CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name:	OHIO DEPARTMENT OF AGING
Package Title:	ODA PROVIDER CERTIFICATION: PERSONAL CARE
Rule Numbers:	173-39-02.11
Date:	November 7, 2017, Revised December 11, 2017
Rule Types:	☑ **5-Year Review** ☑ **Rescinded** ☑ **New** ☐ **Amended** ☐ **No change**

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.

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.

   OVERVIEW

   OAC173-39-02.11 regulates ODA-certified providers when they provide personal care to individuals enrolled in the PASSPORT Program.

   After reviewing the rule top-to-bottom,[1] ODA proposes to rescind the current rule and adopt a new rule in its place to comply with the LSC's 50% guideline.[2] Throughout 2017, ODA has been updating rules in Chapter 173-39, including updating rules for the following similar services: homemaker, independent living assistance (ILA), and enhanced community living (ECL).[3] When doing so, ODA has been giving those rules in a more standard language and format (*i.e.*, the order of topics in the rule). ODA proposes to continue making progress in this area by updating this rule with the same standard language and format.

   ODA anticipates a 3-fold effect from using standard language and format:

   1. Standardization simplifies compliance for personal care providers who also provide 1 or more of the other 3 services.

[1] ORC§106.03 requires each state agency to review each rule before the rule's review deadlines, which JCARR can extend.
[2] OHIO LEGISLATIVE SERVICE COMMISSION, *Rule Drafting Manual*, 4th ed., (May, 2006) §4.3.1.
[3] 173-39-02.8, 173-39-02.15, and 173-39-02.20, respectively.

2. Standardization simplifies compliance for personal care providers who also provide personal care paid, in whole or in part, by Older Americans Act funds, because the standard terminology and format are similar to the terminology and format in 173-3-06.5.

3. Standardization eliminates regulatory hurdles ODA-certified personal care providers would face if they consider becoming certified to provide providing more than 1 service to individuals in the PASSPORT Program.

SPECIFIC AMENDMENTS

ODA proposes to revise the definition of "personal care" to align with the definition used on the CMS-approved Medicaid waiver application for the PASSPORT Program. The significant change here is that personal care now includes providing ADLs and IADLs (when incidental to the ADLs) in the individual's community, not just the individual's home.

ODA proposes to list the activities of personal care in (A) instead of an unnumbered paragraph under (A).

ODA defines "ADLs" and "IADLs" in 173-39-01. Those definitions refer to 5160-3-05. Therefore, in (A)(1)(b), ODA uses "ADLs" and "IADLs" without any need to further define or to refer to another agency's rule.

ODA proposes to define "competency evaluation" to make the rule easier to read than it would if ODA repeated "written testing and skills testing by return demonstration" throughout the rule. "Competency evaluation" often appears in the phrase "training and competency evaluation," such as ODH's rules on nurse aide training and competency evaluation programs or Medicare's training and competency evaluation programs for home health aides.

ODA proposes to define "PCA," to make reading the rule easier than it would be if ODA repeated "personal care aide" throughout the rule.

ODA proposes to insert 2 paragraphs, which function like sub-headings, to indicate where in the rule requirements for the 2 provider types begin. These adds clarity to the rule.

ODA proposes to insert a general requirement to comply with the requirements for every ODA-certified provider in OAC173-39-02. Without this amendment, ODA-certified providers would still be required to comply, but may not be aware of the need to do so.

ODA proposes to combine the requirements on maintaining staffing at adequate levels and possessing back-up plans for providing personal care when the provider has no PCA or PCA supervisor available, because both requirements pertain to staff availability.

ODA proposes to delete the paragraph, (C)(1)(e), requiring providers to give individuals and case managers monthly reports of the personal care activities the provider's staff have provided. Individuals already have a right to this information even if the rules doesn't mention it.

The rule requires providers to employ persons who qualify to be PCAs and gives providers a variety of ways by which a person may qualify to become a PCA. ODA proposes to clarify the language in 2 ways: (1) the organization of the paragraphs and (2) the description of each way to qualify.

The tables below show the clarifications ODA proposes for language describing each of various ways a person may initially qualify to become a PCA.

ONE WAY TO QUALIFY: STNA	
CURRENT DESCRIPTION	PROPOSED NEW DESCRIPTION
Be listed on the Ohio department of health's nurse aide registry;	~~STNA: The person successfully completed an ODH-approved nurse aide training and competency evaluation program under section 3721.31 of the Revised Code, which is verified by checking to see if ODH lists the person as "active" "In good standing" in its nurse aide registry available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx.~~ ODH recently changed the terminology used in the registry. The registry now says the status of one who successfully completed a nurse aide training and competency evaluation program is "in good standing" instead of "active." A person may initially qualify to be a PCA because the registry listed the person as "in good standing" at the time of hiring. At the time many currently-employed PCAs initially were hired, the registry said their status was "active," Therefore, ODA proposes to require documentation that the registry said either "active" or "in good standing" as verification. ODA's proposed language for (C)(3)(a)(i) now reads as follows: STNA: The person successfully completed a nurse aide training and competency evaluation program approved by ODH under section 3721.31 of the Revised Code. ODA moved language on verifying compliance to (C)(3)(e)(ii). It reads as follows: If a person meets the initial qualifications to be a PCA under paragraph (C)(3)(a) of this rule by successfully completing a nurse aide training and competency evaluation program described in (C)(3)(a)(i) of this rule, the provider shall retain a copy of the search results from ODH's nurse aide registry (https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx) to verify the registry listed the person as "active" or "in good standing."

The Ohio Dept. of Health (ODH) may list a person as an abuser in its nurse aide registry, so ODA proposes to consider this a valid way to qualify only if the ODH lists the person as "active" or "In good standing" in its registry. ODA proposes to add language to identify successful completion of an ODH-approved nurse aide training and competency evaluation program as the basis for an "active" or "in good standing" listing. ODA also proposes to identify the URL where the providers may find ODH's nurse aide registry.

In 3701-18-12, ODH requires ODH-approved nurse aide training and competency evaluation programs (TCEPs) to last at least 75 hours, which negates any need to restate specific hour requirements in this rule.

ONE WAY TO QUALIFY: MEDICARE	
CURRENT DESCRIPTION	PROPOSED NEW DESCRIPTION
Successfully complete the medicare competency evaluation program for home health aides set forth in 42 C.F.R. Part 484., as a direct care health care worker without a twenty-four month lapse in employment as a home health aide or nurse aide;	~~Medicare: The person successfully completed a home health aide training and competency evaluation meeting the standards in 42 C.F.R. 484.4 and 484.36 and meets all additional requirements for home health aides in 42 C.F.R. 484.4.~~ Medicare: The person met the qualifications to be a medicare-certified home health aide according to one of the following sets of standards: The standards in 42 C.F.R. 484.4 and 484.36, if the person met those standards on or before January 12, 2018. The standards in 42 C.F.R. 484.80 and 484.115, if the person met those standards on or after January 13, 2018.

The current rule cites 42 CFR Part 484 as the federal requirements for Medicare-certified home health aide TCEPs. Part 484 consists of 41 sections—only 2 of them regulate TCEPs. Therefore, in the new rule, ODA proposes to cite only §§ 484.4 and 484.36. (Note: On January 13, 2018, 42 CFR 484.80 and 484.115 will replace 42 CFR 484.4 and 484.36[4]. ODA doesn't require conti)

§484.4 indicates more than one program can meet the standards of §484.36, so ODA's proposed new rule says "A…program," instead of "the…program."

The current rule mistakenly identifies a Medicare "competency evaluation" program. 42 CFR 484.4 and ODA's addresses "*training and* competency evaluation" programs. ~~Thus, ODA's proposed new rule correctly identifies a "*training and* competency evaluation program."~~ ODA proposes to use "met the qualification to be a medicare-certified home health aide."

~~The current restatement of §484.4's last sentence is confusing and also uses the term "direct care health care worker," which implied *health* care, rather than *personal* care. Therefore, ODA proposes to no longer restate the requirement in the new rule (which also eliminates the term "direct care health care worker") and simply require meeting "all additional requirements for home health aides" in the section. The table below highlights the differences.~~

~~42 CFR 484.4~~	~~173-39-02.11 CURRENT VERSION~~	~~173-39-02.11 PROPOSED NEW VERSION~~
~~An individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a continuous period of 24 consecutive months during none of which the individual furnished services described in §409.40 of this chapter for compensation.~~	~~…without a twenty-four month lapse in employment as a home health aide or nurse aide;~~	~~…and meets all additional requirements for home health aides in 42 C.F.R. 484.4.~~

~~The current rule refers to nurse aides, but 42 CFR 484.4 and 484.36 only refer to home health aides. In the new rule, ODA proposes to only refer to home health aides.~~

42 CFR 484.36 (soon to be 484.80) requires Medicare-certified home health aide TCEPs to last at least 75 hours. Therefore, there is no need to restate specific hour requirements in this rule.

[4] Medicare and Medicaid Programs; Conditions of Participation for Home Health Agencies; Delay of Effective Date, 82 Fed. Reg. 31,729 (July 10, 2017).

ONE WAY TO QUALIFY: EMPLOYMENT EXPERIENCE	
CURRENT DESCRIPTION	PROPOSED NEW DESCRIPTION
Have at least one year employment experience as a supervised home health aide or nurse aide, and have successfully completed written testing and skills testing by return demonstration prior to initiation of service provision.	Previous experience: The person has at least one year of supervised employment experience as a home health aide or nurse aide, and has successfully completed a competency evaluation.

ONE WAY TO QUALIFY: VOCATIONAL PROGRAMS	
CURRENT DESCRIPTION	PROPOSED NEW DESCRIPTION
Successfully complete the COALA home health training program, or a certified vocational program in a health care field, and successfully complete written testing and skills testing by return demonstration prior to initiation of service provision;	The person successfully completed the COALA home health training program or a certified vocational training and competency evaluation program in a health care field before providing any service.

Although COALA home health aide training and competency evaluation no longer exists under the name "COALA," ODA proposes to leave the option in the rule for those who qualify to be PCAs because they successfully passed the training and competency evaluation program in previous years.

WAY TO QUALIFY: OTHER PROGRAMS	
CURRENT DESCRIPTION	PROPOSED NEW DESCRIPTION
Successfully complete sixty hours of training, including, but not limited to instruction on: • Communication skills, including the ability to read, write and make brief and accurate oral or written reports; • Observation, reporting and documentation of consumer status and services provided; • Reading and recording temperature, pulse and respiration; • Universal precautions for infection control procedures; • Basic elements of body functioning and changes in body function that should be reported to a supervisor; • The maintenance of a clean, safe and healthy environment, including but not limited to house cleaning and laundry, dusting furniture, sweeping, vacuuming, and washing floors; kitchen care (including dishes, appliances, and counters), bathroom care, emptying and cleaning bedside commodes and urinary catheter bags, changing bed linens, washing inside windows within reach from the floor, removing trash, and folding, ironing and putting away laundry; • Recognition of emergencies, knowledge of emergency procedures, and basic home safety; • The physical, emotional and developmental needs of consumers, including the need for privacy and respect for consumers and their property; • Appropriate and safe techniques in personal hygiene and grooming that include: bed, tub, shower, and partial bath techniques; shampoo in sink, tub, or bed; nail and skin care; oral hygiene; toileting and elimination; safe transfer and ambulation; normal range of motion and positioning; and adequate nutrition and fluid intake; and • Meal preparation and nutrition planning, including special diet preparation, grocery purchase, planning, and shopping, and errands for the sole purpose of picking up prescriptions. [Plus…] Prior to the provision of services for a consumer, the provider must conduct written testing and skill testing by return demonstration for all PCA staff that are qualified as a PCA by meeting the requirements of paragraph [requiring 60 hours of training] of this rule, and tests must cover all subject areas listed under paragraph [requiring 60 hours of training] of this rule.	Other programs: The provider successfully completed a training and competency evaluation program with the following characteristics: • The training lasted at least sixty hours. • All the following subjects were included in the program's training and its competency evaluation: o Communication skills, including the ability to read, write, and make brief and accurate reports (oral, written, or electronic). o Observation reporting and retaining records of individual's status and activities provided to the individual. o Reading and recording an individual's temperature, pulse, and respiration. o Basic infection control. o Basic elements of body functioning and changes in body function that should be reported to a PCA supervisor. o Maintaining a clean, safe, and healthy environment, including house cleaning, laundry, dusting furniture, sweeping, vacuuming, and washing floors; kitchen care (including dishes, appliances, and counters), bathroom care emptying and cleaning beside commodes and urinary catheter bags, changing bed linens, washing inside windows within reach from the floor, removing trash, and folding, ironing, and putting away laundry. o Recognition of emergencies, knowledge of emergency procedures, and basic home safety. o The physical, emotional, and developmental needs of individuals, including privacy and respect for personal property. o Appropriate and safe techniques in personal hygiene and grooming including bed, tub, shower, and partial bath techniques; shampoo in sink, tub or bed nail and skin care; oral hygiene; toileting and elimination; safe transfer and ambulation; normal range of motion and positioning; and adequate nutrition and fluid intake. o Meal preparation and nutrition planning, including special diet preparation; grocery purchase planning and shopping; and errands such as picking up prescriptions.

In the current rule, the requirement for competency evaluation is in a paragraph superior to the one requiring the training. ODA proposes to simplify the rule by requiring *competency evaluation* immediately after *training* in the same paragraph.

The current rule requires training in "Universal Precautions for Infection Control Procedures," which may refer to one of a number the World Health Organization's training programs, which may also have copyrights. By comparison, 42 CFR 484.36 requires "Basic infection control procedures" and 3701-18-12 requires "infection control." Similarly, ODA's proposed

new rule uses "Basic infection control." Otherwise, ODA proposes to keep the list of subjects for training and competency evaluation the same for "other programs."

ODA proposes to replace a misunderstood requirement on who qualifies to become supervisors, trainers, or testers. In doing so, ODA proposes to replace, "The PCA supervisor trainer and tester may only be a RN or LPN under the direction of an RN" with, "The provider shall only allow a RN (or a LPN under the direction of a RN) to be the PCA supervisor, trainer, or tester."

ODA proposes to replace a misunderstood summarization of the requirement in ORC §121.36 with a straightforward requirement to comply with §121.36. Providers would need to comply with §121.36 even if ODA did not mention doing so in this rule.

ODA proposes to require PCA supervisors to visit individuals at least once every 60 days instead of every 62 days. ODA's intention has been to prohibit more than 2 months from elapsing without a visit from the PCA supervisor. Because 2 2-month periods (December + January and July + August) involve 2 31-day periods, in 2006, ODA set the period as 62 days. It's common for rules to require periods of 30, 60, or 90 days, but not 62 days. ODA, therefore, proposes setting the period at 60 days.

The current rule requires providers to develop written policies on documenting and reporting individual's incidents. This duplicates a requirement in 173-39-02(B)(2)(a). Because it's required for every ODA-certified agency provider and not just ODA-certified personal care agency providers, ODA proposes to delete it from this rule.

ODA proposes to add the URL at which the state tested nurse aide (STNA) registry can be found immediately after ODA states one way to qualify to be a PCA is to be listed as active on the STNA registry.

In the new rule, ODA proposes the following updates to the rule's terminology and format:

- Rearranging the topics in the rule to reflect the order of topics in most other rules regulating services in OAC Chapter 173-39, especially those of the following similar services: homemaker, ILA, and ECD. The pattern begins with definitions; then provider requirements, beginning with general requirements, then provider qualifications, then service verification; and ends with units and rates.
- Adding "ODA provider certification" to the beginning of the rule's title to differentiate this rule from 173-3-06.5, which is the rule regulating AAA-provider agreements for personal care when it is paid, in part or in whole, with Older Americans Act funds.
- Placing quotation marks around terms the rule defines.[5]
- Using the active voice instead of the passive voice. (*E.g.*, "The provider shall X," instead of, "The individual shall be given Y.") The active voice clearly identifies the party responsible for each requirement.[6]
- Using simple past tense, not past perfect tense. (*E.g.*, "The provider has successfully completed" becomes "The provider successfully completed.")
- Using standard record-retention terminology instead of document-maintenance terminology (with exceptions).
- Consistently using the following terminology:
    - "Shall," not "must" or "will." [7]
    - "Personal care," not "personal care service" or "service."
    - "Activity" (as in "activity plan"), not a mix of "activity," "task," intervention," or "service," when referring to a component of personal care.
    - "Home" generally and "personal property" once, not "household" or "place of residence."
    - "Homemaker," not "housekeeping."
    - "Individual," not "consumer."
    - "ODA-certified agency providers," not "ODA-certified long-term care agency providers."
    - "Participant-directed," not "consumer-directed."
    - "Staffing "levels," not "capacity."
    - "Provide," not "furnish," "deliver," or "perform."
    - "Before," not "prior to."

[5] *Rule Drafting Manual*, §5.8.1.
[6] *Rule Drafting Manual*, §5.8.6.
[7] *Rule Drafting Manual*, §§ 5.8.3, 5.8.5.

  - "Before allowing a PCA to begin providing personal care," not "Prior to consumer service initiation."
  - "After the PCA's initial visit to the individual," not "After the consumer service initiation."
  - "ODM," not "ODJFS."
  - "Requirements," not "criteria."
- Deleting unnecessary occurrences of that.
- Deleting "but is not limited to" when occurring after "includes," because the extra words do not change the meaning of "includes."
- Replacing lists in the format of multi-paragraph run-on sentences with lists in the format of paragraphs separated by periods, not semicolons, and beginning with "...all the following:" or similar words.

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

ORC §§ 173.01, 173.02, 173.391, 173.52, and 173.522.

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 order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio's application to for a Medicaid wavier authorizing the State to launch and maintain the PASSPORT Program, 42 CFR 441.352 requires ODA to assure CMS in the waiver application that ODA established adequate requirements for personal care providers (*i.e.*, adopted this rule) and that ODA monitors providers to assure they comply with those requirements (*i.e.*, comply with this rule).

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

ODA is not exceeding 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)?

There are at least four public purposes for this rule:

1. The rules exist to comply with state law. (See #2.)

2. The rules exist to comply with federal law. (See #3.)

3. The rules give providers of personal care to individuals enrolled in the PASSPORT Program statewide, uniform requirements, so they won't face different requirements when working in more than one planning and service area of Ohio. Additionally, ODA's efforts in 2017 to use standard language and format in rules for similar services gives providers who may also provide homemaker, independent living assistance, or enhanced community living similar standards. For more information see #1.

4. The rules assure the general public that personal care provided through the PASSPORT Program must be done by PCAs who meet the rule's PCA qualifications.

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

ODA (and its designees) monitor 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 September 22, 2017, ODA emailed the following businesses and organizations to inform them of an opportunity to review this rule and other rules then provide ODA with recommendations for improving this rule and other rules:

- 4 Providers:
  - Alzheimer's and Dementia Care Services.
  - Home Care by Black Stone.
  - National Church Residences (NCR).
  - Senior Resource Connection.
- 7 Provider Associations:
  - LeadingAge Ohio.
  - Ohio Academy of Senior Health Sciences, Inc.
  - Ohio Assisted Living Association.
  - Ohio Association of Medical Equipment Services.
  - Ohio Council for Home Care and Hospice.
  - Ohio Health Care Association.
  - Ohio Jewish Communities.
- 1 PASSPORT Administrative Agency: Catholic Social Services of the Miami Valley.
- 1 Association Representing Many PASSPORT Administrative Agencies: Ohio Association of Area Agencies on Aging (O4A).

ODA requested responding before September 30, but later extended the deadline to October 2.

ODA conducted an online public-comment period from November 8 to November 19.

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

In response to ODA's email invitations on September 22, 2017 to review, and comment upon, this and other rules, and ODA received 15 comments from 4 stakeholders. ODA lists those comments, and ODA's responses, in the table below.

	COMMENTS	ODA'S RESPONSES
1	TERMINOLOGY Change word consumer to individual. *Catholic Social Services of the Miami Valley*	In the proposed new rule, ODA uses "individual," instead of "consumer."
2	TERMINOLOGY Instead of activity plan, most call this a service plan. *Catholic Social Services of the Miami Valley*	If it's a plan a case manager makes through which it authorizes services, ODA calls it the "service plan," or "person-centered services plan." If it's a plan the provider makes to describe the activities is plans to provide and the dates and times for providing them, ODA calls it the "activity plan." These terms are defined in 173-39-01.

	COMMENTS	ODA'S RESPONSES
3	DUPLICATE REQUIREMENTS The code of ethics, incident reporting, table of organization, record retention are all covered in rule 173-39-02- do they need repeated in this rule? *Catholic Social Services of the Miami Valley*	No. ODA proposes to add to the new rule what is unique in the current rule. The current rule doesn't require incident reporting, it requires adopting a policy on incident reporting procedures required in 173-39-02. In the case of records retention, ODA sometimes retains language to explain how the requirement works for a specific service or facet of providing a service (e.g., retaining records verifying a person's qualifications to be a PCA).
4	PROVIDER TYPES Remove the consumer-directed personal care providers; this isn't needed as the C-HCAS option it available and is the option used. *Catholic Social Services of the Miami Valley*	ODA proposes continuing to allow participant-directed personal care providers to provide personal care. In 2016, 72 such providers were billing ODA for providing personal care.
5	PCA INITIAL QUALIFICATIONS: PREVIOUS EMPLOYER'S TRAINING OPTION The one year of supervised experience, please add that this must be verified and documented. *Catholic Social Services of the Miami Valley*	The current rule requires retaining records to verify all requirements in the rule. In (C)(3)(a)(iii) of the proposed new rule, ODA proposes providers qualifying persons to be PCAs by means of previous employer's training to retain records to show how the person meets the standard.
6	PCA INITIAL QUALIFICATIONS: VOCATIONAL PROGRAM OPTION This needs re worded: completion of a certified or approved home health training program. Passing the Skills and written testing is still need. Suggest that this be defined. Catholic Social Services of the Miami Valley	ODA doesn't certify vocational school programs, but does approve them. As noted above, every means qualifying to be a PCA involves competency evaluation. In the new rule, ODA proposes using "training and competency evaluation program" and defining "competency evaluation" in (A) to include both written testing and skills testing by return demonstration to clarify that all competency evaluation includes written testing and skills testing by return demonstration.
7	PCA INITIAL QUALIFICATIONS: OTHER OPTION The 60 hour training also needs approved by ODA or ODA's designee. *Catholic Social Services of the Miami Valley*	As proposed, a person would qualify if he or she participated in at least 60 hours of training on the list of topics and successful passed competency evaluations on those topics.
8	PCA INITIAL QUALIFICATIONS: OTHER OPTION 2 b is not placed in rule clearly, add that the written and skill testing is required as part of each training listed. *Catholic Social Services of the Miami Valley*	We agree about the misplacement in the current rule's outline. Every method by which a person may qualify to be a PCA requires competency evaluation.
9	CONTINUING EDUCATION PCA complete 12 hours of in-service continuing education, excluding orientation) every 12 months. Would put them in line with other Medicaid programs. *Home Care by Black Stone*	ODA does not intend to increase the number of continuing education hours required per year for agency providers. ODA's requirements for certified providers require 8 hours of continuing education for adult day services, homemaker, personal care (agency only), choices home care attendant, independent living assistance, assisted living, and enhanced community living. Additionally, ODA's rules for the Older Americans Acts Program in Ohio requires 8 hours of continuing education for adult day services, homemaker, and personal care. Additionally, the rule already requires providers to ensure PCAs receive additional training when necessary.

	COMMENTS	ODA'S RESPONSES
10	CONTINUING EDUCATION Add that the in service must be signed off by a RN *Catholic Social Services of the Miami Valley*	In (C)(3)(e) of the new rule, ODA proposes requiring all types of training to be verified by the names, qualifications, and signatures of both the trainer and the tester. In (C)(4) of the new rule, ODA requires the trainer and tester to be a RN or a LPN under the direction of a RN.
11	PCA SUPERVISORS, TRAINERS, AND TESTERS The PCA supervisor trainer and tester may only be a RN or a LPN under the direction of a RN. Does there need to be a comma between supervisor and trainer? Dos an RN need to sign off on the LPN's paperwork? *O4A*	Please see ODA's response to the previous comment.
12	PCA SUPERVISOR VISITS The provider must maintain evidence of compliance with the following supervisory requirements: (a) Prior to consumer service initiation, the supervisor must complete and document a consumer home visit, which may occur at the initial PCA visit to the consumer, to define the expected activities of the PCA and prepare a written PCA activity plan. Need to include "The documentation must include the date of the visit, the name of the PCA supervisor, name of the consumer, and must include the signature of the consumer and the PCA supervisor or the electronic signature of the PCA supervisor" Need o define how a nurse can sign. *O4A*	ODA proposes to incorporate your suggested changes into the new rule.
13	ORC §121.36 What part of this rule is required. This rule is very misunderstood. *Catholic Social Services of the Miami Valley*	In the proposed new rule, ODA no longer attempts to summarize the requirement in ORC §121.36. Instead, ODA simply requires provides to comply with the statute. This should reduce confusion.
14	ORC §121.36 C3c (i) and (ii) This reads as if the provider must ensure that each consumer received services as scheduled for each day by the end of the day. In 2006 we were informed by ODA this is not the expectation, that a provider just needs to have a process in place for ensuring services is delivered-basically the time sheet submitted and reviewed would suffice. Time sheets are mostly turned in weekly or every/other week. Could this section be re-worded to more accurately reflect the expectation? Or, has the expectation changed recently? *O4A*	Please see ODA's response to the previous comment.
15	ORC §121.36 The provider must have a mechanism to verify: This process can be cumbersome for administrative staff. EVV would help. *Home Care by Black Stone*	As previously stated, in the proposed new rule, ODA requires provides to comply with ORC §121.36. Providers would be required to comply with the statute even if ODA did not mention it in the rule. Only enacted legislation could change the requirements of that section.

During ODA's online public-comment period, which ran from November 8 to 19, 2017, ODA received comments from 4 persons. ODA lists those comments, and ODA's responses, in the table below.

	COMMENTS	ODA'S RESPONSES
1	PCA QUALIFICATIONS I find the wording ODH lists the person as "active" in its nurse aide registry confusing. I interpret someone can be 'active' meaning they can show up under the nurse aide registry but have an expired license. That would show proof that they had the training. Or are you stating that they cannot have an unexpired license? *Personal-Touch Home Care*	The Ohio Dept. of Health (ODH) recently changed the way the Nurse Aide Registry describes the status of persons listed in the directory. Accordingly, ODA will now update its terminology to to match ODH's terminology. If a person's registry status is "in good standing," the person qualifies to be a PCA by means of successfully completed the state-tested nurse aide training, the person's registry status is "in good standing" in the registry. If a person's registry status is "not in good standing," the registry indicates the person committed abuse, neglect, or misappropriation. OAC 173-9-03 prohibits agencies from hiring such a person into a paid direct-care position serving individuals in an ODA-administered program. If a person's registry status is "expired," the person is not eligible to be a Medicare-certified home health aide. The personal care rule wouldn't allow a person with this registry status to be a PCA unless the person qualified by one of the other means.
2	PCA QUALIFICATIONS ODA changed section (C)(3)(a)(ii) by stating: "The current rule cites 42 CFR Part 484 as the federal requirements for Medicare-certified home health aide TCEPs. Part 484 consists of 41 sections—only 2 of them regulate TCEPs. Therefore, in the new rule, ODA proposes to cite only §§ 484.4 and 484.36. §484.4 indicates more than one program can meet the standards of §484.36, so ODA's proposed new rule says "A…program," instead of "the…program." This change will increase the cost to home health agencies to provide a training and competency evaluation program, which means a 75 hour course with 16 hours laboratory time included and the competency testing. 42 C.F.R. 484.4 and 484.36 also states "or a competency evaluation program," which means the person must pass a skills demonstration (competency test) and a written test to comply with this choice. The competency evaluation program is for individuals that have passed training/competency evaluation in the past, or may have experience providing care as an STNA or a nursing assistant in a hospital. OCHCH's recommendation for section (C)(3)(a)(ii) is to add "or a competency evaluation program" and delete, "and meets all additional requirements for home health aides in 42 C.F.R. 484.4." This recommendation follows the current Medicare Certified Home Health Agency CoPs. *Ohio Council for Home Care and Hospice*	In the version of the rule ODA intends to file with JCARR, ODA will address the change in federal standards by specifically addressing the applicable federal rules without repeating contested language, as follows: Medicare: The person met the qualifications to be a medicare-certified home health aide according to one of the following sets of standards: The standards in 42 C.F.R. 484.4 and 484.36, if the person met those standards on or before January 12, 2018. The standards in 42 C.F.R. 484.80 and 484.115, if the person met those standards on or after January 13, 2018. Additionally, ODA does not require any person to qualify to be a PCA by means of successfully completing Medicare's training and competency evaluation for home health aides. It is only 1 way to qualify. Other potentially less-expensive programs may only require 60 hours of training. However, if a person successfully completed the Medicare training and competency evaluation, and meets any other requirements in 42 CFR 484.4 (or 484.80) they would also meet the initial qualifications to be a PCA under this rule.

	COMMENTS	ODA'S RESPONSES
3	PCA QUALIFICATIONS Section (C)(3)(a)(ii) - Medicare: The person successfully completed a home health aide training and a competency evaluation program, or a competency evaluation program meeting the standards in 42 C.F.R. 484.4 and 484.36. and meets all additional requirements for home health aides in 42 C.F.R. 484.4. Since the Ohio Departments of Medicaid and Aging have been working together to make their rules similar for like services, the recommended change would also align with the following draft ODM rule that refers to the same CFR section: DRAFT 5160-44-XX-xx Nursing facility-based level of care home and community-based services programs: personal care services. (E) Provider requirements. (1) Personal care shall be delivered by one of the following; (a) An employee or contractor of a Medicare-certified or otherwise-accredited home health agency approved by ODM. For the purposes of this rule, medicare-certified home health agencies and otherwise accredited agencies shall ensure they and the personal care providers they employ or contract with, are in compliance with 42 CFR 484.4 (October 1, 2017). (b) An employee of a long-term care agency provider certified by the Ohio department of aging (ODA) to furnish personal care services under Chapter 173-39 of the Administrative Code…. FYI - The new Medicare Certified Home Health Agency CoPs go into effect on January 13, 2018 and the new home health aide standards would be 42 CFR 484.115 and 484.80. If the ODA rule goes into effect on or after Jan. 13, 2018 the new personal care rule should be amended to include the Jan. 13, 2018 updated reference. *Ohio Council for Home Care and Hospice*	At this time, the changes ODA is proposing to this rule are to update it as state law requires each agency to do for each rule no less often than once every 5 years. If upcoming projects between ODA and ODM involve standardizing the ways one may qualify to provide personal care, we'll consider implementing your comment at that time. Thank you for reminding ODA of the forthcoming renumbering of the federal rules. ODA intends to file this rule with JCARR by referencing the new federal rules.
4	SUPERVISOR VISITS After reviewing the proposed changes to rules for personal care, my only comment is the frequency of the supervisory visits. It seems to me that even 62 days between visits is frequent enough, so decreasing the time between visits appears redundant to me. *United Senior Services*	Agency providers who ensure individuals receive PCA supervisor visits at least every other calendar month—regardless of the number of days in the month—are likely to find 60-day periods easier to follow. Agency providers who wait to provide supervisor visits on the last-possible day of each period (i.e., the 62nd day) to ensure they provide the fewest-possible visits for each individual's lifetimes are also not likely to see a need to provide additional supervisory visits over the long haul. (See ODA's response to question 14c for more information.)
5	RATES OF PAYMENT Regarding Rule 173-39-02.11 Personal Care Services, something needs to be done regarding the unit rates as it is creating an aide shortage in Ohio. The rate of $4.49 for 15 minutes is $17.96 per hour. How much of that does the home health aide get? Do they get mileage and health care benefits. We all know they make next to nothing and agencies make cuts on the back of the aides, which in the long run hurts the seniors. It also creates a high turnover of aides, less quality care, more likelihood of stealing, and last but not least, a shortage of aides. I have had case managers in my department tell me they have	ODA's rule establishes the requirements to become an ODA-certified provider of personal care. As your comment acknowledges, the Ohio Dept. of Medicaid (ODM) establishes the maximum-possible rate. ODM does so in appendix A to rule 5160-1-06.1. We recommend sharing your comment with ODM the next time ODM embarks on a public-comment period for 5160-1-06.1

	COMMENTS	ODA'S RESPONSES
	to call sometime up to 10 providers to find personal care services for their members due to the shortage of aides, and that is in Lucas County. It is worse in the rural areas where there is a shortage of providers. Ottawa County, one of the most densely populated by senior in the state of Ohio has very few providers- this is only going to get worse with the onslaught of boomers. I believe we need to look at creative solutions like Head Start did with their nursery school programs. They raised the standards, required education, and thus improved the education for preschoolers which is preventative in nature. If we did the same in aging, it could be preventative in nature as well for senior safety, less ER visits, and less costly in the long run, as if there are no aides and seniors meet nursing home level of care, they will end up in a nursing facility which we know is less desirable AND more expensive. I would like to know how ODM/Medicaid formulates these unit rates. As one who has done procurement of contracts for over 15 years, it is impossible to come up with an accurate unit rate without a budget. Why does ODM not require providers to write a bid/proposal with a budget like the Older American's Act side of the house? You could have more quality providers, more realistic unit rates, and higher standards. You would do much better by screening through a bid process and have less providers of higher quality and more line worker/aides with higher wages and benefits and mileage, and higher unit rate and save on administrative costs and monitoring. A lot of these aides have such beat up old cars, they can hardly make it to work. This hurts all of us. You too, if you are lucky enough to live that long, will have one of these aides assisting you one day in your home or facility. As they say, create the system for yourself. So in summary: • Raise educational standards for home health aides • Require a living wage in the rule (see ordinance/formula used in Toledo below) • Require mileage reimbursement in accord with IRS guidelines • Require health care benefits • Cap the administrative cost to providers of the unit rate of 10% • Procure Providers on the Medicaid side of the house; get a bid with proposal and budget You can see from the statistics below that home health aides are living at or just above the poverty level, and below living wage and qualify for Medicaid: Home Health Aide Salaries in Ohio | Indeed.com https://www.indeed.com › Salaries › Home Health Aide 4 days ago - Average Home Health Aide salary: $9.97 per hour Equals $20,737.60 annual salary. 2017 Poverty Guidelines for the 48 Contiguous States and th Persons in family/household — Poverty guideline 1 — $12,060	

	COMMENTS	ODA'S RESPONSES
	2 16,240	$22,411
	3 20,420	$28,180
	4 24,600	$33,948
	5 28,780	$39,716
	Living Wage Toledo, Ohio On June 15, 2000, Toledo City Council passed the "Living Wage" Ordinance (ORD. #577-00) which requires that the City of Toledo, and certain employers doing business with the City, to pay employees working on City-funded contracts at least 110% above the Federal Poverty Level (for a family of four (4)) with a minimum level of health insurance or 130% above the Federal Poverty Level when health insurance is not made available. These rates are adjusted annually according to the updated Federal Poverty Level in the Federal Register. Based upon the current guidelines, the 2017 living wage rate is $13.01 per hour (annual salary $27,060.80) with a minimum level of health insurance *(not more than 15% of the employees wages)* and $15.38 per hour (annual salary $31,990) when health insurance is not provided. Living Wage Calculation for Cuyahoga County, Ohio Hourly Wages 1 Adult 1 Adult 1 child Living Wage $9.92 $21.34 Poverty Wage $5.00 $7.00 Minimum Wage $8.10 $8.10 Let's get creative and tackle this problem now before it becomes a crisis in the state of Ohio. We can do better! *Area Office on Aging of Northwest Ohio, Inc.*	

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 obtained data on the volume of providers and the amounts providers charge the PASSPORT Program from its databases. Find them in ODA's response to #14 of this BIA. ODA also determined the likelihood of adverse impact on changing the maximum length of time allowed to elapse without a PCA supervisor visit from 62-60 days with CDC data.[8]

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 amendments bring clarity to the rules.

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?

ORC §173.391 only authorizes ODA (*i.e.*, not any other state agency) to develop requirements for ODA-certified providers of goods and services to individuals 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 amended rule takes effect, ODA will post it on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rule.

Through its regular monitoring activities, ODA and its designees will monitor providers for compliance. OAC 173-39-02 requires all providers to allow ODA (and its designees) to monitor.

[8] U.S. DEPT. OF HEALTH & HUMAN SERVICES: CENTERS FOR DISEASE CONTROL & PREVENTION: NATIONAL CENTER FOR HEALTH STATISTICS, *Characteristics and Use of Home Health Care by men and Women Aged 65 and Over, 2013-2014* (Apr. 12, 2012), National Health Statistics Reports, No. 52, p. 3, figure 3.

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;

As indicated in the table below, in calendar year 2016, ODA had 839 certified providers of personal care.

Calendar Year 2016	
Personal Care	# of Certified Providers
Agency Providers	767
Participant-Directed Providers	72
Total	839

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

This rule requires providers to do the following:

- Both Provider Types: Be available (i.e., maintain staffing at adequate levels) to provide personal care to the individuals it agrees to serve.
- Have adequate training:
  - Agency Providers: Train persons (or hire trained persons) to successfully qualify as PCAs in 1 of the 6 ways ODA allows for a person to qualify.
  - Participant-Directed Providers: Be trained in 1 of the 3 ways a person can qualify to be a participant-directed personal care provider.
- Have further training:
  - Agency Providers: Give PCAs orientation, additional training, 8 hours of annual continuing education, and employee policies.
  - Participant-Directed Providers: Obtain additional training and 12 hours of annual continuing education.
- Only Agency Providers: Qualified PCA supervisors, trainers, and testers: Must be a RN or an LPN under the direction of an RN.
- Only Agency Providers: Maintain PCA supervisor staffing at adequate levels.
- Only Agency Providers: Conduct PCA supervisor visits to each individual. ODA proposes 2 substantive changes to these requirements:
  - ODA proposes requiring PCA supervisor visits every 60 days instead of every 62 days.
  - ODA proposes requiring providers to document their initial PCA supervisor visits. (The current rule only requires documenting subsequent visits, which is an oversight. 173-39-02 requires documenting everything. ODA proposes to make this obvious in the proposed new rule.)

- Only Participant-Directed Providers: Use a financial management service, which is paid for by ODA.
- Both Provider Types: Obtain (and retain) verification that each personal care visit was conducted.

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.

The amount ODA pays providers for personal care is an all-inclusive rate. It's intended to cover the daily costs incurred in service provision plus costs related to the employees such as orientation and training.

Providers set the prices they bill to the PASSPORT Program, so long as those prices do not exceed the maximum allowed per unit. In the appendix to OAC 5160-1-06.1, ODM establishes the maximum-possible payment of Medicaid funds for each service offered in the PASSPORT Program. The table below compares the average price billed to the program to the maximum allowed.

Personal Care	Calendar Year 2016			
	Unit Duration	Units Paid	*Average Billed Per Unit*	*Maximum ODM Allows Per Unit*
Agency Providers	15 minutes	3,408,988	$4.04	$4.49
Participant-Directed Providers	15 minutes	4,986	$3.13	$3.13

For personal care provided by agency providers, the appendix sets the maximum-possible payment at $4.49 per unit (*i.e.*, $17.96 per hour). On average, the amount agency providers billed to the PASSPORT Program in 2016 was $4.04 per unit (*i.e.,* $17.60 per hour), which is 90% of the maximum-possible rate per unit.

For personal care provided by participant-directed providers, the appendix sets the rate at $3.13 per unit ($12.52 per hour). On average, the amount participant-directed providers billed to the PASSPORT Program in 2016 was $3.13 per unit, which is 100% of the maximum-possible rate per unit.

As previously mentioned, ODA proposes requiring PCA supervisor visits every 60 days instead of every 62 days. This is the only substantive change between ODA's proposed new rule and the current rule. Providers may or may not experience a new adverse impact, as follows:

- Agency providers who ensure individuals receive PCA supervisor visits at least every other calendar month—regardless of the number of days in the month—are likely to find no increased adverse impact by the 60-day so long as the provider schedules the supervisory visits no more than 60 days apart during the 2 62-day periods (i.e., December -January and July-August).
- Agency providers who provide individuals with PCA supervisor visits more often than every 60 days would find no increased adverse impact by the 60-day period.
- Agency providers who wait to provide supervisor visits on the last-possible day of each period (i.e., the 62nd day) to ensure they provide the fewest-possible visits for each individual's lifetimes are also not likely to see a new adverse impact. At most, such providers would only need to provide an additional PCA supervisor visit every 5 years for an individual who continuously receives personal care for 5 years. Because only 14% of men and 20% of women receive "home health" for more than 1 year,[9] it seems unlikely a large percentage of individuals would continuously receive personal care for more than 5 years.

[9] *Ibid*.

- The individual is the employer of record for participant-directed provides and is both the "supervisor[10]" and the recipient of the personal care. Supervisory visits aren't 62 days apart because the individual also performs that function, which makes every visit a supervisory visit. There is, therefore, no adverse impact to participant-directed providers caused by replacing the 62-day period with a 60-day period.

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

Because agency providers on average bill less than the maximum-possible rate, it appears the adverse impacts of this rule are being covered by the amount providers are currently billing the PASSPORT Program and is not adding any new requirements to the rule which would increase the adverse impact other than to document the initial PCA supervisor visit and to conduct subsequent visits no less often than ever 60 days (instead of every 62 days). If the cost of doing business increases, providers may amend their provider agreements with ODA's designees to charge higher rates, so long as the rates do not exceed ODM's maximum-possible rates.

Providers voluntarily apply for ODA certification. Providers are only required to meet certification requirements in this rule if they want paid by a program that requires ODA certification, such as the PASSPORT Program. Nationally, only 9.2% of "home health" providers receive payments from a Medicaid-funded program.[11] Thus, many providers of personal care are being paid by third-party insurers, private pay, or other government programs not requiring ODA certification.

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. ODA does not discriminate between providers based upon the size of their business or organization. Providers regulated by these rules are typically small businesses according to ORC §119.14.

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 complies with the requirement in §119.14 to exempt small businesses from penalties for first-time paperwork violations if the business timely corrects the violation, but not if the violation is ineligible for such an exemption according to §119.14(C).

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

ODA and its designees are available to help providers of all sizes with their questions. Any person may contact Tom Simmons, ODA's policy development manager, with questions about the rules.

Additionally, ODA maintains an online rules library to help providers find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

[10] (D)(4) explicitly identifies the individual as "the common-law employer" of the participant-directed provider.

[11] U.S. DEPT. OF HEALTH & HUMAN SERVICES: CENTERS FOR DISEASE CONTROL & PREVENTION: NATIONAL CENTER FOR HEALTH STATISTICS, *Long-Term Care Providers and Services Users in the United States: Data From the National Study of Long-Term Care Providers, 2013-2014* (Feb., 2016), Vital Health Stats, Series 3, No. 38, p. 39.

TO BE RESCINDED

173-39-02.11 **Personal care service.**

(A) Personal care is a service designed to enable a consumer to achieve optimal functioning with ADLs and IADLs, and includes personal care services and homemaking tasks appropriate to a consumer's needs. Personal care services must be provided in the consumer's place of residence.

Personal care activities may include, but are not limited to:

(1) Assisting the consumer with managing the household, handling personal affairs, and providing assistance with self-administration of medications, as defined in rule 173-39-01 of the Administrative Code;

(2) Assisting the consumer with eating, bathing, dressing, personal hygiene, grooming, and other activities of daily living and instrumental activities of daily living described in rule 5101:3-3-08 of the Administrative Code;

(3) The preparation of the consumer's meals;

This isn't itemized in the new rule. Preparing meals is a homemaker activity and homemaker activities are included in personal care activities.

(4) Housekeeping chores, as defined in rule 173-39-02.8 of the Administrative Code, when they are specified in the consumer's service plan and are incidental to the services furnished, or are essential to the health and welfare of the individual, rather than the individual's family; and,

(5) The provision of respite services to the consumer's caregiver.

(B) Eligible providers of personal care services are ODA-certified long-term care agency providers and ODA-certified consumer-directed personal care providers.

(C) Requirements for an agency provider in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

General requirement to retain records found in 173-39-02.

(1) A certified provider of personal care services must maintain evidence that it:

(a) Has the capacity to deliver services seven days a week;

In new rule, combined with back-up plan requirements in (C)(2).

(b) Has a system in place to ensure that the provider nurse supervisor is accessible to respond to emergencies during those times when the provider's employees are scheduled to work;

In new rule, moved to (C)(4)(b).

(c) Maintains a back-up plan for service delivery in the event of a staff person's absence;

In new rule, combined with availability requirements in (C)(2).

(d) Maintains a consumer record documenting each episode of service delivery. The record must include the date of service delivery, a description of the service tasks performed, the name of the personal care aide (PCA) providing services, the PCA's arrival and departure time, and the PCA's written or electronic signature to verify the accuracy of the record. A provider that does not utilize an electronic verification system to document services and keep records must also obtain the consumer's signature for each episode of service.

In new rule, moved to (C)(6)(b) and (C)(6)(c).

This does not appear in the new rule. Individuals and case managers have a right to view reports on the individual even if not mentioned in this rule.

(e) Offers to provide consumers and case managers with monthly reports of services delivered that include the date of service delivery, the service tasks performed, the name of the personal care aide (PCA) providing services, the PCA's arrival and departure time, if the provider has an electronic verification system.

In new rule, moved to (C)(3)(b).

(f) Requires all employees who will have direct, face-to-face contact with consumers to complete an orientation and training prior to working with the consumers that cover, but are not limited to:

(i) Expectations of employees;

(ii) The employee code of conduct;

(iii) An overview of personnel policies;

(iv) Incident reporting procedures;

(v) A description of the provider agency's organization and lines of communication; and,

(vi) Emergency procedures.

In new rule, moved to (C)(5).

(g) Has developed and complies with written policies and procedures, as applicable, that support the operation of the business and the provision of services. At a minimum, the policies and procedures must address:

(i) Reporting and documenting consumer incidents;

(ii) Obtaining a consumer's written permission to share information and/or release information to anyone and compliance with the

requirements described in rule 173-39-02 of the Administrative Code;

(iii) The content, handling, storage and retention of consumer records;

(iv) Personnel requirements including:

(a) Job descriptions for each position;

(b) The documentation of each employee's qualifications for the service(s) to be provided;

(c) Performance appraisals for all workers;

(d) The documentation of compliance with required staff orientation training; and,

(e) Compliance with the code of conduct described in rule 173-39-02 of the Administrative Code.

In new rule, verification of compliance with PCA requirements consolidated into (C)(3)(e).

(2) Certified providers of personal care must maintain evidence of compliance with the following personnel requirements:

In new rule, moved to (C)(3)(a).

(a) Each PCA must, at a minimum, meet at least one of the following requirements:

(i) Be listed on the Ohio department of health's nurse aide registry;

(ii) Successfully complete the medicare competency evaluation program for home health aides set forth in 42 C.F.R. Part 484., as a direct care health care worker without a twenty-four month lapse in employment as a home health aide or nurse aide;

(iii) Have at least one year employment experience as a supervised home health aide or nurse aide, and have successfully completed written testing and skills testing by return demonstration prior to initiation of service provision;

(iv) Successfully complete the COALA home health training program, or a certified vocational program in a health care field, and successfully complete written testing and skills testing by return demonstration prior to initiation of service provision; or,

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(v) Successfully complete sixty hours of training, including, but not limited to instruction on:

(a) Communication skills, including the ability to read, write and make brief and accurate oral or written reports;

(b) Observation, reporting and documentation of consumer status and services provided;

(c) Reading and recording temperature, pulse and respiration;

(d) Universal precautions for infection control procedures;

(e) Basic elements of body functioning and changes in body function that should be reported to a supervisor;

(f) The maintenance of a clean, safe and healthy environment, including but not limited to house cleaning and laundry, dusting furniture, sweeping, vacuuming, and washing floors; kitchen care (including dishes, appliances, and counters), bathroom care, emptying and cleaning bedside commodes and urinary catheter bags, changing bed linens, washing inside windows within reach from the floor, removing trash, and folding, ironing and putting away laundry;

(g) Recognition of emergencies, knowledge of emergency procedures, and basic home safety;

(h) The physical, emotional and developmental needs of consumers, including the need for privacy and respect for consumers and their property;

(i) Appropriate and safe techniques in personal hygiene and grooming that include: bed, tub, shower, and partial bath techniques; shampoo in sink, tub, or bed; nail and skin care; oral hygiene; toileting and elimination; safe transfer and ambulation; normal range of motion and positioning; and adequate nutrition and fluid intake; and

(j) Meal preparation and nutrition planning, including special diet preparation, grocery purchase, planning, and shopping, and errands for the sole purpose of picking up prescriptions.

(vi) The provider must document training and testing for PCA staff, including training site information, the date of training, the number of hours of training, a list of the instruction materials, a description of the subject areas covered, the qualifications of the trainer and tester, the signatures of the trainer and tester to verify the accuracy of the documentation, and all testing results.

In new rule, verification of compliance with PCA requirements consolidated into (C)(3)(e).

(b) Prior to the provision of services for a consumer, the provider must conduct written testing and skill testing by return demonstration for all PCA staff that are qualified as a PCA by meeting the requirements of paragraph (C)(2)(a)(v) of this rule, and tests must cover all subject areas listed under paragraph (C)(2)(a)(v) of this rule.

In new rule, verification of compliance with PCA requirements consolidated into (C)(3)(e).

(c) The provider must conduct additional training and skill testing by return demonstration for PCA staff expected to provide services not included in the training subjects listed in this rule.

In new rule, moved to (C)(3)(c).

(d) The provider must maintain evidence that each PCA has successfully completed eight hours of in-service continuing education, excluding agency and program specific orientation, every twelve months.

In new rule, moved to (C)(3)(d).

(e) The PCA supervisor trainer and tester may only be a RN or a LPN under the direction of a RN.

In new rule, moved to (C)(4)(a).

(3) The provider must maintain evidence of compliance with the following supervisory requirements:

In new rule, evidence of compliance with initial visit now part of (C)(4)(c)(i)

(a) Prior to consumer service initiation, the supervisor must complete and document a consumer home visit, which may occur at the initial PCA visit to the consumer, to define the expected activities of the PCA and prepare a written PCA activity plan;

In new rule, moved to (C)(4)(c)(i).

(b) After the consumer service initiation, the supervisor must conduct and document a visit to the consumer at least once every sixty-two days to evaluate compliance with the activity plan, consumer satisfaction, and PCA performance. The supervisor must discuss recommended modifications with the case manager and PCA. The PCA need not be present during this visit. The visit must be documented. The documentation must include the date of the visit, the name of the PCA supervisor, name of the consumer, and must include the signature of the consumer and the PCA supervisor or the electronic signature of the PCA supervisor;

In new rule, moved to (C)(4)(c)(ii).

(c) The provider must have a mechanism to verify: In new rule, moved to (C)(6)(a).

(i) Whether the PCA is present at the location where the services are to be provided and at the time the services are to be provided;

(ii) At the end of each working day, whether the provider's employees have provided the services at the proper location and time;

(iii) A protocol to be followed in scheduling a substitute employee when the monitoring system identifies that an employee has failed to provide home care services at the proper location and time, including standards for determining the length of time that may elapse without jeopardizing the health and safety of the consumer;

(iv) Procedures for maintaining records of the information obtained through the monitoring system;

(v) Procedures for compiling annual reports of the information obtained through the monitoring system, including statistics on the rate at which home care services were provided at the proper location and time; and,

(vi) Procedures for conducting random checks of the accuracy of the monitoring system. For purposes of conducting these checks, a random check is considered to be a check of not more than five per cent of the home care visits each PCA makes to different consumers.

(D) Requirements for a consumer-directed personal care provider in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) In general: In new rule, the requirement to comply with 173-39-02 moved to (D)(1).

In new rule, moved to (D)(2). (a) Availability: The provider shall provide the service as agreed upon with the consumer and as authorized in the consumer's service plan.

In new rule, moved to (D)(3). (b) Activity plan: The consumer shall develop his or her own activity plan with the provider. The consumer and the provider shall date and sign a copy of the plan. The provider shall retain a copy of the plan.

In new rule, moved to (D)(4). (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 personal care provider that he or she employs.

In new rule, moved to (D)(5).

(3) Provider qualifications:

(a) Initial qualifications: A provider shall only begin to furnish the personal care service if the provider meets the following criteria and retains records to show that he or she meets the following criteria:

(i) The provider shall meet at least one of the following qualifications:

(a) The Ohio department of health lists the provider as active on its state tested nurse aide registry;

(b) The provider has successfully completed an ODA-approved home health aide training program; or,

(c) The provider has successfully completed an apprenticeship program in home health, health, or a related subject approved by the United States department of labor.

(ii) The provider has successfully completed any additional training that the consumer or ODA's designee considers necessary to meet the consumer's needs.

(iii) The provider has successfully completed any training that ODA (or its designee) or ODJFS mandates.

(iv) The provider has successfully demonstrated his or her competence or mastery of a task in a specific area in which the consumer may require the provider to demonstrate the competence or mastery.

(b) Continuing qualifications: The provider shall only continue to provide the personal care service if he or she meets the following criteria:

(i) The provider meets the criteria under paragraph (D)(3)(a) of this rule. If the provider no longer meets this criteria, the provider shall no longer provide the personal care service.

(ii) The provider has successfully completed at least twelve hours of in-service training during the previous twelve months on a topic related to the consumer's activity plan.

In new rule, moved to (D)(6).

(4) Service-verification:

(a) 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, a description of the interventions the provider furnished, 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.

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

(E) Units and rates:

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

(2) In accordance with rule 5101:3-31-07 of the Administrative Code, if the same provider furnishes personal care services during the same visit to more than one but fewer than four PASSPORT consumers in the same household, as identified in the consumers' service plans, the provider's reimbursement rate for services provided to one person in the household shall be one hundred per cent of the per-unit rate in the provider's contract with ODA's designee and seventy-five per cent of the per-unit rate for each subsequent PASSPORT consumer in the household receiving services during the visit. As used in this paragraph, "in the same household" does not refer to a PASSPORT consumer who resides alone in an apartment building where another consumer may reside alone in a separate apartment.

(3) The maximum rates allowable for units of the service are established in appendix A to rule 5101:3-1-06.1 of the Administrative Code.

Online Public-Comment Period
Novemer 8, 2017 to November 19, 2017

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.391, 173.52, 173.522.
Rule Amplifies:	173.39, 173.391, 173.52, 173.522; 42 CFR 441.352.
Prior Effective Dates:	04/16/2006, 03/17/2011, 09/29/2011

173-39-02.11 **ODA provider certification: personal care.**

(A) Definitions for this rule:

(1) "Personal care" means hands-on assistance with ADLs and IADLs (when incidental to providing ADLs) in the individual's home and community. Personal care activities include the following:

(a) Assisting the individual with managing the home, handling personal affairs, and providing assistance with self-administration of medications, as defined in rule 173-39-01 of the Administrative Code.

(b) Assisting the individual with ADLs and IADLs.

(c) Homemaker activities listed in rule 173-39-02.8 of the Administrative Code when those activities are specified in the individual's service plan and are incidental to the activities in paragraph (A)(1)(a) and (A)(1)(b) of this rule, or are essential to the health and welfare of the individual, rather than the individual's family.

(d) Providing respite services to the individual's caregiver.

(2) "Competency evaluation" includes both written testing and skills testing by return demonstration.

(3) "PCA" means "personal care aide."

(B) Qualifying provider types: Eligible providers of personal care are ODA-certified agency providers and ODA-certified participant-directed personal care providers.

(C) Requirements for ODA-certified agency providers of personal care:

(1) General requirements: The provider shall comply with the requirements for every ODA-certified agency provider in rule 173-39-02 of the Administrative Code.

(2) Availability: The provider shall maintain staffing at adequate levels to provide personal care seven days a week, including possessing a back-up plan for providing personal care when the provider has no PCA or PCA supervisor available.

(3) PCA requirements:

In response to a comment, ODA revised the STNA language. See paragraphs (C)(3)(a)(i) and (C)(3)(e)(ii) in the version filed with JCARR.

In response to a comment, ODA revised the Medicare language. See paragraph (C)(3)(a)(ii) in the version filed with JCARR.

(a) Initial qualifications: The provider shall only allow a person to serve as a PCA if the person meets at least one of the following qualifications:

(i) STNA: The person successfully completed an ODH-approved nurse aide training and competency evaluation program under section 3721.31 of the Revised Code, which is verified by checking to see if ODH lists the person as "active" in its nurse aide registry available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx.

(ii) Medicare: The person successfully completed a home health aide training and a competency evaluation program meeting the standards in 42 C.F.R. 484.4 and 484.36 and meets all additional requirements for home health aides in 42 C.F.R. 484.4.

(iii) Previous experience: The person has at least one year of supervised employment experience as a home health aide or nurse aide, and has successfully completed competency evaluation.

(iv) Vocational programs: The person successfully completed the COALA home health training program or a certified vocational training and competency evaluation program in a health care field.

(v) Other programs: The person successfully completed a training and competency evaluation program with the following characteristics:

(a) The training lasted at least sixty hours.

(b) All the following subjects were included in the program's training and its competency evaluation:

(i) Communication skills, including the ability to read, write, and make brief and accurate reports (oral, written, or electronic).

(ii) Observation, reporting, and retaining records of an individual's status and activities provided to the individual.

(iii) Reading and recording an individual's temperature, pulse, and respiration.

(iv) Basic infection control.

(v) Basic elements of body functioning and changes in body function that should be reported to a PCA supervisor.

(vi) Maintaining a clean, safe, and healthy environment, including house cleaning and laundry, dusting furniture, sweeping, vacuuming, and washing floors; kitchen care (including dishes, appliances, and counters), bathroom care, emptying and cleaning beside commodes and urinary catheter bags, changing bed linens, washing inside window within reach from the floor, removing trash, and folding, ironing, and putting away laundry.

(vii) Recognition of emergencies, knowledge of emergency procedures, and basic home safety.

(viii) The physical, emotional, and developmental needs of individuals, including privacy and respect for personal property.

(ix) Appropriate and safe techniques in personal hygiene and grooming including bed, tub, shower, and partial bath techniques; shampoo in sink, tub, or bed; nail and skin care; oral hygiene; toileting and elimination; safe transfer and ambulation; normal range of motion and positioning; and adequate nutrition and fluid intake.

(x) Meal preparation and nutrition planning, including special diet preparation; grocery purchase, planning, and shopping; and errands such as picking up prescriptions.

(b) Orientation: Before allowing a PCA to have direct, face-to-face contact with an individual, the provider shall provide the PCA or other employee with orientation training, that, at a minimum, addresses the following topics:

(i) The provider's expectations of employees.

(ii) The provider's ethical standards, as required under rule 173-39-02 of the Administrative Code.

(iii) An overview of the provider's personnel policies.

(iv) The organization and lines of communication of the provider's agency.

(v) Incident-reporting procedures.

(vi) Emergency procedures.

(c) Additional training: The provider shall conduct additional training and competency evaluation for PCAs who are expected to perform activities for which they did not receive training or undergo competency evaluation under paragraph (C)(3)(a) of this rule.

(d) Continuing education: The provider shall ensure each PCA successfully completes eight hours of in-service continuing education every twelve months. Agency- and program-specific orientation shall not count toward the eight hours.

(e) Verification of compliance with PCA requirements: The provider shall retain copies of certificates of completion earned by each PCA after the PCA meets requirements under paragraph (C)(3) of this rule for successfully completing any training and competency evaluation program, orientation, additional training, and continuing education under paragraph (C)(3) of this rule. Additionally, the provider shall also record the following information for each PCA, and retain it, if it does not appear on the PCA's certificate of completion (or if the PCA did not receive a certificate of completion): training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each trainer and of each tester. If a PCA meets the qualifications under paragraph (C)(3)(a) of this rule only by the previous employment experience described in paragraph (C)(3)(a)(iii) of this rule, the provider shall also retain records to verify the PCA's name, the former employer's name, the former PCA supervisor's name, the date the PCA began working for the former employer, the date the PCA stopped working for the former employer, and the name, title, and contact information of an official from the former employer.

(4) PCA supervisors, trainers, and testers:

(a) Qualifications: The provider shall only allow a RN (or a LPN under the direction of a RN) to be a PCA supervisor, trainer, or tester. The provider shall retain records to show each PCA supervisor maintains a current, valid license to practice as an RN (or a LPN under the direction of a RN).

(b) PCA supervisor availability: The provider shall ensure that a PCA supervisor is available to respond to emergencies when the PCAs are scheduled to work.

(c) PCA supervisor visits:

(i) Before allowing a PCA to begin providing personal care to an individual, a PCA supervisor shall complete and document a visit to the individual, which may occur at the initial PCA visit to the individual, to define the expected activities of the PCA and prepare a written activity plan. The PCA supervisor shall document this visit, including the date of the visit, the PCA supervisor's name, the individual's name, the individual's signature, and the PCA supervisor's signature.

(ii) After the PCA's initial visit to an individual, the PCA supervisor shall conduct and document a visit to the individual at least once every sixty days to evaluate compliance with the activity plan, the individual's satisfaction, and the PCA's performance. The PCA supervisor shall discuss recommended modifications to the activity plan with the case manager and PCA. The PCA does not need to be present during this visit. The PCA supervisor shall document these visits, including the date of the visit, the PCA supervisor's name, the individual's name, the individual's signature, and PCA supervisor's signature.

(5) Provider policies: The provider shall develop, implement, and maintain written policies on all the following topics:

(a) Job descriptions for each position.

(b) Documentation of how each PCA meets the qualifications in paragraph (C)(3) of this rule.

(c) Performance appraisals for each staff position.

(d) Implementing the written procedure for documenting individual's incidents required under paragraph (B)(2)(a) of rule 173-39-02 of the Administrative Code.

(e) Obtaining an individual's written permission to share or release an individual's confidential information pursuant to the state and federal laws and regulations governing individual confidentiality laws listed in rule 173-39-02 of the Administrative Code.

(f) Retaining individuals' records in the designated, locked storage space required in rule 173-39-02 of the Administrative Code.

(6) Service verification:

(a) The provider shall comply with section 121.36 of the Revised Code.

(b) For each episode of personal care a PCA provides, the provider shall document and retain a record of the date of service delivery, a description of the activities provided, the PCA's name, the PCA's arrival and departure time, and the PCA's written or electronic signature to verify the accuracy of the record. A provider that does not use an electronic verification system shall also obtain the individual's signature for each episode of personal care.

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

(D) Every ODA-certified participant-directed provider of personal care shall comply with the following requirements:

(1) General requirements: The provider shall comply with the requirements for every ODA-certified participant-directed personal care provider in rule 173-39-02 of the Administrative Code.

(2) Availability: The provider shall provide personal care as agreed upon with the individual and as authorized in the individual's service plan.

(3) Activity plan: The individual shall develop his or her own activity plan with the provider. The individual and the provider shall date and sign a copy of the plan. The provider shall retain a copy of the plan.

(4) Oversight: The individual is the employer of record and is responsible for supervising the provider. As used in this paragraph, "employer of record" means the 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. ODA provides the support of a financial management service (FMS) to the individual to act as the agent of the common-law employer with the participant-directed personal care provider that he or she employs.

(5) Provider qualifications:

(a) Initial qualifications: A provider shall only begin to provide personal care if the provider meets the following requirements and retains records to show that he or she meets the following requirements:

(i) The provider shall meet at least one of the following qualifications:

(a) STNA: The provider successfully completed an ODH-approved nurse aide training and competency evaluation program under section 3721.31 of the Revised Code, which is verified by checking to see if ODH currently lists the provider as "active" in its nurse aide registry available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx.

(b) ODA-approved training program: The provider successfully completed an ODA-approved home health aide training and competency evaluation program.

(c) DOL-approved training: The provider successfully completed an apprenticeship program in home health, health, or a related subject approved by the United States department of labor.

(ii) The provider successfully completed any additional training the individual or ODA's designee considers necessary to meet the individual's needs.

(iii) The provider successfully completed any training that ODA (or its designee) or ODM mandates.

(iv) The provider successfully demonstrated his or her competence or mastery of an activity in a specific area in which the individual may require the provider to demonstrate the competence or mastery.

(b) Continuing qualifications: The provider shall only continue to provide personal care if he or she meets the following requirements:

(i) The provider meets the qualifications under paragraph (D)(5)(a) of this rule. If the provider no longer meets these qualifications, the provider shall no longer provide personal care.

(ii) The provider successfully completed at least twelve hours of in-service training during the previous twelve months on a subject related to the individual's activity plan.

(6) Service verification:

(a) The provider shall complete the time sheets the individual provides through the FMS, which shall include the date the provider provided personal care, a description of the activities the provider provided, the individual's name, the 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.

(b) The provider shall retain records required under this rule and provide access to those records for monitoring according to rule 173-39-02 of the Administrative Code.

(E) Units and rates:

(1) One unit of personal care equals fifteen minutes.

(2) Appendix A to rule 5160-1-06.1 establishes the maximum rate allowable for one unit of personal care.

(3) In accordance with rule 5160-31-07 of the Administrative Code, if the same provider provides personal care during the same visit to more than one but fewer than four PASSPORT individuals in the same home, as identified in the individuals' service plans, the provider's payment rate for personal care provided to one person in the home shall be one hundred per cent of the per-unit rate listed in the provider agreement and seventy-five per cent of the per-unit rate for each subsequent PASSPORT individual in the home receiving services during the visit. As used in this paragraph, "in the same home" does not refer to a PASSPORT individual who resides alone in an apartment building where another individual may reside alone in a separate apartment.

(F) Incorporation by reference: All references in this rule to 42 C.F.R. 484.4 and 484.36 are to the October, 2017 editions.

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