



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, 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: MANY RULES

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, 173-39-02.2, 173-39-02.4, 173-39-02.5, 173-39-02.6, 173-39-02.9, 173-39-02.12, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.19, 173-39-02.22, 173-39-02.23, 173-39-02.24, 173-39-03.2, 173-39-03.3, 173-39-03.4.

**Date of Submission for CSI Review:** December 1, 2023.

**Public Comment Period End Date:** December 14, 2023 at 11:59PM.

#### Rule Type/Number of Rules:

☐ New/ 0 rules

☐ No Change/ 0 rules (FYR? ☐)

☒ Amended/ 17 rules (FYR? ☒)

☒ Rescinded/ 1 rules (FYR?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?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**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.*

Rule 173-39-01 of the Administrative Code introduces Chapter 173-39 of the Administrative Code and defines terms used in that chapter. ODA proposes to amend this rule to achieve the following:

- 1. Define "business day."
- 2. Delete the definition of "continuing-care retirement communities" because this chapter does not use the term.
- 3. Delete the definition of "incident," because rule 173-39-02 of the Administrative Code now refers to the incident-reporting requirements in [rule 5160-44-05 of the Administrative Code](#).
- 4. Insert the missing words "direct ownership" between "means" and "interest" in the definition of "ownership interest."
- 5. Clarify in the definition of "region" that ODA delegates certain administrative duties to its designees. (Compare to this rule's definition of "ODA's designee.")
- 6. Place the definitions of "agency provider," "assisted living provider," "non-agency provider," and "participant-directed provider" in alphabetical order under paragraph (B) rather than as part of the definition of "provider."
- 7. Replace the definition of "service plan" with a definition of "person-centered services plan."
- 8. Replace the reference to rule 173-39-02.13 of the Administrative Code in the definition of "unique identifier" with a reference to rule 173-39-02.18 of the Administrative Code.
- 9. Delete the reference to rule 173-39-02.11 of the Administrative Code from the definition of "unique identifier" since that rule no longer contains service-verification requirements for participant-directed providers and, instead, refers to the service-verification requirements for participant-directed providers in rule 173-39-02.4 of the Administrative Code.

Rule 173-39-02 of the Administrative Code establishes the general requirements to become, and to remain, an ODA-certified provider. ODA proposes to amend this rule to replace the paragraph on legally-responsible family members with a reference to the Ohio Department of Medicaid's (ODM's) proposed new [rule 5160-44-32 of the Administrative Code](#). ODM's proposed new rule will establish allowable relationships for all Medicaid-waiver authorized programs.

Rule 173-39-02.2 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of alternative meals. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ [106.03](#) and [121.951](#).<sup>1</sup>

Rule 173-39-02.4 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of the choices home care attendant service. ODA proposes to amend this rule to achieve the following:

1. Remove respite from the definition of "choices home care attendant service" because the Centers for Medicare and Medicaid Services (CMS) asked ODA to no longer consider respite for the individual's caregiver as an activity of this service.
2. Correct a cross-reference.

Rule 173-39-02.5 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of home maintenance and chores. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Rule 173-39-02.6 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of personal emergency response systems. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Rule 173-39-02.9 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of home modifications. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Rule 173-39-02.12 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of social work or counseling. ODA proposes to amend this rule to achieve the following:

1. Implement [Senate Bill 204 \(134<sup>th</sup> G.A.\)](#) by allowing an LPCC, LPC, IMFT, MFT, LISW, or LSW with an unencumbered license in another state to qualify for ODA-certification to provide social work or counseling.
2. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951. This accounts for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.
3. No longer require the provider to provide an assessment to the individual's case manager because the assessment is part of developing the treatment plan and the rule requires the provider to share the treatment plan with the individual and the individual's case manager..
4. Give the provider flexibility in paragraph (B)(2) of this rule to provide this service in a community-based setting other than in the individual's home or by telephone or video conference.
5. Simplify paragraph (B)(2) of this rule after the words "as permitted" by referring to licensing boards in general rather than referring to licensing boards in general and also the State Medical Board of Ohio.
6. Establish deadlines on "business days" rather than "days." (This corresponds to ODA's proposal to define "business day" in rule 173-39-01 of the Administrative Code.)
7. No longer state that the provider may use an electronic system to collector o retain records since that topic is now covered in rule 173-39-02 of the Administrative Code.

---

<sup>1</sup> Senate Bill 9 (134<sup>th</sup> G.A.).

Rule 173-39-02.14 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of home-delivered meals. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Rule 173-39-02.15 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of community integration. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Rule 173-39-02.17 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of community transition. ODA proposes amend this rule to reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

Rule 173-39-02.19 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of the kosher option for home-delivered meals. ODA proposes to rescind this rule while ODM will incorporate language in [rule 5160-44-11 of the Administrative Code](#) (effective 01/01/2024) that will apply to home-delivered meals provided through the PASSPORT Program and will eliminate the need for this rule.

Rule 173-39-03.2 of the Administrative Code establishes the specific processes related to changes of ownership interest or organizational structure. ODA proposes to amend this rule to achieve the following:

1. Replace the requirements for a provider to send a notarized statement to ODA on (1) a change of ownership interest or change of organizational structure and (2) continued compliance with 42 C.F.R. Part 441 with a requirement for a provider to send an original signed statement to ODA in both cases. These amendments are ODA's response to a request by the Common-Sense Initiative to reconsider the need for notarization.
2. Reduce, in response to stakeholder input,<sup>2</sup> the impact of the discharge prohibition on assisted living providers by changing the end date of the prohibition on discharging residents from "until ODA makes a final determination regarding certification of the provider" to "until ODA submits the request to HHS for its review under 42 C.F.R. 441.301(c)(5)(v). This will accommodate the provider during the HHS heightened scrutiny review period.
3. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951. This accounts for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

Rule 173-39-03.3 of the Administrative Code establishes the specific application process for an ODA-certified provider to apply for certification to provide an additional service. . ODA proposes to amend this rule to achieve the following:

1. No longer refer to the paragraph (C)(1)(a) of rule 173-39-02 of the Administrative Code that ODA deleted from that rule on July 1, 2023.
2. Update cross-references.
3. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951. This accounts for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

Rule 173-39-03.4 of the Administrative Code establishes the specific application process for an ODA-certified provider to apply for certification in an additional region or from an additional business site in the same region. ODA proposes to amend this rule to achieve the following:

---

<sup>2</sup> See ODA's response to question #10.

1. No longer refer to the paragraph (C)(1)(a) of rule 173-39-02 of the Administrative Code that ODA deleted from that rule on July 1, 2023.
2. Update cross-references.
3. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951. This accounts for many non-substantive amendments that comprise a majority of ODA's proposed amendments to this rule.

ODA also proposes to make additional non-substantive improvements to the rules in this package.

To comply with the 50% guideline in §4.3.1 of the Legislative Service Commission's [Rule Drafting Manual \(June 2020\)](#), when ODA files these rules with the Joint Committee on Agency Rule Review, ODA plans to rescind any rule that it would amend by approximately more than 50% and simultaneously propose to adopt a new rule in its place.

**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.**

R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.39](#), [173.391](#), [173.52](#), [173.522](#), [173.524](#),<sup>3</sup> [173.54](#), [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 Medicaid-funded component of the PASSPORT and Assisted Living Programs, [42 C.F.R. 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.**

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 and Assisted Living Programs.

**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. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT and Assisted Living Programs.

**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. [173-39-04] ODA will judge the proposed amendments to these rules to be a success

---

<sup>3</sup> R.C. §173.524 applies to only rules 173-39-02.14 and 173-39-02.19 of the Administrative Code.

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 contact ODA's policy-development manager at [rules@age.ohio.gov](mailto: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 Addus 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) and 2 associations representing providers gave 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   |
|--------------|-------------|---|--|
| 173-39-01    | OCHCH       | OCHCH supported ODA's proposed amendments to this rule.   | Thankfulness   |
| 173-39-02    | OhioAging   | An AAA requested clarification on spouses who are guardians becoming direct care workers.   | ODM is proposing to adopt new rule 5160-44-32 of the Administrative Code. The final version of this rule will determine whether the spouse of an adult or any relative with legal decision-making authority will be eligible for payment by the PASSPORT Program or any Medicaid-waiver program. |
| 173-39-02    | OhioAging   | An AAA requested guidance on transitioning a spouse who was approved under PHE exceptions to become a participant-directed provider.  | Please refer to ODA's response to the previous comment.  |
| 173-39-02    | OCHCH       | OCHCH supported ODA's proposals to amend this rule to create consistency in defining the scope of service provision allowed by legally-responsible persons across ODA and ODM Medicaid waiver programs. OCHCH supports efforts to reduce barriers for individuals who wish to select legally-responsible persons as their caregivers. Additionally, OCHCH supports clear guidance and consistency across Ohio's Medicaid waiver programs. | Thankfulness   |
| 173-39-02.12 | OCHCH       | OCHCH supported ODA's proposal to allow an LPCC, LPC, IMFT, MFT, LISW, or LSW with an unencumbered license in another state to qualify to ODA-certification to provide social work or counseling.   | Thankfulness   |



| Rule        | Stakeholder | Question, Concern, or Recommendation   | ODA's Response  |
|-------------|-------------|--|---|
| 173-39-03.2 | OALA        | OALA said that paragraph (A)(6) has been an area of concern for providers, as there have been times when the resident stops paying room and board, and providers have not been able to secure payment.                       | ODA proposes to amend this rule to change the end date of the prohibition on discharging residents from "until ODA makes a final determination regarding certification of the provider" to "until ODA submits the request to HHS for its review under 42 C.F.R. 441.301(c)(5)(v)." This will accommodate the provider during the HHS heightened scrutiny review period. |
| 173-39-03.2 | OhioAging   | An AAA suggested that If there is an ownership change and a new owner is taking over, as long as the bill of sale/purchase contract is notarized noting the new owner, the statement to ODA being notarized could be waived. | ODA proposes to no longer require a notarized statement because notarization is unnecessary and burdensome.   |
| 173-39-03.2 | OCHCH       | OCHCH supported the proposed elimination of the requirement for a provider to notarize its notice to ODA of a change of ownership interest or change of organizational structure.  | Thankfulness  |

**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?**

ODA is not proposing to amend the rules in this package due to scientific data.

**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.***

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. 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.

**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.**

Before the proposed amendments to these rules take effect, ODA will post them on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature them.



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**

Every ODA-certified provider.

##### **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.*

The following are the adverse impacts of these rules:

- General requirements to become and to remain an ODA-certified provider. [173-39-02] These include compliance with (1) requirements established in rule 173-39-02 of the Administrative Code (e.g., providing ODA with contact information), (2) requirements on topics (e.g., background checks) that are referenced in rule 173-39-02 of the Administrative Code, but established outside of that rule (e.g., R.C. §§ [173.38](#) and [173.381](#)), and (3) requirements on topics (e.g., records retention) that are established in rule 173-39-02 of the Administrative Code and also outside of that rule (e.g., [45 C.F.R. 75.361](#)).
- Specific requirements unique to each service (e.g., availability, qualifications to provide the service, continuing education/in-service training). [173-39-02.2, 173-39-02.5, 173-39-02.6, 173-39-02.9, 173-39-02.12, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.18, 173-39-02.22, 173-39-02.23, 173-39-02.24]
- Specific requirements on reporting a change of ownership interest, and applying for certification to provide an additional service or to provide a service in additional regions. [173-39-03.2, 173-39-03.3, and 173-39-03.4]

The amount the PASSPORT and Assisted Living Programs pay 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 these rules 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 that 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 units of service for the PASSPORT Program and the maximum-allowable payment for each unit. In the appendix to rule [5160-1-06.5](#) of the Administrative Code, ODM establishes the units of service for the Assisted Living Program and the maximum-allowable payment for each unit. At the time of the drafting of this document, ODM is proposing to increase the maximum-allowable rates in both rules.

#### **16. Are there any proposed changes to the rules that will reduce 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 will reduce the regulatory impact of rule 173-39-02 of the Administrative Code by replacing the paragraph on legally-responsible family members with a reference to the Ohio Department of Medicaid's (ODM's) proposed new [rule 5160-44-32 of the Administrative Code](#). ODM's proposed new rule will allow spouses to be paid for providing services in certain situations.

ODA will reduce the regulatory impact of rule 173-39-02.12 of the Administrative Code with proposals to achieve the following:

1. Implement [Senate Bill 204 \(134<sup>th</sup> G.A.\)](#) by allowing an LPCC, LPC, IMFT, MFT, LISW, or LSW with an unencumbered license in another state to qualify for ODA-certification to provide social work or counseling.
2. No longer require the provider to provide an assessment to the individual's case manager because the assessment is part of developing the treatment plan and the rule requires the provider to share the treatment plan with the individual and the individual's case manager.
3. Give the provider flexibility to provide this service in a community-based setting other than in the individual's home or by telephone or video conference.
4. Establish deadlines on "business days" rather than "days."

ODA will reduce the regulatory impact of rule 173-39-03.2 of the Administrative Code by replacing the requirements for a provider to send a notarized statement to ODA on (1) a change of ownership interest or change of organizational structure and (2) continued compliance with 42 C.F.R. Part 441 with a requirement for a provider to send a signed statement to ODA in both cases.

ODA will reduce the impact of the discharge prohibition in rule 173-39-03.2 of the Administrative Code by changing the end date of the prohibition on discharging residents from "until ODA makes a final determination regarding certification of the provider" to "until ODA submits the request to HHS for its review under 42 C.F.R. 441.301(c)(5)(v). This will accommodate the provider during the HHS heightened scrutiny review period.

## **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 and Assisted Living Programs.

### **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'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.