



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** OHIO DEPT. OF AGING

**Rule Contact Name and Contact Information:** Tom Simmons [rules@age.ohio.gov](mailto:rules@age.ohio.gov)

**Regulation/Package Title (a general description of the rules' substantive content):**

#### ODA PROVIDER CERTIFICATION

Chapter 173-39 of the Administrative Code establishes the requirements to become, and to remain, an ODA-certified provider.

**Rule Number(s):** 173-39-01, 173-39-02, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.13, 173-39-02.20, 173-39-03, 173-39-03.1, 173-39-03.2, 173-39-03.3, 173-39-03.4, 173-39-04

**Date of Submission for CSI Review:** November 1, 2021

**Public Comment Period End Date:** November 14, 2021 at 11:59PM.

**Rule Type/Number of Rules:**

☐ New/ # rules

☐ No Change/ # rules (FYR? ☐)

☒ Amended/ 16 rules (FYR? ☒)

☐ Rescinded/ # rules (FYR? ☐)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

Please review the next page.

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**The rule(s):**

- ☐ a. Require a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

**Regulatory Intent**

**2. Please briefly describe the draft regulation in plain language.**

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

Rule 173-39-01 of the Administrative Code introduces Chapter 173-39 of the Administrative Code and defines terms used in that chapter.

Rule 173-39-02 of the Administrative Code establishes the general requirements to become, and to remain, an ODA-certified provider. Rules 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, and 173-39-02.20 of the Administrative Code establish the specific requirements to become, and to remain, an ODA-certified provider of an adult day service, choices home care attendant service, home medical equipment and supplies, homemaker, nutritional consultations, personal care, social work counseling, non-emergency medical transportation, and enhanced community living (respectively).

Rule 173-39-03 of the Administrative Code establishes the general application process to become an ODA-certified provider. Rules 173-39-03.1, 173-39-03.2, 173-39-03.3, 173-39-03.4 of the Administrative Code establish the specific processes related to application including federal heightened scrutiny of provider settings with institutional characteristics, changes of ownership interest or organizational structure, applying to be certified to provide additional services, and applying to be certified in additional regions or to certify additional business sites (respectively).

Rule 173-39-04 of the Administrative Code establishes the requirements for structural compliance reviews.

On January 10, 2021, ODA adopted amendments to rules 173-39-02, 173-39-02.10, 173-39-03, 173-39-03.3, 173-39-03.4, and 173-39-04 of the Administrative Code to create flexibilities during a state of emergency declared by the governor or on an ongoing basis (as is the case for an adult day service provided in a consumer's home). On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order [2021-09D](#) to authorize ODA to adopt emergency rule [173-1-04](#) of the Administrative Code, which declared that providers have the same flexibility until the end of the federal public health emergency. ODA has since adopted a regular version of rule [173-1-04](#) of the Administrative Code and now proposes to amend the rules in this package to implement the flexibilities authorized by rule 173-1-04 into the rules of this package.

Similarly, ODA proposes to amend rules 173-39-02.8 and 173-39-02.11 to give providers the following flexibilities during a state of emergency declared by the governor or a federal public health emergency:

- Flexibility to conduct the initial supervisor's visit by telephone, video conference, or in person.

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- Flexibility to conduct subsequent supervisor's visits by telephone, video conference, or in person, depending upon the individual's needs, but only if at least two of the supervisor's visits per year are conducted in person.
- Flexibility to verify that they have conducted initial and subsequent visits without collecting a unique identifier of the individual or the individual's caregiver.

ODA proposes to make the following amendments to reduce requirements in rules for outdated modes of communication or unnecessary in-person interaction:

- Throughout this rule package, ODA proposes to either (1) eliminate the unnecessary use of words that imply requirements for paperwork (e.g., "writing," "written," "document," "documentation," and "copy") or (2) if verbal compliance is not an option, indicate that provider may also comply electronically or by email.
- Throughout this rule package, ODA proposes to replace terms indicating options for unique identifiers of an individual, driver, or provider (e.g., "signature," "initials," "fingerprint," "mark," "stamp") with "unique identifier," which is a term ODA defines in rule 173-39-01 of the Administrative Code.

In rule 173-39-01 of the Administrative Code, ODA also proposes to do the following:

- Revise paragraph (A)(1) of the rule to reflect amendments made to R.C. §§ 173.39 and 173.391 by Am. Sub. H.B. 110 (134<sup>th</sup> G.A.).
- Remove the regulatory restriction from the definition of "activity plan."
- Define "competency evaluation" rather than do so in rule 173-39-02.11 of the Administrative Code.
- Remove the regulatory restrictions from the definition of "complete application."
- Delete the definitions of "consumer," "governing body or managing employee," and "individual's signature" because these terms either do not occur in the chapter or will not occur in the chapter after ODA adopts proposed amendments to the chapter.
- Implement Senate Bills 3, 5, 6, and 7 and House Bill 252 (134<sup>th</sup> G.A.) by (1) defining "licensed healthcare professional" and (2) amending the definitions of "registered nurse" and "licensed practical nurse."
- Revise the definition of "unique identifier" to include the unique identifier of a driver under rule 173-39-02.13 of the Administrative Code, the unique identifier of a participant-directed provider under rules 173-39-02.4 and 173-39-02.11 of the Administrative Code, a homemaker aide under rule 173-39-02.8 of the Administrative Code, and the unique identifier of a PCA under rule 173-39-02.20 of the Administrative Code.

In rule 173-39-02 of the Administrative Code, ODA also proposes to do the following:

- Renumber paragraph (A)(1)(a) as paragraph (A)(2) and delete "unless rule 173-9-02 of the Administrative Code exempts the provider" from that paragraph because there is no reason to highlight rule 173-9-02 of the Administrative Code when the entirety of Chapter 173-9 of the Administrative Code applies.
- Insert "report all reportable items to verify the service to ODA or its designee and" between "shall" and "comply" in paragraph (B)(2) of this rule.
- Insert "within seven days after the change" to the end of paragraph (B)(3)(d) of this rule. This arises from ODA's experience of trying to contact providers about COVID-19 issues during the COVID-19 public health emergency and finding that much of the contact information was outdated.

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- Insert examples of “all records necessary” into paragraph (B)(10)(a)(i) of this rule.
- Insert examples of “qualifications” into paragraph (B)(10)(a)(ii) of this rule.

In rule 173-39-02.1 of the Administrative Code, ODA also proposes to do the following:

- Replace the requirement for an outdated mode of communication to post (as in a “poster”) daily and monthly planned activities throughout the center with a requirement to announce daily and monthly planned activities through two or more of four different media options.
- Delete requirements related to fire safety. The state fire marshal established fire-safety requirements in the Ohio Fire Code (Chapter [1301:7-7](#) of the Administrative Code) and the Board of Building Standards established the building standards in the Ohio Building Code (Agency [4101:1](#) of the Administrative Code). Adult day centers are classified in those codes as “institutional group I-4.”
- Replace the requirement for the provider to provide orientation to PCAs with a requirement for the provider comply with the requirements for providing orientation to PCAs in rule 173-39-02.11 of the Administrative Code.
- Deem that any successfully-completed continuing education or in-service training completed to maintain a professional license, certification, or registration counts toward the requirements for continuing education or in-service training in this rule if complete during the same calendar year.
- Replace the requirements on retaining records on compliance with training requirements with a requirement to comply with the requirements for records on training PCAs in rule 173-39-02.11 of the Administrative Code.

In rule 173-39-02.4 of the Administrative Code, ODA also proposes to do the following:

- Add an introductory paragraph to the rule to explain that the rule's requirements apply to both a participant-directed provider and an agency provider and to further explain that, for an agency provider, a requirement for a provider in the rule may apply to an employee of the agency.
- Explain that the rule's requirements to complete time sheets apply only until rule 5160-1-40 of the Administrative Code requires the provider to use EVV to verify the provision of a service.
- Require providers and individuals to prove their unique identifier to verify the accuracy of the task sheet.

In rule 173-39-02.7 of the Administrative Code, ODA also proposes to replace occurrences of “the case manager” in paragraphs (B)(4)(b) and (B)(4)(c) of the rule with “OODA's designee.”

In rule 173-39-02.8 of the Administrative Code, ODA also proposes to do the following:

- Define “aide” and use the term throughout the rule (instead of “homemaker aide”).
- Combine the first 4 ways that a person may qualify to be an aide into “The person meets at least one of the qualifications to be a PCA under...” since they are identical to the requirements to qualify to be a PCA.
- No longer require the verification of training to include a list of instruction materials or the signatures of the trainer and tester.
- Move the paragraph on service verification to the last subparagraph of paragraph (B) of the rule.

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- Require service verification records to include the individual's name.

In rule 173-39-02.10 of the Administrative Code, ODA also proposes to delete the requirements for clinical records.

In rule 173-39-02.11 of the Administrative Code, ODA proposes to do the following:

- Give agency providers flexibility to *ensure* that its employees successfully complete orientation, rather than require the providers to *provide* that orientation.
- Give agency providers flexibility to *ensure* each PCA successfully completes any required additional training and competency evaluation, rather than require the provider to *conduct* that training.
- Indicate that any training successfully completed through <https://mylearning.dodd.ohio.gov/> or <https://collinslearning.com/home-health-care/> is approved.
- Allow the portions of training that are not competency evaluation to occur online.
- Establish a standard for initial qualification that requires the portion of a PCA's competency evaluation that involves return demonstration to be in person.
- Require the provider to comply with the requirements for EVV in rule 5160-1-40 of the Administrative Code.
- Indicate that a person may qualify to be a participant-directed provider if the person is listed in the nurse aide registry as "expired" or "there are no records matching your search."
- Give the participant-directed provider flexibility to obtain training from any organization that uses an RN (or LPN under the direction of an RN) to conduct the training and testing.

In rule 173-39-02.12 of the Administrative Code, ODA also proposes do the following:

- Replace, at the request of the Counselor, Social worker, and Marriage and Family Therapist Board, occurrences of "social work counseling service" and "social work counseling" with "social work or counseling."
- Implement Senate Bill 2 (134<sup>th</sup> G.A.), which allows a licensed psychologist from another state with an e.passport to provide services in Ohio.
- List the Ohio Board of Psychology and the State Medical Board in paragraph (B)(2) of this rule.
- Remove supervisory requirements, since those are regulated by licensing agencies.
- Remove requirements for clinical records.

In rule 173-39-02.20 of the Administrative Code, ODA also proposes to do the following:

- Use *PCA* instead of *direct-care staff* throughout the rule.
- Require the provider to comply with the requirements and flexibilities in rule 173-39-02.11 of the Administrative Code regarding PCA supervisor qualifications.
- Require the provider to comply with the requirements and flexibilities in rule 173-39-02.11 of the Administrative Code regarding PCA qualifications, orientation, and training.

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- Require the individual's caregiver (if the individual has a caregiver) to be part of the in-person review of the person-centered activity plan.
- Delete a duplicate paragraph on adequate staffing levels.

In rule 173-39-03 of the Administrative Code, ODA also proposes to do the following:

- Require itself to use form ODM 10172 to determine if a setting is presumed to have the qualities of an institution.
- Replace "on June 11, 2020" in paragraph (G) of this rule with "when the provider completes an online application followed with an email to [provider\\_enrollment@age.ohio.gov](mailto:provider_enrollment@age.ohio.gov)."

In rule 173-39-04 of the Administrative Code, ODA also proposes to do the following:

- Clarify in paragraph (C) of this rule that ODA has authority to authorize ODA's designee to miss a deadline in this rule.
- Announce that ODA may suspend any review during a state of emergency declared by the governor or a federal public health emergency.

Lastly, ODA also proposes to make non-substantive changes throughout this rule package to comply with LSC's *Rule Drafting Manual* or to update or improve cross-references, terminology, URLs, clarity, punctuation, spelling, and grammar.

**3. Please list the Ohio statutes that authorize the agency, board or commission to adopt the rule(s) and the statutes that amplify that authority.**

R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.391](#), [173.52](#), [173.522](#), [173.54](#), and [173.543](#).

**4. 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 C.F.R. 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).

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

These 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.

**6. 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 exist to comply with the state laws mentioned in ODA's response to #2, which require ODA to establish standards for ODA-certified providers and the PASSPORT Program.

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**7. 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. ODA will judge the proposed amendments to these rules to be a success when ODA and its designees find few violations against them during structural compliance reviews or investigations of alleged incidents.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. 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.*

ODA's guide [Participating in ODA's Rule Development](#) and the [main rules webpage](#) on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so.

On April 27, 2021, ODA emailed the following stakeholders to request their input on a proposal to amend rule 173-39-02.11 of the Administrative Code to allow the following during a state of emergency declared by the governor: If the PCA supervisor conducts at least two subsequent visits per year in person, the PCA supervisor may conduct the remainder of the subsequent visits during the same year by telephone, video conference, or in person based upon the individual's needs. In the same email, ODA said it would accept recommendations for improving any other part of the rule.

- LeadingAge Ohio.
- Ohio Association of Area Agencies on Aging (OAA).
- Ohio Council for Home Care and Hospice.
- Ohio Health Care Association.
- Ohio Association of Senior Centers.
- Ohio Jewish Communities.
- 13 PASSPORT Administrative Agencies (PAAs)—one of which also reached out to personal care providers in its region.
- State Long-Term Care Ombudsman.

On July 12, 2021, ODA sent an email to the following stakeholders to request their recommendations for improving the current version of all the rules in this package, including their recommendations for removing any requirements for outdated modes of communication:

- Catholic Social Services of the Miami Valley.

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- LeadingAge Ohio.
- Ohio Assisted Living Association.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Association of Area Agencies on Aging (OAA).
- Ohio Association of Medical Equipment Suppliers.
- Ohio Association of Senior Centers.
- Ohio Council for Home Care and Hospice.
- Ohio Health Care Association.
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

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

In response to ODA's April 27, 2021 email, ODA received the following 9 comments from 7 stakeholders on rule 173-39-02.11 of the Administrative Code:

- Regarding PCA supervisor visits:
  - A PAA said it is supportive of this change.
  - In support of the proposal, a provider association said the proposed change would minimize exposure to individuals and PCA supervisors, but would also ensure that at least two visits per year were in person to allow for proper assessment.
  - A provider association recommended requiring "safe engagement" protocols (e.g., COVID-19 pre-screen, PPE, social distancing) for in-person visits. ODA emailed the association on November 1, 2021 to explain that it does not intend to duplicate CDC guidance or public health orders in its rules.
  - Another PAA asked if the initial PCA supervisor visit is in person, can it count as one of the two in-person PCA supervisor visits required per year if offering PCA supervisor visits by telephone or video conference at other times of the year? ODA emailed the PAA on November 1, 2021 to explain that it proposes to amend the rule to clarify that a PCA supervisor may conduct two subsequent in-person visits in the same year or the combination of an initial in-person visit and an in-person subsequent visit in the same year.
  - A provider offered appreciation for the flexibility to conduct supervisors' visits to individuals by telephone or video conference during the state of emergency and recommended giving individuals the option to request that supervisor's visits to them be in person, by telephone, or by video conference. On November 1, 2021, ODA emailed a response to explain that in-person visits by the PCA supervisor are necessary even if the individual would prefer to only have visits by telephone or video conference. Individuals need PCA supervisors to visit them in person for their own sake. Some individuals are not capable of visits by telephone or video conference. Plus, individuals may try to protect their honor by not being honest about

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their true condition during a visit by telephone or video conference. For example, they may say that they have been taking baths when they have not (or the PCA has not been giving the individual baths).

- A provider recommended requiring case managers to conduct risk assessments to determine which individual may require more in-person visits by PCA supervisors and which individuals would benefit from PCA supervisor visits by telephone or video conference. On November 1, 2021, ODA emailed a response to explain the following: (1) This rule establishes the requirements to become, and to remain, an ODA-certified provider of personal care. It doesn't establish requirements for case managers at PASSPORT administrative agencies. (2) In-person visits by the PCA supervisor are necessary even if the individual would prefer to only have visits by telephone or video conference. Individuals need PCA supervisors to visit them in person for their own sake. Some individuals are not capable of visits by telephone or video conference. Plus, individuals may try to protect their honor by not being honest about their true condition during a visit by telephone or video conference. For example, they may say that they have been taking baths when they have not (or the PCA has not been giving the individual baths).
- A provider asked for clarification on how often a provider must provide subsequent PCA supervisor visits. On November 1, 2021, ODA responded in email that the proposed amendment to this rule will give providers flexibility during a state of emergency declared by the governor or a federal public health emergency. If a PCA supervisor conducts at least two in-person visits per year to an individual, the proposed amendment to this rule will allow the PCA supervisor to conduct remaining visits to that individual by telephone, video conference, or in-person, based upon the individual's needs.
- Regarding online training:
  - PAA asked for clarification on how a provider should verify the qualifications of trainers, testers, and educational materials when the training is obtained online. ODA emailed the PAA on November 1, 2021 to explain that it does not require the provider to verify these things. Likewise, Medicare does not require such verification for Medicare-certified home health agencies.
  - A PAA asked for a definition of "remote learning platform." ODA emailed the PAA on November 1, 2021 to announce that it proposes to amend the rule to allow portions of training that are not competency evaluation to occur online. In doing so, ODA proposes to use "online" rather than "remote learning platform." There is, therefore, no need to define "remote learning platform."

In response to ODA's July 12, 2021 email, ODA received a recommendation from a provider association to remove a requirement in rule 173-39-02.11 of the Administrative Code to verify the accuracy of monitoring systems with random checks if the provider uses electronic visit verification (EVV). On November 1, 2021, ODA emailed the provider association to explain that the requirement to verify the accuracy of monitoring systems with random checks is found in section [121.36](#) of the Revised Code, not in rule 173-39-02.11 of the Administrative Code. Section 121.36 of the Revised Code does not make any exceptions for EVV. Additionally, that section requires ODA to adopt rules to implement its requirements. To not create any additional burdens on providers, ODA simply alerts providers in rule 173-39-02.11 that they are also subject to section 121.36 of the Revised Code.

ODA did not receive a recommendation on any rule other than rule 173-39-02.11 of the Administrative Code.

## **11. 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?**

Individuals enrolled in the PASSPORT and Assisted Living Programs have a higher risk for contracting COVID-19 than the general population. Accordingly, many of ODA's proposals in this rule package are influenced by guidelines from the Centers for Disease Control and Prevention (CDC) on reducing on reducing in-person interaction to limit exposure to COVID-19.

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**12. 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 programs.

**13. 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.*

Before the proposed new rule takes effect, ODA will 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.

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

R.C. §173.391 authorizes only ODA to develop standards for ODA-certified providers of services to individuals enrolled in ODA-administered programs.

**15. 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 amendments to these rules take effect, ODA will email subscribers of our rule-notification service to feature the rules.

Through regular monitoring activities, ODA and its designees will monitor ODA-certified providers for compliance.

**Adverse Impact to Business**

**16. 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; and**

Every ODA-certified provider.

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

The following are the adverse impacts of these rules:

- The requirement to apply to become certified.
- Base requirements for all ODA-certified providers in rule 173-39-02 of the Administrative Code. (e.g., To be certified by ODA, a provider must comply with licensure laws and background check laws, provide ODA with contact information, and have a commercial liability insurance policy.)

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- Basic requirements unique to each service. (e.g., The requirements for a transportation requirement include inspecting vehicles and hiring qualified drivers while the requirements for a provider of an adult day service include using a qualified adult day center and having an inter-disciplinary team.).
- Structural compliance reviews and potential disciplinary actions for non-compliance.

**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 a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus costs related to the employees. The costs incurred as a result of this rule are likely calculated as part of a provider's operational budget—the cost of doing business and clerical jobs, such as retaining records and updating policies and procedures.

Providers set the prices they bill to the PASSPORT and Assisted Living Programs. In turn, the PASSPORT and Assisted Living Programs pay each provider the amount the provider bills, so long as the price billed does not exceed the maximum the Ohio Dept. of Medicaid (ODM) allows per unit. In the appendix to rule 5160-1-06.1 of the Administrative Code, ODM establishes the maximum-allowed payment of Medicaid funds for services provided through the PASSPORT Program. In the appendix to rule 5160-1-06.4 of the Administrative Code, ODM establishes the maximum-allowed payment of Medicaid funds for services provided through the Assisted Living Program.

**17. 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 programs.

Providers voluntarily apply for ODA certification. Certification is not required to provide a service unless a provider wants a government program that requires certification to pay the provider. Compliance with these rules is only required if a provider voluntarily chooses to participate in a program requiring certification, such as the PASSPORT Program or Assisted Living Program.

**Regulatory Flexibility**

**18. 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 programs, the rules treat all providers the same, regardless of their size.

**19. 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 this rule. 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.

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

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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 these rules.

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