular monitoring activities under rule 173-39-04 of the Administrative Code, the PAAs will ensure that the regulation is applied uniformly.

Business Impact Analysis

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;

All consumer-directed providers: In December, 2013, 517 consumer-directed providers furnished the choices home care attendant service.

All pest control and chore service providers: In December, 2013, only 1 provider furnished pest control.

Any future provider of waiver nursing, out-of-home respite, or home care attendant services: ODA has no way of knowing how many providers will apply to become ODA-certified in order to furnish these services.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

NOT ADVERSE: Reciprocity creates a greater number of potential consumers of services for MyCare Ohio and PASSPORT Programs.

ADVERSE: The all-inclusive payments that ODM makes to providers includes the cost of providing the service including any administrative costs involved.

- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

NOT ADVERSE: For the PASSPORT Program, waiver nursing, out-of-home respite, and home care attendant services would become, on July 1, 2014, a new income avenue for would-be providers. PASSPORT consumers are not presently eligible for these services.

ADVERSE: The all-inclusive payments that ODM makes to providers includes the cost of providing the service including any administrative costs involved. The table below lists the maximum possible rates that a provider can bill for a unit of a service compared to the average amount the providers billed ODM for the PASSPORT and Choices Programs in December, 2013.

The table below shows that the providers are billing or significantly less than the maximum allowable amounts. The average amounts they have billed are strong indications of the cost of providing the services according to the rules that ODA has adopted.

Business Impact Analysis

SERVICE	DECEMBER, 2013	
	BILLING MAXIMUM	BILLING AVERAGE
Pest Control ¹¹	\$783.74	\$234.00
CHCAS ¹²	\$6.15	\$3.15
Chore ¹³	\$2,612.47	\$298.00

Because ODA does not plan to adopt new requirements for pest control or new requirements for a chore service (other than to provide verbal estimates and written quotes), ODA estimates that the proposed amendments to rules 173-39-02.3 and 173-39-02.5 of the Administrative Code should not affect the adverse impact of providers nor the amounts that they bill for their work.

ODA does not anticipate that the consolidation of implied and actual requirements for consumer-directed individual providers would create any adverse impact. Clearly stating and consolidating requirements into one rule should reduce administrative burdens.

ODA's proposed new training requirements should create a new adverse impact. ODA estimates that the training may cost between zero dollars (if the classes are offered for free online) and \$25 for the initial training.¹⁴

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

ODA justifies retaining the present adverse impact of all its rules except for rule 173-39-02.4 of the Administrative Code.

For rule 173-39-02.4 of the Administrative Code, ODA proposes new training because (1) consumer-directed providers currently have no training requirements at all unless the consumer requests training for the provider and (2) the service is now available on a statewide basis, which means that many people may want to become newly-certified consumer-directed providers. If ODA waits to propose the training requirements, the new providers would soon find themselves out of compliance. Proposing the requirements now as people apply to become certified as consumer-directed avoids this problem.

¹¹ In December, 2013, pest control was offered through the Choices Program. The average billed for all of calendar year 2013 was \$247 per unit. A "unit" of pest control is 1 job.

¹² In December, 2013, the choices home care attendant service was offered through the Choices Program.

¹³ In December, 2013, the chore service was offered through both the Choices and PASSPORT Programs. For the PASSPORT Program, the service included pest control. The average for all of calendar year 2013 was \$324 per unit. A "unit" of a chore service is 1 job.

¹⁴ Area Agency on Aging 9 offers COALA training, which far exceeds the requirements that ODA is proposing for consumer-directed providers. It costs only \$25 to register for the 4-week-long COALA program.

<http://www.aaa9.org/COALA%20Brochure.pdf>

Business Impact Analysis

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Section 173.391 of the Revised Code does not authorize ODA to adopt rules that create different standards for provider agreements based upon the size of a provider's workforce.

Additionally, most providers of long-term care services are small businesses.

However, ODA's proposed requirement in proposed new rule 173-39-02.4 of the Administrative Code for a person to verify that he or she has attained core competencies necessary to furnish the Choices home care attendant service allow for flexibility because ODA is not proposing to dictate from whom the person attains the training and will allow for in-person or online training.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODA will comply with section 119.14 of the Revised Code by exempting from penalties an act of non-compliance with the rules for first-time paperwork violations, so long as the first notice of the non-compliance does not reveal a significant pattern of non-compliance or violates an area of employee qualifications to perform a service.

18. What resources are available to assist small businesses with compliance of the regulation?

The staff at ODA and ODA's designees (PASSPORT Administrative Agencies) are available to help direct-care providers of any size with their questions about the statutes and rules. Providers of any type may address their questions to ODA, including ODA's regulatory ombudsman, or to ODA's designees.

Additionally, consumer-directed providers may receive direction from the consumers who employ them. Rule 173-42-06 of the Administrative Code requires the case managers at ODA's designees to assist the consumers who employ such providers.

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

173-39-01

Introduction and definitions.

(A) Introduction: This chapter establishes the certification requirements for providers under the assisted living program, the choices program, or the PASSPORT program; the minimum requirements for a provider of services under those programs; disciplinary action against providers who do not maintain the minimum requirements; and appeal hearings for providers receiving disciplinary action.

(B) Definitions for this chapter:

(1) "Activity of daily living" ("ADL") has the same meaning as in rule 5101:3-3-06 of the Administrative Code.

(2) "Activity plan" means a description of the interventions and the dates and times that the provider will furnish the interventions.

This term, as defined, is not used in the chapter. Uses of the term are defined by their context. ODA proposes to delete this definition.

(3) "Assessment" means an in-depth gathering of information about the strengths, problems, and care needs of an individual in the following major functional areas: physical health, medical care utilization, ADLs, IADLs, mental and social functioning, financial resources, physical environment, and utilization of services and support.

(4) "Assistance with self-administration of medication" has the same meaning as in section 3722.011 of the Revised Code.

(5) "Authorized representative" means an adult eighteen years of age or older, who is designated to act on behalf of, the consumer and who is not the paid caregiver.

(6) "Caregiver" means a relative, friend, or significant other who voluntarily provides assistance to the consumer and is responsible for the consumer's care on a continuing basis.

This term is not used in the chapter. ODA proposes to delete it.

(7) "Case management" means coordinating and monitoring the delivery of all services identified on the service plan; periodic re-evaluation of the consumer's goals and objectives for long-term care services; periodic re-determination of program eligibility; authorization of the amount, scope, and duration of long-term care services; and assisting the consumer to access needed medicaid-waiver services and other medical and social services,

regardless of their source of funding.

(8) "Case manager" means the registered nurse or licensed social worker employed by ODA's designee who is responsible for the planning, coordinating, monitoring, evaluation, and authorization of medicaid-waiver funded community-based long-term care services and the non-medicaid waiver funded PASSPORT program described in section 173.40 of the Revised Code.

(9) "CDJFS" means "county department of job and family services."

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.

(10) "Certification" means ODA's approval of a provider to furnish one or more services under rules 173-39-02.1 to 173-39-02.20 of the Administrative Code.

(11) "Consumer" means an individual who is enrolled in a medicaid-waiver program administered by ODA that provided community-based long-term care services or non-medicaid waiver PASSPORT services as described in section 173.40 of the Revised Code.

(12) "Consumer's signature" means the consumer's signature or that of the consumer's caregiver, which may include a handwritten signature; initials; stamp or mark; or electronic signature that represents the consumer's acknowledgement, including acknowledgement that he or she received a service. ODA's designee documents the consumer's signature of choice (i.e., handwritten, initials, stamp or mark, or electronic) in the consumer's record and communicates it to the provider.

This term is not
used in the
chapter. ODA
proposes to
delete it.

(13) "Denial" means that a provider applying for certification as a long-term care service provider has been refused or not accepted.

(14) "Department" means "the Ohio department of aging."

(15) "Incident" means any event that is not consistent with furnishing routine care or a service to a consumer. Examples of an incident are abuse, neglect, abandonment, accidents, or unusual events or situations that may result in injury to a person or damage to property or equipment. An incident may involve a consumer, a caregiver (to the extent the event impacts the consumer), a provider, a facility, or a staff member of a provider, facility, PAA, ODA, or other administrative authority.

(16) "Instrumental activity of daily living" ("IADL") has the same meaning as in rule 5101:3-3-08 of the Administrative Code.

ODA proposes
to delete this
definition. See
"ODA."

This term is not used in the chapter. ODA proposes to delete it.

(17) "Level of care" ("LOC") means the designation describing a consumer's functional levels and nursing needs under rules 5101:3-3-05 to 5101:3-3-08 of the Administrative Code.

(18) "Licensed practical nurse" ("LPN") has the same meaning as in section 4723.01 of the Revised Code.

(19) "Nursing facility" ("NF") has the same meaning as in section 5111.20 of the Revised Code.

(20) "ODA" means "the Ohio department of aging."

(21) "ODA's designee" has the same meaning as in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."

(22) "ODJFS" means "the Ohio department of job and family services."

(23) "Plan of treatment" means a physician's orders.

(24) "Provider" means a person or entity that furnishes a service under this chapter. There are five types of providers:

Simplification: ODA proposes to remove the cross-references to other parts of this chapter.

(a) "Agency provider" means a legally-organized entity that employs staff and that ODA certifies to furnish one or more of the services under rule 173-39-02.1, 173-39-02.3, 173-39-02.4, 173-39-02.5, 173-39-02.6, 173-39-02.7, 173-39-02.8, 173-39-02.9, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.18, 173-39-02.19, or 173-39-02.20 of the Administrative Code.

(b) "Assisted living provider" means a licensed residential care facility that ODA certifies to furnish services under rules 173-39-02.16 and 173-39-02.17 of the Administrative Code.

(c) "Consumer-directed individual provider" means a person who is the employee of the consumer, that a consumer directly supervises, and that ODA certifies to furnish the home care attendant service under rule 173-39-02.4 of the Administrative Code through the choices program.

- (d) "Consumer-directed personal care provider" means a person who is the employee of the consumer, that a consumer directly supervises, and that ODA certifies to furnish the personal care service under rule 173-39-02.11 of the Administrative Code through the PASSPORT program.
 - (e) "Non-agency provider" means a legally-organized entity that is owned and controlled by one person, that does not employ a staff, and that ODA certifies to furnish one or more of the services under rule 173-39-02.2, 173-39-02.3, 173-39-02.5, 173-39-02.7, 173-39-02.9, 173-39-02.10, 173-39-02.12, 173-39-02.13, 173-39-02.17, or 173-39-02.18 of the Administrative Code.
- (25) "Registered nurse" ("RN") has the same meaning as in section 4723.01 of the Revised Code.
 - (26) "Service plan" means the written outline of services that a provider furnishes to a consumer, regardless of the funding source for those services.
 - (27) "Significant change" means a remarkable change in a consumer's health status, mood, behavior, or demeanor that may indicate the need for a re-assessment of the consumer's needs.
 - (28) "Vocational program" means a planned series, or a sequence of courses or modules, that incorporate challenging, academic education and rigorous, performance-based training to prepare participants for success in a particular health care career or occupation.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under:

119.03

Statutory Authority:

173.01, 173.02, 173.391, Section 323.110 of H.B.59
(130th G.A.)

Rule Amplifies:

173.39, 173.391, 173.52, 173.53, 173.54

Prior Effective Dates:

03/31/2006, 05/07/2009, 10/16/2009, 08/30/2010,
03/17/2011

*** DRAFT - NOT YET FILED ***

173-39-01

Introduction and definitions.

(A) Introduction:

(1) This chapter establishes the certification requirements for providers who furnish services to consumers through an ODA-administered medicaid waiver program or the state-funded components of the assisted living or PASSPORT programs; the minimum requirements for furnishing services through those programs; disciplinary action against providers who do not comply with the minimum requirements; and appeal hearings for providers receiving disciplinary action.

Reciprocity

(2) Rule 5160-58-04 of the Administrative Code requires providers to comply with many of the minimum requirements for furnishing services in this chapter when the provider furnishes those services to consumers in the mycare Ohio program.

A clarification in response to providers' occasional questions.

(3) If a provider furnishes services to consumers through a medicaid waiver program and also furnishes services to consumers through an Older Americans Act program or the Alzheimer's respite program, the provider shall also comply with Chapter 173-3 of the Administrative Code. If a provider furnishes services to consumers through a medicaid waiver program and also furnishes nutrition services to consumers through an Older Americans Act program, the provider shall also comply with Chapters 173-3 and 173-4 of the Administrative Code.

(B) Definitions for this chapter:

(1) "Activity of daily living" ("ADL") has the same meaning as in rule 5160-3-06 of the Administrative Code.

(2) "Activity plan" means a description of the interventions and the dates and times that the provider will furnish the interventions.

(3) "Assistance with self-administration of medication" has the same meaning as in as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is furnished by an unlicensed person.

(4) "Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.

(5) "Caregiver" means a relative, friend, or significant other who voluntarily furnishes assistance to the consumer and is responsible for the consumer's care on a continuing basis.

The Board of Nursing establishes the standard. ODA proposed an identical amendment for rule 173-3-01 in a recent rule filing.

Reciprocity

(6) "Case manager" means the registered nurse or licensed social worker that ODA's designee employs to plan, coordinate, monitor, evaluate, and authorize services for ODA-administered programs that require provider certification under this chapter.

(7) "CDJFS" means "county department of job and family services."

(8) "Certification" means ODA's approval of a provider to furnish one or more of the services that this chapter regulates.

(9) "Consumer" means an individual who receives services as an enrollee in ODA-administered programs that requires provider certification under this chapter.

(10) "Consumer's signature" means the consumer's signature or that of the consumer's caregiver, which may include a handwritten signature; initials; stamp or mark; or electronic signature that represents the consumer's acknowledgment, including acknowledgment that he or she received a service. ODA's designee documents the consumer's signature of choice (i.e., handwritten, initials, stamp or mark, or electronic) in the consumer's record and communicates it to the provider.

(11) "Incident" means any event that is not consistent with furnishing routine care or a service to a consumer. Examples of an incident are abuse, neglect, abandonment, accidents, or unusual events or situations that may result in injury to a person or damage to property or equipment. An incident may involve a consumer, a caregiver (to the extent the event impacts the consumer), a provider, a facility, or a staff member of a provider, facility, ODA, ODA's designee, or other administrative authority.

(12) "Instrumental activity of daily living" ("IADL") has the same meaning as in rule 5160-3-08 of the Administrative Code.

(13) "Licensed practical nurse" ("LPN") has the same meaning as in section 4723.01 of the Revised Code.

(14) "Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

(15) "ODA" means "the Ohio department of aging."

(16) "ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."

ODA proposes to remove the cross-references to other parts of this chapter.

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(17) "ODM" means "the Ohio department of medicaid."

(18) "Older Americans Act" has the same meaning as in rule 173-3-01 of the Administrative Code.

(19) "Plan of treatment" means the orders of a physician.

(20) "Provider" means a person or entity that furnishes a service under this chapter. There are five types of providers:

ODA proposes to remove the cross-references to other rules within the chapter.

(a) "Agency provider" means a legally-organized entity that employs staff.

(b) "Assisted living provider" means a licensed residential care facility.

(c) "Consumer-directed individual provider" means a person that a consumer directly employs and supervises to furnish a choices home care attendant service (CHCAS).

(d) "Consumer-directed personal care provider" means a person that a consumer directly employs and supervises to furnish personal care.

(e) "Non-agency provider" means a legally-organized entity that is owned and controlled by one person and that does not employ a staff.

(21) "Registered nurse" ("RN") has the same meaning as in section 4723.01 of the Revised Code.

(22) "Service plan" means the written outline of the services that a case manager authorizes a provider to furnish to a consumer, regardless of the funding source for those services.

(23) "Services" has the same meaning as "community-based long-term care services" in section 173.14 of the Revised Code.

(24) "Significant change" means a remarkable change in a consumer's health status, mood, behavior, or demeanor that may indicate the need for a re-assessment of the consumer's needs.

(25) "Vocational program" means a planned series, or a sequence of courses or modules, that incorporate challenging, academic education and rigorous, performance-based training to prepare participants for success in a particular health care career or occupation.

Replaces: 173-39-01

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.391, 173.52, 173.54, Section
323.110 of H.B.59 (130th G.A.)
Rule Amplifies: 173.39, 173.391, 173.52, 173.53, 173.54
Prior Effective Dates: 03/31/2006, 05/07/2009, 10/16/2009, 08/30/2010,
03/17/2011

*** DRAFT - NOT YET FILED ***

173-39-02

Conditions of participation.

(A) Introduction: This rule presents the conditions of participation for each of the five types of ODA-certified long-term care providers: agency providers, non-agency providers, consumer-directed individual providers, assisted living providers, and consumer-directed personal care providers.

(B) Agency providers: These are the conditions for any provider who seeks to become, or to remain, an ODA-certified long-term care agency provider:

(1) Service provision:

(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish~~rule 173-39-02.1 of the Administrative Code, if furnishing an adult day service; rule 173-39-02.3 of the Administrative Code, if furnishing a pest control service; rule 173-39-02.4 of the Administrative Code, if furnishing a home care attendant service; rule 173-39-02.5 of the Administrative Code, if furnishing a chore service; rule 173-39-02.6 of the Administrative Code, if furnishing an emergency response service; rule 173-39-02.7 of the Administrative Code, if furnishing home medical equipment and supplies; rule 173-39-02.8 of the Administrative Code, if furnishing a homemaker service; rule 173-39-02.9 of the Administrative Code, if furnishing a minor home modification, maintenance, or repair service; rule 173-39-02.10 of the Administrative Code, if furnishing a nutritional consultation service; rule 173-39-02.11 of the Administrative Code, if furnishing a personal care service; rule 173-39-02.12 of the Administrative Code, if furnishing a social work counseling service; rule 173-39-02.13 of the Administrative Code, if furnishing a non-emergency medical transportation service; rule 173-39-02.14 of the Administrative Code, if furnishing a home-delivered meal service; rule 173-39-02.15 of the Administrative Code, if furnishing an independent living assistance service; rule 173-39-02.17 of the Administrative Code, if furnishing a community transition service; rule 173-39-02.18 of the Administrative Code, if furnishing a non-medical transportation service; rule 173-39-02.19 of the Administrative Code, if furnishing a home-delivered meal service with a kosher diet; and rule 173-39-02.20 of the Administrative Code, if furnishing an enhanced community living service.~~

Simplification:
ODA proposes
to remove the
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other parts of
this chapter.

(b) The provider may furnish a service that is not authorized by the

consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.

- (c) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect a consumer's service needs, including:
 - (i) The provider does not furnish an authorized service at the time (or, for the period of time) authorized by the case manager;
 - (ii) The consumer moves to another address;
 - (iii) The provider is aware of any significant change that may impact furnishing services to the consumer, including the consumer's repeated refusal of services; or,
 - (iv) The consumer's physical, mental, or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (d) The provider shall notify the consumer and ODA's designee in writing at least thirty days before the last day the provider furnishes ODA-certified services to the consumer, unless:
 - (i) The consumer has been hospitalized, placed in a long-term care facility, or has expired;
 - (ii) The health or safety of the consumer or provider is at serious, imminent risk; and,
 - (iii) The consumer is terminating services with the provider.
- (e) The provider shall adopt and implement ethical standards to require workers to furnish services in an ethical professional, respectful, and legal manner and not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:
 - (i) Consuming the consumer's food or drink, or using the consumer's personal property without his or her consent.

- (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the consumer's place of residence.
- (iii) Taking the consumer to the provider's place of business.
- (iv) Consuming alcohol while furnishing a service to the consumer.
- (v) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
- (vi) Discussing religion or politics with the consumer and others in the care setting.
- (vii) Discussing personal issues with the consumer or any other person in the care setting.
- (viii) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the consumer or his or her household members or family members.
- (ix) Engaging the consumer in sexual conduct, or in conduct that a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (x) Leaving the consumer's home for a purpose not related to furnishing a service without notifying the agency supervisor, the consumer's emergency contact person, any identified caregiver, or the consumer's case manager. "Emergency contact person" means a person the consumer or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.
- (xi) Engaging in any activity that may distract the provider from furnishing a service, including:
 - (a) Watching television or playing computer or video games.
 - (b) Engaging in non-care-related socialization with a person other

than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).

(c) Furnishing care to a person other than the consumer.

(d) Smoking without the consumer's consent.

(e) Sleeping.

(xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the consumer.

(xiii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.

(xiv) Being designated to make decisions for the consumer in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship; or authorized representative.

(xv) Selling to, or purchasing from, the consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.

(xvi) Engaging in behavior that constitutes a conflict of interest, or takes advantage of, or manipulates ODA-certified services resulting in an unintended advantage for personal gain that has detrimental results to the consumer, the consumer's family or caregivers, or another provider.

(2) Consumer safety:

(a) The provider shall have a written procedure for documenting consumer incidents. The procedure shall include notifying ODA (or ODA's designee) of the incident no later than one business day after the provider is aware of the incident.

(b) The provider shall report any reasonable cause to believe that a consumer


has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's designee) of the reasonable cause.

(c) The provider shall maintain a minimum of one million dollars in commercial liability insurance.

(d) The provider shall maintain insurance coverage for consumer loss due to theft or property damage and ~~provide~~ furnish written instructions that any consumer may use to obtain reimbursement for a loss due to employee theft or property damage.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2011~~ 2013 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2011~~ 2013 edition).

Update
incorporation
by reference.
(Cf., §121.75)



(4) Provider qualifications:

(a) The provider shall be a formally-organized business or service agency that is registered with the Ohio secretary of state that has been operating, furnishing services, and being paid for the same services for which certification is being applied for at least two adults in the community for a minimum of three months at the point of application.

(b) The provider shall disclose all entities that own at least five per cent of the business.

(c) The provider shall have a written statement defining the purpose of the business or service agency.

(d) The provider shall have written policies. Additionally, if the provider has a governing board, the provider shall have written bylaws; and, if the provider is incorporated, the provider shall have written articles of incorporation.


(e) The provider shall have a written table of organization that clearly identifies lines of administrative, advisory, contractual, and supervisory authority.

(f) The provider shall not allow a staff person to furnish a service to a consumer if the person is the consumer's spouse, parent, step-parent,

legal guardian, power of attorney, or authorized representative.

- (g) The provider shall not allow a volunteer to furnish any aspect of a certified long-term care service for a consumer without supervision by the provider's supervisory staff.
- (h) The provider shall maintain a physical facility from which to conduct business that has all of the following:
 - (i) A primary business telephone number that is locally listed (e.g., in the telephone book in the provider's area of business) under the name of the business or a toll-free telephone number that is available through directory assistance that allows for reliable, dependable, and accessible communication.
 - (ii) A designated, locked storage space for retaining consumer records.
- (i) The provider shall comply with all applicable federal, state, and local laws.
- (j) The provider shall disclose the identity of any person who is an owner or has control over the agency if that person has been convicted of a felony under state or federal law.
- (k) The provider shall comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.
- (l) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 ~~(as in effect on June 8, 2005)~~ October 1, 2013 edition regarding the provision of services.
- (m) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on November 20, 2012) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (n) The provider shall annually ~~provide~~ furnish to ODA (or ODA's designee) a written statement that certifies that the provider has paid all applicable federal, state, and local income and employment taxes.
- (o) The provider shall participate in ODA's (and its designee's) mandatory

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provider training sessions.

(5) Monitoring:

(a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider furnished, and significant business transactions, until the latter of:

(i) Six years after the date the provider receives payment for the service;

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(ii) The date on which ODA, ODA's designee, ~~ODJFS~~, ODM, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(b) Access: The provider shall, upon request, immediately furnish representatives of ODA (or ODA's designee) with access to its facility, a place to work in its facility, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) Reimbursement:

(a) The provider shall bill only for a service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.1, 173-39-02.3, 173-39-02.4, 173-39-02.5, 173-39-02.6, 173-39-02.7, 173-39-02.8, 173-39-02.9, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.18, 173-39-02.19, or 173-39-02.20 of the Administrative Code for any service the provider furnishes that is regulated by one of those rules.~~

Simplification:
ODA proposes
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this chapter.

(b) ODA's obligation to reimburse the provider for the costs of services the provider furnishes as a certified long-term care provider is subject to the hold and review process described in rule ~~5101:3-1-27.25~~160-1-27.2 of the Administrative Code.

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- (c) The provider shall accept the reimbursement levels negotiated for each service by the provider and ODA's designee as payment in full, and not seek any additional payment for those services from the consumer or any other person.

(C) Non-agency providers: These are the conditions for any provider who seeks to become, or to remain, an ODA-certified long-term care non-agency provider:

(1) Service provision:

Simplification:
ODA proposes
to remove the
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other parts of
this chapter.



- (a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.2 of the Administrative Code, if furnishing an alternative meal service; rule 173-39-02.3 of the Administrative Code, if furnishing a pest control service; rule 173-39-02.5 of the Administrative Code, if furnishing a chore service; rule 173-39-02.7 of the Administrative Code, if furnishing home medical equipment and supplies; rule 173-39-02.9 of the Administrative Code, if furnishing a minor home modification, maintenance, or repair service; rule 173-39-02.10 of the Administrative Code, if furnishing a nutritional consultation service; rule 173-39-02.12 of the Administrative Code, if furnishing a social work counseling service; rule 173-39-02.13 of the Administrative Code, if furnishing a non-emergency medical transportation service; rule 173-39-02.17 of the Administrative Code, if furnishing a community transition service; and rule 173-39-02.18 of the Administrative Code, if furnishing a non-medical transportation service.~~
- (b) The provider may furnish a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.
- (c) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:
 - (i) The provider does not furnish an authorized service at the time (or, for the period of time) authorized by the case manager;
 - (ii) The consumer moves to another address;

- (iii) The provider is aware of any significant change that may impact furnishing services to the consumer, including the consumer's repeated refusal of services; or,
 - (iv) The consumer's physical, mental, or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (d) The provider shall notify the consumer and ODA's designee in writing at least thirty days before the last day the provider stops furnishing ODA-certified services to the consumer, unless:
 - (i) The consumer has been hospitalized, placed in a long-term care facility, or has expired;
 - (ii) The health or safety of the consumer or provider is at serious, imminent risk; and,
 - (iii) The consumer is terminating services with the provider.
- (e) The provider shall furnish services in an ethical professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:
 - (i) Consuming the consumer's food or drink, or using the consumer's personal property without his or her consent.
 - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the consumer's place of residence.
 - (iii) Taking the consumer to his or her place of business.
 - (iv) Consuming alcohol while furnishing a service to the consumer.
 - (v) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
 - (vi) Discussing religion or politics with the consumer and others in the

care setting.

- (vii) Discussing personal issues with the consumer or any other person in the care setting.
- (viii) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the consumer or his or her household members or family members.
- (ix) Engaging the consumer in sexual conduct, or in conduct that a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (x) Leaving the consumer's home for a purpose not related to furnishing a service without notifying the consumer's emergency contact person, any identified caregiver, or the consumer's case manager. "Emergency contact person" means a person the consumer or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.
- (xi) Engaging in any activity that may distract the provider from furnishing a service, including:
 - (a) Watching television or playing computer or video games.
 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).
 - (c) Furnishing care to a person other than the consumer.
 - (d) Smoking without the consumer's consent.
 - (e) Sleeping.
- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the consumer.

- (xiii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.
- (xiv) Being designated to make decisions for the consumer in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship; or authorized representative.
- (xv) Selling to, or purchasing from, the consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.
- (xvi) Engaging in behavior that constitutes a conflict of interest or takes advantage of or manipulates ODA-certified services resulting in an unintended advantage for personal gain that has detrimental results to the consumer, the consumer's family or caregivers, or another provider.

(2) Consumer safety:

- (a) The provider shall have a written procedure for documenting consumer incidents. The procedure shall include notifying ODA (or ODA's designee) of the incident no later than one business day after the provider is aware of the incident.
- (b) The provider shall report any reasonable cause to believe that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's designee) of the reasonable cause.
- (c) The provider shall maintain a minimum of one million dollars in commercial liability insurance or professional liability insurance.
- (d) The provider shall maintain insurance coverage for consumer loss due to the theft or property damage caused by the provider and ~~provide~~ furnish written instructions that any consumer may use to obtain reimbursement for a loss due to theft or property damage caused by the provider.

(3) Confidentiality: The provider shall comply with all state and federal laws and

Update
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(Cf., §121.75)

regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2011~~ 2013 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2011~~ 2013 edition).

(4) Provider qualifications:

- (a) The provider shall not furnish a service to a consumer if he or she is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (b) The provider shall not allow a volunteer to furnish any aspect of a certified long-term care service for a consumer except as ODA's designee authorizes the provider to do so through its ~~contract~~ provider agreement with the provider.
- (c) The provider shall disclose whether he or she has been convicted of a felony under state or federal law.
- (d) The provider shall comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.
- (e) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (~~as in effect on June 8, 2005~~ October 1, 2013 edition) regarding the provision of services.
- (f) The provider shall annually ~~provide~~ furnish to ODA (or ODA's designee) a written statement that certifies that he or she has paid all applicable federal, state, and local income and employment taxes.
- (g) The provider shall participate in ODA's (and its designee's) mandatory provider training sessions.

Update
incorporation
by reference.
(Cf., §121.75)

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the service;

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→ (ii) The date on which ODA, ODA's designee, ~~ODJFS ODM~~, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(b) Access: The provider shall, upon request, immediately furnish representatives of ODA (or ODA's designee) with access to his or her workplace, a place to work in his or her workplace, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) Reimbursement:

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.

→ (a) The provider shall bill only for a service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.2, 173-39-02.3, 173-39-02.5, 173-39-02.7, 173-39-02.9, 173-39-02.10, 173-39-02.12, 173-39-02.13, 173-39-02.17, or 173-39-02.18 of the Administrative Code for any service the provider furnishes that is regulated by one of those rules.~~

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→ (b) ODA's obligation to reimburse the provider for the costs of services the provider furnishes as a certified long-term care provider is subject to the hold and review process described in rule ~~5101:3-1-27.25~~ 160-1-27.2 of the Administrative Code.

(c) The provider shall accept the reimbursement levels negotiated for each service by the provider and ODA's designee as payment in full, and not seek any additional payment for those services from the consumer or any other person.

(D) Consumer-directed individual providers: These are the conditions for any person who seeks to become, or to remain, an ODA-certified long-term care consumer-directed individual provider:

(1) Service provision:

~~(a) At the consumer's request, the provider shall participate in an interview~~

~~with the consumer before initiating any service.~~

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.

~~(b)~~(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.4 of the Administrative Code to furnish the home care attendant service.~~

~~(e)~~(b) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:

- (i) The consumer moves to another address;
- (ii) The consumer has been admitted to a hospital or has visited an emergency room;
- (iii) The provider is aware of any significant change that may impact the furnishing of services to the consumer, including the consumer's repeated refusal of services; or,
- (iv) The consumer's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.

~~(d)~~(c) The provider shall notify the consumer and ODA's designee in writing at least thirty days before the last day the provider furnishes the home care attendant service to the consumer, unless the health or safety of the consumer or provider is at serious, imminent risk.

~~(e)~~(d) The provider shall furnish the home care attendant service in an ethical, professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:

- (i) Consuming alcohol while furnishing a service to the consumer.
- (ii) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
- (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the consumer or his or her household members or

family members. However, if the provider is the consumer's family member, he or she may accept gifts for birthdays and holidays.

- (iv) Engaging the consumer in sexual conduct, or in conduct that a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (v) Leaving the home for a purpose not related to furnishing a service without the consent or knowledge of the consumer.
- (vi) Engaging in any activity that may distract the provider from furnishing a service, including:
 - (a) Watching television or playing computer or video games.
 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).
 - (c) Furnishing care to a person other than the consumer.
 - (d) Smoking without the consumer's consent.
 - (e) Sleeping.
- (vii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.
- (viii) Being designated or serve to make decisions for the consumer in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.
- (ix) Selling to, or purchasing from, the consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.

(2) Consumer safety:

- (a) The provider shall notify ODA (or ODA's designee) of any "incident" involving a consumer, as defined in rule 173-39-01 of the Administrative Code, no later than one business day after the provider is aware of the incident.
- (b) The provider shall report any reasonable cause to believe that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's designee) of the reasonable cause.

Update
incorporation
by reference.
(Cf., §121.75)

- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2011~~ 2013 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2011~~ 2013 edition).

(4) Provider qualifications:

- ~~(a) The provider shall complete an application to become an ODA-certified long-term care consumer-directed individual provider.~~

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- ~~(b)~~(a) The provider shall maintain an active, valid medicaid agreement, as set forth in rule ~~5101:3-1-17.2~~ 5160-1-17.2 of the Administrative Code.

- ~~(c) The provider shall be at least eighteen years of age.~~

- ~~(d) The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:~~

- ~~(i) Driver's license;~~

- ~~(ii) State of Ohio identification card; or,~~

- ~~(iii) United States of America permanent residence card.~~

- ~~(e) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and rule 173-39-02.4 of the Administrative Code.~~

- ~~(f) The provider shall be able to effectively communicate with the consumer.~~

- ~~(g)~~(b) The provider shall not furnish a service to a consumer if he or she is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- ~~(h)~~(c) The provider shall maintain telephone service that allows for reliable, dependable, and accessible communication.
- ~~(i)~~(d) The provider shall maintain a secure place for retaining consumer records.
- ~~(j)~~(e) The provider shall comply with all applicable federal, state, and local laws.
- ~~(k)~~(f) The provider shall comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.
- ~~(l)~~(g) The provider shall participate in ODA's (and its designee's) mandatory provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the service;
 -  (ii) The date on which ODA, ODA's designee, **ODJFS ODM**, or a duly-authorized law enforcement official concludes a review of the records, including the review described in rule 173-39-04 of the Administrative Code, and any findings are finally settled; or,
 - (iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.
- (b) Access: The provider shall, upon request, immediately furnish ODA (or ODA's designee) with access to all records required by this rule and by

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.

any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.4 of the Administrative Code.~~

- (6) Reimbursement: A provider shall accept the reimbursement levels negotiated between the provider and the consumer for each home care attendant service as payment in full and not seek any additional payment for those services from the consumer or any other person.

(E) Assisted living providers: These are the conditions for any provider who seeks to become, or to remain, an ODA-certified long-term care assisted living provider:

(1) Service provision:

- (a) The provider shall not furnish any services under the assisted living program to a person who is not enrolled in the program.

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.

- (b) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~regulation under rules 173-39-02.16 and 173-39-02.17 of the Administrative Code.~~

- (c) The provider may furnish a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.

- (d) The provider shall acknowledge that any statute or rule that regulates the assisted living program supersedes any clause in the facility's resident agreement.

- (e) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:

- (i) The provider is aware of any significant change that may impact furnishing services to the consumer, including the consumer's repeated refusal of services; or,
- (ii) The consumer's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.

(f) The provider shall transfer or discharge a consumer under the terms of section 3721.16 of the Revised Code.

HB59 → (g) If the provider terminates its medicaid provider agreement with ODJFS ODM, pursuant to section 3721.19 of the Revised Code, it shall furnish written notification to the consumer and ~~the PAA~~ ODA's designee at least ninety days before terminating services to the consumer.

(h) The provider shall adopt and implement ethical standards of practice by requiring facility staff to furnish services in accordance with the residents' rights policies and procedures described in section 3721.12 of the Revised Code, and in accordance with the provider's policies and procedures.

(2) Consumer safety:

(a) The provider shall have a written procedure for documenting consumer incidents, in accordance with paragraph (B) of rule 3701-17-62 of the Administrative Code. The procedure shall include notifying ODA (or ODA's designee) of the incident.

(b) The provider shall report any reasonable cause to believe that a consumer has suffered abuse, neglect, or exploitation, in accordance with rule 3701-64-02 of the Administrative Code, and also notify ODA (or ODA's designee) of the reasonable cause.

(c) The provider shall maintain a minimum of one million dollars in commercial liability insurance.

(d) The provider shall maintain insurance coverage for consumer loss due to theft or property damage and ~~provide~~ furnish written instructions that any consumer may use to obtain reimbursement for a loss due to employee theft or property damage.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, 2014 2013 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2014 2013 edition).

Update
incorporation
by reference.
(Cf., §121.75)

(4) Provider qualifications:

- (a) The provider shall be licensed as a residential care facility by the Ohio department of health under rules 3701-17-50 to 3701-17-68 of the Administrative Code.
- (b) The provider shall have a written statement of policies and directives, and bylaws or articles of incorporation.
- (c) The provider shall have a written table of organization that clearly identifies lines of administrative, advisory, contractual, and supervisory authority, unless the business consists of a self-employed person.
- (d) The provider shall not allow a staff person to furnish a service to a consumer if the person is the consumer's spouse, parent, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (e) The provider shall not allow a volunteer to furnish any aspect of the services regulated under rule 173-39-02.16 or 173-39-02.17 of the Administrative Code for consumers without supervision by the provider's supervisory staff.
- (f) The provider shall comply with all applicable federal, state, and local laws.
- (g) The provider shall comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.
- (h) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 ~~(as in effect on June 8, 2005)~~ October 1, 2013 edition regarding the provision of services.
- (i) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on November 20, 2012) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (j) The provider shall participate in ODA's (and its designee's) mandatory provider training sessions.

Update
incorporation
by reference.
(Cf., §121.75)



(5) Monitoring:

(a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider furnished, and significant business transactions, until the latter of:

(i) Six years after the date the provider receives payment for the;

HB59 → (ii) The date on which ODA, ODA's designee, **ODJFS ODM**, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(b) Access: The provider shall, upon request, immediately furnish representatives of ODA (or ODA's designee) with access to its facility, a place to work in its facility, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) Reimbursement:

Simplification:
ODA proposes to remove the cross-references to other parts of this chapter.

→ (a) The provider shall bill only for a service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.16 or 173-39-02.17 of the Administrative Code.~~

(b) ODA's obligation to reimburse the provider for the costs of services the provider furnishes as a certified long-term care provider is subject to the hold and review process described in rule **5101:3-1-27.25160-1-27.2** of the Administrative Code.

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(c) The provider shall accept the reimbursement levels negotiated for each service by the provider and ODA's designee as payment in full, and not seek any additional payment for those services from the consumer or any other person.

(d) The assisted living program shall not pay for any service the provider furnishes to an applicant before ODA's designee enrolls the applicant into the program and before case manager authorizes the service in the

consumer's service plan.


- (e) If a consumer is absent from the facility, the provider shall not accept a payment for the service under rule 173-39-02.16 of the Administrative Code or charge the consumer an additional fee for the service or charge the consumer an additional fee to hold the unit during the consumer's absence.

(F) Consumer-directed personal care provider: These are the conditions for any person who seeks to become, or to remain, and ODA-certified long-term care consumer-directed personal care provider:

(1) Service provision:

- (a) At the consumer's request, the provider shall participate in an interview with the consumer before initiating any service.

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.



- (b) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish ~~rule 173-39-02.11 of the Administrative Code to furnish the personal care service.~~

- (c) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:

- (i) The consumer moves to another address;

- (ii) The consumer has been admitted to a hospital or has visited an emergency room;

- (iii) The provider is aware of any significant change that may impact the furnishing of services to the consumer, including the consumer's repeated refusal of services; or,

- (iv) The consumer's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.

- (d) The provider shall notify the consumer and ODA's designee in writing at least thirty days before the last day the provider furnishes the personal

care service to the consumer, unless the health or safety of the consumer or provider is at serious, imminent risk.

- (e) The provider shall furnish the personal care service in an ethical, professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:

- (i) Consuming alcohol while furnishing a service to the consumer.
- (ii) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
- (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the consumer or his or her household members or family members. However, if the provider is the consumer's family member, he or she may accept gifts for birthdays and holidays.
- (iv) Engaging the consumer in sexual conduct, or in conduct that a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (v) Leaving the home for a purpose not related to furnishing a service without the consent or knowledge of the consumer.
- (vi) Engaging in any activity that may distract the provider from furnishing a service, including:
 - (a) Watching television or playing computer or video games;
 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).
 - (c) Furnishing care to a person other than the consumer.
 - (d) Smoking without the consumer's consent.

(e) Sleeping.

(vii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.

(viii) Being designated or serve to make decision for the consumer in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.

(ix) Selling to, or purchasing from, the consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.

(2) Consumer safety:

(a) The provider shall notify ODA (or ODA's designee) of any "incident" involving a consumer, as defined in rule 173-39-01 of the Administrative Code, no later than one business day after the provider is aware of the incident.

(b) Report any reasonable cause to believe that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's designee) of the reasonable cause.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2011~~ 2013 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2011~~ 2013 edition).

Update
incorporation
by reference.
(Cf., §121.75)

(4) Provider qualifications:

(a) The provider shall complete an application to become an ODA-certified long-term consumer-directed personal care provider.

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(b) The provider shall maintain an active, valid medicaid agreement, as set forth in rule ~~5101:3-1-17.2~~ 5160-1-17.2 of the Administrative Code.

- (c) The provider shall be at least eighteen years of age.
 - (d) The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:
 - (i) Driver's license;
 - (ii) State of Ohio identification card; or,
 - (iii) United States of American permanent residence card.
 - (e) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and rule 173-39-02.11 of the Administrative Code.
 - (f) The provider shall be able to effectively communicate with the consumer.
 - (g) The provider shall not furnish a service to a consumer if he or she is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
 - (h) The provider shall maintain telephone service that allows for reliable, dependable, and accessible communication.
 - (i) The provider shall maintain a secure place for retaining consumer records.
 - (j) The provider shall comply with all applicable federal, state, and local laws.
 - (k) The provider shall comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.
 - (l) The provider shall participate in ODA's (and its designee's) mandatory provider training sessions.
- (5) Monitoring:
- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the service the provider

furnished, and significant business transactions, until the latter of:

(i) Six years after the date the provider receives payment for the service;

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(ii) The date on which ODA, ODA's designee, ~~ODFS~~ ODM, or a duly-authorized law enforcement official concludes a review of the records, including the review described in rule 173-39-04 of the Administrative Code, and any findings are generally settled; or,

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

Simplification:
ODA proposes
to remove the
cross-
references to
other parts of
this chapter.

(b) Access: The provider shall, upon request, immediately furnish ODA (or ODA's designee) with access to all records required by this ~~rule~~ rule and any rule in Chapter 173-39 of the Administrative Code that regulates a service that ODA certified the provider to furnish by rule 173-39-02.11 of the Administrative Code.

(6) Reimbursement: The provider shall accept the reimbursement rate that the written agreement with ODA's designee establishes for each personal care service as payment in full and not seek any additional payment for services from the consumer or any other person.

(G) If a provider of any type fails to ~~meet or maintain any of the required conditions of participation under~~ comply with this rule, ODA (or ODA's designee) may ~~sanction~~ discipline the provider under the terms of ~~rule 173-39-06~~ rules 173-39-05 or 173-39-05.1 of the Administrative Code, ~~which include the denial or revocation of the provider's certification.~~

Effective:

R.C. 119.032 review dates: 03/17/2016

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.391, 173.52, 173.54, Section
323.110 of H.B.59 (130th G.A.)
Rule Amplifies: 173.39, 173.391, 173.52, 173.53, 173.54
Prior Effective Dates: 03/31/2006, 04/26/2009, 10/19/2009, 08/30/2010,
03/17/2011, 01/01/2013

*** DRAFT - NOT YET FILED ***

173-39-02.3

Pest control service.

ODA proposes to use either "pest control" or "service" throughout the rule instead of "pest control service."

(A) "Pest control ~~service~~" means a service that improves, restores, or maintains a clean, sanitary, and safe living environment through the performance of tasks in the home that are beyond the consumer's capability and the removal of pests posing a threat to the consumer's health and welfare.

(B) Eligibility: A consumer is only eligible for the service if:

- (1) Neither the consumer, nor anyone else in the consumer's home, is capable of performing or financially providing for the services;
- (2) No other relative, caregiver, community/volunteer agency, or third-party payer is capable of, or responsible for, their provision; and,
- (3) No other person (e.g., a landlord) has a legal or contractual responsibility to perform the job.

(C) Requirements for a pest control ~~service~~ in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) ~~Cost estimate~~ Estimate: Upon a consumer's initial request:

(a) If the provider is a consumer-directed provider, upon a consumer's initial request:

~~(a)(i)~~ (i) Each agency provider shall furnish ODA's designee the consumer with a verbal estimate of the cost of the service.

~~(b)(ii)~~ (ii) Each non-agency provider shall furnish the consumer with a verbal estimate of the cost of the service.

(b) Each provider that is not a consumer-directed provider shall furnish ODA's designee with a verbal estimate upon the request of ODA's designee.

(2) Written price quote:

(a) If the provider is a consumer-directed provider, upon a consumer's initial request:

ODA proposes to add language to this rule that allows pest control to be covered for consumers who are enrolled in the PASSPORT Program whether the service is consumer directed (as it has been in the Choices Program) or not consumer directed. In the PASSPORT Program, pest control has been covered as part of a chore service, but consumer direct of pest control has not been an option.

ODA proposes to add language to this rule that allows pest control to be covered for consumers who are enrolled in the PASSPORT Program whether the service is consumer directed (as it has been in the Choices Program) or not consumer directed. In the PASSPORT Program, pest control has been covered as part of a chore service, but consumer direct of pest control has not been an option.

~~(a)(i) Each agency provider shall furnish ODA's designee the consumer with a written price quote no later than seven days after the consumer initially requests the service. The provider shall not charge more than the amount of the original price quote that it submits to ODA's designee.~~

Relocated under paragraph (D)

~~(b)(ii) Each non-agency provider shall furnish the consumer with a written price quote no later than seven days after the consumer initially requests the service, unless the consumer establishes an alternative time period for providing the written price quote. The provider shall not charge more than the original price quote he or she submits to the consumer.~~

Relocated under paragraph (D)

(b) Each provider that is not a consumer-directed provider shall furnish ODA's designee with a written price quote no later than seven days after ODA's designee requests the service.

(3) Safety:

- (a) The provider shall retain, and furnish to the consumer and/or ODA's designee, upon request, a list of the chemical(s) or substance(s) used for each job order.
- (b) The provider shall inform the consumer and ODA's designee of any specific health or safety risks expected during the job project, and assist the case manager to coordinate times and dates of service to insure minimal risk of hazard to the consumer as applicable to each job.
- (c) The provider shall comply with any applicable local codes or ordinances in the performance of each job order.
- (d) The provider shall furnish a warranty to ODA's designee that covers the workmanship and materials involved in the service provided.

(4) Provider qualifications:

- (a) Type of provider: Only an agency that ODA certifies as an agency provider or a person that ODA certifies as a non-agency provider shall ~~provide~~ furnish this service.
- (b) Licensure: The provider shall maintain a current and valid commercial

pesticide applicator license and a pesticide application business license from the Ohio department of agriculture.

(5) Service verification:

(a) After the provider completes a job order, the provider shall retain a record of the:

(i) Consumer's name;

(ii) Date of service;

(iii) Service description, including a comparison between the job order and the completed job;

(iv) Provider's signature; and,

(v) Consumer's signature. The case manager shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(b) The provider may use a technology-based system to collect or retain the records required under this rule.

(c) The agency provider shall retain records required under this rule according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code and the non-agency provider shall retain records required under this rule according to paragraph (C)(5) of rule 173-39-02 of the Administrative Code.

(D) Units and rates: ~~A unit of pest control service is one job order, with the unit rate being the price quoted by a qualified provider and accepted by the consumer.~~

Relocated under paragraph (D)

(1) One unit of pest control is equal to one completed job order of pest control.

(2) The maximum amount allowable for a unit is the provider's written price quote, so long as the price does not exceed the maximum amount allowable amount in paragraph (D)(3) of this rule.

(3) The maximum amount allowable for a unit is established in appendix A to rule 5160-1-06.1 of the Administrative Code.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under:

119.03

Statutory Authority:

173.01, 173.02, 173.391, 173.52, Section 323.110 of
H.B.59 (130th G.A.)

Rule Amplifies:

173.39, 173.391, 173.52, 173.53

Prior Effective Dates:

03/31/2006, 03/17/2011

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

173-39-02.4 **Choices home care attendant service.**

(A) "Choices home care attendant service" ("CHCAS") means a service that provides supports specific to the needs of an individual consumer with impaired physical or cognitive functioning. Allowable home care attendant services include, but are not limited to:

- (1) Personal assistance with bathing, dressing, grooming, caring for nail, hair and oral hygiene, shaving, deodorant application, skin care, foot care, ear care, feeding, toileting, ambulation, changing position in bed, assistance with transfers, normal range of motion, and nutrition and fluid intake;
- (2) General household assistance with the planning, preparation and clean-up of meals, laundry, bed-making, dusting, vacuuming, shopping and other errands, the replacement of furnace filters, waste disposal, seasonal yard care and snow removal;
- (3) Heavy household chores including, but not limited to, washing floors, windows and walls, tacking down loose rugs and tiles, moving heavy items of furniture to provide safe access and egress;
- (4) Assistance with money management and correspondence as directed by the consumer; and,
- (5) Escort services and transportation to community services, activities and resources. This activity is offered in addition to medical transportation available under the medicaid state plan, and may not replace it. Whenever possible, other sources, which can provide this service without charge, must be utilized.

(B) Requirements for a choices homecare attendant service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

- (1) Certified providers who transport a consumer for any reason must ensure that the driver has a valid drivers license, and proof of collision and liability insurance for each vehicle used.
- (2) Oversight: The consumer is the employer of record and is responsible for supervising the provider. As used in this paragraph, "employer of record"

means the consumer who employs the provider; supervises the provider; pays the appropriate state, federal, and local taxes; and pays premiums for worker's compensation and unemployment compensation insurance. ODA provides the support of a financial management service (FMS) to the consumer to act as the agent of the common-law employer with the consumer-directed individual provider that he or she employs.

(3) Provider qualifications:

- (a) Only a consumer-directed individual provider that ODA certifies or an agency provider that ODA certifies shall furnish the service.
- (b) Prior to service initiation, the CHCAS worker must complete training provided by the consumer or his designee, and must demonstrate competency in skills appropriate to the consumer's needs.
- (c) At the request of a consumer, the CHCAS worker must participate in an interview with the consumer prior to service initiation.

(C) Rates and Units:

- (1) One unit of choices home care attendant service is equal to fifteen minutes.
- (2) The maximum rate allowable for the service is established in the appendix to rule 5160-1-06.4 for the choices program.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under:

119.03

Statutory Authority:

173.01, 173.02, 173.391, 173.52, Section 323.110 of
H.B.59 (130th G.A.)

Rule Amplifies:

173.391, 173.52, 173.53

Prior Effective Dates:

03/31/2006, 11/11/02013

*** DRAFT - NOT YET FILED ***

173-39-02.4

Choices home care attendant service (CHCAS).

ODA proposes to add "consumer-directed" to the definition.

(A) "Choices home care attendant service" ("CHCAS") means a consumer-directed service that furnishes specific activities to support the needs of an individual consumer with impaired physical or cognitive functioning. Activities of the service include:

- (1) Personal assistance with bathing; dressing; grooming; caring for nail, hair and oral hygiene; shaving; deodorant application; skin care; foot care; ear care; feeding; toileting; ambulation; changing position in bed; assistance with transfers, normal range of motion, and nutrition and fluid intake.
- (2) General household assistance with the planning; preparation and clean-up of meals; laundry; bed-making; dusting; vacuuming; shopping and other errands; the replacement of furnace filters; waste disposal; seasonal yard care; and snow removal.
- (3) Heavy household chores including washing floors; windows and walls; tacking down loose rugs and tiles; moving heavy items of furniture to furnish safe access and egress.
- (4) Assistance with money management and correspondence as directed by the consumer.
- (5) Escort and transportation to community services, activities, and resources. This activity is offered in addition to medical transportation available under the medicaid state plan, and may not replace it.

(B) Requirements for the service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) In general,

ODA proposes to borrow this language from the consumer-directed portion of rule 173-39-02.11. This has been a requirement for the consumer-directed providers. ODA is making this clear by adding it to the rule.

(a) Availability: The provider shall furnish the service as agreed upon with the consumer and as authorized in the consumer's service plan.

ODA proposes to no longer use the acronym "FMS." The acronym isn't necessary due to the lack of use of the term in the rule.

(b) Oversight: The consumer is the employer of record and is responsible for supervising the provider. As used in this paragraph, "employer of record" means the consumer who employs the provider; supervises the provider; pays the appropriate state, federal, and local taxes; and pays premiums for worker's compensation and unemployment compensation insurance. A financial management service acts as the agent of the common-law employer with the consumer-directed individual provider that the consumer employs.

ODA proposes to no longer say that the financial management service has a contractual relationship with ODA. The contractual relationship between ODA and a financial management service is not an item that belongs in a rule that regulates consumer-directed providers. The goal of the paragraph is to highlight the consumer's oversight authority over the provider, which involves using a financial management service to enable the consumer to pay the employment taxes, etc.

ODA proposes to relocate this paragraph from paragraph (B)(1) of the version of the rule that ODA is proposing to rescind.

(c) Escort and transportation: The provider shall only transport the consumer if the provider has a valid driver's license and collision and liability insurance for each vehicle used.

(2) Provider qualifications:

(a) General qualifications:

(i) Only a consumer-directed individual provider that ODA certifies or an agency provider that ODA certifies shall furnish the service.

(ii) The provider shall complete an application to become an ODA-certified long-term care consumer-directed individual provider.

(iii) At the request of a consumer, the provider shall participate in an interview with the consumer before providing the first episode of service to the consumer.

(iv) The provider shall be at least eighteen years of age.

(v) The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:

(a) Driver's license.

(b) State of Ohio identification card.

(c) United States of America permanent residence card.

(vi) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and rule 173-39-02 of the Administrative Code.

(vii) The provider shall be able to effectively communicate with the consumer.

(b) Initial training:

(i) There are five areas of core competency for a consumer-directed individual provider:

(a) Maintaining a clean and safe environment. Training on this competency shall include the following topics:

ODA proposes to relocate these requirements from rule 173-39-02 to this rule.

The proposed new training requirements implement recommendations from the Direct Care Worker Advisory Workgroup to allow consumer-directed providers to meet the core competencies through different methods than the proposed testing requirements. There are 6 core competencies.

(i) Basic home safety.

(ii) Universal precautions fro the prevention of disease transmission, including hand-washing and proper disposal of bodily waste and medical instruments that are sharp or may produce sharp pieces if broken.

(b) Promoting the consumer's development.

(c) Assisting with activities of daily living.

(d) Communicating the consumer's information to authorized persons.

(e) Performing administrative tasks.

(ii) Beginning on July 1, 2014, every consumer-directed provider that a consumer hired on or after July 1, 2014 shall successfully complete training in the core competencies that ODA listed in paragraph (A)(2)(b)(i) of this rule before furnishing the first episode of service to a consumer.

After the public-comment period, but before ODA filed the proposed new rule with JCARR, ODA added language to allow currently-certified consumer-directed providers until September 1, 2014 to meet the training requirements.

(iii) Beginning on September 1, 2014, every consumer-directed provider that a consumer hired before July 1, 2014 shall successfully complete training in the core competencies that ODA listed in paragraph (A)(2)(b)(i) of this rule before continuing to furnishing services to a consumer.

(c) Continuing education: Each year, the provider shall successfully complete at least eight hours of continuing education before his or her anniversary date of enrollment as an ODA-certified consumer-directed provider.

The 6th core competency is professional development (i.e., "continuing education.")

(d) Person-centered training: The provider shall successfully complete any training that the consumer or ODA's designee consider necessary to meet the consumer's needs. This training is in addition to the eight hours of continuing education.

ODA proposes to relocate this paragraph from (B)(1)(b) of the version of this rule that ODA proposes to rescind.

(3) Records:

(a) Initial training verification: The consumer shall retain a copy of completed and signed form ODA1042 to verify that the provider complied with this rule's initial training requirements.

(b) Continuing education verification: The consumer shall retain a completed and signed form ODA1043 to verify that the provider complied with the

ODA proposes to borrow language on service verification (e.g., time sheets) from the consumer-directed portion of rule 173-39-02.11 of the Administrative Code. Consumer-directed providers have always been required to verify the services they have provided, but adding the language to the rule makes this requirement clear. Unlike in rule 173-39-02.11 of the Administrative Code, the provider of CHCAS submits the service task sheet to the consumer, not the financial management service.

continuing education requirements. The consumer shall also retain a copy of each certificate of completion and course syllabus that verifies that the provider complied with this rule's continuing education requirements.

(c) Service verification:

(i) The provider shall complete the time sheets the consumer furnishes through the financial management service, which shall include the date the provider furnished the service, the consumer's name, the consumer's signature, the provider's name, the provider's arrival and departure times, and the provider's written or electronic signature to verify the accuracy of the record.

(ii) The provider shall complete the service task sheet with a description of the activities the provider furnished. The provider shall retain the service task sheet in the consumer's home records.

(iii) The provider shall retain records required under this rule and furnish access to those records for monitoring according to paragraph (D)(5) of rule 173-39-02 of the Administrative Code.

(4) The provider shall continue to meet all the criteria under paragraph (B) of this rule in order to continue providing the service.

(C) Rates and Units:

(1) One unit of the service is equal to fifteen minutes.

(2) The maximum rate allowable for the service is established in the appendix to rule 5160-1-06.1 of the Administrative Code.

(3) The provider may furnish a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.

(D) Definitions for this rule:

(1) "Form ODA1042" means "ODA1042 'Employee core Competencies Verification." The form is available to the general public on www.age.ohio.gov.

(2) "Form ODA1043" means "ODA1043 'Employee Continuing Education Verification." The form is available to the general public on www.age.ohio.gov.

ODA proposes to mention the new maximum rates that ODM established for the Choices home care attendant service in rule 5160-1-06.1.

Replaces: 173-39-02.4

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
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Rule Amplifies: 173.39, 173.391, 173.52, 173.53
Prior Effective Dates: 03/31/2006, 11/11/2013

*** DRAFT - NOT YET FILED ***

173-39-02.5

Chore service.

(A) "Chore service" means a service that improves, restores, or maintains a clean, sanitary, and safe living environment through the performance of tasks in the consumer's home that are beyond the consumer's capability, and the removal of hazards posing a threat to the consumer's health and welfare. Examples of a chore service are:

(1) Heavy household cleaning: washing walls and ceilings; washing the outside of windows, washing the inside of windows that are difficult to reach; removing, cleaning, and re-hanging curtains or drapery; and, shampooing carpets or furniture;

(2) Simple household maintenance: repairing a water faucet; unclogging a drain; lighting and relighting a pilot light; and, replacing a furnace filter;

~~(3) Pest control; or,~~

Reciprocity and uniformity: On July 1, 2014, pest control will be available for the MyCare Ohio and PASSPORT Programs through rule 173-39-02.3.

~~(4)~~(3) Disposal of garbage.

(B) Eligibility: A consumer is only eligible for the service if:

(1) Neither the consumer, nor anyone else in the consumer's home, is capable of performing or financially providing for the services;

(2) No relative, caregiver, community/volunteer agency, or third-party payer is capable providing the service; and,

(3) No other person (e.g., a landlord) has a legal or contractual responsibility to perform the job.

(C) Requirements for a chore service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) Cost estimate: Each provider shall furnish ODA's designee with a verbal estimate upon the the request of ODA's designee.

(2) Written price quote: Each agency provider shall furnish ODA's designee with a written price quote no later than seven days after ODA's designee requests the service.

ODA borrowed this proposed language from rule 173-39-02.3

~~(1)~~(3) Safety:

- (a) The provider shall maintain a list of the chemicals or substances used for each job order. The provider shall furnish the list to ODA's designee upon request.
- (b) The provider shall inform the consumer and ODA's designee or any specific health or safety risks expected during the job and coordinate times and dates of service to ensure minimal risk of hazard to the consumer.
- (c) The provider shall comply with any applicable local codes or ordinances in the performance of each job order.
- (d) The provider shall furnish a warranty to ODA's designee that covers the workmanship and materials involved in the service provided.

~~(2)~~(4) Provider qualifications: Only an agency that ODA certifies as an agency provider or a person that ODA certifies as a non-agency provider shall ~~provide~~ furnish this service.

~~(3)~~(5) Service verification:

- (a) For each service furnished, the provider shall retain a record of the:
 - (i) Consumer's name;
 - (ii) Date of service;
 - (iii) Service description, including a comparison between task in the job order and tasks provided;
 - (iv) Units of service;
 - (v) Name of each person in contact with the consumer;
 - (vi) Provider's signature; and,
 - (vii) Consumer's signature. The case manager shall record the

consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

- (b) The provider may use a technology-based system to collect or retain the records required under this rule.
- (c) The agency provider shall retain records required under this rule according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code and the non-agency provider shall retain records required under this rule according to paragraph (C)(5) of rule 173-39-02 of the Administrative Code.

(D) Unit and rates:

- (1) One unit of a chore service is one completed job order of a chore service at a rate accepted by ODA's designee.

ODA borrowed
this proposed
language from
rule
173-39-02.3

- (2) The maximum amount allowable for a unit is the provider's written price quote, so long as the price does not exceed the maximum amount allowable amount in paragraph (D)(3) of this rule.

- ~~(2)~~(3) The maximum rate allowable for a job order of the service is listed in appendix A to rule ~~5101:3-1-06.1~~ 5160-1-06.1 of the Administrative Code.

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*** DRAFT - NOT YET FILED ***

173-39-02.22

Waiver nursing service.

A provider of a waiver nursing service to consumers who are enrolled in the PASSPORT program shall comply with the requirements in rule 173-39-02 of the Administrative Code and the requirements for a waiver nursing service in rule 5160-46-04 of the Administrative Code, with the following exceptions:

(A) Only an ODA-certified agency provider or ODA-certified non-agency provider shall furnish the service to consumers who are enrolled in the PASSPORT program.

(B) The provider shall submit all required documentation for authorizations to ODA (or ODA's designee).

(C) The provider shall only furnish personal care aide activities as a part of the waiver nursing service if those activities are incidental to the personal care aide services defined in paragraphs (B)(1)(a) and (B)(1)(b), but not (B)(1)(c), (B)(1)(d), or (B)(1)(e) of rule 5160-46-04 of the Administrative Code.

(D) "All services plan" means "service plan" as the term is defined in rule 173-39-01 of the Administrative Code.

ODA added this paragraph after the public-comment period, but before filing the rule with JCARR.

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Statutory Authority:

173.01, 173.02, 173.391, 173.52, Section 323.110 of
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Rule Amplifies:

173.39, 173.391, 173.52

*** DRAFT - NOT YET FILED ***

173-39-02.23

Out-of-home respite services.

A provider of an out-of-home respite service to consumers who are enrolled in the PASSPORT program shall comply with the requirements in rule 173-39-02 of the Administrative Code and the requirements for an out-of-home respite service in rule 5160-46-04 of the Administrative Code, with the following exceptions:

- (A) Only an ODA-certified agency provider shall furnish the service to consumers who are enrolled in the PASSPORT program.
- (B) The provider shall submit all required documentation for authorizations to ODA (or ODA's designee).
- (C) "All services plan" means "service plan" as the term is defined in rule 173-39-01 of the Administrative Code.

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Rule Amplifies:

173.39, 173.391, 173.52

*** DRAFT - NOT YET FILED ***

173-39-02.24

Home care attendant service.

A provider of a home care attendant service to consumers who are enrolled in the PASSPORT program shall comply with the requirements in rule 173-39-02 of the Administrative Code and the requirements for a home care attendant service in rule 5160-46-04.1 of the Administrative Code, with the following exceptions:

- (A) Only an ODA-certified non-agency provider shall furnish the service to consumers who are enrolled in the PASSPORT program.
- (B) The provider shall submit all required documentation for authorizations to ODA (or ODA's designee).
- (C) "All services plan" means "service plan" as the term is defined in rule 173-39-01 of the Administrative Code.
- (D) References to rule 5101-45-03 of the Administrative Code are replaced by rule 173-42-06 of the Administrative Code.

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