CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: PROVIDER CERT TERMINOLOGY
5-YEAR RULE REVIEW, PROPOSED AMENDMENTS

Rule Number(s): 173-39-01, 173-39-02.22, 173-39-02.23, and 173-39-02.24

Date: July 6, 2015, Revised June 22,2 015.

Rule Types:

☑ **5-Year Review:**	173-39-01 173-39-02.22, 173-39-02.23, 173-39-02.24
☑ **New:**	173-39-01
☑ **Amended:**	173-39-02.22, 173-39-02.23, 173-39-02.24
☑ **Rescinded:**	173-39-01
☐ **No change:**	None

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 regulations in plain language.
Please include the key provisions of the regulation as well as any proposed amendments.

Rule 173-39-01 introduces Chapter 173-39 of the Administrative Code, a chapter on provider certification, and defines terms used in that chapter. Rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 regulate ODA-certified providers when those providers furnish waiver nursing services, out-of-home respite services, and home care attendant services to individual who have enrolled in the PASSPORT Program.

In rule 173-39-01 of the Administrative Code, ODA proposes to redefine the term "ODA's designee" in a way that would allow the 13 current PASSPORT administrative agencies to continue to be designees, but that also allows ODA to designate another entity if necessary. The current definition says the following:

> "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 for the new definition to say the following:

> "ODA's designee" is an entity to which ODA delegates one or more of its administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and "Catholic Social Services of the Miami Valley."

ODA also proposes to make the following non-substantive amendments to rule 173-39-01 of the Administrative Code:

- Because every rule in the chapter pertains to provider certification, ODA proposes to amend the rule from "introduction and definitions" to "Provider certification: introduction and definitions."

- ~~ODA proposes to remove the enumeration for the definitions. Alphabetical order organizes them, so enumeration isn't necessary. This would prevent ODA from needing to change enumeration in the future when a new definition is added or an existing definition is deleted. It also prevents ODA and the general public from citing paragraph numbers when referring to a definition because the paragraph numbers may change when ODA next amends the rule.~~ *Revised:* The RAS3 software that the Legislative Service Commission requires for drafting rules won't allow unenumerated paragraphs below enumerated paragraphs; therefore, at this time, ODA will not be able to remove the enumeration for the definitions.

- ODA proposes to replace all occurrences of "consumer" with "individual," except in the term "*consumer*-directed...provider." Because ODA is not proposing to amend every rule in the chapter at once, ODA must retain an amended definition of "consumer" in rule 173-39-01 of the Administrative

Code that would say that "consumer" has the same meaning as "individual." ODA also proposes to make this change in the remaining rules in the chapter on later dates.

- ODA proposes to replace the citation to the definition of "ADL" in rule 5160-3-06 of the Administrative Code with a citation to rule 5160-3-05 of the Administrative Code.

- ODA proposes to replace the citation to the definition of "IADL" in rule 5160-3-08 of the Administrative Code with a citation to rule 5160-3-05 of the Administrative Code.

- ODA proposes to increase the list of professions that the definition of "case manager" says can be a case manager from an RN or LSW to an RN, LSW, or LiSW.

- ODA proposes to continue defining "plan of treatment" as the orders of a physician, but also define the term to include orders of other healthcare professionals who have treatment planning in their scopes of practice.

- ODA proposes to replace the definitions of "incident" and "significant change" with definitions that correspond those adopted by ODM in Chapter 5160-45 of the Administrative Code.

In rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 of the Administrative Code, ODA is proposing to continue the terminology switch that it began in rule 173-39-01 of the Administrative Code by proposing to replace all occurrences of "consumer" with "individual," to begin each rule's title with "provider certification."

In rule 173-39-02.24 of the Administrative Code, ODA proposes to delete the exception that said, "references to rule 5101-45-03 of the Administrative Code..." because ODM has filed rules with JCARR to propose to remove that rule number.

ODA's proposed amendments to rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 of the Administrative Code are all non-substantive.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

- 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 gives 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.

- Section 173.391 of the Revised Code requires ODA to adopt rules to establish certification requirements.

- Section 173.52 of the Revised Code requires ODA to adopt rules governing the implement the Medicaid-funded component of the PASSPORT Program.

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.

   No.

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

   The rules do not exceed any federal requirements.

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 rule exists to comply with the state laws that ODA listed in its response to #2.

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

   ODA (and ODA's designees) will monitor the providers for compliance.

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 June 4, 2015, ODA reached out to providers and provider associations to announce that ODA was reviewing rule 173-39-01 of the Administrative Code and to ask if they had comments to offer. The provider, association, and board were as follows:

- National Church Residences (NCR) (a provider)
- LifeCare Alliance (provider)
- Homecare by Blackstone (provider)
- Senior Resource Connection (provider)
- Licking County Aging Program (a provider)
- Ohio Association of Senior Centers (association of providers)
- Ohio Council for Home Care and Hospice (OCHCH) (association of providers)
- Ohio Assisted Living Association (association of providers)
- Ohio Jewish Communities (OJC) (association of providers)
- Midwest Care Alliance (association of providers)
- Ohio Association of Medical Equipment Suppliers (association of providers)

Consulting with other government entities and ODA's designees is wise, but documenting such consultations is not the purpose of the BIA. Nevertheless, on June 4, 2015, ODA reached out to a designee that perform administrative duties on ODA's behalf and an association of designees to announce that ODA was reviewing rule 173-39-01 of the Administrative Code and to ask if they had comments to offer. The designee and association were as follows:

- Catholic Social Services of the Miami Valley (a designee)
- Ohio Association of Area Agencies on Aging (O4A) (association of designees)

On July 2, 2015, ODA informed OCHCH and Midwest Care Alliance that ODA was contemplating the proposal of non-substantive changes to rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 of the Administrative code and asked for any suggestions that they had concerning the proposed changes or if they recommended that ODA propose other changes.

The online public-comment period began on **July 6, 2015** and ended on **July 19, 2015**. ODA initiates its online public-comment periods by sending an email notice to its 1,755 listserv subscribers[1] for such notices.

[1] As of April 27, 2015.

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

On June 4, OCHCH responded by saying, "Thank you for giving OCHCH the opportunity to review the rule. We have no comments at this time." On July 2, after reviewing rules 173-39-02.22, 173-39-02.23, and 173-39-02.24, OCHCH said the following:

> I will formally make the suggestion that instead of beginning each rule's title with "provider certification", the title should start with "ODA provider certification." By using this wording at the beginning of the title, it will be easier for individuals to locate the specific state agency's rules. I would compare this to ODM using the following for their waiver programs, "Ohio department of medicaid (ODM) -administered waiver program:…"
>
> Thank you for giving Ohio Council for Home Care & Hospice the opportunity to comment on these rules.

In response, ODA will add "ODA provider certification" instead of "Provider certification."

On June 8, NCR said, "Thank you for including us, as always. We don't have any additional suggestions at this time!"

On June 6, LifeCare Alliance said, "I have reviewed and determined there are no concerns on my part. I did share with the appropriate staff and three responded after reviewing with no concerns."

On June 6, Homecare by Blackstone said, "Thanks for keeping us in the loop."

On June 9, the Ohio Assisted Living Association requested that ODA model its definition of "incident" after the definition in rule 3701-17-62 of the Administrative Code. The Association also asked ODA, regarding the definition of "significant change," to insert "care" in between "individual's" ["consumer's"] and "needs" and to replace "remarkable" with "noteworthy." ODA also received input from ODM requesting that ODA compare its definitions to that of ODM. ODA understands that assisted living providers who participate in the Assisted Living Program are under 3 incident-reporting systems: one for ODH, one for ODA, and another for ODM. ODA now proposes to align its definitions with that of ODM which should make incident reporting uniform for 2 of the 3 regulatory bodies. ODA's decision to propose to use uniform terminology to that of ODM nullifies the need to make the vocabulary changes that OALA recommended.

On June 5, OJC said, "I have forwarded [the invitation to comment] to our providers and asked them to let you/us know if they have any concerns." As of the date of this BIA, no provider raised any concerns through OJC. [ODA received no concerns.]

On June 11, Catholic Social Services said, "CSS has a strong history of successful partnerships with the Oho Department of Aging, as well as Area Agencies on Aging.

As the State of Ohio transitions to new strategies for long-term services and supports, CSS looks forward to continued collaboration with the Ohio Department of Aging and other entities to ensure Ohio residents receive personal choice." ODA agrees that CSS has a strong history of successful partnerships with ODA. In fact, CSS was the pilot organization for the PASSPORT Program. The proposed definition of "ODA's designee" *includes* CSS.

On June 9, O4A requested that the definition for "plan of treatment" be expanded to include the orders of any healthcare professional, not just a physician, who has treatments plans in its scope of practice. O4A also said, "WE feel that the language proposed [for "ODA's designee"] is much broader than what has been articulated as the intent—could you propose something narrower so that it does not appear to allow ODA to designate any and all functions to non-PAA entities?" In response, ODA plans to implement this suggestion.

ODA did not receive any comments on the rules during the online public-comment period.

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?

ODA is not proposing to amend the rules based upon scientific data.

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?

The Ohio Assisted Living Association requested that ODA compare its definition of "incident" to that of the Ohio Dept. of Health's definition. ODA has made the comparison below and realizes that a RCF that participates in the Medicaid-funded component of the Assisted Living Program is bound to comply with three sets of incident reporting: one for its licensure with ODH (3701-17-62), one for its certification to be an assisted living provider with ODA (173-39-01 [terms] and 173-39-02 [reporting requirement], and another for being a Medicaid waiver provider with ODM (5160-45-01). ODA does not have the authority to require RCFs to only report to one system, nor does ODA have the authority to require the state agency to whom an RCF reports to share information with the other two state agencies. Unifying incident reporting is beyond the scope of this present rule project.

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 regulations when considering whether to amend this rule.

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

Section 173.391 of the Revised Code gives ODA the authority to develop the requirements for ODA-certified providers of goods and services to individuals who are enrolled in ODA-administered programs.

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.

Before the rules would take effect, ODA will post them on ODA's website. ODA also sends an email to subscribers of our rule-notification service to feature the rules.

Through its regular monitoring activities, ODA and its designees will monitor providers for compliance. Rule 173-39-02 of the Administrative Code requires all providers to allow ODA (or ODA's designees) to monitor.

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;

Every provider who applies to become an ODA-certified provider or who seeks to remain an ODA-certified provider would be impacted by rule 173-39-01.

Beginning on July 1, 2014, the PASSPORT Program began to cover three new services: waiver nursing services, out-of-home respite services, and home care attendant services. Any provider who seeks to become, or to remain, a provider of those services to individuals who are enrolled in the PASSPORT Program would be impacted by rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 of the Administrative Code. As of June 16, 2015, ODA has certified 76 providers were certified to provide waiver nursing services while no providers have been certified to furnish the other two new services.

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

- Rule 173-39-01 of the Administrative Code introduces Chapter 173-39 of the Administrative Code and defines terms used in the chapter. The introduction does not regulate any provider. ODA does not intend to use definitions to regulate providers, nevertheless some definitions can limit providers. Therefore, ODA's proposal to expand the definition of "plan of treatment" to include orders of other healthcare professionals who have treatment planning in their scopes of practice should make obtaining plans of treatment less costly and more available to individuals and providers.

- ODA's proposal to align its definitions of "incident" and "significant change" with that of ODM reduces the need for providers to know which events to report to one state agency, but not the other. It makes reporting uniform between the two agencies. Providers who participate in the Assisted Living Program, however, must also comply with ODH's incident reporting rules.

- Although the entities to which ODA designates to perform its administrative duties are not regulated by this chapter, and although the definition of "adverse impact" in section 107.52 of the Administrative Code would not apply to ODA's designees, ODA will report on the impact of redefining "ODA's designee." The proposed new definition would *include* the current area agencies on aging and Catholic Social Services of the Miami Valley. Therefore, these entities would not lose their designation and would still be performing administrative duties on ODA's behalf. But, if

programmatic changes cause a backlog of work for the current designees, ODA could contract with another designee to expedite processing. For example, if a Medicaid waiver program merges into the PASSPORT Program, many providers who have only worked under the program-to-be-merged may need to become quickly ODA-certified. Allowing a new entity to tackle the matter may delay period of inactivity in a provider's business due to delays in processing applications for provider certification.

- ODA's proposed amendment to include LiSWs in the definition of "case manager" should expand the talent pool from with ODA's designees may hire.

- ODA's proposed amendments to rules 173-39-02.22, 173-39-02.23, and 173-39-02.24 are all non-substantive and, therefore, have no adverse impact.

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.

Some of the amendments to definitions would make the definitions uniform with those of ODM, thereby providing a consistent experience for providers who do business with both ODA and ODM. This could reduce any adverse impact created by diverse definitions between programs.

If ODA wanted to designate another entity to perform administrative duties, the adverse impact would be the entity that ODA didn't designate for to perform these duties. If ODA uses free and open competition to choose the "designee," the adverse impact would be the result of submitting a bid that was not the winning bid.

The best estimates for the cost of furnishing waiver nursing services, out-of-home respite services, or home care attendant services to individuals who are enrolled in the PASSPORT Program come from recently-reported actual costs that providers have billed to the state-funded and Medicaid-funded components of the PASSPORT Program.

Rule 5160-46-06 of the Administrative Code (current rule and proposed amendments) establishes the fix-rate payments for waiver nursing and out-of-home respite, and rule 5160-46-06.1 of the Administrative Code (current rule and proposed amendments) establishes the fix-rate payments for home care attendant services.

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

ODA is not making any burdens upon providers that the provider would not face in the normal course of duty—regardless of the payer of the services. Thus, the regulatory burden of furnishing goods and services, creating and retaining records related to the goods and services, and retaining records that document how the provider qualifies to furnish goods and services is minimal compared to the health and safety of individuals who receive long-term care.

Regulatory Flexibility

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

The rule treats all providers the same, regardless of their size, except that a non-agency provider—by nature—is a self-employed provider who has no supervision.

Virtually all providers are small businesses.

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?

Section 119.14 of the Revised Code establishes the exemption for small businesses from penalties for first-time paperwork violations.

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

ODA does not offer different discriminate between responsible parties, applicants, or employees based upon the size of the business or organization. In fact, the majority of businesses that this rule regulates are small businesses according to section 119.14 of the Revised Code.

ODA maintains an online rules library to assist all providers (and the general public) to find the rules that regulate them. Providers (and the general public) may access the online library 24 hours per day, 365 days per year.

ODA (and ODA's designees) are available to help providers with their questions.

Additionally, any person may contact Tom Simmons, ODA' policy development manager, with questions about the rules.

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

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.

(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.

(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.

(6) "Case manager" means the registered nurse or licensed social worker that ODA's desingee 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."

(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:

(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.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.391, 173.52, 173.54
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, 07/01/2014

DRAFT - NOT FOR FILING

173-39-01 ODA provider certification: introduction and definitions.

(A) Introduction:

(1) This chapter establishes the certification requirements for providers who furnish services to individuals 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.

(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 individuals in the mycare Ohio program.

(3) If a provider furnishes services to individuals through a medicaid waiver program and also furnishes services to individuals through an Older Americans Act program, the provider shall also comply with Chapter 173-3 of the Administrative Code. If a provider furnishes services to individuals through a medicaid waiver program and also furnishes nutrition services to individuals 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:

Current rule cites 5160-3-08

"Activity of daily living" ("ADL") has the same meaning as in rule 5160-3-05 of the Administrative Code.

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

"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.

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

New

"Case manager" means the registered nurse, licensed social worker, or licensed independent 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.

"CDJFS" means "county department of job and family services."

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

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Switch from "consumer" to "individual throughout the chapter.

"Consumer" has the same meaning as "individual."

This new definition is uniform with the definition in rule 5160-45-05.

"Incident" means an alleged, suspected, or actual event that is not consistent with the routine care of, and/or service delivery to, an individual. Incidents include all of the following:

(1) Abuse: the injury, confinement, control, intimidation or punishment of an individual by another person that has resulted, or could reasonably be expected to result, in physical harm, pain, fear or mental anguish. Abuse includes physical, emotional, verbal and/or sexual abuse, and use of restraint, seclusion or restrictive intervention that results in, or could reasonably be expected to result in, physical harm, pain, fear or mental anguish to the individual.

(2) Neglect: when there is a duty to do so, the failure to provide goods, services and/or treatment necessary to assure the health and welfare of an individual.

(3) Exploitation: the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit or gain.

(4) Misappropriation: depriving, defrauding or otherwise obtaining the money, or real or personal property (including medication) of an individual by any means prohibited by law.

(5) Death of an individual.

(6) Hospitalization or emergency department visit (including observation) as a result of any of the following:

(a) Accident, injury or fall;

(b) Injury or illness of an unknown cause or origin.

(c) Recurrence of an illness or medical condition within seven calendar days of the individual's discharge from a hospital.

(7) Unauthorized use of restraint, seclusion and/or restrictive intervention that does not result in, or cannot reasonably be expected to result in, injury to the individual.

(8) An unexpected crisis in the individual's family or environment that results in an inability to assure the individual's health and welfare in his or her primary place of residence.

(9) Inappropriate service delivery including any of the following:

(a) A provider's violation of the requirements for every provider in rule 173-39-02 of the Administrative Code.

(b) Services provided to the individual that are beyond the provider's scope of practice.

(c) Services delivered to the individual without, or not in accordance with, physician's orders.

(d) Medication administration errors involving the individual.

(10) Actions on the part of the individual that place the health and welfare of the individual or others at risk including any of the following:

(a) The individual cannot be located.

(b) Activities that involve law enforcement.

(c) Misuse of medications.

(d) Use of illegal substances.

Switch from "consumer" to "individual throughout the chapter.

"Individual" means an individual who receives services as an enrollee in ODA-administered programs that require provider certification under this chapter.

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

"Instrumental activity of daily living" ("IADL") has the same meaning as in rule 5160-3-05 of the Administrative Code.

Current rule cites 5160-3-08

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

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

"ODA" means "the Ohio department of aging."

"ODA's designee" is an entity to which ODA delegates one or more of its administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and "Catholic Social Services of the Miami Valley."

Current definition limits "ODA's designee" to only AAAs and CSS.

"ODM" means "the Ohio department of medicaid."

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

"Plan of treatment" means the orders of a physician or any other healthcare professional whose scope of practice includes making plans of treatment.

New

"Provider" means a person or entity that furnishes a service under this chapter. There are

five types of providers:

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

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

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

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

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

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

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

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

This new definition is uniform with the definition in rule 5160-45-01.

"Significant change" is a variation in the health, care, or needs of an individual that warrants further evaluation to determine if changes to the type, amount, or scope of services are needed. Significant changes include differences in health status, caregiver status, residence/location of service delivery, and service delivery that result in the individual not receiving waiver services for thirty days.

"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.

*** DRAFT - NOT YET FILED ***

173-39-02.22 **ODA provider certification: Waiver nursing service.**

A provider of a waiver nursing service to ~~consumers~~ individuals 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~~ individuals 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.

*** DRAFT - NOT YET FILED ***

173-39-02.23 **ODA provider certification: Out-of-home respite services.**

A provider of an out-of-home respite service to ~~consumers~~ individuals 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~~ individuals 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.

*** DRAFT - NOT YET FILED ***

173-39-02.24 **ODA provider certification: Home care attendant service.**

A provider of a home care attendant service to ~~consumers~~ individuals 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~~ individuals 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.~~