

## Business Impact Analysis

**Agency Name:** OHIO DEPARTMENT OF AGING

**Package Title:** ONE SET OF STANDARDS FOR THREE SERVICES

**Rule Numbers:** 173-39-02.3 (pest control), 173-39-02.5 (chores), 173-39-02.9 (minor home maintenance, modification, and repair), 173-39-02.15 (independent living assistance), 173-39-02.17 (community transition)

**Date:** March 7, 2019

**Rule Types:**

- ☒ **5-Year Review** All of the above
- ☒ **Rescinded** All of the above
- ☒ **New** All of the above, minus 173-39-02.3
- ☐ **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

The Ohio Department of Medicaid (ODM) proposes to incrementally adopt one chapter of rules ([Chapter 5160-44](#)) that will become the single set of service standards for providers serving individuals through all Medicaid waiver programs operated by the Ohio Department of Aging (ODA) and ODM. This is part of ODM's larger strategy to develop a uniform set of rules to benefit providers who serve individuals enrolled in multiple Medicaid waiver programs.

To this end, ODM proposes to adopt new service standards for the following three services: home maintenance and chores (5160-44-12), community integration (5160-44-14), and community transition (5160-44-26). In kind, ODA proposes for its rules on ODA-certified providers of those services to require compliance with ODM's service standards instead of continuing to state the standards in ODA's rules.

#### RULE-BY-RULE

173-39-02.3 Pest Control → Home Maintenance and Chores

The current rule, which ODA proposes to rescind, requires ODA-certified providers of pest control to comply with the following:

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- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of pest control (e.g., estimates, service verification), which ODA established in this rule.

ODA proposes for pest control to be reclassified as part of "home maintenance and chores" in 173-39-02.5; therefore, there is no reason for ODA to adopt a new version of 173-39-02.3 once pest control is part of "home maintenance and chores."

### **173-39-02.5 Chore Services → Home Maintenance and Chores**

The current rule, which ODA proposes to rescind, requires ODA-certified providers of chore services to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of chore services (e.g., estimates, service verification), which ODA established in this rule.

ODA proposes to reclassify "pest control" (from 173-39-02.3), "chore services," "home maintenance" (from 173-39-02.9), and "home home repair" (also from 173-39-02.9) as "home maintenance and chores" under a proposed new version of 173-39-02.5.

ODA's proposed new version of 173-39-02.5 will require ODA-certified providers of home maintenance and chores to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of home maintenance and chores (e.g., fixed-cost proposals, service verification), which ODM will establish in their proposed new 5160-44-12. For more information on ODM's proposed new rule, please review ODM's rule and its BIA.

### **173-39-02.9 Minor Home Maintenance, Modification, and Repair → (1) Home Maintenance and Chores and (2) Home Modification**

The current rule, which ODA proposes to rescind, requires ODA-certified providers of minor home maintenance, modification, and repair to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of home modification (e.g., fixed-cost proposals, permits), which ODM established in 5160-44-13.
- Specific requirements for ODA-certified providers of home maintenance and home repair (e.g., estimates, permits), which ODA established in this rule.

ODA proposes for to reclassify "home maintenance" and "home repair" as "home "home maintenance and chores" (in 173-39-02.5), leaving 173-39-02.9 to only regulate ODA-certified providers of home modification.

ODA's proposed new rule will require ODA-certified providers of home modification to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of home modification (e.g., fixed-cost proposals, permits), which ODM established in 5160-44-13.

### **173-39-02.15 Independent Living Assistance (ILA) → Community Integration**

The current rule, which ODA proposes to rescind, requires ODA-certified providers of ILA to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of ILA (e.g., service verification), which ODA established in this rule.

ODA proposes to reclassify "ILA" as "community integration" under a proposed new version of 173-39-02.15.

ODA's proposed new version of 173-39-02.15 will require ODA-certified providers of community integration to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of community integration (e.g., training plans, service verification), which ODM will establish in their proposed new 5160-44-14. For more information on ODM's proposed new rule, please review ODM's rule and its BIA.

### **173-39-02.17 Community Transition**

The current rule, which ODA proposes to rescind, requires ODA-certified providers of community transition services to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of community transition services (e.g., service verification), which ODA established in this rule.

ODA proposes to adopt a new version of 173-39-02.5, which will require ODA-certified providers of community transition to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of community transition (e.g., service verification), which ODM will establish in their proposed new 5160-44-26. For more information on ODM's proposed new rule, please review ODM's rule and its BIA.

## **2. Please list the Ohio statutes authorizing the Agency to adopt these regulations.**

R.C. §§ [173.01](#), [173.02](#), [173.391](#), [173.52](#), and [173.522](#). For 173-39-02.17, §§ [173.54](#) and [173.543](#) also apply.

## **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 for a Medicaid waiver 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 providers (i.e., adopted these rules) and that ODA monitors the providers to assure they comply with those requirements (i.e., comply with these rules).

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

The rules exist to comply with the state laws mentioned in ODA's response to #2, which require ODA to establish the standards for ODA-certified providers.

## **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)?**

These rules ensure necessary safeguards are in place to protect the health and safety of individuals receiving services from ODA-certified providers.

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

ODA and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from ODA-certified providers. The rules are judged as being successful when ODA and its designees find few violations from structural compliance reviews or investigations of alleged incidents.

### **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.*

Since May 2013, ODM has been convening its HCBS<sup>1</sup> Rules Workgroup. ODM invites approximately 900 stakeholders, which includes providers and provider associations, to participate in person or by conference call. In the workgroup's meetings, ODA and ODM solicit stakeholder input on rule proposals.

The rules specific to home maintenance and chores, community integration, and community transition were reviewed at the January 23, 2019 workgroup meeting. Aside from ODA and ODM, the following stakeholders participated:

- Kim King for Home Care Network.
- Lisa Bryant for CHI Health at Home.
- Andrea Gogel and Christy Greco for CareSource.
- Jean Thompson for Ohio Assisted Living Assn.
- Dr. Bashiel H. Smith and Antionette Korvah for Dreamers Home Health Care.
- Beth Foster and Kathy Royer for Ohio Council for Home Care and Hospice.
- Diane Kumarich for Addus Homecare.
- Debbie Jenkins for Ohio Health Care Assn.
- Chelsea Herdman for Area Agency on Aging, PSA2
- Kim Kelly.
- Robin Lahmers for Area Agency on Aging, Region 9.
- Maria Matzik for Access Center for Independent Living.
- Kathryn Shelley for Ability Center.
- Amy Smith for Life Safe Security.
- Katelyn Smith for Molina Health Care.
- Heidi Goodman for PurFoods (Mom's Meals).
- Amelia Tucciarone for SourcePoint.
- Debra Studer for Interim Health.

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

No stakeholder participating in the January 23, 2019 meeting expressed concern over this rule project. For more information, please review ODM's BIA for rules 5160-44-12, 5160-44-14, and 5160-44-26, which ODM entitled, "Home and community-based service waiver alignment: Phase 2." (Attached)

### **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.

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<sup>1</sup> "HCBS" means home and community-based services.

**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?**

R.C. §173.391 requires ODA to adopt rules to establish requirements for ODA-certified providers. Additionally, federal rules require ODA to establish adequate requirements for providers to assure the health and safety of individuals enrolled in ODA-administered Medicaid waiver programs.

**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 these rules.

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

Rules for ODA's and ODM's Medicaid waiver programs are promulgated by both agencies and implemented by both agencies, their designees, and providers, as appropriate. Interagency legal and legislative staff review both agencies' rules to ensure there is no duplication. The HCBS waiver alignment initiative will further ensure the rules on providers are not duplicative.

**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 proposed new rules take effect, ODA will post them 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.

**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;**

The tables below show the number of ODA-certified providers billing for services provided in 2018 in each of the two ODA-administered Medicaid-waiver programs.

PASSPORT PROGRAM	
2018	
SERVICE	# OF CERTIFIED PROVIDERS
Chores	39
Minor Home Maintenance, Modification, and Repair	166
Independent Living Assistance: In-Person	29
Independent Living Assistance: Travel	5
Independent Living Assistance: Phone	7
Community Transition	1

ASSISTED LIVING PROGRAM	
2018	
SERVICE	# OF CERTIFIED PROVIDERS

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

The adverse impact of ODA's proposed new rules is the requirement to comply with other rules. These rules will require ODA-certified providers to comply with the following:

- General requirements for ODA-certified providers (e.g., background checks, records retention), which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of home maintenance and chores (e.g., fixed-cost proposals, obtaining permits and inspections) which ODM will establish in their proposed new rule 5160-44-12.
- Specific requirements for ODA-certified providers of community integration (e.g., training plans, service verification), which ODM will establish in their proposed new rule 5160-44-14, and
- Specific requirements for ODA-certified providers of community transition (e.g., service verification), which ODM will establish in their proposed new rule 5160-44-26.

**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 services 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. The costs incurred as a result of these rules are likely calculated as part of a provider's operational budgets (the cost of doing business and clerical jobs, such as retaining records and updating policies).

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 appendices to 5160-1-06.1 and 5160-1-06.5,<sup>2</sup> ODM establishes the maximum-possible payment of Medicaid funds for each service offered in the PASSPORT and Assisted Living Programs. The table below compares the average price billed to the program to the maximum allowed.

2018				
SERVICE	UNIT DURATION	UNITS PAID	AVERAGE BILLED PER UNIT	MAXIMUM ODM ALLOWS PER UNIT
Pest Control	1 job	1,475	\$379.88	\$783.74
Chores	1 job	674	\$520.93	\$2,612.47
Minor Home Maintenance, Modification, and Repair	1 job	2,127	\$27.69	\$10,000
Independent Living Assistance	15-min. unit of in-person	4,731	\$2.67	\$5.22
	15-min. unit of travel attendance	2,217	\$2.20	\$5.22
	1 phone call	611	\$2.77	\$5.22
Community Transition (PASSPORT Program)	1 job	2	\$500.00	\$1,477.50 <sup>3</sup>

<sup>2</sup> See *Waiver Alignment Phase II: ODA-operated waivers* (attached) for information on ODM's proposed amendments to 5160-1-06.1 and 5160-1-06.5.

<sup>3</sup> ODM is simultaneously proposing to increase the maximum-allowable rate to \$2,000. See *Waiver Alignment Phase II: ODA-operated waivers* (attached).

Community Transition (Assisted Living Program)	1 job	240	\$690.83	\$1,477.60 <sup>4</sup>
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Because providers on average bill less than the maximum-possible rate, the adverse impacts of the current rules are being covered by the amount providers are currently being paid by the PASSPORT and Assisted Living Programs.

ODM is proposing to establish new rates for the services in the appendices to 5160-1-06.1 and 5160-1-06.5 which take into consideration the providers' certification requirements and cost of doing business. For more information on ODM's proposed new rules, please review ODM's BIA(s) for rules 5160-44-12, 5160-44-14, and 5160-44-26.

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

ODA is required to develop rules establishing requirements for ODA-certified providers and to ensure the health and safety of individuals enrolled in ODA-administered waiver programs.

Providers voluntarily apply for ODA certification. Certification is not required to engage in providing a service unless a provider wants paid for providing that service by a program, such as the PASSPORT Program or Assisted Living Program, for which R.C. §173.391 requires providers to be certified. Therefore, compliance with these regulations is only required if a provider voluntarily chooses to participate in an ODA-administered waiver program.

**Regulatory Flexibility**

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

Because the primary purpose of these rules is to ensure the health and safety of individuals enrolled in ODA-administered waiver programs, the rules treat all providers the same, regardless of their size.

**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 is concerned primarily about protecting the health and safety of individuals receiving services from ODA-certified providers through compliance with these rules. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

**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.

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<sup>4</sup> Ibid.

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TO BE RESCINDED

173-39-02.3                    **Pest control.**

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

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

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

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

(1) Cost estimate:

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

- (i) Each agency provider shall furnish the consumer with a verbal estimate
- (ii) Each non-agency provider shall furnish the consumer with a verbal estimate.

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

(2) Written price quote:

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

(i) Each agency provider shall furnish the consumer with a written price quote no later than seven days after the consumer initially requests the service.

(ii) Each non-agency provider shall furnish the consumer with a written price quote no later than seven days after the consumer initially requests the service, unless the consumer establishes an alternative time period for providing the written price quote.

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

(3) Safety:

(a) The provider shall retain, and furnish to the consumer and/or ODA's designee, upon request, a list of the chemical(s) or substance(s) used for each job order.

(b) The provider shall inform the consumer and ODA's designee of any specific health or safety risks expected during the job project, and assist the case manager to coordinate times and dates of service to insure minimal risk of hazard to the consumer as applicable to each job.

(c) The provider shall comply with any applicable local codes or ordinances in the performance of each job order.

(d) The provider shall furnish a warranty to ODA's designee that covers the workmanship and materials involved in the service provided.

(4) Provider qualifications:

(a) Type of provider: Only an agency that ODA certifies as an agency provider or a person that ODA certifies as a non-agency provider shall furnish this service.

(b) Licensure: The provider shall hold a valid license with the Ohio department of agriculture or Ohio department of natural resources to practice the type of pest control that it furnishes to consumers, if the type of pest control that the provider furnishes requires licensure.

(5) Service verification:

- (a) After the provider completes a job order, the provider shall retain a record of the:
  - (i) Consumer's name;
  - (ii) Date of service;
  - (iii) Service description, including a comparison between the job order and the completed job;
  - (iv) Provider's signature; and,
  - (v) Consumer's signature. The case manager shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.
- (b) The provider may use a technology-based system to collect or retain the records required under this rule.
- (c) The agency provider shall retain records required under this rule according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code and the non-agency provider shall retain records required under this rule according to paragraph (C)(5) of rule 173-39-02 of the Administrative Code.

(D) Units and rates:.

- (1) One unit of pest control is equal to one completed job order of pest control.
- (2) The maximum amount allowable for a unit is the provider's written price quote, so long as the price does not exceed the maximum amount allowable amount in paragraph (D)(3) of this rule.
- (3) The maximum amount allowable for a unit is established in appendix A to rule 5160-1-06.1 of the Administrative Code.

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TO BE RESCINDED

173-39-02.5                    **Chore service.**

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

- (1) Heavy household cleaning: washing walls and ceilings; washing the outside of windows, washing the inside of windows that are difficult to reach; removing, cleaning, and re-hanging curtains or drapery; and, shampooing carpets or furniture.
- (2) Simple household maintenance: repairing a water faucet; unclogging a drain; lighting and relighting a pilot light; and, replacing a furnace filter.
- (3) Disposal of garbage.

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

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

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

- (1) Cost estimate: Each provider shall furnish ODA's designee with a verbal estimate upon the the request of ODA's designee.
- (2) Written price quote: Each agency provider shall furnish ODA's designee with a written price quote no later than seven days after ODA's designee requests the service.
- (3) Safety:

- (a) The provider shall maintain a list of the chemicals or substances used for each job order. The provider shall furnish the list to ODA's designee upon request.
  - (b) The provider shall inform the consumer and ODA's designee or any specific health or safety risks expected during the job and coordinate times and dates of service to ensure minimal risk of hazard to the consumer.
  - (c) The provider shall comply with any applicable local codes or ordinances in the performance of each job order.
  - (d) The provider shall furnish a warranty to ODA's designee that covers the workmanship and materials involved in the service provided.
- (4) Provider qualifications: Only an agency that ODA certifies as an agency provider or a person that ODA certifies as a non-agency provider shall furnish this service.
- (5) Service verification:
- (a) For each service furnished, the provider shall retain a record of the:
    - (i) Consumer's name;
    - (ii) Date of service;
    - (iii) Service description, including a comparison between task in the job order and tasks provided;
    - (iv) Units of service;
    - (v) Name of each person in contact with the consumer;
    - (vi) Provider's signature; and,
    - (vii) Consumer's signature. The case manager shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.
  - (b) The provider may use a technology-based system to collect or retain the records required under this rule.
  - (c) The agency provider shall retain records required under this rule according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code and

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

(D) Unit and rates:

- (1) One unit of a chore service is one completed job order of a chore service.
- (2) The maximum amount allowable for a unit is the provider's written price quote, so long as the price does not exceed the maximum amount allowable amount in paragraph (D)(3) of this rule.
- (3) The maximum rate allowable for a job order of the service is listed in appendix A to rule 5160-1-06.1 of the Administrative Code.

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173-39-02.5

**ODA provider certification: home maintenance and chores.**

(A) "Home maintenance and chores" means the service defined in rule 5160-44-12 of the Administrative Code.

(B) Every ODA-certified provider of home maintenance and chores shall comply with the following requirements:

(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) Requirements specific to home maintenance and chores: The provider shall comply with the requirements in rule 5160-44-12 of the Administrative Code.

(3) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-12 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code.

(C) Units and rates:

(1) One unit of home maintenance and chores is one job.

(2) Appendix A to rule 5160-1-06.1 of the Administrative Code establishes the maximum-allowable rate per job.

(3) Rule 5160-31-07 of the Administrative Code requires the unit rate to be negotiated between the provider and ODA's designee. The negotiated rate shall include all administrative, labor, and material costs for a specific job. The provider shall not bill ODA's designee for any amount in excess of the negotiated rate, unless ODA's designee revises the negotiated rate in one of the following situations:

(a) ODA's designee revises the rate before the provider begins the job.

(b) ODA's designee revises the rate to coincide with authorizing the provider to address an unforeseen issue as part of the original job.

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TO BE RESCINDED

**173-39-02.9 ODA provider certification: minor home modification, maintenance, and repair.**

(A) Minor home modification:

- (1) "Minor home modification" has the same meaning as in rule 5160-44-13 of the Administrative Code.
- (2) Requirements for ODA-certified providers of a minor home modification:
  - (a) The provider shall comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code.
  - (b) The provider shall comply with the requirements in rule 5160-44-13 of the Administrative Code.
  - (c) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-13 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code.
- (3) Paragraph (E) of this rule establishes the units and rates for a minor home modification.

(B) Minor home maintenance:

- (1) "Minor home maintenance" means jobs maintaining an individual's home to assure the individual's health and safety in the home, and meet the individual's specified needs.
  - (a) Minor home maintenance includes inspecting and maintaining furnaces, water heaters, and water pumps; and replacing/installing electrical fuses.
  - (b) Minor home maintenance does not include the following jobs:
    - (i) Maintaining items in the home of general utility, and not of direct medical or remedial benefit to the individual.
    - (ii) Jobs that can be accomplished through existing informal or formal supports.
    - (iii) Jobs that are the legal or contractual responsibility of someone other than the individual.
- (2) ODA-certified providers of minor home maintenance shall comply with paragraph (D) of this rule.
- (3) Paragraph (E) of this rule establishes the units and rates for minor home maintenance.

(C) Minor home repair:

- (1) "Minor home repair" means jobs repairing an individual's home to assure the individual's health and safety in the home, and meet the individual's identified needs.
  - (a) Minor home repair includes plumbing and electrical repair (or replacement) of window screens or panes.
  - (b) Minor home repair does not include the following jobs:

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## **TO BE RESCINDED**

- (i) Repairing items in the home of general utility, and not of direct medical or remedial benefit to the individual.
- (ii) Jobs that can be accomplished through existing informal or formal supports.
- (iii) Jobs that are the legal or contractual responsibility of someone other than the individual.
- (2) ODA-certified providers of minor home repair shall comply with paragraph of this rule.
- (3) Paragraph (E) of this rule establishes the units and rates for minor home repair.
- (D) Requirements for ODA-certified providers of minor home maintenance and repair:
  - (1) General requirements:
    - (a) The provider shall comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code.
    - (b) If federal, state, or local laws regulate a job, the provider shall comply with those federal, state, or local laws when providing the job.
  - (2) Consent agreements: A provider shall not maintain or repair a home without first obtaining a written consent agreement from the homeowner, which may be the individual, the individual's family, or a landlord. In the agreement, the homeowner shall agree to the maintenance or repair and allow it to remain in place until after the individual vacates the home.
  - (3) Permits: Before beginning a job, the provider shall obtain all permits and pre-job inspections required by law, a homeowners' association, or both.
  - (4) Inspections: After completing a job, but before billing for the job, the provider shall obtain any post-job inspections and post-job inspection reports required by law, a homeowners' association, or both, to verify whether each completed job meets federal, state, and local laws or homeowners' association requirements.
  - (5) Health and safety: If health and/or safety risks to the individual are expected during the job, the provider shall inform the individual and ODA's designee of those risks and coordinate with the individual and ODA (or its designee) to provide the job on dates and times that minimize those risks.
  - (6) Warranties: The provider shall provide a warranty, lasting at least one year, and covering workmanship and materials consistent with generally-accepted industry standards for the job completed. The provider shall submit details of the warranty with the final invoice the provider submits to ODA or its designee. ODA and its designee shall not pay any invoice not accompanied by a warranty.
  - (7) Provider qualifications:
    - (a) Provider types: Only an ODA-certified agency or non-agency provider shall provide minor home maintenance or repair.
    - (b) Licensure: If federal, state, or local laws require the provider or the provider's staff to have a current,

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## **TO BE RESCINDED**

valid license, certificate, or other credentials before providing a particular job, the provider or its staff shall not provide the job until the provider or its staff complies with those laws.

- (8) Service verification: The provider shall obtain the individual's or caregiver's signature and date at the completion of the job to verify the provider completed the job authorized, left the individual's home in satisfactory condition, and repaired any damages incidental to the job.
- (9) Revising authorized jobs: If a provider is in the process of completing a job and identifies an unforeseen issue necessitating a revision to the job authorization or negotiated rate, prior authorization from ODA (or its designee) shall be obtained before completing the job.

### **(E) Units and rates:**

- (1) A unit of minor home modification, maintenance, or repair is one completed job.
- (2) Appendix A to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowable for one job of minor home modification, maintenance, or repair.
- (3) Rule 5160-31-07 of the Administrative Code requires the unit rate to be negotiated between the provider and ODA's designee. The negotiated rate shall include all materials and labor. The provider shall not bill ODA's designee for any amount in excess of the negotiated rate, unless ODA's designee revises the negotiated rate in one of the following situations:
  - (a) ODA's designee revises the rate before the provider begins the job.
  - (b) ODA's designee revises the rate to coincide with authorizing the provider to address an unforeseen issue as part of the original job, according to the process outlined in paragraph (D)(9) of this rule.

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173-39-02.9

**ODA provider certification: minor home modification.**

(A) "Minor home modification" has the same meaning as "home modifications" in rule 5160-44-13 of the Administrative Code.

(B) Requirements for ODA-certified providers of minor home maintenance and repair:

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

(2) Requirements specific to minor home modification: The provider shall comply with the requirements in rule 5160-44-13 of the Administrative Code.

(3) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-13 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code.

(C) Units and rates:

(1) A unit of minor home modification is one completed job.

(2) The rate per job is subject to the maximum-allowable rate established in Appendix A to rule 5160-1-06.1 of the Administrative Code and the limitations in paragraph (A) of rule 5160-44-13 of the Administrative Code.

(3) Rule 5160-31-07 of the Administrative Code requires the unit rate to be negotiated between the provider and ODA's designee. The negotiated rate shall include all administrative, labor, and material costs for a specific job. The provider shall not bill ODA's designee for any amount in excess of the negotiated rate, unless ODA's designee approves a revised rate.

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TO BE RESCINDED

173-39-02.15      **ODA provider certification: independent living assistance service.**

(A) Independent living assistance (ILA) means a service helping individuals manage their households, handle their personal affairs, self-administer medications, and retain their community living arrangements. There are three types of ILA: telephone support activities, in-person support activities, and travel attendant activities.

(1) Telephone support activities include one or both of the following:

- (a) Calling individuals according to a preset schedule to remind them to take prescribed and over-the-counter medications at specified times.
- (b) Calling individuals at times no other in-home services are being provided to confirm that individuals are functioning safely in the home environment.

(2) In-person support activities include one or more of the following when done for individuals:

- (a) Assisting with banking, including routine deposits and withdrawals, cashing benefit checks, purchasing money orders, writing personal checks, paying bills, and balancing checkbooks, reconciling monthly checking account statements.
- (b) Organizing and coordinating health insurance records.
- (c) Assisting with applications for programs such as homestead exemption, home energy assistance program (HEAP), subsidized housing, or other public programs.
- (d) Monitoring and replenishing needed groceries.
- (e) Assisting with business and personal correspondence including writing letters or email, purchasing postage, and delivering correspondence to the post office or similar drop off location.

(3) Travel attendant activities include one or both of the following:

- (a) Accompanying individuals to their medical and other appointments.

- (b) Accompanying individuals on their errands and other activities outside their homes.

(B) Requirements for ODA-certified providers of ILA:

- (1) General requirements: The provider shall comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code.
- (2) Eligible providers of ILA service are ODA-certified agency providers.
- (3) Service verification: The provider shall maintain an individual record documenting each episode of service, including the date of service, activities provided, name of the staff person providing activities, the beginning and ending times of activities provided, and the provider staff's signature or electronic signature. Providers who do not utilize an electronic verification system to document activities and keep records shall also obtain the individual's signature for each episode of in-person and travel attendant activities.
- (4) Availability: The provider shall maintain adequate staffing levels to provide ILA five days per week and a back-up plan for providing ILA when the provider has no aide available.
- (5) Personnel requirements:
  - (a) ILA staff: ILA staff shall meet all of the following requirements before providing ILA activities to individuals:
    - (i) Have a high school diploma, have successfully completed a GED, or have a minimum of one year of relevant, supervised work experience with a public health, human services, or other community service agency.
    - (ii) Have the ability to understand written activity plans, execute instructions, document activities provided, and, for staff providing ILA in-person activities, the ability to perform basic mathematical operations.
    - (iii) Have the ability to communicate effectively with individuals.
    - (iv) Have the ability to access emergency service systems.
    - (v) Have the ability to provide travel-attendant activities.

- (b) Supervisors: Providers shall retain records documenting how each supervisor meets the requirements to supervise in at least one of the following ways:
  - (i) The supervisor possesses a current and valid license to practice in the state of Ohio as an RN, LPN, LISW, or LSW.
  - (ii) The supervisor earned a bachelor's degree or an associate degree in home economics, nutrition/dietetics, counseling, gerontology, social work, nursing, public health, health education, or other related field.
  - (iii) The supervisor has at least three years of employment experience providing social services.
- (6) Supervision:
  - (a) Initial activities plans:
    - (i) Before service initiation of in-person and/or travel attendant activities, the supervisor shall complete and document a home visit to define the expected activities. The supervisor shall develop and document a specific activities plan consistent with the case manager's authorized plan.
    - (ii) Before service initiation of telephone support activities, the supervisor shall conduct a conference call or a home visit with the individual to define the expected telephone support activities. The supervisor shall develop and document a specific activities plan consistent with the case manager's authorized plan.
  - (b) Periodic evaluations: The supervisor shall evaluate staff compliance with the activities plan, individual's satisfaction, and job performance during a home visit with the individual receiving in-person and travel attendant activities at least every ninety days. The ILA staff need not be present during the visit. The supervisor shall evaluate the telephone support staff compliance with the activities plan, individual's satisfaction, and job performance during a home visit or a telephone conference with the individual receiving ILA telephone support activities at least every ninety days.
- (7) Orientation: Before allowing any staff member to provide ILA, the provider shall train the staff member on all the following:

- (a) The provider's expectations of ILA staff.
  - (b) The provider's ethical standards, as required under rule 173-39-02 of the Administrative Code.
  - (c) An overview of the provider's personnel policies.
  - (d) The organization and lines of communication of the provider's agency.
  - (e) Incident-reporting procedures.
  - (f) Emergency procedures.
- (8) Continuing education: The provider shall document a minimum of eight hours of continuing education for each ILA staff providing in-person activities every twelve months.
- (9) Provider policies: The provider shall develop written personnel requirements including all of the following:
- (a) Job descriptions for each position.
  - (b) Documentation of how each ILA staff member meets the requirements in (C)(5)(a) of this rule.
  - (c) Performance appraisals for each ILA staff member.

(C) Units and rates:

- (1) A unit of ILA is fifteen minutes of telephone-support activities, in-person support activities, or travel attendant activities.
- (2) The maximum rate allowable for a unit of telephone-support activities, in-person support activities, or travel-attendant activities is established in appendix A to rule 5160-1-06.1 of the Administrative Code.
- (3) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

173-39-02.15

**ODA provider certification: community integration.**

(A) "Community integration" means the service defined in rule 5160-44-14 of the Administrative Code.

(B) Requirements for an ODA-certified provider of community integration:

(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) Requirements specific to community integration: The provider shall comply with the requirements in rule 5160-44-14 of the Administrative Code.

(3) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-14 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code.

(C) Units and rates:

(1) One unit of community integration is fifteen minutes.

(2) Appendix A to rule 5160-1-06.1 of the Administrative Code establishes the maximum-allowable rate per unit.

(3) Rule 5160-31-07 of the Administrative Code establishes the rate-setting methodology for a unit of community integration.

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TO BE RESCINDED

173-39-02.17      **Community transition service.**

(A) "Community transition services" means non-recurring set-up expenses for a consumer who is transitioning from an institutional setting or another provider-operated living arrangement to a living arrangement in a private residence where the consumer is directly responsible for his or her own living expenses. Expenses are furnished only if the service plan clearly identifies the expenses as reasonable and necessary for the consumer to establish a basic household, if the expenses don't constitute room and board, and if the consumer is unable to meet the expenses or to obtain them from other sources. Non-recurring set-up expenses that meet this criteria may include any of the following:

- (1) Security deposits required to lease an apartment or home. (For the purposes of this rule, mortgages and rents are room and board, but security deposits are non-recurring set-up expenses.)
- (2) Household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens.
- (3) Set-up fees or deposits required for utility or service access, including telephone, electricity, heating, and water. (For the purposes of this rule, regular utility charges are room and board, but set-up fees and deposits are non-recurring set-up expenses.)
- (4) Services required for the consumer's health and safety, such as pest eradication and one-time cleaning prior to occupancy.
- (5) Moving expenses.
- (6) Home accessibility adaptations required for the consumer that are not the landlord's responsibility.
- (7) Activities to arrange for and to procure other non-recurring set-up expenses.

(B) Eligibility criteria for the community transition service:

- (1) A case manager may authorize one or more expenses for:
  - (a) A consumer who is enrolled in the assisted living program and is in transition from a nursing facility to a residential care facility; or,

- (b) A consumer who is enrolled into the PASSPORT program and is in transition from a nursing facility to a house or apartment.
  - (2) In a consumer's service plan, a case manager may only authorize an expense if no other person, including a landlord, has a legal or contractual responsibility to cover the expense and if family, neighbors, friends, or community agencies are unwilling to provide the expense for free.
- (C) Requirements for a community transition service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:
- (1) **Deadline:** The provider shall furnish the service no later than ninety days after the date the consumer enrolls in the assisted living program or the PASSPORT program.
  - (2) **Consumer choice:** The provider shall involve the consumer in the selection of items to be purchased on the consumer's behalf.
  - (3) **Limitations:** The provider shall not seek reimbursement for any expenses in excess of those authorized in the consumer's service plan.
  - (4) **Provider qualifications:** Only an agency that ODA certifies as an agency provider, a person that ODA certifies as a non-agency provider, or a residential care facility that ODA certifies as an assisted living provider shall provide this service.
  - (5) **Service verification:**
    - (a) For each service provided, the provider shall retain a record of the:
      - (i) Consumer's name;
      - (ii) Date of service;
      - (iii) Accurate description of each expense;
      - (iv) A receipt for each expense;
      - (v) The consumer's signature to verify that the consumer was involved in the selection of any item purchased on the consumer's behalf; and,
      - (vi) The consumer's signature to verify that the service was provided.



- (b) The case manager shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.
- (c) The provider may use a technology-based system to collect or retain the records required under this rule.
- (d) The agency provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code. The non-agency provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (C)(5) of rule 173-39-02 of the Administrative Code. The assisted living provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (E)(5) of rule 173-39-02 of the Administrative Code.

(D) Rates:

- (1) The sum of the community transition service expenses authorized in a consumer's service plan constitutes one job of community transition service.
- (2) The per-job rate for a service is negotiable, but is finalized by ODA's designee.
- (3) The maximum rate allowable for the service is established in the appendix to rule 5101:3-1-06.5 for the assisted living program and in the appendix to rule 5101:3-1-06.1 of the Administrative Code for the PASSPORT program.

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173-39-02.17

**ODA provider certification: community transition.**

(A) "Community transition" means the service defined in rule 5160-44-08 of the Administrative Code.

(B) Requirements for an ODA-certified provider of community transition:

(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) Requirements specific to community transition: The provider shall comply with the requirements in rule 5160-44-08 of the Administrative Code.

(3) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-08 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code.

(C) Units and rates:

(1) One unit of community transition is one completed job per individual per enrollment in the PASSPORT program and includes includes any of the expenses listed under paragraph (A)(1) of rule 5160-44-08 of the Administrative Code.

(2) The rate per job is subject to the maximum-allowable rate established in Appendix A to rule 5160-1-06.1 of the Administrative Code and paragraph (C)(2) of rule 5160-44-08 of the Administrative Code.

(3) Rule 5160-31-07 of the Administrative Code requires the unit rate to be negotiated between the provider and ODA's designee. The negotiated rate shall include any expenses listed under paragraph (A)(1) of rule 5160-44-08 of the Administrative Code. The provider shall not bill ODA's designee for any amount in excess of the negotiated rate, unless ODA's designee approves a revised rate.