

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: PROVIDER CERT: CHOICES HOME
CARE ATTENDANT SERVICE
5-YEAR RULE REVIEW, PROPOSED AMENDMENTS

Rule Number(s): 173-39-02.4

Date: July 16, 2015, Revised August 6, 2015

Rule Types:

☒ **5-Year Review:** 173-39-02.4

☐ **New:** None

☒ **Amended:** 173-39-02.4

☐ **Rescinded:** None

☐ **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 173-39-02.4 of the Administrative Code regulates the choices home care attendant service when it's provided by ODA-certified providers. The service is offered through both the state-funded and Medicaid-funded components of the PASSPORT Program.

ODA's primary change to propose for this rule is to replace the requirements for auto insurance with new requirements that could save funds for many participant-directed providers. The current rule requires providers to carry auto liability insurance and collision insurance—even for providers that don't drive and even if the providers own older, used cars for which one wouldn't normally buy collision coverage.

In the proposed amendments to the rule, ODA inserts new language that would only require insurance if the provider transports the individual and that no longer requires collision insurance.

Additionally, ODA proposes to make the following non-substantive amendments that would not change the requirements in the rule nor increase any adverse impact of the rule:

- As ODA proposes to do for other rules that it amends in Chapter 173-39 of the Administrative Code, ODA proposes to begin the rule's title with "ODA provider certification."
- ODA proposes to replace all occurrences of "consumer-directed provider" with "participant-directed provider."
- ODA proposes to replace all occurrences of "consumer" with "with individual," except when "consumer" is part of "*consumer*-directed provider."
- ODA proposes to delete the records-retention requirements in paragraph (B)(7)(c) of the rule because they are duplicative of records-retention requirements in rule 173-39-02 of the Administrative Code.
- ODA proposes to indicate that the rates are subject to rule 5160-31-07 of the Administrative Code. This would not change payments to providers because providers are already subject to rule 5160-31-07 of the Administrative Code. The proposed change would add a helpful cross reference to each rule.
- ODA proposes to make a number of minor non-substantive amendments.

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.
- Section [173.522](#) 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.

In Ohio’s application to the Centers for Medicare and Medicaid Services (CMS) for a waiver to authorize the Medicaid-funded component of the PASSPORT Program, Ohio indicated that ODA adopted a rule on the choices home care attendant service and cited rule 173-39-02.4 of the Administrative Code. Because CMS authorized a waiver that included the service, as regulated by rule 173-39-02.4 of the Administrative Code, the state is responsible for maintaining rule 173-39-02.4 of the Administrative Code.

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.

From July 2, 2015 to July 7, 2015, ODA distributed by email a SurveyMonkey survey to a 299 providers of the Choices Home Care Attendant Service.

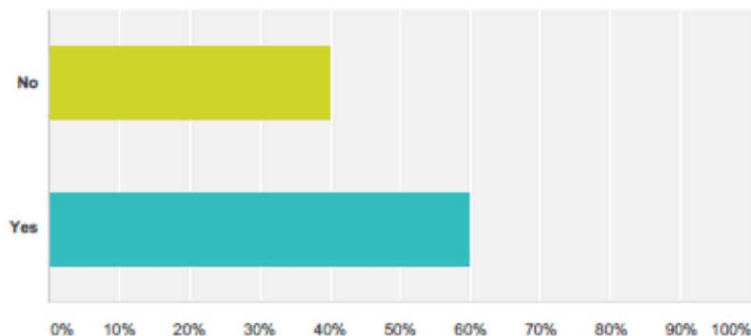
The online public-comment period will operate from **July 17, 2015** and end on **August 2, 2015**. ODA initiates its online public-comment periods by sending an email notice to its 1,755 listserv subscribers¹ for such notices.

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

20 participant-directed providers responded to ODA's electronic survey. Here are the results:

Q1 The Department may soon propose to eliminate a requirement for choices home-care attendants. Instead of requiring both liability insurance and collision insurance on a vehicle in which you transport an individual, the rule would only require liability insurance. The Dept. reasons that collision insurance covers losses that a driver causes to himself or herself. It's not necessary for furnishing services and may be too expensive for drivers who own their cars in full. In your opinion, would it help choices home care attendants if the Department no longer required collision insurance?

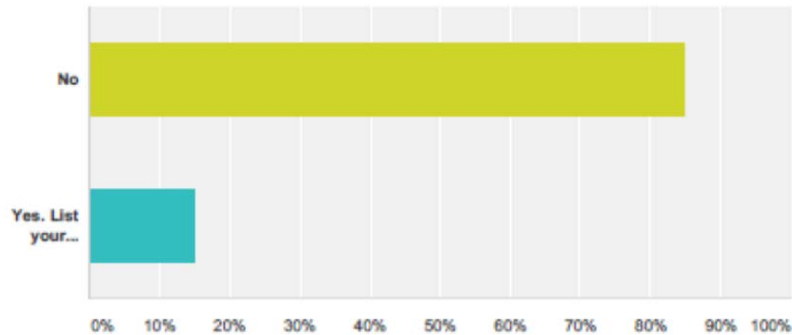
Answered: 20 Skipped: 0



¹ As of April 27, 2015.

Q2 Do you have any suggestions for improving the choices home care attendant service?

Answered: 20 Skipped: 0



3 providers offered suggestion.

| PROVIDERS' SUGGESTIONS | ODA'S RESPONSES |
|--|---|
| I think we should be eligible for raises from time to time---I take pride in my job and give 110% but really you can't ever better yourself---I've seen some home health hiring u in at 12.00 or more an hour---I'm not getting rich by no means and would love more money on the hour because I love my job and taking care of my people but I feel very rich inside when I leave at the end of my shift!!!! | The employer (the individual who receives the services) has authority to offer employee raises. We recommend that increases are percentage based, not a dollar figure. As always, the individual's service plan would need to be able to support the increase without impact to the individual's service needs. The individual cannot opt for less service in order to pay the provider a higher wage. Additionally, the PASSPORT Program would not increase the individual's service plan budget in order to pay the provider a higher wage. |
| When they take care of a loved one 24 hours a day, making them to detail everything did on a daily basis is not only a waste of time but insulting. And why do you only pay for 12 months in bimonthly checks instead of 52 weeks or 26 checks. we're not on vacation the other 4 weeks and as little as is paid can ill afford to donate 4 weeks to the state esp when many of us are 24/7. just compare what our services cost the government to what a nursing home would cost and I think you would see that something isn't fair! | This comment understandable because it makes a difference in how you budget your income. If you get paid on the 15 th and not again until the 31 st , you have to make your paycheck go for 16 days, not 14 days. Fortunately, providers are paid for every unit of service that they provide according to the rules, so being paid twice a month means being paid for every unit worked in a half-month period. |
| For the time that I was a home care attendant, I would have appreciated more contact with the case worker. I sometimes had questions that needed a faster answer. | Case managers are always available, except when they are in appointments (with other providers) and making visits to individuals' homes. All providers are given contact information for ODA's designee and the case manager so they can be contacted at any time between the case manager's scheduled visits. |

During the online public-comment period that runs from July 17 to August 2, ODA anticipates that it may receive more comments.

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?

ODA did not consider any alternative regulations. The alternative to no longer requiring collision insurance would be to retain the requirement for collision insurance.

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;

All providers of the choices home care attendant service are impacted by the rule. In December, 2013, 517 participant-directed providers furnished the choices home care attendant service. Since that time the service has become available statewide. On July 17, 2015, there were 826 participant-directed providers.

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

The PASSPORT Program's payment for a choices home care attendant service is an all-inclusive payment that includes all aspects of furnishing the service, including training.

Generally, a consumer-directed individual provider can obtain the training necessary to furnish the choices home care attendant service from training websites. The rule does not restrict the provider from seeking all training online.

Additionally, ODA proposes to make it easier for providers by eliminating the need for auto insurance if they don't drive and eliminating the requirement for collision insurance even if they do drive.

Additionally, not requiring the staff of ODA and ODA's designees to request to see proof of insurance would speed up the application process for becoming ODA-certified providers.

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.

Rule 5160-1-06.1 of the Administrative Code establishes the maximum-possible payment that the PASSPORT Program would make for a unit of a choices home care attendant service, which is \$6.25 per 15-minute unit. In December, 2013, the average that a provider billed for the service was \$3.15 per unit. In March, 2015, the average that a provider billed for the service was \$3.13 per unit.

The training fees would vary because training organizations aren't required to use standard fees for the training classes that they offer.

As previously stated, a consumer-directed individual provider can obtain the training necessary to furnish the choices home care attendant service from training websites. [CareStar](#) and [Collins Learning](#) and are examples of online vendors.

- CareStar's fees are typically \$7.00 per course, but the price drops to \$5.75 per course if the courses are purchased in bundles of 12.
- Collins Learning's fees for "personal care home administrator" classes are \$14.99 per class or \$99.00 per year for unlimited access to online training.

The courses from online vendors such as Collins Learning and CareStar may be used for initial training, continuing education, and consumer-initiated training (e.g., the consumer requires his or her consumer-directed provider to undergo training on handling consumers who have suffered from strokes).

Again, the rule does not restrict the provider from seeking all training online.

The savings to the provider would be the cost of no longer purchasing auto insurance if they didn't drive or no longer purchasing collision insurance if buying such insurance is not a sound expenditure based on the age and condition of the vehicle.

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. 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.

It also seems reasonable to expect consumer-directed providers to be adequately trained to offer the choices home care attendant service and the low costs of training make doing so affordable. Additionally, ODA does not place any limits on the amount of training that a provider may take online.

Additionally, ODA is proposing to reduce insurance requirements for this service which should reduce the costs of qualifying to be an ODA-certified provider and also speed up the application process for becoming an ODA-certified provider.

Regulatory Flexibility

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

The rules treat all providers the same, regardless of their size.

For the choices home care attendant service, all providers are small businesses because every participant-directed provider is the employee of the individual who receives the service.

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.

173-39-02.4

ODA provider certification: Choices home care attendant service (CHCAS).

Adding to the beginning of every rule in Chapter 173-39

Replace "consumer-directed" with "participant-directed" throughout the rule. ODA will propose the same for rule 173-39-01 of the Administrative Code.

(A) "Choices home care attendant service" ("CHCAS") means a ~~consumer-directed~~ participant-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 the following:

Replace "consumer" with "individual" throughout the rule, except as otherwise noted.

- (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~~ individual.
 - (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~~ a provider of the choices home care attendant service in addition to the ~~conditions of participation~~ requirements for every ODA-certified provider under rule 173-39-02 of the Administrative Code:
- (1) In general:
 - (a) Availability: The provider shall furnish the service as agreed upon with the ~~consumer~~ individual and as authorized in the ~~consumer's~~ individual's service plan.
 - (b) Oversight: The ~~consumer~~ individual who receives the service is the employer of record and is responsible for supervising the provider. As used in this paragraph, "employer of record" means the ~~consumer~~ individual 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~~ participant-directed individual provider that the ~~consumer~~ individual employs.

~~(e) 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:

ODA is proposing to replace this language with language later in the rule.

(a) General qualifications:

- (i) Only a ~~consumer-directed~~ participant-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~~ an individual, the provider shall participate in an interview with the ~~consumer~~ individual before providing the first episode of service to the ~~consumer~~ individual.
- (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~~ individual.

(viii) Transporting the individual:

(a) If the provider intends to transport the individual, before providing the first episode of transportation, the provider shall show ODA's designee a valid driver's license and a valid insurance identification card to show that the provider has liability insurance for driving a vehicle that complies with the financial responsibility requirements in Chapter 4501:1-02 of the Administrative Code. The provider shall only transport the individual in a vehicle for which ODA's designee has verified is insured.

(b) If the provider does not intend to transport the individual, the provider shall submit an email or written attestation to ODA's designee that declares that the provider will not transport the individual unless the provider complies with paragraph (B)(2)(a)(viii)(a) of this rule.

(b) Initial training:

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

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

(i) Basic home safety.

(ii) Universal precautions ~~fre~~ for 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~~ individual's development.

(c) Assisting with activities of daily living.

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

This would replace the requirement for ALL providers to have an insurance policy with liability and collision coverage. Plus, there is no need for any auto insurance if the provider never transports the individual.

(e) Performing administrative tasks.

(ii) Beginning on July 1, 2014, every ~~consumer-directed~~ participant-directed provider that ~~a-consumer~~ an individual 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 an individual.

(iii) Beginning on September 1, 2014, every ~~consumer-directed~~ participant-directed provider that ~~a-consumer~~ an individual 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~~ an individual.

(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~~ participant-directed provider.

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

(3) Records:

(a) Initial training verification: The ~~consumer~~ individual 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~~ individual shall retain a completed and signed form ODA1043 to verify that the provider complied with the continuing education requirements. The ~~consumer~~ individual 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~~ individual's name, the ~~consumer's~~ individual'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~~ individual's home records.

This requirement is duplicative of rule 173-39-02, so ODA is proposing to delete it.

~~(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:

This highlights a matter of law that's already in force, but of which providers may not know without this helpful cross reference.

(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 reimbursement rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

~~(3)~~(4) The provider may furnish a service that is not authorized by the ~~consumer's~~ individual's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the ~~consumer's~~ individual's service plan.

(D) Definitions for this rule:

(1) "Form ODA1042" means "ODA1042 'Employee Core Competencies Verification. (March, 2014)" The form is available to the general public on ODA's website.

(2) "Form ODA1043" means "ODA1043 'Employee Continuing Education

Verification. (March, 2014)" The form is available to the general public on ODA's website.