

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: ODA PROVIDER CERTIFICATION:
SHARED LIVING

Rule Number(s): 173-39-02.25

Date: September 8, 2016, *Revised October 7, 2016*

Rule Types:

☐ 5-Year Review:

☐ Rescinded:

☒ New: 173-39-02.25

☐ 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.

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Regulatory Intent

1. Please briefly describe the regulations in plain language.

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

The proposed new rule would regulate providers when they provide shared living to individuals enrolled in the PASSPORT Program. For more information, please review ODA's response to BIA question #5.

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.

Ohio is applying to CMS to amend the Medicaid waiver authorizing the *Medicaid-funded component* of the PASSPORT Program. In the application, ODA is indicating it will adopt a rule on shared living and is citing future rule OAC173-39-02.25 as the rule to regulate the new service. If CMS authorizes ODA to offer shared living through the PASSPORT Program, ODA must adopt the rule in order for certify providers for shared living. (*cf.*, ORC§173.391).

If CMS approves Ohio's request to amend the Medicaid waiver, ODA would also offer shared living to individuals enrolled in the *state-funded component* of the PASSPORT Program. ODA offers all services available to individuals enrolled in the Medicaid-funded component of the program to individuals enrolled in the state-funded component.

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)?

Ohio is applying to CMS to amend the Medicaid waiver authorizing the Medicaid-funded component of the PASSPORT Program. If CMS approves, the amended waiver would authorize ODA to add shared living to the service options for individuals enrolled in the program. If CMS authorizes ODA to offer shared living through the PASSPORT Program, ODA must adopt a rule for ODA-certified providers to regulate the service. (*cf.*, ORC§173.391).

If CMS authorizes shared living, it would present a new opportunity for individuals in the program and a new opportunity for providers seeking to help those individuals.

Shared living would give Ohio a less-costly alternative to nursing facilities for individuals enrolled in the PASSPORT Program. Shared living would enable individuals with more intensive healthcare needs to retain their independence and dignity by remaining in their homes. Shared living includes specific training requirements for caregivers to complete to assure they have the skills necessary to meet the evolving needs of participants including those with Alzheimer's disease or other dementias.

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

ODA and its designees will monitor the providers for compliance.

ODA can measure (1) the utilization of shared living, (2) disenrollments from Medicaid waiver programs to enter nursing facilities, and (3) the length of time individuals receive shared living services while on the waiver in comparison to individuals receiving similar services on PASSPORT.

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 November 23, December 3, and December 7, 2015, ODA conducted focus groups with caregivers, individuals enrolled in the PASSPORT Program, case managers for the PASSPORT Program, and representatives from the Alzheimer's Association.

ODA invited Senior Link (of MA), REM Ohio, the Ohio Council for Home Care and Hospice (of OH), Ohio Association of Area Agencies on Aging, LeadingAge Ohio, and others to participate in stakeholder meetings on April 12, 2016, April 26, 2016, and June 28, 2016.

On August 15, 2016, ODA posted the proposed amendments to the Medicaid waiver application to for the PASSPORT Program in its [Online Rules Library](#). If CMS approves the proposed amendments, the amended application would authorize the PASSPORT Program to offer shared living. The comment period on the proposed amendments ends on September 15, 2016.

From September 9, 2016 to September 26, 2016, ODA conducted an online public-comment period on its website.

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

Focus Groups on November 23, December 3, and December 7, 2015:

FOCUS GROUP SUGGESTIONS	ODA'S RESPONSES
ODA heard repeated requests for home health providers to be appropriately trained, be consistent, be available in the evenings, etc.	ODA will better meet the needs of individuals enrolled in the PASSPORT Program, adding a shared living service requiring the caregiver to reside with the individual and to successfully complete training necessary to address the needs and preferences of the individual. The caregiver shall also complete and demonstrate competency with dementia care training, if applicable.

Stakeholder meetings on April 12, April 26, and June 28, 2016:

PROVIDERS' SUGGESTIONS	ODA'S RESPONSES
Are 2 levels of shared living appropriate or is there a need for 3 levels to accommodate an individual who may not have dementia but may have other significant issues including loss of limb, visual impairment, etc. <i>Jennifer Crosbie, Senior Link (Boston, MA)</i>	The PASSPORT Program requires ODA's designees to assess individuals enrolled in the PASSPORT Program to each individual's needs and preferences for goods and services. The Program already makes goods and services available to assist with many individuals who are unable to complete ADLs and IADLs without assistance. ODA believes 2 levels of shared living are sufficient to focus on the needs of individuals assessed to need the occasional or continuous presence of another person to assist with their care needs.
Can providers working under a different Medicaid waiver for another state agency be deemed by ODA. <i>Sue Gregg, Caregiver Homes (Quincy, MA)</i>	ORC§ 173.39 requires all providers of goods or services to individuals enrolled in the PASSPORT Program to be certified by ODA. However, certification by another state agency to provide shared living will better qualify a provider for ODA certification. When evaluating if the provider meets the "job experience" requirements in OAC 173-39-02(B)(4)(a) , ODA will consider a provider's experience providing shared living to individuals enrolled in another state-regulated home- and community-based long-term care program. OAC173-39-02(B)(4)(a) reads as follows: (a) At the point of application, the provider shall have at least three months of experience doing all of the following: (i) The provider has been providing the specific goods and services for which it seeks certification from ODA to provide to at least two Ohio adults in the community. (ii) The provider has been providing the goods and services in paragraph (B)(4)(a)(i) of the rule as a business entity with an active registration from the Ohio secretary of state. (iii) The provider was paid for providing the goods

PROVIDERS' SUGGESTIONS	ODA'S RESPONSES
	and services in paragraph (B)(4)(a)(i) of the rule.

Online Public-Comment Period September 9 to September 25, 2016

ODA received 40 comments and questions from 4 entities:

- 2 provider associations: Ohio Assisted Living Association, Ohio Council for Home Care and Hospice.
- 1 provider: Senior Link.
- 1 association of ODA's designees: Ohio Association of Area Agencies on Aging.

In response to the comments, the version of the proposed new rule ODA will file with JCARR, contains the following 12 amendments:

1. Define "continuous."
2. Define "ongoing."
3. Amend definition of "shared living" to eliminate the duplicate lists shared-living activities and to add "escort and transportation to community services, activities and resources" as a shared-living activity and to clarify this shared-living activity is offered in addition to medical transportation available under the Medicaid state plan, and may not replace it. This language is similar to transportation language in OAC173-39-02.4.
4. Delete extra use of "shall" in "shall shall."
5. Insert "of" between "records" and "each."
6. Delete "the" as it occurred between "verify" and "his or her."
7. Require the caregiver coach to conduct a care conference for Level II shared living at intervals no greater than once every 31 days instead of once every 30 days.
8. Delete "that" as it occurred between "at a level" and "enabling."
9. Combine multiple paragraphs of requirements for shared-living caregivers intending to transport individuals into 1 paragraph, then add "the vehicle to be used for transportation" (*i.e.*, the individual's vehicle vs. the shared-living caregiver's vehicle) is the vehicle requiring compliance with Ohio's financial responsibility (*i.e.*, auto liability insurance) laws. This also involves changing a cross-reference to this paragraph later in the rule.
10. Replace the annual date by which to measure completion of continuing education hours from the anniversary date of hire to the anniversary date on which the shared-living caregiver begins providing shared living to the individual.
11. Delete a duplicate statement of a requirement for caregiver coaches that are RNs to possess current, valid Ohio nursing licenses.

12. Replace “a” with “an.”

For paragraph references, verbatim comments, and detailed responses, please review the table below.

	COMMENTS	ODA’S RESPONSES
1	<p>(A)</p> <p>Is “continuous” defined in rule, in terms of a minimum (and maximum) amount of time? “...<i>regardless of the source of funds used to pay the other person,....</i>”</p> <p><i>Ohio Assisted Living Association</i></p>	<p>In the version of the proposed new rule ODA files with JCARR, ODA will define “continuous” by referencing the definition of “twenty-four hour support” in OAC5160-3-05.</p>
2	<p>(A)</p> <p>Is “occasional” defined in rule, in terms of a minimum (and maximum) amount of time?</p> <p><i>Ohio Assisted Living Association</i></p>	<p>In the version of the proposed new rule ODA files with JCARR, ODA will define “occasional” by referencing the definition of “less than twenty-four hour support” in OAC5160-3-05.</p>
3	<p>(A)(7)(a)</p> <p>Can this service only be provided in the home of the individual who is served? Can it be provided for the individual in the home of a relative or friend?</p> <p><i>Ohio Assisted Living Association</i></p>	<p>(A)(7)(a) defines “shared living” as “...in the individual’s home.” (A)(3) defines “home” as “the primary residence of the individual.” The rule doesn’t disqualify an individual from receiving shared living if his or her primary residence is owned by, or shared with, a relative or friend.</p> <p>The only shared-living activity covered outside of the individual’s primary residence is escort and transportation to community services, activities, and resources.</p>
4	<p>(A)(7)(b)</p> <p>(A)(7)(b) (page 1) should include “transportation” as one of the services that could possibly be provided. Transportation is mentioned later in the rule, along with stipulations of use.</p> <p><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will offer clarity on transportation by combining the lists of shared-living activities in (A)(7)(c) into (A)(7)(b) and clearly mentioning escort and transportation to community services, activities, and resources as one of those activities.</p>
5	<p>(A)(7)(c)(i) [Now (A)(7)(b)(i)]</p> <p>If an individual requires the constant presence of someone else, how are they assessed to be capable to administer with assistance their own medications?</p> <p><i>Ohio Assisted Living Association</i></p>	<p>The list under (A)(7)(b) is of shared-living activities included in the definition of “shared living.” “Includes” [now “including”] does not mean every individual receiving shared living receives every possible shared-living activity. Case managers will assess individuals and determine which shared-living activities to include in each individual’s person-centered services plan.</p>

	COMMENTS	ODA'S RESPONSES
6	<p>(A)(7)(c)(i) [Now (A)(7)(b)(i)]</p> <p>Would like to see this include “assist with managing finances”, of course, with stipulations. (Thinking that most shared-living caregivers will be family members.)</p> <p style="text-align: right;"><i>Ohio Assisted Living Association</i></p>	<p>The term “handling personal affairs” includes the individual's personal financial affairs. The term is similar to the in-person support activities in OAC173-39-02.15.</p>
7	<p>(A)(7)(c)(iii) [Now (A)(7)(b)(iii)]</p> <p>Is the caregiver also consuming all the meals they prepare? What about any others in the household (minor children, etc...)? Is it the responsibility of the individual served to pay for this food? Who pays for other consumable household goods (toilet paper, laundry soap, etc...)?</p> <p style="text-align: right;"><i>Ohio Assisted Living Association</i></p>	<p>A decision related to accommodations between an individual and a shared-living caregiver is a private arrangement.</p>
8	<p>(A)(9)</p> <p>Definitions (pages 1 & 2) need to include definitions for “Provider” and “Shared-living Caregiver” for clarity as these are mentioned throughout the rule and it can be confusing to distinguish between them.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>Because the term “provider” is used in many rules in OAC Chapter 173-39, ODA defines the term in a list of definitions applying to the entire chapter in OAC173-39-01.</p> <p>ODA defines “shared living caregiver” in this rule.</p>
9	<p>(B)(1)(b)(ii) and (B)(2)(b)(ii)</p> <p>(B)(1)(b)(ii) (page 7) says “The home is not owned or rented by the provider.” I’m assuming the “provider” is an agency provider so the home isn’t owned by the agency, but could be owned by the shared-living caregiver?</p> <p>(B)(2)(b)(ii) (page 3) same as (B)(1)(b)(ii)</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>(B)(2)(a) of the rule requires all providers to be ODA-certified <i>agency</i> providers.</p> <p>The rule does not preclude a shared-living caregiver from owning the home in which he or she also provides shared living so long as the home is the primary residence of the individual. (See definition of “home.”)</p>
10	<p>(B)(1)(b)(ii) and (B)(2)(b)(ii)</p> <p>Is the use of the word “provider” referring to the ODA-certified agency provider or is it referring to the shared-living caregiver? If it is the shared-living caregiver who is prohibited from owning or renting the home of the individual who is enrolled in the PASSPORT Program, it would be clearer to use “shared-living caregiver” in both of these places.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>Please review ODA's response to the previously listed comment.</p>

	COMMENTS	ODA'S RESPONSES
11	<p>(C)(1)(b)(ii)</p> <p>Type, repeated word ... "shall, shall"</p> <p><i>Ohio Assisted Living Association</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
12	<p>(C)(1)(b)(ii)</p> <p>(C)(1)(b)(ii) has a typo – the first line has the word "shall" duplicated.</p> <p><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
13	<p>(C)(1)(b)(ii)</p> <p>In line 1 the word, "shall" is duplicated; one of them can be omitted.</p> <p><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
14	<p>(C)(1)(b)(ii)</p> <p>OCHCH recommends that a repeated word be removed in (C)(1)(b)(ii) Content: Caregiver coaches shall shall, in collaboration with the individual, draft the shared-living activity plan, in accordance with needs and preferences identified in the person-centered services plan, in the following manner:...</p> <p><i>Ohio Council for Home Care and Hospice</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
15	<p>(C)(1)(c)</p> <p>In (C)(1)(c) Care Conferences requires a certain amount of specific documentation.</p> <p>Question: Will the ODA certified agency provider have a specific care conference form in order to make sure that all required documentation with signatures is completed as required?</p> <p><i>Ohio Council for Home Care and Hospice</i></p>	<p>In the same way that ODA doesn't require adult day providers to use specific forms for care conferences, ODA doesn't require shared living providers to use a specific form.</p> <p>ODA allows providers flexibility in the matter of design, including the flexibility to use electronic forms, so long as the records contain all the information required in (C)(1)(c).</p>

	COMMENTS	ODA'S RESPONSES
15	<p>(C)(1)(c)(i)</p> <p>I would suggest that if a family member or other person is in attendance at the care conference, that person's name and signature also be recorded.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>OAC5160:1-1-55.1 regulates authorized representation for all Medicaid-funded programs. When a rule for a Medicaid-funded program (e.g., this rule) requires obtaining authorization or verification from an individual, authorization or verification must be obtained from the individual unless an authorized representative has been appointed to authorize or verify instead of the individual according to OAC5160:1-1-55.1.</p> <p>Therefore, if a family member is an individual's authorized representative, and if the document appointing the family member to be an authorized representative says one of the family member's duties is standing in the place of the individual at care conferences, the provider must obtain the family member's signature at the conclusion of each care conference.</p> <p>OAC5160:1-1-55.1 permits a family member to accompany and assist an individual at care conferences without being the individual's authorized representative. Such accompaniment and assistance doesn't indicate a need for a provider to obtain the family member's signature at the conclusion of each care conference.</p>
17	<p>(C)(1)(c)(i)</p> <p>The 7th line down needs the word "for" between the words records and each so that it reads "The provider shall retain records for each..."</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
18	<p>(C)(1)(c)(ii)</p> <p>Typo on the 4th line = remove the word "the" so that it reads "...provide his or her signature to verify his or her..."</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
19	<p>(C)(1)(c)(ii)</p> <p>In line 4 the word, "the" is not needed.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>

	COMMENTS	ODA'S RESPONSES
20	<p>(C)(1)(c)(iii)(b)</p> <p>I would suggest making the care conference interval for Level II thirty-one days instead of thirty days to cover a full month, similar to the use of 62 days for the Level I interval to cover two full months.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>In the version of the proposed new rule ODA files with JCARR, ODA will use "thirty-one days."</p>
21	<p>(C)(1)(d)(ii) and (C)(1)(d)(iii)</p> <p>Limitations, the following statement is included after each sections: "...from the provider of shared living or any other provider.</p> <ul style="list-style-type: none"> • Question: Does mean that either the per diem shared living rate is reimbursed, or the other provider service is reimbursed? How will the reimbursement be determined? According to the amount of time the service was provided, or will the reimbursable service be based on the set rate for that service? • Question: Who will determine the method of whether the per diem shared living is reimbursed or the other provider service is reimbursed? • Comment: It seems that most of the limitations should be a non-issue if the shared-living caregiver has been assigned more of the personal care, homemaking and chores on the shared-living activity plan. <p style="text-align: right;"><i>Ohio Council for Home Care and Hospice</i></p>	<p>Only ODA's designee's case managers authorize services for individuals enrolled in the PASSPORT Program. The proposed new rule details the services available in combination with the shared living. The case manager will work with the individual to determine the quantity and combination of the additional services available that will best meet the individual's needs.</p> <p>Both the Level I and Level II shared living service will be authorized at one full unit. The maximum-possible payment rate for a unit of shared living is outlined in Appendix A to OAC5160-1-06.1.</p> <p>The language from this proposed new rule limiting services is as follows:</p> <p><u>The PASSPORT program shall not pay for shared living when provided in one or more of the following situations:</u></p> <p style="padding-left: 40px;">(i) <u>The individual's person-centered service plan does not authorize shared living.</u></p> <p style="padding-left: 40px;">(ii) <u>On the same day an individual receives shared living, the individual also received the choices home care attendant service, chore service, homemaker service, home care attendant service, or independent living assistance from the provider of shared living or any other provider.</u></p> <p style="padding-left: 40px;">(iii) <u>On the same day an individual receives shared living, the individual also received more than four hours of adult day services or personal care from the shared living provider or any other provider.</u></p> <p>Please also review ODA's response to comment 40.</p>
22	<p>(C)(1)(e)</p> <p>Typo in the 4th line – the word "records" should be "record."</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>In the version of the proposed new rule ODA files with JCARR, ODA will delete "a" as it appeared before "records" to keep the use of "records" consistent throughout the paragraph.</p>

	COMMENTS	ODA'S RESPONSES
23	<p>(C)(1)(d)(iii)</p> <p>So, Medicaid will pay for Level II <i>continuous</i> shared living, plus up to 4 hours of adult day services during that same day? Is there a cap on the individual's service cost (e.g. not higher than the Medicaid cost of an individual's care in a nursing home)?</p> <p style="text-align: right;"><i>Ohio Assisted Living Association</i></p>	<p>Yes. In OAC5160-31-03, the Ohio Dept. of Medicaid established an individual cost limit of \$14,700 per month.</p>
24	<p>(C)(2)(b)(i)(c)(i)</p> <p>The word "enabling" should be "enables."</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>In the version of the proposed new rule ODA files with JCARR, ODA will delete "that" as it appeared before "enabling" so the paragraph reads "...English at a level enabling the shared-living caregiver to...."</p>
25	<p>(C)(2)(b)(i)(c)(i)</p> <p>In line 2 the word, "that" can be omitted.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
26	<p>(C)(2)(b)(i)(d)</p> <p>Transportation, OCHCH recommends that there should also a review of the shared-living caregiver's driving records, including how many points he/she has against their driver's license.</p> <p style="text-align: right;"><i>Ohio Council for Home Care and Hospice</i></p>	<p>The requirements for transportation by a shared-living caregiver include both a valid driver's license and compliance with Ohio's financial responsibility (<i>i.e.</i>, auto liability insurance) laws. The provider agency must show ODA's designee a copy of the valid driver's license and valid insurance ID card for the vehicle to be used for transportation before transporting the individual for the first time. In shared living, individuals may also access additional transportation options available through the PASSPORT Program and Medicaid state plan. The rule doesn't prevent a provider agency from reviewing driving records or other information when reviewing candidates to become shared-living caregivers.</p>
27	<p>(C)(2)(b)(i)(d)(ii)</p> <p>When transportation is a provided service, this needs to allow for some use of the individual's vehicle. This is especially important when a modified vehicle (example van with wheelchair life) is required.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>ODA does not intend to prohibit use of an individual's vehicle. In the version of the proposed new rule ODA files with JCARR, ODA will indicate compliance with Ohio's financial responsibility (<i>i.e.</i>, auto liability insurance) laws is required for the vehicle used for transportation.</p>

	COMMENTS	ODA'S RESPONSES
28	<p>(C)(2)(b)(i)(e) and (C)(2)(b)(i)(f)</p> <p>What does the state anticipate to be the amount of training required? How is the competency demonstrated? Who assesses if the caregiver is competent? ...Any timeframes?</p> <p style="text-align: right;"><i>Ohio Assisted Living Association</i></p>	<p>The requirements for shared-living caregivers to successfully complete training is similar to the training requirements for personal care aides. "Before" in (C)(2)(b)(i) establishes the timeframe. It requires shared-living caregivers to meet a list of conditions <i>before</i> providing shared living to an individual. Two of those conditions are successfully completing the core-competency training and person-centered training.</p> <p>The provider determined when the shared-living caregiver has successfully demonstrated competency with the training topics. This is also the standard for personal care, homemaker, and other services.</p>
29	<p>(C)(2)(c)(i)(b)(i)</p> <p>Since the causes and the states of Alzheimer's Disease are different, perhaps the word, "and" should be used instead of "or".</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>"Or" allows a provider to cover 1 of the topics or all 3 topics. Additionally, "include" in (C)(2)(c)(i)(b) allows providers establishes no restrictions on adding additional training topics, such as a 4th dementia-related topic, to the training.</p>
30	<p>(C)(2)(c)(ii)(b)</p> <p>The State has made it clear that Shared Living providers may either hire or independently contract with Shared Living caregivers depending on the Provider's business model and in accordance with applicable laws and regulations. The proposed Shared Living rules includes language that accommodates both models with the exception of one reference that suggests that caregivers will be hired by the Shared Living Agency Provider. We believe this is an oversight in drafting and recommend that the State revise the language as follows.</p> <p>173-39-02.25(C)(2)(c)(ii)(b) (pg.9) b) The shared-living caregiver shall successfully complete at least eight hours of continuing education each year before <u>the anniversary date on which she or he began providing Shared Living services</u> before his or her anniversary date of hire with the provider.</p> <p style="text-align: right;"><i>Caregiver Homes (Quincy, MA)</i></p>	<p>In the version of the proposed new rule ODA files with JCARR, ODA will use the following:</p> <p style="text-align: center;"><u>The shared-living caregiver shall successfully complete at least eight hours of continuing education each year before the anniversary date on which he or she began providing shared living to the individual.</u></p>

	COMMENTS	ODA'S RESPONSES
31	<p>(C)(2)(d)</p> <p>Caregiver coach qualifications only allow for RN or LPN under the supervision of an RN. Should we add LSW as a qualifier? Frequently, dementia patients have more social needs than medical.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The individual will already have assessments by LSWs because ODA's designee's case managers, who establish the person-centered services plan, are LSWs. Additionally, the rule doesn't preclude shared-living caregivers from being LSWs. ODA's intent at this time is to only permit RNs and LPNs under the supervision of RNs to qualify as caregiver coaches.</p>
32	<p>(C)(2)(d)</p> <p>OCHCH recommends that a repeated language removed in (C)(2)(d) Caregiver coach qualifications: Each caregiver coach shall possess a current, valid Ohio license to practice as an RN or an LPN under the direction of an RN, if the RN directing the LPN also possesses a current, valid Ohio license to practice as an RN.</p> <p style="text-align: right;"><i>Ohio Council for Home Care and Hospice</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>
33	<p>(C)(2)(e)</p> <p>(C)(2)(e) states that, "...the provider shall retain records to verify the qualifications of the shared-living caregiver and caregiver coach in the individual's home for the individual to examine." Although a nurse's license may be accessed on the Ohio Board of Nursing website, it does not seem appropriate to have a hard copy of the professional license of an agency-employed nurse in an individual's home. I believe it is solely the responsibility of the agency that has procedures in place to maintain licenses in a secure manner and not the individual. This seems like an appropriate practice whether the individual receives Shared Living or another agency-provided service.</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The rule requires <i>records to verify</i> qualifications, not original licenses or certificates of completion. The language allows providers flexibility in complying. Examples of ways providers could comply:</p> <ul style="list-style-type: none"> • Give an individual paper a copy of licenses or certificates of completion. • Give a computer-savvy individual an electronic copy of licenses or certificates of completion. • Give a consumer a statement itemizing the status of the qualifications of the shared-living caregiver and caregiver coach without presenting a paper or electronic copy of actual licenses or certificates.
34	<p>(C)(3)(a)</p> <p>The 2nd line, the "a" should be "an" so that it reads "...caregiver shall complete an activity log..."</p> <p style="text-align: right;"><i>Ohio Association of Area Agencies on Aging</i></p>	<p>The version of the proposed new rule ODA files with JCARR will correct this mistake.</p>

	COMMENTS	ODA'S RESPONSES
35	<p>(C)(3)</p> <p>In (C)(3) Service verification (activity logs)</p> <p>Question: Will the ODA certified agency provider have a specific activity log form in order to make sure that all required documentation with verifications/signatures are completed as required?</p> <p><i>Ohio Council for Home Care and Hospice</i></p>	<p>ODA doesn't require a specific form to verify shared living—or any other service available to individuals in the PASSPORT Program—was successfully provided.</p> <p>ODA allows providers flexibility in the matter of design, including the flexibility to use electronic forms, so long as the records contain all the information required in (C)(3).</p>
36	<p>(C)(3)(b)</p> <p>Is the electronic activity log “real time” documentation? What is the timeframe requirements for documentation?</p> <p><i>Ohio Assisted Living Association</i></p>	<p>The rule requires documenting each day's shared-living activities, but does not require doing so on a “real time” basis. Although a best practice is to complete an activity log on the same day as the activities occur, the shared-living caregiver may complete a day's activity log on a subsequent day.</p>
37	<p><i>IN GENERAL</i></p> <p>The Ohio Association of Area Agencies on Aging supports adding shared living services to the PASSPORT program. This new service promotes additional choices for consumers who wish to and are able to live at home with support, and expanded support for caregivers, especially family members who wish to be live-in caregivers. Shared Living provides an opportunity for a member to live at home and engage in community life, to the extent possible, with the assistance of a live-in caregiver. The model of care also makes it possible for family members to make a full-time caregiving commitment because they receive financial assistance as well as support from a multi-disciplinary professional care team.</p> <p><i>Ohio Association of Area Agencies on Aging</i></p>	<p>Thanks.</p>
38	<p><i>IN GENERAL</i></p> <p>On behalf of Caregiver Homes of Ohio, I am pleased to submit this letter in support of the Ohio Department of Aging's proposed rules 173-39-02.25 ODA Provider Certification: Shared Living (Shared Living Rules). We believe the new Shared Living service presents a wonderful opportunity to introduce a model of care that will support older Ohioans and their caregivers in keeping care at home.</p> <p>We appreciate the commitment of the Ohio Departments of Aging and Medicaid to the inclusive and deliberate stakeholder process that led to the development of the proposed Shared Living Rules and are pleased to see that stakeholder comments from those discussions and</p>	<p>Thank you for sharing your ideas on the future of shared living in the PASSPORT Program.</p> <p>ODA and its designees will monitor all providers, including shared living providers. (<i>cf.</i>, OAC 173-39-02, 173-39-04.)</p> <p>ODA and its designees are available to help providers with requests for technical assistance. ODA and its designees may also offer guidance in other ways (<i>e.g.</i>, highlighting best practices).</p>

	COMMENTS	ODA'S RESPONSES
	<p>deliberations are reflected throughout the proposal. We note, specifically, our support for the following provisions:</p> <ul style="list-style-type: none"> • Enabling agency providers to deliver provider-developed Alzheimer's Disease and Dementia training to Level 2 caregivers. This will allow providers to deliver training that is responsive to the practical, logistical, and educational needs of lay caregivers and permit caregiver coaches to modify the training to address the management of issues and behaviors that are unique to each individual and their caregiver. • Allowing agency providers to use demonstrated prior experience serving individuals in other stateregulated home-and community based long-term care programs in Ohio during the ODA provider certification process. This is important to the successful implementation and adoption of the new service. <p>Our additional comments on the proposed Shared Living Rules include a minor but consequential technical language recommendation and programmatic recommendations the State may incorporate into sub-regulatory guidance governing the service to be issued in the short-term and in evaluations of the new service over time.</p> <p>...</p> <p>Caregiver Homes' experience developing and providing Shared Living services to elders and adults with disabilities over the past eleven years, across six states, in managed care and fee-for-service delivery systems, gives us a perspective on how States think about measures of the success and value of the service and factors that influence the adoption, utilization, integrity and evolution of the model. Because the proposed Shared Living Rules provide minimal guidance regarding the administration of the service, we expect there will be variability in service offerings and delivery by providers of the service. To ensure appropriate and consistent outcomes for older Ohioans across the State, we recommend that the State evaluate the new model at meaningful milestones so that the State and stakeholders can learn what is working – or not - across populations, geographies, and delivery systems and make any necessary refinements. The factors we recommend be considered in such assessments include:</p> <ul style="list-style-type: none"> • Individual Satisfaction and Outcomes – An individual served through Shared Living who has the capabilities to participate in surveys should be asked her his overall satisfaction, the extent to which she was included in planning 	

	COMMENTS	ODA'S RESPONSES
	<p>her supports, and how the caregiver helps the individual to meet her goals.</p> <ul style="list-style-type: none"> • Caregiver Engagement and Support- A caregiver must feel confident to perform the services and supports that the individual needs, informed about potential developments in the individual's mental and physical health and knowledgeable about how to access her coaches. The State could survey caregivers about these issues and others. • Provider Responsibilities - Provider requirements must be rigorous enough to promote the development of a provider network qualified to serve the populations who have chosen Shared Living and committed to outreach to older adults across cultural communities. Providers must be operating efficiently and acting in a timely manner on critical information provided by caregivers. • Quality and Collaboration with Medical Providers and Managed Care Organizations - Providers should be collecting, aggregating, and analyzing data on individuals served and their health outcomes and using that data to identify and implement quality initiatives. Providers should be sharing information with case managers and managed care partners in a way that extends the reach and impact of existing case and care management services and enhances collaboration. • Service adoption by MyCare health plans – MyCare plans should be surveyed on their experiences with the adoption and administration of the service and any actions they have taken or intend to take to extend the model to other populations served. <p>Thank you for the opportunity to comment on the proposed Shared Living Rules. We are excited to begin offering Shared Living to older Ohioans and supporting caregivers who make substantial commitments to help keep care at home. Please feel free to contact me with any questions.</p> <p><i>Caregiver Homes (Quincy, MA)</i></p>	

	COMMENTS	ODA'S RESPONSES
39	<p><i>IN GENERAL</i></p> <p>The roll of the PASSPORT CM is not elaborated at all. I'm assuming it would be the same contact schedule as usual. But I'm wondering if the CM should have more over sight in monitoring the records the provider, shared living coach and the shared-living caregiver keep???</p> <p><i>Ohio Association of Area Agencies on Aging</i></p>	<p>OAC Chapter 173-39 regulates ODA provider certification. This rule specifically regulates shared living provided by ODA-certified providers. Although the rule has implications for ODA's designees' case managers, it does not directly regulate them. ODA is happy to discuss the need of individuals with ODA's designees—even on a case-by-case basis.</p>

	COMMENTS	ODA'S RESPONSES
40	<p><i>IN GENERAL</i></p> <p>OCHCH agrees that promoting an individual's independence in the community and providing them the flexibility to choose their place of residence can be a rewarding experience for our aging population. As you know, "Shared living" means personal care and support services provided to an individual in the individual's home by a shared-living caregiver who lives with the individual receiving the personal care and support services."</p> <p>The Shared Living service will be a per diem rate: Level I Services - \$77.20/day; and Level II Services - \$113.19/day. This payment covers the caregiver coach and the shared- living caregiver wages and benefits, and transportation if provided. Also, if a live-in caregiver is caring for a LEVEL II individual, this caregiver and the supervisors must successfully complete and demonstrate competency with training from a nationally-accredited organization in dementia care or Alzheimer's disease.</p> <p>Although OCHCH supports the goals of the new Shared Living Service, our members have some concerns about the details:</p> <ul style="list-style-type: none"> Requirements for essential benefits under the Affordable Care Act and overtime rules from the U.S. Department of Labor make the financial viability of the program questionable; <ul style="list-style-type: none"> Question: Will the ODA certified agency provider be permitted to provide three different shared-living caregivers, each covering an eight hour period that would equal 24 hours? If this is an acceptable practice, then this would avoid any concerns with the overtime rules. The cost of training for caregivers and caregiver coaches for dementia or Alzheimer's disease care will increase the cost of providing this service; and There will also be an increase in the home health agency's liability and risk to transport individuals, and to do so without an increase in the per diem rate. <p>The proposed per diem rates are too low for the Ohio Department of Aging (ODA) certified home health agencies to meet costs. Many of our members have responded that they would not be financially able to provide this service.</p> <p>...</p> <p>Thank you for allowing OCHCH to provide comments on the new Shared Living Service waiver amendment.</p> <p><i>Ohio Council for Home Care and Hospice</i></p>	<p>ON OVERTIME</p> <p>The per diem rates were developed following a historical review of services provided to individuals currently enrolled in the PASSPORT Program, including those who may be eligible to receive shared living. Assumptions included both informal supports as well as sleep time. Additionally, the rule permits individuals to receive adult day or personal care within the limits outlined in the rule. ODM will establish the maximum-possible rate of payment for a unit of shared living in Appendix A to OAC5160-1-06.1.</p> <p>The proposed new rule and the pending amendment to the waiver application to CMS for the PASSPORT Program say shared living is a service that provides personal care and support services to individuals by shared-living caregivers who lives with the individual.</p> <p>To develop the proposed new service, ODA hosted a series of focus groups around Ohio comprised of individuals enrolled in the PASSPORT Program, caregivers, Alzheimer's Association representatives, and case managers from ODA's designees. Throughout the focus groups, consistent assignment was a recurring theme among caregivers and advocates. As a result, ODA structured shared living to require one-to-one relationships between shared-living caregivers and individuals. ODA believes this approach will lead to improved health outcomes for individuals in the PASSPORT Program.</p> <p>ON TRAINING</p> <p>Training requirements were considered by the state and are a component of the maximum-possible rate of payment for a unit of shared living (vs. an item paid in addition to a unit of shared living) in ODM's Appendix A to OAC5160-1-06.1.</p> <p>ON TRANSPORTATION</p> <p>Transportation is also a component of the maximum-possible rate of payment for a unit of shared living in ODM's Appendix A to OAC5160-1-06.1. The rule doesn't require transporting individuals. If a shared-living caregiver intends to transport individuals, the vehicle to be used for transportation must comply with Ohio's financial responsibility (<i>i.e.</i>, auto liability insurance) laws.</p>

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

ODA is not proposing to adopt the proposed new rule based upon scientific data.

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

ODA did not consider any alternative regulations.

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.

Although ORC§[119.037](#) only requires state agencies to publish a rule in the Register of Ohio 10 days before the rule would take effect, ODA also publishes the rule in its [Online Rules Library](#) and alerts subscribers of ODA's rule-notification service of the newly-published rule. Any person may [subscribe](#) to receive a notice from ODA.

Additionally, any may create a [RuleWatch Ohio account](#) to receive electronic notifications of rule filings made on rules the the person chooses to track. RuleWatch Ohio will direct subscribers to the Register of Ohio, not to ODA's Online Rules Library.

Through its regular monitoring activities under OAC[173-39-02](#), ODA and its designees monitor providers for compliance with the compliance with any new rule. When compliance is lacking, ODA and its designees offer technical assistance, and sometimes disciplinary actions, to ensure uniform compliance across Ohio. Under OAC[173-39-05](#), disciplinary actions range from simply requiring a plan of correction to—in cases of severe violations—revoking a provider's certification with ODA.

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 proposed new rule would create an opportunity for providers to provide a new service to individuals enrolled in the Medicaid- and state-funded components of the PASSPORT Program. Shared living is not yet available in the program, so ODA does not yet have any statistics on the number of providers who would be regulated by the proposed new rule. Yet, ODA is aware of at least one provider expressing interest and an Ohio-based association of providers expressing interest.

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

The proposed new rule would require providing shared-living activities to individuals and require shared-living caregivers to successfully complete training and to retain certain records in individual's homes. When the PASSPORT Program pays for a service, its payment covers all aspects of providing the service. Therefore, the payment would cover all aspects of providing the service, including shared-living activities, training, and records retention.

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 Ohio Dept. of Medicaid (ODM) plans to amend Appendix A to OAC5160-1-06.1 to establish the maximum-possible rates the PASSPORT Program would pay for each day of shared living with Medicaid funds. For Level I, ODM proposes to establish a maximum-possible rate of \$77.20 per day. For Level II, ODM proposes to establish a maximum-possible rate of \$113.19 per day.

The proposed new rule would require shared-living caregivers to successfully complete core-competency training, which is the type of training also required for similar professions in nursing homes, assisted living, personal care, and home health. A shared-living caregiver could obtain cost-effective online training from the Alzheimer's Association, [CareStar](#), or [Collins Learning](#). The Alzheimer's Association offers [free training](#) (individual classes) and [for-fee training](#) (certificate program) ranging from \$24.95 to \$59.95 per shared-living caregiver, although discounted rates are available. CareStar's fees for core-competency training are typically \$7.00 per course, but the price drops to \$5.75 per course if the courses are purchased in bundles of 12. Collins Learning's fees for "personal care home administrator" classes are \$14.99 per class or \$99.00 per year for unlimited access to online training.

Before providing *Level II* shared-living activities to an individual, the proposed new rule would require a shared-living caregiver to successfully complete, and demonstrate competency with, training in dementia care. (The proposed rule would not require a shared-living caregiver to

complete the same training to provide *Level I* shared-living activities to an individual.) An example of dementia-care training is the array of training options offered jointly by HealthCare Interactive and the Alzheimer's Association as [online dementia-care training and individual certification programs](#). For one shared-living caregiver, course fees range from \$24.95 to \$59.95. Providers may pay discounted rates for purchasing training for 25 or more shared-living caregivers.

The proposed new rule would also require 8 hours of continuing education each year. A shared-living caregiver could obtain cost-effective online training from the following aforementioned sources: The Alzheimer's Association, CareStar, or Collins Learning.

The proposed new rule would also require storing records in the individual's home for the individual to review, which would require the provider to provide electronic copies to the individual if the individual prefers to review the documents electronically or hard-copy documents to the individual if the individual prefers to review hard-copy documents. This would involve the minimal expense of making copies and storing them in an electronic or hard-copy file accessible to the individual.

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

The proposed new rule would not require providers to comply with extraordinary requirements. The proposed new rule would require providers to meet the requirements for every ODA-certified provider in in OAC[173-39-02](#), to meet activity planning and care conference requirements similar to those for adult day services (*cf.*, OAC173-39-02.1), and to meet dementia-care training requirements if providing Level II share-living activities to individuals.

Shared living would give Ohio a less-costly alternative to nursing facilities for individuals enrolled in the PASSPORT Program by enabling individuals with advanced healthcare needs including Alzheimer's disease or related dementias to retain their independence and dignity by remaining in their homes. To make shared living a safe and effective alternative to nursing facilities, it seems reasonable to expect shared-living caregivers to be adequately trained in dementia care if providing Level II shared-living activities to individuals. Fortunately, the training is affordable.

Regulatory Flexibility

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

ODA does not discriminate between providers based upon their size. The proposed new rule would require equal compliance from large and small providers.

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?

ORC§[119.14](#) establishes the exemption for small businesses from penalties for first-time paperwork violations.

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

ODA does not discriminate between providers based upon their size. According to ORC§[119.14](#), the proposed new rule would primarily regulate small businesses.

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

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

Additionally, any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rules.