Common Sense Initiative

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Business Impact Analysis

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

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

AIDE QUALIFICATIONS AND TRAINING

Chapter 173-3 of the Administrative Code establishes requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds.
Chapter 173-39 of the Administrative Code establishes the requirements to become, and to remain, an ODA-certified provider.

Rule Number(s): 173-3-01, 173-3-06.4, 173-3-06.5, 173-39-02.8, 173-39-02.11, and 173-39-02.20

Date of Submission for CSI Review: February 15, 2024

Public Comment Period End Date: February 29, 2024 at 11:59PM.

Rule Type/Number of Rules:

☐ **New/ # rules**
☒ **Amended/ 6 rules (FYR? ☒)**
☐ **No Change/ # rules (FYR? ☐)**
☐ **Rescinded/ # rules (FYR? ☐)**

The Common Sense Initiative is established in RC 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. **RC 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 RC 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?

The rule(s):

a. ☐ Requires 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.

Overview

Effective October 3, 2023, Am. Sub. HB 33 (135th GA) enacted RC §173.525. ODA proposes to amend the rules in this package primarily to implement this bill's new requirements.

The new law establishes a new requirement for a person to successfully complete 30 hours of pre-service, ODA-acceptable training to qualify to be a personal care aide (PCA).

Currently, rule 173-39-02.11 of the Administrative Code does not require any pre-service, ODA-acceptable training. Instead, it establishes the following 5 ways for a person to qualify to be a PCA for an ODA-certified provider:

1. State-Tested Nurse Aide (STNA)—a person qualifies to be a PCA if the person qualifies, or once qualified, to be a STNA and is listed on the nurse aide registry as "active," "in good standing," or "expired."

2. Medicare HHA—a person qualifies to serve as a PCA if the person qualifies to be a home health aide (HHA) under 42 CFR 484.80 and 484.115.

3. Previous Supervised Experience—1 year.

4. Vocational Training, including training obtained before a person applies to be a PCA.

5. Other—at least 60 hours of training on a list of topics.

Of these 5 ways to qualify, only 3 inherently involve training: STNA, vocational training, and DIY. The previous-supervised-experience way to qualify may not involve training. The Medicare way to qualify may not involve training because 42 CFR 484.80(a) allows a person who successfully passes competency evaluation to qualify to be a HHA without successfully completing any or all of the 75 hours of supervised practical training under 42 CFR 484.80(b).

ODA proposes to implement RC §173.525 in a way that does not cause job loss for PCAs who qualified by the previous-supervised-experience way or the Medicare HHA way. ODA also proposes to implement the new law in a way that does not require PCAs who qualified by the previous-supervised-experience way or the Medicare way to complete 30 hours of new training to retain their jobs. ODA proposes to achieve both goals by considering any person who meets one of the 5 ways to qualify as having successfully completed the 30 hours of training required under RC §173.525, even if the way to qualify did not involve any training.

ODA's proposal will also keep the ways to qualify to be a PCA uniform between the PASSPORT Program and the Older Americans Act programs (cf., rule 173-3-06.5 of the Administrative Code). For providers who serve consumers of both the

PASSPORT Program and Older Americans Act programs, this will continue to all allow the provider's PCAs to qualify to serve consumers under either program.

Because RC §173.525 applies to PCAs in the PASSPORT Program without limiting its application to personal care, it will also apply to PCAs who provide enhanced community living under rule 173-39-02.20 of the Administrative Code.

RC §173.525 also established a new 6-hour limit on in-service training for PCAs in the PASSPORT Program. ODA proposes to amend rule 173-39-02.11 of the Administrative Code to reduce the hours required every twelve months from 8 to 6. This will also apply to PCAs who provide enhanced community living. ODA voluntarily proposes to implement the same 6-hour limitation into rule 173-3-06.5 of the Administrative Code to maintain uniformity between the PASSPORT Program and Older Americans Act programs.

RC §173.525 also established requirements for pre-service and in-service training for persons serving as home health aides (HHAs) under the PASSPORT Program. Because the PASSPORT Program does not pay or home health, this will have no impact upon ODA's rules.

Furthermore, because ODA's rules require more hours of annual in-service training for homemaker aides than RC §173.525 requires for PCAs, ODA voluntarily proposes to reduce the annual in-service training for homemaker aides to 6 hrs./yr. for both the PASSPORT and Older Americans Act programs.

ODA also proposes to amend the rules in this package for additional purposes.

Rule-by-Rule List of Proposed Amendments

173-39-02.11: This rule establishes the specific requirements to become, and to remain, an ODA-certified provider of personal care. ODA proposes to amend this rule to achieve the following:

1. Remove respite as an activity of personal care because the Centers for Medicare and Medicaid Services (CMS) informed ODA that respite cannot be part of Medicaid-funded personal care. [For more information on other respite options, please see ODA's response to the stakeholder input listed in ODA's response to question #10 of this BIA.]

2. Declare that ODA considers any person who meets one of the 5 ways to qualify to be a PCA as having successfully completed the 30 hours of pre-service ODA-acceptable training required under RC §173.525, even if the way to qualify did not involve any training.

3. Reduce the minimum number of training hours in the "other" way to qualify to be a PCA from 60 to 30 hours.

4. Replace the orientation topic of "universal precautions for infection control" with "standard precautions for infection control."

5. Reduce annual in-service, ODA-acceptable training hours for a 12-month period from 8 hours to 6 hours to comply with the limitation in RC §173.525.

6. Retain current qualifications to be PCA supervisor: Because RC §173.525 limited those who qualify to be a PCA supervisor to (1) registered nurses (RNs) and (2) licensed practical nurses (LPNs) under the direction of RNs, ODA must retain its current standard that only (1) and (2) qualify to be a PCA supervisor. ODA proposes to cite RC §173.525 in paragraph (C)(4)(a) of this rule so that readers can connect the standard to the statute.

7. Indicate that a provider may retain evidence that a PCA supervisor conducted a visit by telephone or video conference instead of obtaining a unique identifier of the individual. Examples of such evidence may include a report generated by telehealth software, phone records, or a clinical summary of the visit.

173-39-02.20: This rule establishes the specific requirements to become, and to remain, an ODA-certified provider of enhanced community living (ECL). ODA proposes to amend this rule to achieve the following:

1. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in the rule to comply with RC §§ 106.03 and 121.951. This may account for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

2. Remove the portion of the definition of "ECL" that indicates ECL excludes respite from thee indication that personal care is part of ECL because the Centers for Medicare and Medicaid Services (CMS) informed ODA that respite cannot be part of Medicaid-funded personal care and because is simultaneously removing respite as an activity of personal care. [For more information on other respite options, please see ODA's response to the stakeholder input listed in ODA's response to question #10 of this BIA.]

8. Ease qualifications for PCAs. House Bill 33 (135th GA) enacted RC §173.525, which limits the amount of "pre-service training" that ODA may require of a PCA when being paid by the PASSPORT Program to 30 hours. ODA proposes to maintain a provision in this rule that requires PCAs for ECL to meet the qualifications to be a PCA in paragraph(C)(3)(a) of rule 173-39-02.11 of the Administrative Code, which requires complying the standards in paragraph (C)(3)(e) of the same rule. ODA is simultaneously amending paragraph (C)(3)(e) of that rule to declare that ODA considers any person who meets one of the 5 ways to qualify to be a PCA as having successfully completed the 30 hours of pre-service ODA-acceptable training required under RC §173.525, even if the way to qualify did not involve any training. Thus, the easing of qualifications to be a PCA in rule 173-39-02.11 of the Administrative Code will also ease the qualifications to be a PCA in this rule.

3. Reduce annual in-service training to 6 hours per year. RC §173.525 limits the amount of annual in-service training that ODA may require of a PCA when being paid by the PASSPORT Program to 6 hours. ODA proposes to maintain a provision in this rule that requires PCAs for ECL to comply with the annual in-service training requirements for PCAs in rule 173-39-02.11 of the Administrative Code, which ODA is simultaneously amending to reduce from 8 to 6 hours.

4. Retain current qualifications to be PCA supervisor: Because RC §173.525 limited those who qualify to be a HHA or PCA supervisor to (1) registered nurses (RNs) and (2) licensed practical nurses (LPNs) under the direction of RNs, ODA must retain its current standard that only (1) and (2) qualify to be a PCA supervisor. ODA proposes to cite RC §173.525 in paragraph (C)(4)(a) of this rule so that readers can connect the standard to the statute.

5. Divide the two sentences of the current paragraph on the primary team [(B)(4)(b)(iii)] into separate paragraphs [(B)(3) and (B)(4)(g)].

6. Delete the permission to use electronic systems and the requirement to retain records because rule 173-39-02 of the Administrative Code cover this topic for every service and ODA does not need to repeat them in a rule that applies to only one service.

7. Make additional non-substantive improvements to this rule.

173-3-06.5: This rule establishes requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) for personal care that are paid, in whole or in part, with Older Americans Act funds. ODA proposes to amend this rule to achieve the following:

1. Ease qualifications for PCAs. House Bill 33 (135th GA) enacted RC §173.525, which limits the amount of "pre-service training" that ODA may require of a PCA when being paid by the PASSPORT Program to 30 hours. Although RC §173.525 does not apply to Older Americans Act programs, ODA voluntarily proposes to apply the PCA qualifications to this rule to make the requirements uniform between ODA's programs because many providers serve consumers in both the PASSPORT Program and the Older Americans Act's supportive services[1] and National

[1] The program's supportive services are often called "Title III-B" services.

Family Caregiver Support Program.[2] Because this rule does not require any pre-service training, there is no pre-service training to limit. Instead, this rule establishes 5 ways that any person may qualify to be a PCA. Two of the ways qualify do not involve training (Medicare-certified competency evaluation and previous experience). Two of the ways to qualify require successfully completing a training and competency evaluation program that lasted at least 60 hours (vocational programs and other programs). In the "spirit" of RC §173.525, ODA voluntarily proposes to reduce the hours from 60 to 30 for vocational programs and other programs. Without this amendment, a provider may have PCAs who qualify to provide personal care to individuals enrolled in the PASSPORT Program, but not to consumers of the same service when provided through an Older Americans Act program.

2. Replace the training topic "basic infection control" with "standard precautions for infection control" and change from a training topic for qualifying to be a PCA to an orientation topic.

3. Reduce annual in-service training hours: RC §173.525 limits the amount of annual in-service training that ODA may require of a PCA when being paid by the PASSPORT Program to 6 hours. Although RC §173.525 does not apply to Older Americans Act programs, ODA voluntarily proposes to reduce annual in-service training hours from 8 to 6 to make the requirements uniform between ODA's programs for the reasons cited in 1. above.

4. Ease the qualifications for PCA supervisors. Because RC §4723.01(F) allows an LPN to be under the direction of an RN, physician, physician assistant, dentist, podiatrist, optometrist, or chiropractor; and because RC §173.525 does not apply to the Older Americans Act programs, ODA proposes to give providers the flexibility to use an LPN as a PCA supervisor if the LPN is supervised by any healthcare professional listed in RC §4723.01(F).[3]

5. Indicate that a provider may retain evidence that a PCA supervisor conducted a by telephone or video conference instead of obtaining a unique identifier of the individual. Examples of such evidence may include a report generated by telehealth software, phone records, or a clinical summary of the visit.

173-3-01: This rule introduces chapter 173-3 of the Administrative Code and defines terms used in the chapter. ODA proposes to amend the rule to achieve the following:

1. Define "business day" and delete the related definition of "legal holiday."

2. Define "coordination."

3. Amend the definition of "licensed practical nurse" to refer to RC §4723.01(E) and (F), which indicate that a number of licensed professionals other than an RN may provide direction or an LPN. This will widen the options that providers have for who may direct an LPN.

4. Define "older relative caregiver."

5. Turn the definitions within the definition of "provider" into stand-alone definitions.

6. Delete the January 1, 2023 sunrise provision from the definitions for "licensed healthcare professional," "licensed practical nurse," and "registered nurse."

7. Amend the definition of "unique identifier" to remove references to specific rules and to add "or as an authorization for a plan or agreement" to the end of the definition.

173-39-02.8: This rule establishes the specific requirements to become, and to remain, an ODA-certified provider of a homemaker service. ODA proposes to amend this rule to achieve the following:

[2] The program's supportive services are often called "Title III-E" services.
[3] Please also see the corresponding amendment to the definition of "licensed practical nurse" in rule 173-3-01 of the Administrative Code.

1. Delete the second sentence of paragraph (A)(1) of this rule because it is unnecessary since ODA lists homemaker activities in subparagraphs, but also add acting as a travel attendant in a subparagraph.

2. Indicate that laundry activities at a laundromat can be a homemaker activities if the individual does not have a working washer and dryer.

3. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in the rule to comply with RC §§ 106.03 and 121.951. This may account for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

4. Allow a person to qualify to be a homemaker aide by completing training on only activities that a homemaker aide would provide as an aide. For example, a person who would provide only laundry as an aide would qualify to be an aide by successfully completing training and competency evaluation on laundry.

5. Add standard precautions for infection control to the list of orientation topics.

6. Reduce the in-service training hours for homemaker aides. Because ODA does not want providers to have more stringent in-service training requirements for their homemaker aides than for their PCAs, ODA voluntarily proposes to apply the training limitations for PCAs in RC §173.525 to homemaker aides in rule 173-39-02.8 of the Administrative Code.

7. Remove the limitation for an LPN to be under the direction of an RN in order to supervise a homemaker aide since RC §4723.01 allows other healthcare professionals other than an RN to provide such direction.

8. Indicate that a provider may retain evidence that a supervisor conducted a by telephone or video conference instead of obtaining a unique identifier of the individual. Examples of such evidence may include a report generated by telehealth software, phone records, or a clinical summary of the visit.

9. Make additional non-substantive improvements to this rule.

173-3-06.4: This rule establishes requirements to include in, or exclude from, AAA[4]-provider agreements (i.e., contracts) for a homemaker service that are paid, in whole or in part, with Older Americans Act funds. ODA proposes to amend this rule to achieve the following:

1. Indicate that laundry activities at a laundromat can be a homemaker activities if the consumer does not have a working washer and dryer.

2. Allow a person to qualify to be a homemaker aide by completing training on only activities that a homemaker aide would provide as an aide. For example, a person who would provide only laundry as an aide would qualify to be an aide by successfully completing training and competency evaluation on laundry.

3. Add standard precautions for infection control to the list of orientation topics.

4. Because ODA does not want providers to have more stringent training requirements for their homemaker aides than for their PCAs, ODA proposes to apply the reduce the in-service training for homemaker aides to 6 hours every 12 months.

5. Remove the limitation for an LPN to be under the direction of an RN in order to supervise a homemaker aide since RC §4723.01 allows other healthcare professionals other than an RN to provide such direction.

[4] "AAA" means "area agency on aging."

6. Indicate that a provider may retain evidence that a supervisor conducted a by telephone or video conference instead of obtaining a unique identifier of the individual. Examples of such evidence may include a report generated by telehealth software, phone records, or a clinical summary of the visit..

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

173-3-06.4 and 173-3-06.5: RC §§ 121.07, 121.36, 173.01, 173.02, 173.392.

173-39-02.8, 173-39-02.11, and 173-39-02.20: RC §§ 121.07, 121.36, 173.01, 173.02, 173.39, 173.391, 173.52, 173.522, 173.525.

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.

173-3-06.4 and 173-3-06.5: 42 USC 3025 says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and 45 CFR 1321.11 requires ODA to "develop policies governing all aspects of [Older Americans Act] programs."[5]

173-39-02.8, 173-39-02.11, and 173-39-02.20: 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 Medicaid-funded component of the PASSPORT Program, 42 CFR 441.352 requires ODA to establish provider-certification requirements to safeguard the health and welfare of individuals who receive services through the program.

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

173-3-01, 173-3-06.4, and 173-3-06.5: These rules do not exceed federal requirements. They exist to implement the state laws that ODA listed in its response to #2, which require ODA to establish the qualifications for AAA-provider agreements, and the federal law and federal rule that ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs in Ohio.

173-39-02.8, 173-39-02.11, and 173-39-02.20: These rules do not exceed federal requirements. They exist to comply with the state laws that ODA listed in its response to #2. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT Program.

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)?

173-3-01, 173-3-06.4, and 173-3-06.5: These rules exist to (1) comply with the state laws mentioned in ODA's response to #3, which require ODA to establish requirements for AAA-provider agreements, and (2) ensure necessary safeguards are in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds.

173-39-02.8, 173-39-02.11, and 173-39-02.20: These rules exist to comply with the state laws mentioned in ODA's response to #2. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT Program.

[5] On March 15, 2024, 45 CFR 1321.9 will replace 45 CFR 1321.11.

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

173-3-01, 173-3-06.4, and 173-3-06.5: To ensure compliance fostering the health and safety of consumers receiving services paid with Older Americans Act funds and compliance with monitoring (i.e., auditing) requirements under 45 CFR Part 75, Subpart F: (1) ODA regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements, these rules are judged as being successful when (1) ODA funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

173-39-02.8, 173-39-02.11, and 173-39-02.20: ODA and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from ODA-certified providers. [173-39-04] 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 RC 101.352, 101.353, 106.032, 121.93, or 121.931?
If yes, please specify the rule number(s), the specific RC 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 contact ODA's policy-development manager at rules@age.ohio.gov to give input on improving ODA's rules. From each rule's effective date to the date of this BIA, ODA received no email from any stakeholder on these rules in that email inbox.

On May 17, 2022, ODA emailed the following stakeholders to explain how artificial intelligence has added a new dimension to interpreting rules, define *regulatory restrictions*, declare the need to reduce regulatory restrictions, explain how ODA can reduce regulatory restrictions by eliminating duplicate uses of regulatory restrictions, provide stakeholders with an opportunity to make recommendations on ODA's plan, and provide stakeholders with an opportunity to make recommendations on eliminating any regulatory restriction in any chapter of ODA's rules:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- OhioAging (O4A).
- Ohio Assisted Living Association (OALA).
- Ohio Association of Medical Equipment Suppliers (OAMES).
- Ohio Association of Senior Centers (OASC).
- Ohio Council for Home Care and Hospice (OCHCH).
- Ohio Health Care Association (OHCA).
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

On August 18, 2023, ODA emailed the following stakeholders to request their recommendations for improving the current version of many rules in Chapter 173-39 of the Administrative Code, including the rules in this package and for ODA's specific proposals for certain rules in Chapter 173-39 of the Administrative Code, including the rules in this package:

- Catholic Social Services of the Miami Valley (CSS).
- LeadingAge Ohio.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- OhioAging (O4A).
- Ohio Assisted Living Association (OALA).
- Ohio Association of Medical Equipment Suppliers (OAMES).
- Ohio Association of Senior Centers (OASC).
- Ohio Council for Home Care and Hospice (OCHCH).
- Ohio Health Care Association (OHCA).
- Ohio Jewish Communities (OJC).
- State Long-Term Care Ombudsman.

On August 25, 2023, ODA emailed Arcadia Homecare the same email sent to other stakeholders on August 18, 2023.

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 its May 17, 2022 emails, ODA received 0 recommendations from stakeholders on this chapter of rules.

In response to its August 18, 2023 and August 25, 2023 emails, 1 association representing ODA's designees (OhioAging), 2 associations representing providers (OHCA, OCHCH), and 1 provider (Arcadia) provided input. The table below presents their questions, concerns, and recommendations and ODA's responses to them.

Rule	Stakeholder	Question, Concern, or Recommendation	ODA's Response
173-39-02.8 on training	OHCA	With knowledge that, per HB33, rule 173-39-02.11 of the Administrative Code, should be changed to require a PCA to receive 30 hours of pre-service training and 6 hours of in-service training every 12 months, we feel that the in-service training requirement for a homemaker aide should be changed from 8 hours per year to 6 hours per year to be more consistent with the amended requirements for PCAs.	ODA voluntarily proposes to apply the training limitations for PCAs to homemaker aides.

Rule	Stakeholder	Question, Concern, or Recommendation	ODA's Response
173-39-02.8 173-39-02.11 on training	Arcadia	Arcadia Home Care & Staffing is in favor of rulemaking that will reduce barriers for direct care workers delivering high-quality services to Waiver participants. We are in support of rule revision that centers the needs of individuals receiving services while eliminating unfunded mandates for providers seeking to deliver services. We would like to see changes to all standards (OAC) that will cover Passport, My Care Ohio and State plan, in lieu of having different rules/standards for each payer type.	ODA proposes to voluntarily apply the training limitations for PCAs to homemaker aides. Although ODA cannot amend the rules for the Medicaid state plan or ODM-administered programs, we can amend our Older Americans Act rules to establish this parity between the PASSPORT Program and Older Americans Act programs.
173-38-02.8 173-39-02.11 on training	OCHCH	OCHCH supports reducing barriers for direct-care workers delivering high-quality services. OCHCH supports amendments that center on individual's needs while eliminating unfunded mandates for providers. OCHCH supports parity in qualifications and training requirements between the Medicaid state plan, ODA-administered Medicaid waiver programs, and ODM-administered Medicaid waiver programs.	ODA proposes to voluntarily apply the training limitations for PCAs to homemaker aides. Although ODA cannot amend the rules for the Medicaid state plan or ODM-administered programs, we can amend our Older Americans Act rules to establish this parity between the PASSPORT Program and Older Americans Act programs.
173-39-02.11 on respite	OhioAging	We find this disheartening with so much focus of caregivers, why would CMS require this task be omitted? Respite would remain a separate service and not included under personal care service?	Ohio needs CMS' authorization to use Medicaid funds for the PASSPORT Program. CMS informed ODA that "personal care services may not be utilized as respite care for caregivers." At this time, we do not have more information on the basis for this.

Rule	Stakeholder	Question, Concern, or Recommendation	ODA's Response
173-39-02.11 on respite	OhioAging	I understand that this is a CMS directive; however, this change will be detrimental to individuals' ability to remain in their homes. We have many family caregivers who work outside of the home who need respite just to work and support the household. Their loved ones may not be able to stay home alone due to dementia, traumatic brain injury, *etc*. At times, we authorize a full day (8 hours) of care and other times may only be a couple of hours spread throughout the day to provide hands on care and additional supervision to the individual. This may force caregivers to put their loved one in a nursing facility. From an administrative standpoint, if this change goes into effect, I recommend that the rule expressively state that respite is not permissible. If this cannot be written in rule, we ask for an ODA notice that we would be able to bring as supportive documentation in a state hearing. We anticipate hearings for those who already use personal care as respite which we would have to take away, but also for future cases when we deny the requested hours because they cannot be used for respite. In Ohio Home Care Waiver, respite is not explicitly stated in rule so we have had to bring case management guides, manuals, *etc.* to state that the service cannot be used for respite. Having it written directly in rule would help a lot.	In the definition of "personal care" that applies to the PASSPORT Program, ODA proposes to indicate that respite is not included in personal care. If respite is needed, consumers and case managers should consider whether appropriate care would be covered and available under the following options: (1) The National Family Caregiver Support Program, which is an Older Americans Act funded program that covers in-home respite and other forms of caregiver support. (2) Alzheimer's Respite Program, which is a state-funded program that covers in-home respite and other forms of caregiver support. (3) The adult day service, which is covered under the PASSPORT Program and the Older Americans Act programs. (4) The out-of-home respite service, which is covered under the PASSPORT Program.

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?

Scientific research is not the impetus for amending each rule.

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? ***Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

173-3-01, 173-3-06.4, and 173-3-06.5: RC §173.392 requires ODA to adopt rules to establish requirements for AAA-provider agreements. Additionally, the federal law and regulation ODA listed in its response to #3 require ODA to develop policies for all aspects of the Older Americans Act programs.

173-39-02.8, 173-39-02.11, and 173-39-02.20: RC §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 the PASSPORT Program.

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

173-3-01, 173-3-06.4, and 173-3-06.5: RC §173.392 authorizes only ODA to adopt rules to establish requirements for AAA-provider agreements.

173-39-02.18: RC §173.391 authorizes only ODA to develop qualifications for ODA-certified providers of services to individuals enrolled in ODA-administered programs.

14. 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.

All Rules: Before the proposed amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature the rules.

173-3-01, 173-3-06.4, and 173-3-06.5: Through regular monitoring (i.e., auditing) requirements under 45 CFR Part 75, Subpart F: (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements.

173-39-02.8, 173-39-02.11, and 173-39-02.20: Through regular monitoring activities, ODA and its designees will monitor ODA-certified providers for compliance. [173-39-04]

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

173-3-01, 173-3-06.4, and 173-3-06.5: Every provider with an AAA-provider agreement for a homemaker service or personal care.

173-39-02.8, 173-39-02.11, and 173-39-02.20: Every ODA-certified provider of a homemaker service, personal care, or ECL.

Many providers operate in multiple ODA-administered programs, including programs that require AAA-provider agreements and programs that require certification.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).
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.

All Rules: The following are the adverse impacts of each rule:

- General requirements for every AAA-provider agreement or for every ODA-certified provider, including (1) requirements established in either rule 173-3-06 or 173-39-02 of the Administrative Code, (2) requirements on topics (e.g., background checks) that are referenced in rule 173-3-06 or 173-39-02 of the Administrative Code, but established outside of either rule (e.g., RC §§ 173.38 and 173.381), and (3) requirements on topics (e.g., records retention) that are established in rule 173-3-06 or 173-39-02 of the Administrative Code and also outside of either rule (e.g., 45 CFR 75.361).

- Specific requirements unique to each service: (1) availability, (2) PCA qualifications, including training, (3) supervisory requirements, and (4) service verification.

173-3-01, 173-3-06.4, and 173-3-06.5: Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit of service. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the service. If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 45 CFR 75.329 and rules 173-3-04 and 173-3-05 of the Administrative Code). As noted in ODA's response to question #16, ODA's proposed amendments will reduce the regulatory burden on providers.

173-39-02.8, 173-39-02.11, and 173-39-02.20: The amount the PASSPORT Program pays providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus employee-related costs. 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. The PASSPORT Program pays each provider the amount the provider the rate that ODM established in the appendix to rule 5160-1-06.1 of the Administrative Code. As noted in ODA's response to question #16, ODA's proposed amendments will reduce the regulatory burden on providers.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

ODA's proposed amendments will significantly reduce the regulatory burden. The amendments will achieve the following:

1. Declare that ODA considers any person who meets one of the 5 ways to qualify to be a PCA as having successfully completed the 30 hours of pre-service ODA-acceptable training required under RC §173.525, even if the way to qualify did not involve any training. This will prevent the crisis that would result from many PCAs from losing their jobs or being unable to perform their duties until they successfully complete 30 hours of training.[6] (173-39-02.11, 173-39-02.20)[7]

2. Reduce the number of training hours in the "other" way to qualify to be a PCA from 60 to 30 hours. (173-3-06.5 and 173-39-02.11)

[6] See ODA's response to question #2 for more information on ways that a person may qualify to be a PCA without successfully completing 30 hours of training.
[7] There is no need to add a similar declaration to rule 173-3-06.5 of the Administrative Code since RC §173.525 does not apply to that rule.

3. Reduce the number of training hours in the vocational-training way to qualify to be a PCA from 60 hours to 30 hours. (173-3-06.5)

4. Allow a person to qualify to be a homemaker aide by completing training on only activities that a homemaker aide would provide as an aide. For example, a person who would provide only laundry activities as an aide would qualify to be an aide by successfully completing training and competency evaluation on laundry activities. (173-3-06.4, 173-39-02.8)

5. Reduce the required annual in-service training hours for PCAs from 8 hours to 6 hours to comply with the limitation in RC §173.525. (173-39-02.11, 173-39-02.20)

6. Reduce the required annual in-service training hours for PCAs from 8 hours to 6 hours. (173-3-06.5)

7. Reduce annual in-service training hours for homemaker aides from 8 hours to 6 hours.

8. Stop limiting LPNs from being PCA supervisors only if the LPN is under the direction of an RN when RC §4723.01 allows an LPN to be under the direction of a list of healthcare professionals, except when limited by RC §173.525. (173-3-06.4, 173-3-06.5, 173-39-02.8)

9. Allow providers to retain evidence that a PCA supervisor or homemaker supervisor conducted a visit by telephone or video conference instead of obtaining a unique identifier of the individual. Examples of such evidence may include a report generated by telehealth software, phone records, or a clinical summary of the visit. This will prevent supervisors who conduct the visit by telephone of video conference from having to visit the consumer/individual in person to obtain a unique identifier. (173-3-06.4, 173-3-06.5, 173-39-02.8, 173-39-02.11)

10. Allow homemaker aides who provide laundry activities to do so in a laundromat if the consumer/individual does not have a working washer and dryer. (173-3-06.4, 173-39-02.8)

11. Create uniformity in the matters described above between programs that require AAA-provider agreements and programs that require certification, which will simplify matters for providers who operate in both types of programs.

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

173-3-01, 173-3-06.4, and 173-3-06.5: RC §173.392 requires ODA to develop rules establishing standards for AAA-provider agreements (i.e., contracts and grants) and RC §173.01 requires ODA to represent the interests older Ohioans. Establishing standards for AAA-provider agreements in this rule ensures the health and safety of the older Ohioans who are consumers of services through Older Americans Act programs, which fulfills both statutes. There is no requirement for a provider to enter into an AAA-provider agreement in order to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business may enter into an AAA-provider agreement in order for those Older Americans Act programs to pay the provider for the trips it wants to provide to consumers of those programs. Additionally, providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on providing services to be paid with Older Americans Act funds, and (2) the provider's bid is a winning bid. Providers may provide services without entering into an AAA-provider agreement when paid by private pay, third-party insurers, or other government programs that do not use Older Americans Act funds.

173-39-02.8, 173-39-02.11, and 173-39-02.20: ODA is required to develop rules establishing requirements for ODA-certified providers and to ensure the health and safety of individuals enrolled in programs that require ODA's certification (e.g., the PASSPORT Program). Providers voluntarily apply for ODA certification. Certification is not required to provide services 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 obtain ODA's certification.

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 consumers/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's primary concern is the health and safety of individuals receiving services from ODA-certified providers. 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?

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.