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Hearing Date: 04/30/2024

Today's Date: 05/09/2024

Agency: Ohio Department of Aging

Rule Number(s): 173-39-03, 173-39-04, 173-39-05

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

In-Person Comments:

Individual(s)/Organization(s)	Rule	Comments
Central Ohio AAA	Please see attachment	

Written Comments:

Individual(s)/Organization(s)	Rule	Comments
Freedom Caregivers	Please see attachment	
Central Ohio AAA	Please see attachment	

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Please see the attached table of testimony and ODA's response to the testimony.

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

Comment Received	Rule	How Incorporated
Central Ohio AAA	Please see attachment	

PUBLIC HEARING TESTIMONY

PROVIDER CERTIFICATION: APPLICATION, REVIEW, DISCIPLINE

On April 30, 2024, ODA held a public hearing on proposed amendments to rules 173-39-03, 173-39-04, and 173-39-05 of the Administrative Code. The table below lists the testimony received on these rules and ODA's responses to that testimony.

	Rule	Testimony	ODA's Response
1	173-39-01	<p>Changing the definition of “case manager” and removing the definition of “incident” are concerning without more information. While changing the definition of “case manager” certainly widens the pool of those who could provide this service/support, it could also be seen as diluting the expertise needed for that role and could lead to unqualified individuals urging consumers to make decisions that aren't in their best interest, or that hurt agency providers. Likewise, removing the definition of “incident” could lead to less awareness of safety related trends or identification of issues with unqualified workers in self-direction. These changes would allow the shift of care away from agency providers in the self-direction program in an inappropriate way and without the protection that patients expect.</p> <p>Freedom Caregivers</p>	<p>This rule was not part of the April 30 public hearing.</p> <p>ODA conducted a public hearing for amendments to this rule on February 6. On April 29 at 8:41AM, ODA adopted those amendments in their final form and established the effective date as July 1.</p> <p>The reason why ODA deleted the definition of “incident” from this rule is because rule 5160-44-05 of the Administrative Code has established incident-reporting standards for all provider types, including participant-directed providers and ODA does not intend to retain any language in our rules that either duplicate or differ from rule 5160-44-05 of the Administrative Code.</p> <p>ODA amended the definition of “case manager” so that it did not imply that only RNs, LISWs, or LSWs qualify as case managers. This chapter of rules regulates certified providers and not case managers. We do not want for a definition in this chapter to imply that it establishes strict qualifications for case managers that may not exist.</p>

	Rule	Testimony	ODA's Response
2	173-39-03	<p>These changes most certainly benefit non-agency providers by creating separation between people that might be providing services from a professional provider. Again, the trend to create a lower standard of care for non-agency providers while also pressing people into self-directed programs is a huge concern.</p> <p>Freedom Caregivers</p>	<p>The reason for ODA's proposal to add paragraph (G) to this rule is to implement Senate Bill 131 (134th GA), which took effect on December 29, 2023. The legislation requires ODA to certify a person certified by the uniformed services or another state when that person moves to Ohio from the uniformed services or the other state according to the standards in RC Chapter 4796. For ODA's provider certification, the legislation applies to only non-agency or participant-directed providers because they are the only one-person provider types.</p>
3	173-39-03.3	<p>These changes seemed to be aimed at making the process for applying for provider certification easier/simpler. It is not immediately clear who these changes benefit, but it does lower the burden on agency providers.</p> <p>Freedom Caregivers</p>	<p>This rule was not part of the April 30 public hearing.</p> <p>ODA conducted a public hearing for amendments to this rule on February 6. On April 29 at 8:41AM, ODA adopted those amendments in their final form and established the effective date as July 1.</p>
4	173-39-04	<p>These changes appear to be helpful for agency providers by creating more flexibility in structural compliance reviews so agencies can address any issues while remaining in compliance.</p> <p>Freedom Caregivers</p>	<p>Thank you.</p>
5	173-39-04 (B)(1)(c-e)	<p>We request that parts d and e of the rule be written into part c: "A provider of personal care, enhanced community living, waiver nursing, choices home care attendant service, and home care attendant service that is neither certified by medicare nor accredited by the accreditation commission for health care, the community health accreditation partner, the joint commission, or another national accreditation organization that is approved by CMS and ODH."</p> <p>Certain providers of personal care and homemaking are permitted to go three years between reviews. Choices home care attendant service and home care attendant service are akin to personal care and homemaking; therefore, it is not logical to require them to have an annual review. Additionally, we have many personal care and homemaking providers who are certified to provide choices home care attendant service but never have. Requiring an annual review for choices home care attendant service and home care attendant service puts an undo (sic) burden on both the provider and the Provider Relations Specialist.</p> <p>Central Ohio Area Agency on Aging</p>	<p>ODA will continue with its plan to establish the deadline to review a provider of the choices home care attendant service and a provider of the home care attendant service as one year since the previous review because these providers do not have professional supervision that comes with being part of a provider agency.</p> <p>On May 9, 2024, ODA refiled the rule to revise Appendix A to this rule to allow ODA's designee to conduct a desk review of a participant-directed provider who has not provided any service since the previous review.</p>

	Rule	Testimony	ODA's Response
6	173-39-04 (C)(2)	<p>We request removal of language requiring retention of extension request in the provider's file.</p> <p>The AAA will already have to request approval from ODA for an extension (of which ODA should have record) and document the request in PIMS. This is sufficient documentation of the request. Central Ohio Area Agency on Aging</p>	<p>On May 9, 2024, ODA refiled this rule to delete this paragraph and to combine paragraph (C)(1) of the rule with paragraph (C) of the rule.</p>
7	173-39-04 (G)(1)	<p>We request that rule clarify that "in writing" includes email. Central Ohio Area Agency on Aging</p>	<p>On May 9, 2024, ODA refiled this rule to add a new paragraph (J) to this rule. The new paragraph will indicate that email is acceptable for plans of correction, evidence of compliance, notices, communications, and summary letters. This also involved deleting "written or electronic" from paragraph (H)(1) since the new paragraph (J) of this rule will supersede those words.</p>
8	173-39-04 (H)(1)(a)	<p>We request that rule clarify that "communication" includes email. Central Ohio Area Agency on Aging</p>	<p>Please see ODA's response to the testimony in row #7.</p>
9	173-39-04 (H)(1)(c)	<p>We request to remove this [paragraph] from the rule.</p> <p>The provider's deadline is already addressed in 173-39-04(H)(3). The placement of this rule is confusing – it reads as if the provider is responsible for demonstrating compliance within 10 business day (sic) of the conclusion of the review/exit interview, which is contradictory to 173-39-04(H)(3). Central Ohio Area Agency on Aging</p>	<p>On May 9, 2024, ODA refiled this rule to delete this paragraph.</p>
10	173-39-04 (H)(1)(d)	<p>We request to remove this [paragraph] from the rule.</p> <p>Our understanding is that one of the primary purposes of the LEAN process was to remove disciplinary actions from the compliance review process altogether. Our preference is that consideration for disciplinary action begins after the provider's deadline for coming into compliance has passed without being met. Central Ohio Area Agency on Aging</p>	<p>ODA will retain this paragraph so that the rule indicates that ODA or its designee may immediately impose a disciplinary action.</p>

	Rule	Testimony	ODA's Response
11	173-39-04 (H)(2)	<p>We request that rule allows 30 calendar days after the review for ODA's designee to send the summary letter to the provider.</p> <p>There are several reasons the proposed change is not reasonable, the first being that it is a drastic change – over 50 percent reduction. Just like our in-home care providers, many AAAs (especially the larger ones like COAAA) have been understaffed for years. Here at COAAA, the pending PASSPORT provider applicant list has nearly tripled since 2017. In that time, our staff lost three seasoned Provider Relations Specialist and trained three more. So far this month alone, COAAA has 115 pending PASSPORT provider applicants. As of April 1, 2024, we have 531 PASSPORT providers either certified or in the process of becoming so, 115 Participant-Directed providers either certified or in the process of becoming so, and 46 Assisted Living providers. This does not include the workload incurred by monitoring county levy programs and Title III. This is already a nearly unmanageable amount of work, and cutting our review follow up time by more than half adds to the burden. The amount of pre-certification reviews we are responsible for conducting has increased so much that we've had to devote a staff person entirely to that process – which means most of her caseload is then distributed amongst a staff already stretched thin. Many rule changes have been made over the past couple of years to decrease the burden on providers – we ask that you also consider decreasing the burden on those in the field. These changes have offered more flexibility to the providers who are in violation of ODA's regulations, but has further restricted us in our process to ensure rule adherence. By allowing 30 calendar days for ODA's designee to send the summary letter, we are able to address noncompliance, determine the appropriate correction process and ensure our providers receive the time and attention they need for comprehending rule compliance measures and receiving associated technical assistance. Our priority is always ensuring that Ohio waiver recipients received the highest quality care possible, which we feel will be compromised if the monitoring staff is held to an unreasonable deadline expectation.</p> <p>Central Ohio Area Agency on Aging</p>	<p>If ODA's designee (i.e., a PASSPORT administrative agency (PAA)) finds that a provider is out of compliance, waiting 30 days to send a summary letter to a provider to inform the provider of non-compliance is waiting too long. Waiting 30 days may extend problems an individual experiences from a non-compliant provider for another month. If a provider is unaware of the non-compliance, it also does not give the provider information needed to quickly correct the non-compliance.</p> <p>Additionally, ODA already decreased the burden on PAAs when it adopted amendments to this rule (effective July 1, 2023) to establish the deadlines for PAAs to review many types of providers to 3 years after the previous review.</p>

	Rule	Testimony	ODA's Response
12	173-39-04 (H)(2)	<p>Additionally, we request to remove language regarding disciplinary action.</p> <p>Our understanding is that one of the primary purposes of the LEAN process was to remove disciplinary actions from the compliance review process altogether. We understand our providers and their processes well, and with our experience and professional judgement, are able to quickly identify any violations of health and safety quickly and efficiently. As part of our procedure, we ensure immediate action is taken during the review process to rectify these areas of non-compliance preceding the conclusion of our site visit, removing the need for disciplinary action. Our preference is that consideration for disciplinary action begins after the provider's deadline for coming into compliance has passed without being met.</p> <p>Central Ohio Area Agency on Aging</p>	<p>ODA will retain the words "disciplinary action" in paragraph (H)(2) of this rule. The paragraph does not require ODA's designee (i.e., a PAA) to issue immediate disciplinary action. Instead, it gives ODA's designee flexibility to do so.</p>
13	173-39-04 (H)(3)	<p>We request that rule allows 30 calendar days after the summary letter is sent for the provider to submit a plan of correction or evidence of compliance.</p> <p>There are several reasons the proposed change is not reasonable, the first being that it is a drastic change – over 50 percent reduction. We anticipate that our providers, even seasoned ones, will struggle to adjust to this deadline decrease, which will temporarily increase the number of subsequent disciplinary actions being issued. Other rule changes over the past months were enacted to decrease the burden on the provider, presumably so that they can more easily recruit and retain staff and provide quality care. This proposed change is contradictory to that ideology – it puts an undue burden on the provider. We feel it is imperative to cultivate a process that allows providers the capacity to fully comprehend the rule violations so they are able to implement an effective plan of correction. Any finding during a review that is a potential safety threat to Ohio waiver recipients is going to be addressed by the Provider Relations Specialist during the exit conference, including pulling the provider's staff from service as needed. There is no measurable reason why anything else must be submitted within ten days as opposed to 30.</p> <p>Central Ohio Area Agency on Aging</p>	<p>Please review ODA's response to testimony in row #11.</p>

	Rule	Testimony	ODA's Response
14	173-39-04 (H)(3)	<p>Additionally, we request to remove language regarding disciplinary action.</p> <p>Our understanding is that one of the primary purposes of the LEAN process was to remove disciplinary actions from the compliance review process altogether. Our preference is that consideration for disciplinary action begins after the provider's deadline for coming into compliance has passed without being met.</p> <p>Central Ohio Area Agency on Aging</p>	Please review ODA's response to the testimony #12.
15	173-39-05	<p>Similarly, these changes are good because it gives ODA more flexibility to address compliance issues, while it allows agencies to focus on addressing areas of non-compliance rather than all compliance.</p> <p>Freedom Caregivers</p>	Thank you.