

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Ohio Department of Aging

**Package Title:** Community-Based Settings + Person-Centered Planning

**Rule Number(s):** 173-38-01, 173-39-01, 173-39-02, 173-40-01, 173-42-01, 173-51-01

**Date:** March 25, 2016, Revised April 14, 2016

**Rule Types:**

- ☒ **5-Year Review:** All above rules
- ☒ **Rescinded:** 173-38-01, 173-40-01, 173-42-01, 173-51-01
- ☒ **New:** 173-38-01, 173-40-01, 173-42-01, 173-51-01
- ☒ **Amended:** 173-39-01, 173-39-02
- ☐ **No change:** None

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Regulatory Intent**

**1. Please briefly describe the draft regulations in plain language.**

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

**COMPLY WITH FEDERAL MANDATES:** The Ohio Department of Aging (ODA) proposes to implement requirements in its rules for providers to comply with ODM's proposed new community-characteristics rule and for programs and providers to comply with ODM's proposed new person-centered planning rule. For more information, see ODA's response to BIA question #5.

**COMMON SENSE AMENDMENTS:** ODA proposes to make several common-sense amendments. For more information, see ODA's response to BIA question #5.

**SYSTEMATIC UPDATES:** ODA proposes to make non-substantive updates to the rules as part of a strategy to systematically update the terminology and references in all ODA rules. For more information, please review Appendix A.

This rule project involves 10 original rule filings (4 filings for rules to rescind, 4 filings for new rules, and 2 filings for adult day service rules to amend).<sup>1</sup>

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

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

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

***If yes, please briefly explain the source and substance of the federal requirement.***

42 C.F.R. Part 441 (Oct, 2015), which regulates home and community-based settings. Within that part, 42 C.F.R. 441.540 (Oct., 2015) regulates the person-centered planning process.

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

ODA is complying with federal mandates. ODA is not exceeding its federally-authorized regulatory scope of authority.

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<sup>1</sup> The Legislative Service Commission requires state agencies to rescind rules and replace them with new rules if the agency would have otherwise proposed amending 50% or more of the rule's words. Thus, to replace 1 rule, the agency must make 2 original rule filings with the Joint Committee on Agency Rule Review: 1 for the rescission and 1 for the new.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Below, ODA lists 3 primary purposes for this project:

- **FEDERAL MANDATES:** ODA's purpose for proposing to require compliance with ODM's proposed new community-characteristics rule<sup>2</sup> and new person-centered planning rule<sup>3</sup> is to comply with federal rules.
  - a. The proposed language regarding community characteristics is found in OAC173-39-02.
  - b. The proposed language regarding person-centered planning appears in the definitions for "service plan" in OAC 173-38-01, 173-39-01, 173-40-01, 173-42-01, and 173-51-01.
- **COMMON SENSE AMENDMENTS:** ODA's purpose for common-sense amendments is to keep pace with the changing legal and cultural environment for the long-term care industry and to eliminate unnecessary regulations.
  - a. **Code of Ethics (add to):** ODA proposes to amend the requirements for providers' ethics policies to stay relevant to today's technology—especially to address the problem caused by staph posting improper photos of elders on social media.<sup>4</sup> The proposed amendments include the following:
    - i. **Smart Phones:** An expansion of the prohibition against distracting activities while providing goods and services from against watching television or playing computer or video games to a prohibition against doing these activities on a phone (*i.e.*, a "smart phone").
    - ii. **Social Media:** An expansion of the prohibition against behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to an individual to a prohibition that includes publishing any manner of photos of an individual on social media websites without the individual's written consent.
    - iii. **Conflict of Interest:** An expansion of the prohibition on being both a paid caregiver and a designated decision maker for an individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship, or authorized representative. The expanded prohibition would prohibit performing the same actions, not just being designated to perform them.

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<sup>2</sup> For more information, please review (1) ODM's proposed new OAC5160-44-01 and its corresponding business impact analysis (BIA); (2) Centers for Medicare & Medicaid Services. *2014 HCBS Final Rule*. Slideshow presented at HCBS Conference. Sept 2015.

<sup>3</sup> For more information, please review ODM's proposed new OAC5160-44-02 and its corresponding BIA.

<sup>4</sup> Charles Ornstein. *Nursing Home Workers Share Explicit Photos of Residents on Snapchat*. ProPublica. Dec 21, 2015. [www.propublica.org](http://www.propublica.org) Accessed on Mar 25, 2016.

- b. **Code of Ethics (remove from):** ODA proposes to amend a requirement for providers' ethics policies to eliminate an unnecessary regulation. The prohibition on taking the individual to the provider's place of business makes no sense if the care setting is the place of business (*e.g.*, an adult day center).
- c. **"Job Experience":** ODA proposes to rewrite the "job experience" requirement for agency providers. A provider made an inquiry about a requirement in the rule that a provider is required to work for 3 months without pay. The provider was referring to this paragraph. The rule did not then, nor does now, contain such a requirement. Nevertheless, ODA is rewriting the requirement to move "at least three months of experience" to the beginning of the requirement to emphasize that this is a requirement for previous "job experience." In doing so, ODA is not changing the requirement.
- d. **Criminal Records Checks:**
  - i. **Sealed Records:** ODA proposes to add language to paragraphs that highlight the requirement to conduct background checks. This proposed new language would unveil a more difficult-to-find requirement in ORC§[109.572](#) for BCII to open sealed criminal records (if any) when a person requests a criminal records check under ORC§173.38. This amendment would not change background check laws. It would merely unveil a more difficult-to-find requirement.
  - ii. **Assisted Living:** ODA proposes to remove the language that requires assisted-living providers to comply with the background check requirement in OAC§173.38 because current law now exempts those providers from that section.
- e. **Training:** ODA proposes to change the requirement to participant in ODA's (or its designee's) provider training sessions to a requirement to participate in ODA's (or its designee's) *free* provider training sessions.
- f. **Hiring Practices:** ODA proposes to delete the requirement to for non-agency providers to comply with federal non-discrimination laws when hiring, because, by definition, a non-agency provider has no employees.
- g. **Assisted Living:** ODA proposes to delete the requirement that assisted living providers only provide services to individuals in the Assisted Living Program. ODA does has not been expecting, and does not now expect, any assisted living facility to refuse to serve individuals who are not enrolled in the Assisted Living Program in order to serve even 1 individual in the Program.
- **SYSTEMATIC UPDATES:** This should keep ODA's rules accurate and relevant. Please review Appendix A for more information.

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

For the Assisted Living and PASSPORT Programs, ODA monitors its designees and ODA and ODA's designees monitor providers for compliance according to OAC173-39-04.

### **Development of the Regulation**

### 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

***If applicable, please include the date and medium by which the stakeholders were initially contacted.***

ODA participated in a legislature-created stakeholder workgroup: §323.235 of Am. Sub. H.B. No. 59 (130<sup>th</sup> G.A.) created the Nursing Facility Distinct Part Advisory Workgroup in which providers joined legislators and state agencies, including ODA and ODM, to work on developing a compliance plan to respond to the federal mandates on community characteristics.

ODA also participated in stakeholder groups hosted by the Governor's Office of Health Transformation (OHT). OHT solicited comments from by public by hosting 2 public hearings on January 7 and 15, 2015 and by inviting email comments.<sup>5</sup>

On March 11, 2016, the Ohio Assisted Living Association made an inquiry regarding sealed-records requirements in statutes or rules that regulate ODA-administered programs.

On March 17, 2016, ODA polled an assisted living provider and 3 provider associations that represent assisted living on the following questions:

Next week, ODA may begin an online public-comment period for various rules and we're soliciting some early input from associations that represent assisted living. Let us know if you have thoughts on any of the topics below that may affect your clients:

- Remove requirement in OAC173-39-02 for ODA-certified assisted living providers to comply with OAC Chapter 173-9 because assisted-living providers are no longer subject to ORC§173.38, which is the basis for OAC Chapter 173-9.
- Add the following helpful statement to OAC173-39-02 and 173-9-04: [Division \(B\)\(1\) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.38 of the Revised Code.](#) This would not create a new requirement. Instead, it would unveil a difficult to locate requirement. This would not apply to assisted living providers. However, assisted living providers have been asking for the source of requirement to open sealed records. Perhaps, this would be a wise request for ODH to add to their rules on criminal records checks.
- Add this requirement to OAC173-39-02: [The provider shall not provide services to individuals in provider-owned or provider-controlled settings unless the settings meet the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.](#) Rather than creating a duplicate rule to comply with the new federal rules, ODA proposes to require compliance with ODM's proposed new rule on community characteristics.

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<sup>5</sup> Governor's Office of Health Transformation. *Ohio's Draft Plan to Comply with New Federal Home and Community Based Services Requirements* and the accompanying document *Questions and Answers*. Dec 15, 2014.

- Define “service plan” in many rules to *include person-centered planning as set forth in rule 5160-44-02 of the Administrative Code*. Again, rather than creating a duplicate rule to comply with the new federal rules, ODA proposes to require compliance with ODM’s proposed new rule on person-centered planning.
- Change the requirement in OAC173-39-02 for providers to participate in ODA’s mandatory provider training sessions, to a requirement to participate in ODA’s mandatory *free* provider training sessions.
- [This point pertained to another forthcoming rule project.]
- Update OAC Chapter 173-51 (state-funded component of the Assisted Living Program) to use the new references to ODM statutes, ODM forms, *etc.* (These rules may have a comment period in the summer instead of next week.)

On March 17, 2016, ODA polled 7 providers who aren’t assisted-living providers and 2 provider associations on the following questions:

Next week, ODA may begin an online public-comment period for various rules and we’re soliciting some early input from providers and provider associations. Let us know if you have thoughts on any of the proposals below;

- Remove the prohibition in OAC173-39-02 against taking individuals to the provider’s place of business if the place of business is the care setting (*e.g.*, an adult day center).
- To the ethics language in OAC173-39-02 for agency, non-agency, and participant-directed providers, add prohibitions on (1) non-care-related socialization through video (*e.g.*, Skype), (2) publishing any manner of photos of the individual on social media websites, and (3) making decisions for the individual in any capacity involving a declaration for mental health treatment, power of attorney,..... Regarding (3): The current language only prohibits being designated to make decisions.
- Rewrite the requirement for 3 months of “job experience” before an agency provider may be certified without making any new requirements of providers. The goal is to emphasize that the requirement is about job experience. The Ohio Secretary of State’s office assisted with a proposed rewrite. We may use the language below:

At the point of application, the provider shall have at least three month of experience doing all of the following:

(i) The provider has been providing the specific goods and services for which it seeks certification from ODA to provide to at least two Ohio adults in the community.

(ii) The provider has been providing the goods and services in paragraph (i) of the rule as a business entity with an active registration from the Ohio secretary of state.

(iii) The provider was paid for providing the goods and services in paragraph (i) of the rule.

- Change the requirement in OAC173-39-02 for providers to participate in ODA’s mandatory provider training sessions, to a requirement to participate in ODA’s mandatory *free* provider training sessions.
- Eliminate the requirement in OAC173-39-02 for non-agency providers to follow federal employment rules. By definition, a non-agency provider is self-employed and may not hire a person. If a non-agency provider hired a person, it would become an agency provider and need to be certified in that manner.
- [This point pertained to another forthcoming rule project.]
- [This point pertained to another forthcoming rule project.]

- Add the following helpful statement to OAC173-39-02, [another rule project], and [another rule project]: [Division \(B\)\(1\) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.38 of the Revised Code.](#) This would not create a new requirement. Instead, it would unveil a difficult to locate requirement.
- Add this requirement to OAC173-39-02: [The provider shall not provide services to individuals in provider-owned or provider-controlled settings unless the settings meet the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.](#) Rather than creating a duplicate rule to comply with the new federal rules, ODA proposes to require compliance with ODM's proposed new rule on community characteristics.
- Define "service plan" in many rules to *include person-centered planning as set forth in rule 5160-44-02 of the Administrative Code.* Again, rather than creating a duplicate rule to comply with the new federal rules, ODA proposes to require compliance with ODM's proposed new rule on person-centered planning.

From March 25, 2016 to April 10, 2016, ODA conducted an online public-comment period to gather further input.

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

The inquiry from the Ohio Assisted Living Assn. convinced ODA to add helpful language to ODA's rules that would not require or regulate sealed records, but would highlight the difficult-to-locate law on sealed records in OAC§109.572.

Senior Resource Connection was the only party to respond to ODA's March 17 requests for input. For more information, please see ODA's response to BIA question #10.

During ODA's online public-comment period, 1 of ODA's designees (AAA5) and an association representing ODA's designees (O4A) submitted a combined 7 comments on the rule proposals. Although ODA received no other comments, ODA is aware that others reviewed the rules. For the March portion of the comment period,<sup>6</sup> ODA's web traffic analysis shows that 84 people accessed the proposed new version of OAC173-39-02 97 times. This compares to 174 people checking the current version of the same rule 207 times. However, most of those who accessed the proposed new version of OAC173-39-02 left a comment upon the rule. For more information on the public comments and ODA's responses to those comments, please review Appendix B to this BIA.

In response to the comments, ODA determined that it would offer technical assistance to its designees regarding the determination of which providers are agency providers and which are non-agency providers.

Additionally, in the following 2 rules, ODA made a total of 3 changes before filing the rules with JCARR:

- **POST-COMMENT-PERIOD REVISIONS to OAC173-39-01:** ODA included hospitalizations and emergency department visits as examples of "significant changes" that could result in not receiving goods or services for 30 days. This change would not alter the adverse impact upon providers.
- **POST-COMMENT-PERIOD REVISION to OAC173-39-02:**

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<sup>6</sup> At the time of printing, ODA did not yet have web traffic analysis for April 1 to April 10, 2016. Those would have represented the portion of the online public-comment period occurring in April.

- ODA deleted explicit requirements to include hospitalizations and emergency department visits as significant changes because ODA simplified the matter by amending the definition of “significant change” in OAC173-39-01. This change would not alter the adverse impact upon providers.
- ODA will clarify that payment rates for consumer-directed individual providers are negotiated between the consumer and the individual, but that ODA’s designees are required to record the negotiated rate in the certification agreement. This change would not alter the adverse impact upon providers.

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

This rule project is not based upon scientific reports.

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

ODA considered a total ban on publishing photos of individuals on social media. However, the input from Senior Resource Connection, a Dayton-area provider, reminded ODA that providers use social media in good ways to promote the services that they offer to individuals. Therefore, ODA has altered its proposal to ban publishing photos of individuals on social media *unless the provider has obtained the written consent of the individual*.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

***Performance-based regulations define the required outcome, but don’t dictate the process the regulated stakeholders must use to achieve compliance.***

Rules that regulate the Assisted Living and PASSPORT Programs are not inherently performance-based regulations. However, the programs have a *de facto* performance-based component. 42 C.F.R. 431.51 authorizes any individual enrolled in the PASSPORT Program the freedom to choose to any willing and qualified provider to provide his or her goods or services. Thus, a high-performing provider t will see greater numbers of individuals requesting its goods and services.

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

ODA reviewed its rules to ensure that it doesn’t duplicate regulations.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

ODA publishes all proposed and currently-effective rules in the [Online Rules Library](#) on ODA's website. Before a rule takes effect, ODA publishes the soon-to-be-effective rule in the Rules Library. Then, to any subscriber of our rule-notification service, ODA emails a notice that the soon-to-be-effective rule is published.

Any person may [subscribe](#) to receive email notifications of soon-to-be-effective ODA rules.

As previously stated in the BIA, ODA monitors its designees for compliance. Additionally, ODA (and its designees) monitor providers for compliance.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

OAC173-39-01 and 173-39-02 regulate every ODA-certified provider.

OAC 173-38-01, 173-40-01, 173-42-01, and 17-51-01 do not regulate providers or any other Ohio businesses.

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

OAC 173-38-01, 173-39-01, 173-40-01, 173-42-01, and 173-51-01 merely define terms and create no adverse impact. These rules also contain definitions for "service plan" that references proposed new OAC5160-44-02. For more information on the adverse impact of rule OAC5160-44-02, please review ODM's recent BIA for that rule.

OAC173-39-02 lists requirements for every ODA-certified provider. The requirements include the following:

- **Service-provision requirements** including reporting significant changes to ODA, reporting planned cessation of services to ODA, adopting staff ethics policies, and providing services to individuals in settings meeting the home and community-based setting characteristics set forth in proposed new OAC5160-44-01. ODA's proposed changes to the ethics policies would not create a new or increased adverse impact. Because the practices being banned could lead to lawsuits or criminal proceedings, providers may save money by implementing them. For more information on the adverse impact of rule OAC5160-44-01, please see ODM's recent BIA for that rule.

- **Consumer safety:** ODA is not proposing to make substantive changes to these requirements. The current requirements involve documenting incidents; reporting any abuse, neglect, or exploitation; and maintaining commercial liability insurance and insurance coverage for loss due to theft or property damage caused by the provider or provider's staff members.
- **Confidentiality:** ODA is not proposing to make substantive amendments to these requirements. The requirements don't require any expenses.
- **Provider qualifications:** ODA is proposing make a helpful rewrite of the "job experience" language and sealed records language. This should prevent any provider from being confused by what is in (or not in) the current rule language. ODA is also indicating that it's mandatory provider training sessions are free. Non-agency providers would no longer need to comply with federal hiring non-discrimination requirements because non-agency providers don't hire employees. Assisted Living providers would not need to comply with ORC173.38 and would be permitted to serve consumers who are not enrolled in the Assisted Living Program if ODA certifies them to provide services to people in that program. These items do not increase adverse impact and may even reduce adverse impact.
- **Monitoring:** ODA is not proposing to make substantive amendments to these requirements. The requirements don't require any expenses.

**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 regulatory features of Ohio's plan to comply with federal rules is contained in those 2 proposed new ODM rules: OAC 5160-44-01 and 5160-44-02. For more information on the adverse impact of complying with those rules, please review ODM's recent BIA for those rules. Additional sources may provide helpful analyses.<sup>7</sup>

ODA's proposed amendments to the rules in this package would not increase adverse impact. In fact, the reduced regulatory burden and prevention of activities that could cause lawsuits may reduce adverse impact.

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<sup>7</sup> (1) Maureen M. Corcoran. "Analysis of Final Regulations Regarding the Definition of HCBS Settings and the Ohio Medicaid Assisted Living Waiver Program." Memo to Jean Thompson. Jun 23, 2014. (2) National Association of States United for Aging and Disabilities. *Medicaid HCBS Settings Regulations and Adult Services*. Apr, 2015. (3) Centers for Medicare and Medicaid Services. *Questions and Answers – 1915(i) State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, Setting Requirements for Community First Choice, and 1915(c) Home and Community-Based Services Waivers – CMS 2249-F and 2296-F*. May 7, 2012.

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

ODA is obligated to cooperate with ODM to implement a requirement for ODA-certified providers to comply with ODM's OAC 5160-44-01 and 5160-44-02. Because ODA is not proposing to adopt requirements in addition to those being proposed by ODM, ODA is not creating any adverse impact except that caused by OAC 5160-44-01 and 5160-44-02.

Although providers may save money by implementing the amended staff ethics policy requirements, no requirements for that policy would increase adverse impact.

**Regulatory Flexibility**

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

ODA's rules treat all providers the same, regardless of their size.

ORC§173.391 does not authorize ODA to adopt rules that create different regulations based upon the size of a provider's workforce.

Additionally, most providers of long-term care services are small businesses.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

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

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

ODA and its designees are available to answer providers' requests for technical assistance—regardless of the number of size of a provider's business. As stated in #16, for both programs, ODA's rules treat nutrition providers the same, regardless of their size.

ODA maintains an [online rules library](#) to allow providers to find the rules that regulate them. Providers may access the online library 24 hours per day, 365 days per year.

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





## APPENDIX A

# TERMINOLOGY BACKGROUND & OTHER COMPOSITION STANDARDS

April, 2016

### Disclaimer

*This appendix does not define terms used in ODA's rules. Instead, it provides background on why ODA is systematically incorporating uniform terminology and other composition standards into new and amended rules. For definitions, please see the definitions in ODA's rules.*

### Background for Terminology.

**AAA-provider agreement:** ODA proposes to use "AAA-provider agreement" instead of "provider agreement" to represent agreements between an AAA and the provider. The term is used much in OAC Chapter 173-3, which regulates AAA-provider agreements that pay providers, in whole or in part, with Older Americans Act funds. For now, OAC Chapter 173-4 may use "contract" in place of "AAA-provider agreement." *Compare to "certification agreement" and "Medicaid-provider agreement."*

**Applicable and Appropriate:** ODA proposes to not use "applicable" or "appropriate" in a rule. Adopting those words into law allows the *reader*, not the *author*, of the law to determine what he or she believes is the law.

**Before:** ODA proposes to continue using "before" instead of "prior to."

**Certification Agreement:** ODA proposes to use "certification agreement" instead of "provider agreement" or "contract" to represent agreements between ODA's designee and the provider. *Compare to "AAA-provider agreement" and "Medicaid-provider agreement."*

**Certified Provider:** Because "certified provider" and "certified long-term care provider" have the same meaning in ODA's rules, ODA proposes to delete the unnecessary use of "long-term care."

**Certified Service:** ODA does not certify services; it certifies providers to provide goods and services. Therefore, ODA proposes to replace all occurrences of "certified services" with "goods or services ODA certified the provider to provide."

**Choices:** ODA proposes to delete all references to the now-defunct Choices Program.

**Compliance Reviews:** ODA proposes to use “compliance reviews” refer to the reviews in OAC173-39-04. The term would have the same meaning as “audit or structural compliance review” in ORC§173.391 and “provider structural compliance review” in the current version of OAC173-39-04. Using a general term minimizes the potential for interpreting that OAC173-39-04 only applies to specific types of compliance reviews.

**Days + Deadlines:** Unless the context indicates otherwise, ODA proposes to consider a day to be a 24-hour period that begins and ends at Midnight.<sup>1</sup> The term would not require the modifier “calendar” to differentiate a day from a *business day*.

Additionally, ODA proposes to refrain from using “business day” because the term could be interpreted to mean weekdays, weekdays-minus weekday holidays, days not on vacations (*i.e.*, “holidays”), *etc.* Additionally, “holidays” could be interpreted to mean major holidays, government holidays, vacations, *etc.*

ODA proposes to use the following terminology because (1) it accounts for deadlines that would occur on a day other than a business day, (2) would not be prone to misinterpretation by adversarial interests, and (3) would create a statewide standard within ODA-administered programs:

...no later than five days after X. If the fifth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day that immediately follows the fifth day that is not on a weekend or a legal holiday.

ODA proposes to denote deadlines with terms that would not allow 2 directions of days. For example, “within five days of X” could mean 5 days before *or* after X, or an 11-day period, while “no later than 5 days after X” only means 5 days after X.

**Disciplinary Actions:** Although people sometimes refer to “sanctions,” ODA proposes to continue using “disciplinary actions” in its rules. “Disciplinary actions” is used in ORC§173.391 where it refers to the actions taken by ODA that involve hearings. Disciplinary actions are regulated by OAC173-39-05. “Non-disciplinary actions” refers to the actions taken by ODA in ORC§173.391 that do not involve hearings. Non-disciplinary actions are regulated by OAC173-39-05.1.

**Expired:** ODA proposes to no longer use “expired” to refer to individuals who are deceased. Instead, ODA proposes to use “deceased.”

**Goods + Services:** Meals and home medical equipment include service components (*e.g.*, delivery) but are traditionally considered goods, not services. Therefore, ODA proposes to generally use “goods and services” when referring to goods and services but to use “services” when referring to only services.

It is also verbose and unnecessary to insert “service” after the name of goods. It’s also verbose and unnecessary to insert “service” after the name of certain services (*e.g.*, assisted living, chores, and personal

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<sup>1</sup> If a rule would refer to a 24-hour period that would begin and end at a time other than Midnight, the term would be “twenty-four hour period.”

care). The same goes for inserting the word “service” before “requirements.” The requirements stand without the word “service.”

Together, ODA’s proposal to use “*goods and services*” and to eliminate “*service requirements*” would prevent potential misconceptions that certain requirements would not apply to providers of goods without changing the meaning of any rule.

For rules that only regulate a service, ODA would continue to use the word “service.”

**Includes:** ODA proposes to continue using “includes” but not “includes, but is not limited to.” Both have the same meaning, but the latter is redundant.

**Individual:** ODA proposes to replace “consumer” with “individual” in OAC Chapter 173-39 and for rules that regulate the state and Medicaid-funded components of the Assisted Living and PASSPORT Programs. These would be the exceptions:

1. When referring to consumer-directed providers, ODA proposes to replace “consumer” with “participant.”
2. When referring to person-centered planning, ODA proposes to use “person” where “consumer” would have been used if the term “consumer-centered planning” existed in the current rules.

**Legalisms:** ODA proposes to minimize unnecessary legalisms in rule language, such as replacing “in accordance with” with “according to.”

**Medicaid-Provider Agreement:** ODA proposes to use “Medicaid-provider agreement” to represent agreements between ODM and the provider. *Compare to “AAA-provider agreement” and “certification agreement.”*

**Minimum requirements:** ODA proposes to continue replacing occurrences of “minimum requirements” with “requirements” because ODA is not authorized to adopt a rule that, in turn, authorizes extra-rule requirements that are not incorporated into the rule by reference and readily available to the general public free of charge.

**ODA’s designee:** In 2015, ODA adopted a new version of OAC173-39-01 that included a new definition for “ODA’s designee.” In the BIA for the rule project,<sup>2</sup> ODA explained the following:

In rule 173-39-01 of the Administrative Code, ODA proposes to redefine the term “ODA’s designee” in a way that would allow the 13 current PASSPORT administrative agencies to continue to be designees, but that also allows ODA to designate another entity if necessary. The current definition says the following:

“ODA’s designee” has the same meaning as “PASSPORT administrative agency” in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code plus “Catholic Social Services of the Miami Valley.”

ODA proposes for the new definition to say the following:

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<sup>2</sup> Ohio Dept. of Aging. *ODA Provider Certification: Terminology*. Business Impact Analysis. Revised, Sept 10, 2015. Pg. 2.

“ODA’s designee” is an entity to which ODA delegates one or more of its administrative duties. ODA’s current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and “Catholic Social Services of the Miami Valley.”

In the same BIA, ODA also explained the following:<sup>3</sup>

If ODA wanted to designate another entity to perform administrative duties, the adverse impact would be the entity that ODA didn’t designate for to perform these duties. If ODA uses free and open competition to choose the “designee,” the adverse impact would be the result of submitting a bid that was not the winning bid.

ODA proposes to continue using “ODA’s designee” in this manner.

Instead of using the phrase “ODA (or ODA’s designee),” ODA may use “ODA (or its designee).”

**Ohio Administrative Code + Ohio Revised Code Citations:** §5.2.1 of the Legislative Service Commission’s (LSC’s) Rule Drafting Manual requires state agencies to make citations to these bodies of law use the following formulas: “rule 123-4-56 of the Administrative Code” and “section 123.45 of the Revised Code.”<sup>4</sup> However, to make the BIA and related documents shorter and easier to read, ODA proposes to use the following unofficial citation formulas in the BIA and related non-rule documents: “OAC123-4-56” and “ORC§123.45.”

**Participant-directed:** ODA proposes to use “participant-directed” instead of “consumer-directed.” This would be an exception to the ODA’s proposal to change occurrences “consumer” to “individual.” Otherwise, “consumer-directed individual provider” would become “individual-directed individual provider.” The latter term could be mistaken for a self-employed (*i.e.*, non-agency) provider.

**Pay:** ODA proposes to use forms of “pay” (*e.g.*, “payment”) instead of forms of “reimburse” (*e.g.*, “reimbursement”). ODA<sup>5</sup> and ODM<sup>6</sup> have proposed or made similar changes to other rules.

**Policies and Procedures:** ODA proposes to consistently use “policies” and not “policies and procedures,” because a required procedure would be a policy. Therefore, “and procedures” is redundant.

**Provide:** ODA proposes to use the verb “provide” instead of “furnish,” “deliver,” “serve,” *etc.*

**Provider:** Because all of OAC Chapter 173-39 is about ODA provider certification and because each rule begins by requiring ODA-certified providers to comply, there is no need to use “certified” or “ODA-certified” before “provider” in the rest of each rule’s text. This reduces verbosity.

When describing the relationship between a provider and a government authority, ODA proposes to consistently use the following terms throughout OAC Chapter 173-39:

- Licensure is a matter between (1) a provider/provider’s employee who requires a license to practice a profession in Ohio and the state’s licensing board or agency or (2) a facility (*e.g.*, a residential care facility) that requires a license to operate in Ohio and the state’s licensing board or agency. Although

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<sup>3</sup> *Id.* Pg. 10.

<sup>4</sup> ORC§1.01 allows LSC to draft legislation using “R.C.”

<sup>5</sup> Ohio Dept. of Aging. *Nutrition Rules*. Business Impact Analysis. Revised, Dec 31, 2015.

<sup>6</sup> Ohio Dept. of Medicaid. *Modifications to Administrative Rules 5160-4-12 and 5160-4-13*. (MHTL 3334-14-XX) Undated.

ODA is not a licensing board or agency, to obtain ODA's certification, a provider shall have all licenses required by state law.

- "ODA provider certification" and "certification" refer to ODA's certification of providers. This is the primary topic of OAC Chapter 173-39.
- "Current, valid Ohio Medicaid provider agreement" or "agreement" is an agreement between a provider and the Ohio Dept. of Medicaid to obtain a Medicaid provider number. The number is necessary for billing for the goods and services provided to individuals enrolled in the Assisted Living or PASSPORT Programs.
- "Contract" is an agreement between a provider and ODA's designee that establishes the rates of payment for each job, item (*i.e.*, "good"), or unit of service.<sup>7</sup>

**Requirements:** ODA proposes to use "requirements" instead of "criteria" because the singular form of "criteria" is "criterion." Most readers would not know the meaning of "criterion." Fortunately, the single form of "requirements" is simply "requirement."

ODA proposes to use "requirements" instead of "conditions" because "conditions" is a term more associated with weather (*e.g.*, *weather conditions*) than provider qualifications. Thus, references to "conditions of participation" in OAC173-39-02 become references to the "requirements" in OAC173-39-02.

Together, using "requirements" instead of "criteria" or "conditions" would offer consistent terminology for readers of ODA's rules.

**Service plan:** ODA proposes to amend the definitions of "service plan" to say that the term includes "person-centered planning" conducted according to OAC5160-44-02.

**Shall:** §5.8.3 of the LSC's Rule Drafting Manual requires state agencies to make requirements of providers with the term "shall," not "must."

**Waiver Services:** ODA proposes to eliminate "waiver" as it appears before "services" in rules. ODA requires providers to comply with OAC Chapter 173-39 when they are providing goods and services to individuals enrolled in both the *State-funded* and *Medicaid-funded* components of the PASSPORT and Assisted Living Programs. Thus not all services are authorized by Medicaid waivers.

## Composition Standards

**Rule Titles:** Chapters of the Ohio Administrative Code do not have official titles. Publishers assign their own titles to chapters. Over the years, ODA has inserted helpful cross-references in its rules when it seemed helpful to let the reader know that they may want to be reading another chapter of rules. Now, ODA is proposing to delete many of those cross references because it is systematically adding "Chapter title" language to each rule's title. For example, ODA has 2 adult day service rules, each of which regulate on a different basis. Because ODA is proposing (in another rule project) to insert "Older Americans Act" in front of "Adult day

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<sup>7</sup> See OAC5160-31-07.

service,” there is no need to refer any readers of the provider certification chapter (OAC Chapter 173-39) that a similar regulation exists.

**General First:** ODA proposes to generally raise general topics before specific ones.

- Bad example: Except as set forth in paragraph (B)(2) of the rule, the provider shall not X.
- Good example: The provider shall not X, unless the provider is Y.

**Multi-Paragraph Run-On Sentences:** ODA proposes to continue converting multi-paragraph run-on sentences into paragraphs that end in periods.

**References:** ODA proposes to make as few references as possible within each rule and between rules.

**Paragraph Outline:** For rules that regulate the provision of goods and services, ODA proposes to generally place paragraphs in the following order:

- (A) Definition of the good or service.
- (B) Eligibility of individual.
- (C) Requirements for providing the good or service.
  - (1) General requirements.
  - (2) Facility requirements.
  - (3) Staffing levels.
  - (4) Provider (staff) qualifications, including training.
  - (5) Service verification.
- (D) Payment/Unit and Rates
- (E) Definitions specific to rule (*i.e.*, a glossary).

Most rules contain the text above in black. Rules that do not contain one or more of the blue paragraphs would be renumbered accordingly.

**Active Voice:** ODA proposes to use the active voice (*vs.*, the passive voice) whenever reasonable.

- Passive example: The consumer shall be provided X. (Who is the responsible party?)
- Active example: The provider shall provide X to the consumer. (The language clearly identifies the responsible party.)



## APPENDIX B

# ONLINE PUBLIC-COMMENT PERIOD

April 14, 2016

ODA conducted an online public-comment period from March 25, 2016 to April 10, 2016 for the proposals for OAC 173-38-01, 173-39-01, 173-39-02, 173-40-01, 173-42-01, and 173-51-01. During the public-comment period, 1 of ODA's designees (AAA5) and association representing ODA's designees (O4A) submitted 7 comments. ODA received no other comments.

ODA presents the comments below:

OAC173-38-01 ASSISTED LIVING PROGRAM (MEDICAID-FUNDED COMPONENT): INTRODUCTION AND DEFINITIONS	
COMMENT RECEIVED	ODA's RESPONSE
ODA received no comments.	NA

OAC173-39-01 ODA PROVIDER CERTIFICATION: INTRODUCTION AND DEFINITIONS	
COMMENT RECEIVED	ODA's RESPONSE
<p><b>"Provider" Definition</b></p> <p>OAC 173-39-01 has included additional information in the definition under "Provider" for the Non-agency provider. Previously the definition, and our understanding, was that a non-agency provider could enter into sub-contracts that would be acceptable if prior approval was obtained from the PAA. If this will no longer be permitted, we could lose a number of current MHM and Chore providers who rely on these sub-contractors to assist with specific and/or larger jobs. Additionally, it had been our understanding that if a husband and wife have a "family" business, this could be considered as self-employed. So, they could apply as a non-agency provider.</p> <p>We would appreciate clarification on these two issues.</p> <p><b>Joyce Boling, Chief of Quality Management Ohio District 5 Area Agency on Aging (AAA5)</b></p>	<p>The current and previous versions of the rule do not consider non-agency providers to be family businesses or providers who can sub-contract.</p> <p>Likewise, other also rules define "non-agency provider" and the similar term, "independent provider" also indicate self-employment with no employees, whether by direct hiring or by sub-contracting.</p> <p>ODA will provide technical assistance to its designees on this matter.</p>

OAC173-39-02 ODA PROVIDER CERTIFICATION: REQUIREMENTS FOR EVERY PROVIDER	
COMMENT RECEIVED	ODA's RESPONSE
<p><b>(B)(1)(d)(i): Discontinuing services</b></p> <p>[This paragraph] allows an agency provider to terminate services to an individual who has been hospitalized without a 30 day notice. This is problematic, especially when we have an individual hospitalized for a short stay. They will potentially return home without a provider if we are unable to quickly secure another provider. This situation is not much different than terminating services without notice for an individual currently in the community. I would advocate that ODA consider removing the exemption for the 30 day notice in the situations where an individual is hospitalized. If the individual goes to a NF, we would normally have more time to get new services in place, so we do not have the same concerns about the lack of notice for an individual placed in a NF. This same wording is present in section (C)(1)(d)(i) for non-agency providers but is not included as an exemption to the 30 day notice for consumer directed providers. Since CDIPs are required to give a 30 day notice in these circumstances, we feel that agency providers should have the same requirement.</p> <p><b>Ohio Association of Area Agencies on Aging (O4A)</b></p>	<p>The 30-day notification requirement has been OAC173-39-02 for agency, non-agency, and participant-directed providers since it was first adopted on March 31, 2006. During the time since its adoption, ODA has not received complaints from agency, non-agency, or participant-directed providers. Additionally, the requirement is in alignment with the Ohio Dept. of Medicaid's requirement in OAC5160-45-10.</p>
<p><b>(B)(1)(e)(xi): Ethical standards: distracting activities</b></p> <p>Because this rule is a requirement for an "agency provider" it seems more appropriate that the word "provider" in the first line of this section should be "staff member" and the word "provider's" in section (a) that follows should read, "staff member's".]</p> <p><b>Ohio Association of Area Agencies on Aging (O4A)</b></p>	<p>The current and proposed new versions of OAC173-39-02 make requirements for providers, not their staff members. In both the current and proposed new versions of OAC173-39-02(B)(1)(e), ODA requires providers to adopt and implement ethical standards. It would be the job of the provider's workers/staff members to comply with the provider's standards.</p>

OAC173-39-02	
ODA PROVIDER CERTIFICATION: REQUIREMENTS FOR EVERY PROVIDER	
COMMENT RECEIVED	ODA's RESPONSE
<p><b>(B)(1)(e)(xiv): Ethical standards: conflict of interest</b>  <b>[Also, (C)(1)(e)(xiv), (D)(1)(d)(ix), and (F)(1)(e)(ix)]</b></p> <p>The sections ... around prohibitions on workers having any type of decision making capacity is still unclear and perhaps ODA might choose to add more clarity here. The rule does not specify or make any differentiation between a “durable power of attorney” which might allow an individual some current decision making authority around a variety of topics as opposed to a “durable power of attorney for health care” which would only be activated if the individual is unable to make decisions for themselves and only allows authority specifically for health care decisions ( as we understand it). If ODA intends this section to include DPOAs for health care, they should specifically state that here.</p> <p>Also, because the rule states “durable power of attorney”, are we to infer that POAs that are not “durable” are exempt.</p> <p>Finally, if it is the state’s intent that direct service workers should not be involved with an individual in any decision making capacity, it might be clearer to add the words “decision making including...” Example, ..making decisions, or being designated to make decisions, for the individual in any capacity involving decision making including a declaration for mental health treatment, durable power of attorney.... In that case, we would interpret any type of POA as serving in a decision making capacity.</p> <p><b>Ohio Association of Area Agencies on Aging (O4A)</b></p>	<p>ODA wants to further investigate this matter before considering any amendments to the rule. In the meantime, ODA plans to proceed with the filing of this rule so that the rule may take effect on—or as close to—July 1, 2016 as possible to comply with federal laws on defining which settings have community characteristics and what care is person-centered. ODA plans to review OAC173-39-02 again in fall, 2016. ODA will incorporate your comment into that review.</p>
<p><b>(D)(1)(b): Significant change reporting.</b></p> <p>[This paragraph] describes when a consumer directed provider is required to notify ODA's designee of significant changes in condition. For the consumer directed individual providers, it is specifically noted that they notify the designee when an “individual was admitted to a hospital or visited an emergency room”. We support that this is a specific requirement in the rule but are questioning why it is not also specifically noted in the rule sections for agency or non-agency providers as well as Assisted Living providers. We feel it is important that we are notified as soon as possible of all hospitalizations and ER visits.</p> <p><b>Ohio Association of Area Agencies on Aging (O4A)</b></p>	<p>For simplicity and uniformity, in the version of OAC173-3-01 that ODA files with JCARR, ODA will amend the definition of “significant change” to include hospitalization and emergency department visits as examples of significant changes.</p> <p>Because reporting significant changes would include reporting hospitalizations or emergency department visits that result in the individual not receiving services for 30 days, there is no need to itemize hospitalizations and emergency department visits in the paragraphs of OAC173-39-02 that regulate participant-directed providers. In the version of OAC173-39-02 that ODA files with JCARR, ODA will remove any language in significant-change reporting paragraphs that mention hospitalizations or emergency department visits.</p>

OAC173-39-02 ODA PROVIDER CERTIFICATION: REQUIREMENTS FOR EVERY PROVIDER	
COMMENT RECEIVED	ODA's RESPONSE
<p><b>(D)(6): Payment</b></p> <p>This section addresses Consumer Directed IPs. ODA is making significant changes to the wording in this section and the changes are not accurate with our current practice. One AAA confirmed with their provider department that they use a unit rate of \$1 on the contracts for consumer directed IPs. Their actual hourly wage is then negotiated with the consumer and is not a set rate with ODA or the AAA. The FMS pays the CDIP the wage rate negotiated by the consumer and approved by the CM. We advocate that the wording should more clearly describe actual practice unless ODA is proposing to change how the rates/wages are determined for the CDIPs. The previous wording that ODA is changing was more accurate. CDIPs can serve more than one individual and can negotiate a different rate with each individual.</p> <p><b>Ohio Association of Area Agencies on Aging (O4A)</b></p>	<p>In the version of OAC173-39-02(D)(6) that ODA files with JCARR, ODA will retain the language from the current-version of the rule that says the payment rate is “negotiated between the provider and the individual,” but also say that ODA’s designee records the rate negotiated between the provider and the individual in the certification agreement.</p> <p>A proposed amendment to OAC173-39-01 would define “certification agreement” as an agreement between ODA’s designee and the provider.</p>
<p><b>(E)(4): Assisted living providers: background checks</b></p> <p>Since current law now exempts Assisted Living providers from complying with a section of the background check requirement and ODA is proposing to delete that from OAC 173-39-02(E)(4)(g), do ODA’s designees have authority to monitor the AL waiver providers for background check compliance as required by the Ohio Department of Health?</p> <p><b>Ohio Association of Area Agencies on Aging (O4A)</b></p>	<p>On February 10, 2016, ODA distributed a notice to its designees addressing this topic. Here is the notice’s explanation of designee’s responsibilities:</p> <p>The Ohio Department of Aging (ODA) is responsible for the administration of the Assisted Living waiver in a manner consistent with federal waiver assurances. This responsibility includes the review of criminal record checks for all providers of community-based long term care services. ...</p> <p>In consultation with ODH, it has been determined that Ohio Revised Code section 3721.121(E)(7) grants ODA the authority to review criminal records checks completed pursuant to RCF licensure requirements in ODA certified Assisted Living waiver facilities. Therefore, effective Monday, February 15, 2016, PASSPORT Administrative Agencies (PAAs) are to resume the practice of reviewing criminal record checks during structural compliance reviews for all Assisted Living Waiver providers. In these reviews, the PAA will determine the provider’s compliance with ODH’s criminal background rules found in OAC Chapter 3701-13. Please note this review is not occurring on behalf of ODH as that agency will continue to monitor RCFs for compliance with the State’s licensure requirements. The PAAs role is to use this information as part of its routine monitoring of assisted living providers for compliance with ODA’s certification requirements.</p> <p>ODA and ODH criminal record check rules are different and include the following:            ODH rule does not require criminal background checks for employees hired prior to 1/27/97 (3701-13-02).</p>

OAC173-39-02 ODA PROVIDER CERTIFICATION: REQUIREMENTS FOR EVERY PROVIDER	
COMMENT RECEIVED	ODA's RESPONSE
	<ul style="list-style-type: none"> <li>• Criminal records check results must be received within 30 days of fingerprinting instead of 60 days (3701-13-04 (D)(01)).</li> <li>• ODH does not utilize Tier levels related to Disqualifying offenses (3701-13-04 (D)(02)).</li> <li>• ODH allows Personal Character Standards (3701-13-06).</li> <li>• The applicant log (Bureau of Criminal Identification and Investigation (BCII) log) has different required elements (3701-13-07 (D)). The following are required: <ul style="list-style-type: none"> <li>○ Name of applicant;</li> <li>○ Application date;</li> <li>○ Start date;</li> <li>○ Criminal record request date;</li> <li>○ Type of check (BCII/FBI);</li> <li>○ BCII/FBI received date;</li> <li>○ BCII completed date;</li> <li>○ Were personal character standards used?;</li> <li>○ Final disposition;</li> <li>○ Conditional employment terminated.</li> <li>○ ODH does not require criminal record re-checks post-hire.</li> <li>○ ODH does not require the 6 free database checks.</li> </ul> </li> </ul> <p>...</p> <p>During each Assisted Living structural compliance review (SCR), as part of the conditions of participation evaluation, employee records will be checked for compliance with the ODH criminal record check requirements. This includes opening sealed envelopes with BCII information enclosed, reviewing the applicant log for completion and accuracy, and reviewing personal character standards. If any areas of deficiency are identified during review of the criminal records and/or deficiencies in the application of personal character standards, the PAA must provide technical assistance or, based on the significance of the deficiency identified, issue a Level One Disciplinary Action citing OAC rule 173-39-02(E)(4)(f). Additionally, the PAA must notify ODH, when learning of a criminal background deficiency or other health and safety issue(s).</p> <p>Please note that this change is to help ensure the health and safety of our individuals and ODA complies with the Medicaid Assisted Living waiver assurances.</p>

OAC173-40-01 PASSPORT PROGRAM (STATE-FUNDED COMPONENT): INTRODUCTION AND DEFINITIONS	
COMMENT RECEIVED	ODA's RESPONSE
ODA received no comments.	NA

OAC173-42-01 PASSPORT PROGRAM (MEDICAID-FUNDED COMPONENT): INTRODUCTION AND DEFINITIONS	
COMMENT RECEIVED	ODA's RESPONSE
ODA received no comments.	NA

OAC173-51-01 ASSISTED LIVING PROGRAM (STATE-FUNDED COMPONENT): INTRODUCTION AND DEFINITIONS	
COMMENT RECEIVED	ODA's RESPONSE
ODA received no comments.	NA

To this document, ODA attached the rules as they appeared on ODA's website during the online public-comment.



**DRAFT for ONLINE PUBLIC-COMMENT PERIOD**  
**\*\*\* DRAFT - NOT YET FILED \*\*\***

173-38-01

**Assisted living program (medicaid-funded component):  
introduction and definitions.**

Note: ODA presents the rule in a proposed amendment form. When ODA files the rule with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, the Legislative Service Commission will require ODA to propose rescinding the rule and adopting a new rule in its place.

(A) Introduction: Chapter 173-38 of the Administrative Code regulates the medicaid-funded component of the assisted living program created under section 173.54 of the Revised Code. (See Chapter 173-51 of the Administrative Code for rules on the state-funded component of the assisted living program.)

~~(B) Definitions for Chapter 173-38 of the Administrative Code:~~

- ~~(1) "Assisted living program" ("program") means the home and community-based medicaid waiver program created under section 173.54 of the Revised Code that provides consumers in the program with the assisted living service under rule 173-39-02.16 of the Administrative Code and, in some cases, the community transition service under rule 173-39-02.17 of the Administrative Code, if the consumers reside in a residential care facility and would otherwise receive services in a nursing facility if the waiver program was not available.~~
- ~~(2) "Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.~~
- ~~(3) "CDJFS" means "county department of job and family services."~~
- ~~(4) "Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.~~
- ~~(5) "ODA" means "the Ohio department of aging."~~
- ~~(6) "ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."~~
- ~~(7) "ODM" means "the Ohio department of medicaid."~~
- ~~(8) "Service plan" (aka, "care plan") means the written outline of the services that ODA's designee expects a provider to furnish to a consumer.~~

(B) Definitions for this chapter:

"Assisted living program" ("program") means the home and community-based medicaid waiver program created under section 173.54 of the Revised Code that provides individuals in the program with the assisted living service under rule 173-39-02.16 of the Administrative Code and, in some cases, the community transition service under rule 173-39-02.17 of the Administrative Code, if the

individuals reside in a residential care facility and would otherwise receive services in a nursing facility if the waiver program was not available.

"Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.

"Form JFS07200" means "form JFS07200 'Request for Cash, Food, and Medical Assistance.' (rev. 9/2014)" The Ohio department of job and family services publishes the form on <http://www.odjfs.state.oh.us/forms/>." It is available to the general public at no cost.

"Form ODA1115" means "form ODA1115 'Financial Assessment Worksheet.' (rev. 09/2011)" ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODA1116" means "form ODA1116 'Enrollment Agreement.' (rev. 09/2011)" ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODA1117" means "form ODA1117 'Notice of Proposed Action and Opportunity for Hearing' (rev. 04/2012)" ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODM02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS)' (07/2014)." ODM publishes the form on <http://medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx>. It is available to the general public at no cost.

"ODA" means "the Ohio department of aging.

"ODA's designee" has the same meaning as in rule 173-39-01 of the Administrative Code.

"ODM" means "the Ohio department of medicaid."

"ODM's administrative agency" has the same meaning as "administrative agency" in rule 5160:1-1-01 of the Administrative Code.

"Residential care facility" has the same meaning as in section 3721.01 of the Revised Code.

"Service plan" means the written outline of the goods or services that a case manager authorizes a provider to provide to an individual, regardless of the funding source for those goods or services. "Service plan" includes the person-centered planning in rule 5160-44-02 of the Administrative Code.

173-39-01

**ODA provider certification: introduction and definitions.**

(A) Introduction:

- (1) This chapter establishes the certification requirements for providers who ~~furnish~~ provide goods or services to individuals through an ODA-administered medicaid waiver program or the state-funded components of the assisted living or PASSPORT programs; the ~~minimum~~ requirements for ~~furnishing~~ providing goods or services through those programs; disciplinary action against providers who do not comply with the ~~minimum~~ requirements; and appeal hearings for providers receiving disciplinary action.
- (2) Rule 5160-58-04 of the Administrative Code requires providers to comply with many of the ~~minimum~~ requirements for ~~furnishing~~ providing goods or services in this chapter when the provider ~~furnishes~~ provides those goods or services to individuals in the mycare Ohio program.
- ~~(3) If a provider furnishes services to individuals through a medicaid waiver program and also furnishes services to individuals by using Older Americans Act funds, the provider shall also comply with Chapter 173-3 of the Administrative Code. If a provider furnishes services to individuals through a medicaid waiver program and also furnishes nutrition services to individuals by using Older Americans Act funds, the provider shall also comply with Chapters 173-3 and 173-4 of the Administrative Code.~~

(B) Definitions for this chapter:

"Abandonment of application" means a provider applicant who does not complete all requirements of the provider-certification process as set forth in rule 173-39-03 of the Administrative Code.

"Activity of daily living" ("ADL") has the same meaning as in rule 5160-3-05 of the Administrative Code.

"Activity plan" means a description of ~~the~~ interventions and the dates and times that the provider ~~will furnish~~ shall provide the interventions.

"Assistance with self-administration of medication" has the same meaning as in as in paragraph (C) of rule 4723-13-02 of the Administrative Code when an unlicensed person provides the assistance ~~is furnished by an unlicensed person.~~

"Caregiver" means a relative, friend, or significant other who voluntarily ~~furnishes~~ provides assistance to the individual and is responsible for the individual's care on a continuing basis.

"Case manager" means the registered nurse, licensed social worker, or licensed

independent social worker that ODA's designee employs to plan, coordinate, monitor, evaluate, and authorize services for ODA-administered programs that require provider certification under this chapter.

"CDJFS" means "county department of job and family services."

"Certification" means ODA's approval of a provider to ~~furnish~~ provide one or more of the services that this chapter regulates.

"Certification agreement" means an agreement between ODA's designee and the provider.

"Consumer" has the same meaning as "individual."

"Incident" means any event that is not consistent with ~~furnishing~~ providing routine care ~~or of~~ a good or service to an individual. Examples of an incident are abuse, neglect, abandonment, accidents, or unusual events or situations that may result in injury to a person or damage to property or equipment. An incident may involve an individual, a caregiver (to the extent the event impacts the individual), a provider, a facility, or a staff member of a provider, facility, ODA, ODA's designee, or other administrative authority.

"Individual" means an individual who receives goods or services as an enrollee in ODA-administered programs that require provider certification under this chapter.

"Individual's signature" means the individual's signature or that of the individual's caregiver, which may include a handwritten signature; initials; stamp or mark; or electronic signature that represents the individual's acknowledgment, including acknowledgment that he or she received a good or service. ODA's designee documents the individual's signature of choice (i.e., handwritten, initials, stamp or mark, or electronic) in the individual's record and communicates it to the provider.

"Instrumental activity of daily living" ("IADL") has the same meaning as in rule 5160-3-05 of the Administrative Code.

"Licensed practical nurse" ("LPN") has the same meaning as in section 4723.01 of the Revised Code.

"Medicaid-provider agreement" means an agreement between ODM and the provider.

"Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

"ODA" means "the Ohio department of aging."

"ODA's designee" ~~is~~ means an entity to which ODA delegates one or more of its

administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and "Catholic Social Services of the Miami Valley." When "its designee" occurs after "ODA," it means "ODA's designee."

"ODM" means "the Ohio department of medicaid."

~~"Older Americans Act" has the same meaning as in rule 173-3-01 of the Administrative Code.~~

"Ownership or control interest" means having ownership or interest, whether directly, indirectly, or in any combination.

"Plan of treatment" means the orders of a ~~physician or any other~~ licensed healthcare professional whose scope of practice includes making plans of treatment.

"Provider" means a person or entity that ~~furnishes~~ provides a good or service under this chapter. The five categories of providers are agency providers, assisted living providers, non-agency providers, participant-directed individual providers, and participant-directed personal care providers. "Agency provider" means a legally-organized entity that employs staff. "Assisted living provider" means a licensed residential care facility. "Non-agency provider" (i.e., "self-employed provider") means a legally-organized entity that is owned and controlled by one self-employed person ~~and that who~~ does not employ ~~a staff, either directly or through a contract, anyone else to provide goods or services, and who is unsupervised.~~ "Participant-directed provider" means either a "participant directed individual provider" or "participant-directed personal care provider" depending upon the context. "Participant-directed individual provider" ("consumer-directed individual provider") means a person that an individual (participant) directly employs and supervises to ~~furnish~~ provide a choices home care attendant service (CHCAS). "Participant-directed personal care provider" ("consumer-directed personal care provider") means a person that an individual (participant) directly employs and supervises to ~~furnish~~ provide personal care.

"Registered nurse" ("RN") has the same meaning as in section 4723.01 of the Revised Code.

"Service plan" means the written outline of the goods or services that a case manager authorizes a provider to ~~furnish~~ provide to an individual, regardless of the funding source for those goods or services. "Service plan" includes the person-centered planning in rule 5160-44-02 of the Administrative Code.

"Services" has the same meaning as "community-based long-term care services" in section 173.14 of the Revised Code.

"Significant change" ~~is~~ means a variation in the health, care, or needs of an individual that warrants further evaluation to determine if changes to the type,

amount, or scope of goods or services are needed. Significant changes include differences in health status, caregiver status, ~~residence/location of service delivery~~ residence, service location, and service delivery that result in the individual not receiving ~~waiver~~ services for thirty days.

"Vocational program" means a planned series, or a sequence of courses or modules, that incorporate challenging, academic education and rigorous, performance-based training to prepare participants for success in a particular health care career or occupation.

DRAFT for ONLINE PUBLIC-COMMENT PERIOD  
\*\*\* DRAFT - NOT YET FILED \*\*\*

173-39-02

ODA provider certification: Conditions of participation requirements for every provider.

(A) Introduction: This rule presents the ~~conditions of participation~~ requirements for each of the five types of ODA-certified ~~long-term-care~~ providers: agency providers, non-agency providers, ~~consumer-directed~~ participant-directed individual providers, assisted living providers, and ~~consumer-directed~~ participant-directed personal care providers.

(B) Agency providers: These are the ~~conditions~~ requirements for any provider who seeks to become, or to remain, an ODA-certified ~~long-term-care~~ agency provider:

(1) Service provision:

(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a good or service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

(b) The provider may ~~furnish~~ provide a good or service ~~that is~~ not authorized by the ~~consumer's~~ individual's service plan, but ODA (or ~~ODA's~~ its designee) only ~~reimburses~~ pays the provider for ~~furnishing~~ providing a service that is goods or services authorized by the ~~consumer's~~ individual's service plan.

(c) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that may affect ~~a consumer's~~ an individual's service needs, including one or more of the following:

(i) The provider does not ~~furnish~~ provide an authorized good or service at the time (or, for the period of time) authorized by the case manager~~;~~.

(ii) The ~~consumer~~ individual moves to another address~~;~~.

(iii) The provider is aware of any significant change ~~that may impact~~ furnishing impacting the provision of goods or services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods or services~~;~~ ~~or~~.

(iv) The ~~consumer's~~ individual's physical, mental, or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.

- (d) The provider shall notify the ~~consumer~~ individual and ODA's designee in writing at least thirty days before the last day the provider ~~furnishes~~ provides ~~ODA-certified~~ goods or services to the ~~consumer~~ individual, unless:
- (i) The ~~consumer~~ individual has been hospitalized, placed in a long-term care facility, or ~~has expired~~ is deceased;
  - (ii) The health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk; and,
  - (iii) The ~~consumer is terminating~~ individual chooses to no longer receive goods or services ~~with~~ from the provider.
- (e) The provider shall adopt and implement ethical standards to require ~~workers~~ its staff members to ~~furnish~~ provide goods and services in an ethical professional, respectful, and legal manner and not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following behaviors:
- (i) Consuming the ~~consumer's~~ individual's food or drink, or using the ~~consumer's~~ individual's personal property without his or her consent.
  - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the ~~consumer's~~ individual's place of residence.
  - (iii) Taking the ~~consumer~~ individual to the provider's place of business, unless the place of business is the care setting.
  - (iv) Consuming alcohol while ~~furnishing~~ providing a service goods or services to the ~~consumer~~ individual.
  - (v) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that~~ in a way that is illegal, unprescribed, or impairs the provider from ~~furnishing~~ providing a service goods or services to the ~~consumer~~ individual.
  - (vi) Discussing religion or politics with the ~~consumer~~ individual and others in the care setting.

- (vii) Discussing personal issues with the ~~consumer~~ individual or any other person in the care setting.
- (viii) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the ~~consumer~~ individual or his or her household members or family members.
- (ix) Engaging the ~~consumer~~ individual in sexual conduct, or in conduct ~~that~~ a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (x) Leaving the ~~consumer's~~ individual's home for a purpose not related to ~~furnishing~~ providing a service without notifying the agency supervisor, the ~~consumer's~~ individual's emergency contact person, any identified caregiver, or the ~~consumer's~~ individual's case manager. "Emergency contact person" means a person the ~~consumer~~ individual or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.
- (xi) Engaging in any activity that may distract the provider from ~~furnishing a service~~ providing goods or services, including the following activities:
  - (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.
  - (b) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or~~ email, or video).
  - (c) ~~Furnishing~~ Providing care to a person other than the ~~consumer~~ individual.
  - (d) Smoking without the ~~consumer's~~ individual's consent.
  - (e) Sleeping.

- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the ~~consumer~~ individual including publishing any manner of photos of the individual on social media websites without the individual's written consent.
- (xiii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.
- (xiv) ~~Being~~ Making decisions, or being designated to make decisions, for the ~~consumer~~ individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship; or authorized representative.
- (xv) Selling to, or purchasing from, the ~~consumer~~ individual products or personal items, unless the provider is the ~~consumer's~~ individual's family member who does so only when not ~~furnishing a service~~ providing goods or services.
- (xvi) Engaging in behavior ~~that constitutes~~ constituting a conflict of interest, or ~~takes~~ taking advantage of, or ~~manipulates~~ manipulating ~~ODA-certified~~ services resulting in an unintended advantage for personal gain that has detrimental results to the ~~consumer~~ individual, the ~~consumer's~~ individual's family or caregivers, or another provider.

(f) The provider shall only provide services to individuals in settings meeting the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.

(2) ~~Consumer safety~~ Safety:

- (a) The provider shall have a written procedure for documenting ~~consumer~~ individual's incidents. The procedure shall include notifying ODA (or ~~ODA's~~ its designee) of the incident no later than one business day after the provider is aware of the incident.
- (b) The provider shall report any reasonable cause to believe ~~that a consumer~~ has an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), ~~in accordance with~~ as required by section 5101.61 of the Revised Code, ~~and~~ The provider shall also notify ODA (or ~~ODA's~~

its designee) of the reasonable cause.

- (c) The provider shall maintain a minimum of one million dollars in commercial liability insurance.
  - (d) The provider shall maintain insurance coverage for ~~consumer~~ individual loss due to theft or property damage and ~~furnish~~ provide written instructions that any ~~consumer~~ individual may use to obtain ~~reimbursement~~ payment for a loss due to employee theft or property damage.
- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer~~ individual confidentiality including, ~~but not limited to,~~ 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).
- (4) Provider qualifications:
- (a) ~~The provider shall be a formally organized business or service agency that is registered with the Ohio secretary of state that has been operating, furnishing services, and being paid for the same services for which certification is being applied for at least two adults in the community for a minimum of three months at the point of application.~~ At the point of application, the provider shall have at least three months of experience doing all of the following:
    - (i) The provider has been providing the specific goods and services for which it seeks certification from ODA to provide to at least two Ohio adults in the community.
    - (ii) The provider has been providing the goods and services in paragraph (B)(4)(a)(i) of the rule as a business entity with an active registration from the Ohio secretary of state.
    - (iii) The provider was paid for providing the goods and services in paragraph (B)(4)(a)(i) of the rule.
  - (b) The provider shall disclose all entities that own at least five per cent of the provider's business.
  - (c) The provider shall have a written statement defining the purpose of the provider's business ~~or service agency~~.

- (d) The provider shall have written policies. Additionally, if the provider has a governing board, the provider shall have written bylaws; and, if the provider is incorporated, the provider shall have written articles of incorporation.
- (e) The provider shall have a written table of organization ~~that~~ clearly ~~identifies~~ identifying lines of administrative, advisory, contractual, and supervisory authority.
- (f) The provider shall not allow a staff person to ~~furnish~~ provide ~~a service~~ goods or services to a ~~consumer~~ individual if the person is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (g) The provider shall not allow a volunteer to ~~furnish~~ provide any aspect of ~~a certified long-term care service for a consumer~~ providing goods or services ODA certified the provider to provide individual without supervision by the provider's supervisory staff.
- (h) The provider shall maintain a physical facility from which to conduct business that has all of the following:
  - (i) A primary business telephone number ~~that is~~ locally listed (e.g., in the telephone book in the provider's area of business) under the name of the business or a toll-free telephone number ~~that is~~ available through directory assistance that allows for reliable, dependable, and accessible communication.
  - (ii) A designated, locked storage space for retaining ~~consumer~~ individuals' records.
- (i) The provider shall comply with all applicable federal, state, and local laws.
- (j) The provider shall disclose the identity of any person who is an owner or has control over the agency if that person ~~has been~~ was convicted of a felony under state or federal law.
- (k) ~~The~~ When hiring an applicant for, or retaining an employee in, a paid direct-care position, the provider shall ~~comply with the database reviews~~ review databases and check criminal records ~~check requirements under~~ according to section 173.38 of the Revised Code

and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.38 of the Revised Code.

- (l) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, ~~2013~~ 2015 edition) regarding the provision of goods and services.
- (m) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on ~~November 20, 2012~~ March 4, 2016) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (n) The provider shall annually ~~furnish~~ provide to ODA (or ~~ODA's~~ its designee) a written statement ~~that certifies~~ certifying that the provider ~~has~~ paid all applicable federal, state, and local income and employment taxes.
- (o) The provider shall participate in ODA's (~~and~~ or its designee's) mandatory free provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the goods and services the provider ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ latest of the following dates:
  - (i) Six years after the date the provider receives payment for the good or service~~;~~.
  - (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled~~;~~or,
  - (iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

- (b) Access: The provider shall, upon request, immediately ~~furnish~~ provide representatives of ODA (or ~~ODA's~~ its designee) with access to its facility, a place to work in its facility, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) ~~Reimbursement~~Payment:

- (a) The provider shall bill only for a good or service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a good or service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
  - (b) ODA's obligation to ~~reimburse~~ pay the provider for the costs of goods and services the provider ~~furnishes~~ provides as a certified ~~long-term-care~~ provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.
  - (c) The provider shall accept the ~~reimbursement~~ payment levels ~~rates negotiated for each service by the provider and ODA's designee for~~ goods and services established in the certification agreement as payment in full, and not seek any additional payment for ~~those~~ goods and services from the ~~consumer~~ individual or any other person.
- (C) Non-agency providers: These are the ~~conditions~~ requirements for any provider who seeks to become, or to remain, an ODA-certified ~~long-term-care~~ non-agency provider:

(1) Service provision:

- (a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a good or service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (b) The provider may ~~furnish~~ provide a service ~~that is~~ not authorized by the ~~consumer's~~ individual's service plan, but ODA (or ~~ODA's~~ its designee) only ~~reimburses~~ pays the provider for ~~furnishing~~ providing a good or service ~~that is~~ authorized by the ~~consumer's~~ individual's service plan.
- (c) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that

may affect the ~~consumer's service needs~~ individual's need for goods and services, including one or more of the following:

- (i) The provider does not ~~furnish~~ provide an authorized good or service at the time (or, for the period of time) authorized by the case manager~~;~~.
  - (ii) The ~~consumer~~ individual moves to another address~~;~~.
  - (iii) The provider is aware of any significant change ~~that may impact~~ furnishing impacting the provision of goods or services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods or services~~;~~~~or~~.
  - (iv) The ~~consumer's~~ individual's physical, mental, or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (d) The provider shall notify ~~the~~ an consumer individual and ODA's designee in writing at least thirty days before the last day the provider stops ~~furnishing providing ODA-certified goods and~~ services ODA certified the provider to provide to the ~~consumer~~ individual, unless:
- (i) The ~~consumer~~ individual has been hospitalized, placed in a long-term care facility, or ~~has expired~~ is deceased;
  - (ii) The health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk; and,
  - (iii) The ~~consumer is terminating~~ individual chooses to no longer receive goods or services ~~with~~ from the provider.
- (e) The provider shall ~~furnish~~ provide goods and services in an ethical professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following behaviors:
- (i) Consuming the ~~consumer's~~ individual's food or drink, or using the ~~consumer's~~ individual's personal property without his or her consent.

- (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the ~~consumer's~~ individual's place of residence.
- (iii) Taking the ~~consumer~~ individual to his or her place of business, unless the place of business is the care setting.
- (iv) Consuming alcohol while ~~furnishing~~ providing a service goods or services to the ~~consumer~~ individual.
- (v) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that~~ in a way that is illegal, unprescribed, or impairs the provider from ~~furnishing~~ providing a service goods or services to the ~~consumer~~ individual.
- (vi) Discussing religion or politics with the ~~consumer~~ individual and others in the care setting.
- (vii) Discussing personal issues with the ~~consumer~~ individual or any other person in the care setting.
- (viii) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the ~~consumer~~ individual or his or her household members or family members.
- (ix) Engaging the ~~consumer~~ individual in sexual conduct, or in conduct ~~that a~~ reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (x) Leaving the ~~consumer's~~ individual's home for a purpose not related to ~~furnishing~~ providing a service goods or services without notifying the ~~consumer's~~ individual's emergency contact person, any identified caregiver, or the ~~consumer's~~ individual's case manager. "Emergency contact person" means a person the ~~consumer~~ individual or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.
- (xi) Engaging in any activity that may distract the provider from ~~furnishing a service~~ providing goods or services, including the following activities:

- (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.
  - (b) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or~~ email, or video).
  - (c) ~~Furnishing~~ Providing care to a person other than the ~~consumer~~ individual.
  - (d) Smoking without the ~~consumer's~~ individual's consent.
  - (e) Sleeping.
- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the ~~consumer~~ individual including any manner of publishing photos of the individual on social media websites without the individual's written consent.
- (xiii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.
- (xiv) ~~Being~~ Making decisions, or being designated to make decisions, for the ~~consumer~~ individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship; or authorized representative.
- (xv) Selling to, or purchasing from, the ~~consumer~~ individual products or personal items, unless the provider is the ~~consumer's~~ individual's family member who does so only when not ~~furnishing a service~~ providing goods or services.
- (xvi) Engaging in behavior ~~that constitutes~~ constituting a conflict of interest, ~~or—takes~~ taking advantage of, or ~~manipulates~~ manipulating ~~ODA-certified~~ the provision of goods and services resulting in an unintended advantage for personal gain that has

detrimental results to the ~~consumer~~ individual, the ~~consumer's~~ individual's family or caregivers, or another provider.

(f) The provider shall only provide services to individuals in settings meeting the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.

(2) ~~Consumer safety~~ Safety:

(a) The provider shall have a written procedure for documenting ~~consumer~~ individual's incidents. The procedure shall include notifying ODA (or ~~ODA's~~ its designee) of the incident no later than one business day after the provider is aware of the incident.

(b) The provider shall report any reasonable cause to believe ~~that a consumer~~ has an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), ~~in accordance with~~ as required by section 5101.61 of the Revised Code, ~~and. The provider shall~~ also notify ODA (or ~~ODA's~~ its designee) of the reasonable cause.

(c) The provider shall maintain a minimum of one million dollars in commercial liability insurance or professional liability insurance.

(d) The provider shall maintain insurance coverage for ~~consumer~~ individual loss due to the theft or property damage caused by the provider and ~~furnish~~ provide written instructions ~~that~~ any ~~consumer~~ individual may use to obtain ~~reimbursement~~ payment for a loss due to theft or property damage caused by the provider.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer~~ individual confidentiality including, ~~but not limited to,~~ 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).

(4) Provider qualifications:

(a) The provider shall not ~~furnish~~ provide a service to a ~~consumer~~ individual if he or she is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.

(b) The provider shall not allow a volunteer to ~~furnish~~ provide ~~any aspect of a certified long-term care service for a consumer~~ goods or services to an

individual except as ODA's designee authorizes the provider to do so through ~~its~~ the provider certification agreement with the provider.

(c) The provider shall disclose whether he or she ~~has been~~ was convicted of a felony under state or federal law.

(d) The provider shall comply with the database reviews and criminal records check requirements ~~under~~ in section 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.381 of the Revised Code.

~~(e) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, 2013 edition) regarding the provision of services.~~

~~(f)~~(e) The provider shall annually ~~furnish~~ provide to ODA (or ~~ODA's~~ its designee) a written statement ~~that certifies~~ certifying that he or she ~~has~~ paid all applicable federal, state, and local income and employment taxes.

~~(g)~~(f) The provider shall participate in ODA's (and its designee's) mandatory free provider training sessions.

(5) Monitoring:

(a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ latest of the following dates:

(i) Six years after the date the provider receives payment for the service~~;~~.

(ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled~~;~~or.

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes

an audit of the records and any findings are finally settled.

- (b) Access: The provider shall, upon request, immediately ~~furnish~~ provide representatives of ODA (or ~~ODA's~~ its designee) with access to his or her workplace, a place to work in his or her workplace, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) ~~Reimbursement~~Payment:

- (a) The provider shall bill only for a service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
  - (b) ODA's obligation to ~~reimburse~~ pay the provider for the costs of goods and services the provider ~~furnishes~~ provides as a certified ~~long-term-care~~ provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.
  - (c) The provider shall accept the ~~reimbursement~~ payment levels rates ~~negotiated for each service by the provider and ODA's designee~~ established in the certification agreement as payment in full, and not seek any additional payment for those services from the ~~consumer~~ individual or any other person.
- (D) ~~Consumer-directed~~ participant-directed individual providers: These are the ~~conditions~~ requirements for any person who seeks to become, or to remain, an ODA-certified ~~long-term-care consumer-directed~~ participant-directed individual provider:

(1) Service provision:

- (a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (b) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that may affect the ~~consumer's service needs~~ individual's need for goods and services, including one or more of the following:

- (i) The ~~consumer~~ individual moves to another address~~;~~.
  - (ii) The ~~consumer~~ individual ~~has been~~ was admitted to a hospital or ~~has~~ visited an emergency room~~;~~.
  - (iii) The provider is aware of any significant change ~~that may impact the furnishing of~~ impacting the provision of goods and services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods and services~~;~~~~or~~.
  - (iv) The ~~consumer's~~ individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (c) The provider shall notify the ~~consumer~~ individual and ODA's designee in writing at least thirty days before the last day the provider ~~furnishes~~ provides the home care attendant service to the ~~consumer~~ individual, unless the health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk.
- (d) The provider shall ~~furnish~~ provide the home care attendant service in an ethical, professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following behaviors:
- (i) Consuming alcohol while ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (ii) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that~~ in a way that is illegal, unprescribed, or impairs the provider from ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the ~~consumer~~ individual or his or her household members or family members. However, if the provider is the ~~consumer's~~ individual's family member, he or she may accept gifts for birthdays and holidays.
  - (iv) Engaging the ~~consumer~~ individual in sexual conduct, or in conduct ~~that~~ a reasonable person would interpret as sexual in nature, even

if the conduct is consensual.

(v) Leaving the home for a purpose not related to ~~furnishing~~ providing a service without the consent or knowledge of the ~~consumer~~ individual.

(vi) Engaging in any activity that may distract the provider from ~~furnishing~~ providing a service, including:

(a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.

(b) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or~~ email, or video).

(c) ~~Furnishing~~ providing care to a person other than the ~~consumer~~ individual.

(d) Smoking without the ~~consumer's~~ individual's consent.

(e) Sleeping.

(vii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including publishing any manner of photos of the individual on social media websites, without the individual's written consent.

~~(vii)~~ (viii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.

~~(viii)~~ (ix) ~~Being~~ Making decisions, or being designated ~~or serve~~ to make decisions, for the ~~consumer~~ individual in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.

~~(ix)~~ (x) Selling to, or purchasing from, the ~~consumer~~ individual products

or personal items, unless the provider is the ~~consumer's~~ individual's family member who does so only when not ~~furnishing~~ providing a service.

(2) ~~Consumer safety~~ Safety:

(a) The provider shall notify ODA (or ~~ODA's~~ its designee) of any "incident" involving ~~a consumer~~ an individual, as defined in rule 173-39-01 of the Administrative Code, no later than one business day after the provider is aware of the incident.

(b) The provider shall report any reasonable cause to believe ~~that a consumer~~ has an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), ~~in accordance with~~ as required by section 5101.61 of the Revised Code, ~~and~~ The provider shall also notify ODA (or ~~ODA's~~ its designee) of the reasonable cause.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer~~ individual confidentiality including, ~~but not limited to~~, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).

(4) Provider qualifications:

(a) The provider shall maintain an active, valid ~~medicaid~~ medicaid-provider agreement, as set forth in rule 5160-1-17.2 of the Administrative Code.

(b) The provider shall not ~~furnish~~ provide a service to a ~~consumer~~ individual if he or she is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.

(c) The provider shall maintain telephone service ~~that allows~~ allowing for reliable, dependable, and accessible communication.

(d) The provider shall maintain a secure place for retaining ~~consumer~~ individual records.

(e) The provider shall comply with all applicable federal, state, and local laws.

(f) The provider shall comply with the database reviews and criminal records

check requirements ~~under~~ in section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for checks conducted under section 173.38 of the Revised Code.

- (g) The provider shall participate in ODA's (and its designee's) mandatory free provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the goods and services the provider ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ latest of the following dates:

- (i) Six years after the date the provider receives payment for the good or service~~;~~.

- (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the records, including the review described in rule 173-39-04 of the Administrative Code, and any findings are finally settled~~;~~ or.

- (iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

- (b) Access: The provider shall, upon request, immediately ~~furnish~~ provide ODA (or ~~ODA's~~ its designee) with access to all records required by this rule and by any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

- (6) ~~Reimbursement~~Payment: A provider shall accept the ~~reimbursement~~ payment ~~levels~~ rate ~~negotiated between the provider and the consumer for each home care attendant service~~ established in the certification agreement as payment in full and not seek any additional payment for ~~those~~ services from the ~~consumer~~ individual or any other person.

(E) Assisted living providers: These are the ~~conditions~~ requirements for any provider who seeks to become, or to remain, an ODA-certified ~~long-term-care~~ assisted living provider:

(1) Service provision:

~~(a) The provider shall not furnish any services under the assisted living program to a person who is not enrolled in the program.~~

~~(b)~~(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

~~(e)~~(b) The provider may ~~furnish~~ provide a service ~~that is~~ not authorized by the ~~consumer's~~ individual's service plan, but ODA (or ~~ODA's~~ its designee) only ~~reimburses~~ pays the provider for ~~furnishing~~ providing a service ~~that is~~ authorized by the ~~consumer's~~ individual's service plan.

~~(d)~~(c) The provider shall acknowledge that any statute or rule ~~that regulates~~ regulating the assisted living program supersedes any clause in the facility's resident agreement.

~~(e)~~(d) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that may affect the ~~consumer's service needs~~ individual's need for goods and services, including one or both of the following:

(i) The provider is aware of any significant change ~~that may impact~~ furnishing impacting the provision of goods and services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods and services; ~~or,~~

(ii) The ~~consumer's~~ individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.

~~(f)~~(e) The provider shall transfer or discharge ~~a consumer~~ an individual under the terms of section 3721.16 of the Revised Code.

~~(g)~~(f) If the provider terminates its ~~medicaid-provider~~ medicaid-provider agreement ~~with ODM~~, pursuant to section 3721.19 of the Revised

Code, it shall ~~furnish~~ provide written notification to the ~~consumer individual~~ and to ODA's designee at least ninety days before terminating the provision of goods and services to the ~~consumer individual~~.

~~(h)~~(g) The provider shall adopt and implement ethical standards of practice by requiring facility staff to ~~furnish~~ provide services ~~in accordance with~~ according to the residents' rights policies and procedures described in section 3721.12 of the Revised Code, and ~~in accordance with~~ according to the provider's policies and procedures.

(h) The provider shall only provide services to individuals in settings meeting the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.

(2) ~~Consumer safety~~Safety:

(a) ~~The provider shall have a written procedure~~ In the policy the provider adopts for documenting consumer on how to document individual's incidents, in accordance with as required by paragraph (B) of rule 3701-17-62 of the Administrative Code. ~~The procedure, the provider shall include~~ require notifying ODA (or ~~ODA's~~ its designee) of ~~the incident~~ incidents.

(b) The provider shall report any reasonable cause to believe ~~that a consumer has~~ an individual suffered abuse, neglect, or exploitation to the Ohio department of health, in accordance with ~~according to~~ rule 3701-64-02 of the Administrative Code, ~~and, The provider shall~~ also notify ODA (or ~~ODA's~~ its designee) of the reasonable cause.

(c) The provider shall maintain a minimum of one million dollars in commercial liability insurance.

(d) The provider shall maintain insurance coverage for ~~consumer individuals' loss~~ losses due to theft or property damage and ~~furnish~~ provide written instructions ~~that any consumer individual may use to obtain reimbursement~~ payment for a loss due to employee theft or property damage.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer individual's~~ consumer individual's confidentiality including, ~~but not limited to,~~ 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).

(4) Provider qualifications:

- (a) The provider shall be licensed as a residential care facility by the Ohio department of health under rules 3701-17-50 to 3701-17-68 of the Administrative Code.
- (b) The provider shall have a written statement of policies ~~and directives~~, and bylaws or articles of incorporation.
- (c) The provider shall have a written table of organization ~~that~~ clearly ~~identifies~~ identifying lines of administrative, advisory, contractual, and supervisory authority, unless the business consists of a self-employed person.
- (d) The provider shall not allow a staff person to ~~furnish~~ provide a service to a ~~consumer~~ individual if the person is the ~~consumer's~~ individual's spouse, parent, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (e) The provider shall not allow a volunteer to ~~furnish~~ provide any aspect of the services regulated under rule 173-39-02.16 or 173-39-02.17 of the Administrative Code for ~~consumers~~ individuals without supervision by the provider's supervisory staff.
- (f) The provider shall comply with all applicable federal, state, and local laws.
- ~~(g) The provider shall comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.~~
- ~~(h)~~(g) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, ~~2013~~ 2015 edition) regarding the provision of services.
- ~~(i)~~(h) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on ~~November 20, 2012~~ March 4, 2016) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- ~~(j)~~(i) The provider shall participate in ODA's (~~and~~ or its designee's)

mandatory free provider training sessions.

(5) Monitoring:

(a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider ~~furnished~~ provided, and significant business transactions, until the ~~latest~~ latest of the following dates:

(i) Six years after the date the provider receives payment for the ~~;~~ service.

(ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled ~~;~~ or.

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(b) Access: The provider shall, upon request, immediately ~~furnish~~ provide representatives of ODA (or ~~ODA's~~ its designee) with access to its facility, a place to work in its facility, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) ~~Reimbursement~~ Payment:

(a) The provider shall bill only for a service if the provider complies with the requirements ~~under~~ in this rule and the requirements, including service-verification requirements, ~~under~~ in any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

(b) ODA's obligation to ~~reimburse~~ pay the provider for the costs of services the provider ~~furnishes~~ provides as a certified ~~long-term-care~~ provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.

(c) The provider shall accept the ~~reimbursement~~ payment ~~levels~~ rates ~~negotiated for each service by the provider and ODA's designee~~ established in the certification agreement as payment in full, and not seek any additional payment for those services from the ~~consumer~~

individual or any other person.

- (d) The assisted living program shall not pay for any service the provider ~~furnishes~~ provides to an applicant before ODA's designee enrolls the applicant into the program and before case manager authorizes the service in the ~~consumer's~~ individual's service plan.
- (e) If a ~~consumer~~ individual is absent from the facility, the provider shall not accept a payment for the service under rule 173-39-02.16 of the Administrative Code or charge the ~~consumer~~ individual an additional fee for the service or charge the ~~consumer~~ individual an additional fee to hold the unit during the ~~consumer's~~ individual's absence.
- (F) ~~Consumer-directed~~ Participant-directed personal care provider: These are the ~~conditions~~ requirements for any person who seeks to become, or to remain, and ODA-certified ~~long-term-care-consumer-directed~~ participant-directed personal care provider:
  - (1) Service provision:
    - (a) At the ~~consumer's~~ individual's request, the provider shall participate in an interview with the ~~consumer~~ individual before initiating any service.
    - (b) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
    - (c) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that may affect the ~~consumer's~~ individual's service needs, including one or more of the following:
      - (i) The ~~consumer~~ individual moves to another address~~;~~.
      - (ii) The ~~consumer~~ individual has been admitted to a hospital or ~~has~~ visited an emergency room~~;~~.
      - (iii) The provider is aware of any significant change ~~that may impact the furnishing of~~ impacting the provision of goods or services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods or services~~;~~ ~~or~~.

- (iv) The ~~consumer's~~ individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (d) The provider shall notify the ~~consumer~~ individual and ODA's designee in writing at least thirty days before the last day the provider ~~furnishes~~ provides the personal care service to the ~~consumer~~ individual, unless the health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk.
- (e) The provider shall ~~furnish~~ provide the personal care service in an ethical, professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:
  - (i) Consuming alcohol while ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (ii) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that~~ in a way that is illegal unprescribed, or impairs the provider from ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the ~~consumer~~ individual or his or her household members or family members. However, if the provider is the ~~consumer's~~ individual's family member, he or she may accept gifts for birthdays and holidays.
  - (iv) Engaging the ~~consumer~~ individual in sexual conduct, or in conduct ~~that~~ a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
  - (v) Leaving the home for a purpose not related to ~~furnishing~~ providing a service without the consent or knowledge of the ~~consumer~~ individual.
  - (vi) Engaging in any activity that may distract the provider from ~~furnishing~~ providing a service, including:
    - (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.

- (b) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or~~ email, or video).
  - (c) ~~Furnishing~~ providing care to a person other than the ~~consumer~~ individual.
  - (d) Smoking without the ~~consumer's~~ individual's consent.
  - (e) Sleeping.
  - (vii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including publishing any manner of photos of the individual on social media websites, without the individual's written consent.
  - ~~(vii)~~(viii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.
  - ~~(viii)~~(ix) ~~Being~~ Making decisions, or being designated ~~or serve~~ to make ~~decision~~ decisions, for the ~~consumer~~ individual in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.
  - ~~(ix)~~(x) Selling to, or purchasing from, the ~~consumer~~ individual products or personal items, unless the provider is the ~~consumer's~~ individual's family member who does so only when not ~~furnishing~~ providing a service.
- (2) ~~Consumer safety~~Safety:
- (a) The provider shall notify ODA (or ~~ODA's~~ its designee) of any "incident" involving ~~a consumer~~ an individual, as defined in rule 173-39-01 of the Administrative Code, no later than one business day after the provider is aware of the incident.

- (b) Report any reasonable cause to believe ~~that a consumer has~~ an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), ~~in accordance with~~ as required by section 5101.61 of the Revised Code; ~~and. The provider shall~~ also notify ODA (or ~~ODA's~~ its designee) of the reasonable cause.
- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer~~ individual confidentiality including, ~~but not limited to,~~ 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).
- (4) Provider qualifications:
  - (a) The provider shall complete an application to become an ODA-certified ~~long term—consumer-directed~~ participant-directed personal care provider.
  - (b) The provider shall maintain an active, valid ~~medicaid~~ medicaid-provider agreement, as set forth in rule 5160-1-17.2 of the Administrative Code.
  - (c) The provider shall be at least eighteen years of age.
  - (d) The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:
    - (i) Driver's license;
    - (ii) State of Ohio identification card; or,
    - (iii) United States of American permanent residence card.
  - (e) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and rule 173-39-02.11 of the Administrative Code.
  - (f) The provider shall be able to effectively communicate with the ~~consumer~~ individual.
  - (g) The provider shall not ~~furnish~~ provide a service to ~~a—consumer~~ an

individual if he or she is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.

- (h) The provider shall maintain a telephone service ~~that allows~~ allowing for reliable, dependable, and accessible communication.
- (i) The provider shall maintain a secure place for retaining ~~consumer~~ individual's records.
- (j) The provider shall comply with all applicable federal, state, and local laws.
- (k) The provider shall comply with the database reviews and criminal records check requirements ~~under~~ in section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for checks conducted under section 173.38 of the Revised Code.
- (l) The provider shall participate in ODA's (~~and~~ or its designee's) mandatory free provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the service the provider ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ latest of the following dates:
  - (i) Six years after the date the provider receives payment for the service~~;~~.
  - (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the records, including the review described in rule 173-39-04 of the Administrative Code, and any findings are generally settled~~;~~.
  - (iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

- (b) Access: The provider shall, upon request, immediately ~~furnish~~ provide ODA (or ODA's designee) with access to all records required by this rule and any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service that ODA certified the provider to ~~furnish~~ provide.
- (6) Reimbursement: The provider shall accept the ~~reimbursement~~ payment rate ~~that the written agreement with ODA's designee establishes for each personal care service~~ established in the certification agreement as payment in full and not seek any additional payment for services from the ~~consumer~~ individual or any other person.
- (G) If a provider of any type fails to comply with this rule, ODA (or ODA's designee) may discipline the provider under the terms of rule 173-39-05 or 173-39-05.1 of the Administrative Code,.

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173-40-01

**PASSPORT program (state-funded component): Introduction and definitions.**

Note: ODA presents the rule in a proposed amendment form. When ODA files the rule with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, the Legislative Service Commission will require ODA to propose rescinding the rule and adopting a new rule in its place.

(A) Introduction: Chapter 173-40 of the Administrative Code regulates the state-funded component of the PASSPORT program; created under section 173.522 of the Revised Code, ~~and establishes the criteria for receivership of ODA's designee~~. (See Chapter 173-42 of the Administrative Code for rules on the medicaid-funded component of the PASSPORT program.)

~~(B) Definitions for Chapter 173-40 of the Administrative Code:~~

- ~~(1) "Authorized representative" means a person, eighteen years of age or older, who is chosen by, and acts on behalf of, an individual who is applying for, or receiving, medical assistance. In accordance with rule 5101:1-38-01.2 of the Administrative Code, the individual must provide a written statement naming the authorized representative and the duties that the named authorized representative may perform on the individual's behalf.~~
- ~~(2) "CDJFS" means "county department of job and family services."~~
- ~~(3) "Form JFS02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS).'"~~
- ~~(4) "Form JFS07200" means "form JFS07200 'Request for Cash, Food and Medical Assistance.'"~~
- ~~(5) "Form ODA1115" means "form ODA1115 'Financial Assessment Worksheet.'" The \_\_\_\_\_ form \_\_\_\_\_ is \_\_\_\_\_ readily \_\_\_\_\_ available \_\_\_\_\_ on <http://www.aging.ohio.gov/information/rules/forms.aspx>.~~
- ~~(6) "Form ODA1116" means "form ODA1116 'Enrollment Agreement.'" The form is \_\_\_\_\_ readily \_\_\_\_\_ available \_\_\_\_\_ on <http://www.aging.ohio.gov/information/rules/forms.aspx>.~~
- ~~(7) "Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.~~
- ~~(8) "ODA" means "the Ohio department of aging."~~
- ~~(9) "ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."~~
- ~~(10) "ODJFS" means "the Ohio department of job and family services."~~

~~(11) "Service plan" means written documentation of the specific tasks and activities to be carried out by a service provider, including, but not limited to, consumer specific goals and objectives, detailed description of the interventions, frequency, and time frames for ongoing services.~~

(B) Definitions for this chapter:

"Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.

"Form JFS07200" means "form JFS07200 'Request for Cash, Food, and Medical Assistance.' (rev. 9/2014)" The Ohio department of job and family services publishes the form on <http://www.odjfs.state.oh.us/forms/>." It is available to the general public at no cost.

"Form ODA1115" means "form ODA1115 'Financial Assessment Worksheet.' (rev. 09/2011)" ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODA1116" means "form ODA1116 'Enrollment Agreement.' (rev. 09/2011)" ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODA1117" means "form ODA1117 'Notice of Proposed Action and Opportunity for Hearing' (rev. 04/2012)" ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODM02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS)' (07/2014)." ODM publishes the form on <http://medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx>. It is available to the general public at no cost.

"ODA" means "the Ohio department of aging.

"ODA's designee" has the same meaning as in rule 173-39-01 of the Administrative Code.

"ODM" means "the Ohio department of medicaid."

"ODM's administrative agency" has the same meaning as "administrative agency" in rule 5160:1-1-01 of the Administrative Code.

"Service plan" means the written outline of the goods or services that a case manager authorizes a provider to provide to an individual, regardless of the funding source for those goods or services. "Service plan" includes the person-centered planning in rule 5160-44-02 of the Administrative Code.

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173-42-01

**PASSPORT program (medicaid-funded component):  
introduction and definitions.**

Note: ODA presents the rule in a proposed amendment form. When ODA files the rule with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, the Legislative Service Commission will require ODA to propose rescinding the rule and adopting a new rule in its place.

(A) Introduction: Chapter 173-42 of the Administrative Code regulates the medicaid-funded component of the PASSPORT program created under section 173.52 of the Revised Code. (See Chapter 173-40 of the Administrative Code for rules on the state-funded component of the PASSPORT program.)

~~(B) Definitions for Chapter 173-42 of the Administrative Code:~~

- ~~(1) "Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.~~
- ~~(2) "CDJFS" means "county department of job and family services."~~
- ~~(3) "Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.~~
- ~~(4) "ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."~~
- ~~(5) "ODM" means "the Ohio department of medicaid."~~
- ~~(6) "PASSPORT program" ("PASSPORT") means the medicaid-funded component of the PASSPORT program created under section 173.52 of the Revised Code.~~

(B) Definitions for this chapter:

"Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.

"Form JFS07200" means "form JFS07200 'Request for Cash, Food, and Medical Assistance.' (rev. 9/2014)" The Ohio department of job and family services publishes the form on <http://www.odjfs.state.oh.us/forms/>." It is available to the general public at no cost.

"Form ODM02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS)' (07/2014)." ODM publishes the form on <http://medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx>. It is available to the general public at no cost.

"Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

"ODA's designee" has the same meaning as in rule 173-39-01 of the Administrative

Code.

"ODM" means "the Ohio department of medicaid."

"ODM's administrative agency" has the same meaning as "administrative agency" in rule 5160:1-1-01 of the Administrative Code.

"PASSPORT program" ("PASSPORT") means the medicaid-funded component of the PASSPORT program created under section 173.52 of the Revised Code.

"Service plan" means the written outline of the goods or services that a case manager authorizes a provider to provide to an individual, regardless of the funding source for those goods or services. "Service plan" includes the person-centered planning in rule 5160-44-02 of the Administrative Code.

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173-51-01

Assisted living program (state-funded component):  
Introduction introduction and definitions.

Note: ODA presents the rule in a proposed amendment form. When ODA files the rule with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, the Legislative Service Commission will require ODA to propose rescinding the rule and adopting a new rule in its place.

(A) Introduction: Chapter 173-51 of the Administrative Code regulates the state-funded component of the assisted living program created under section ~~5111.89~~ 173.543 of the Revised Code. (See Chapter 173-38 of the Administrative Code for rules on the medicaid-funded component of the assisted living program.)

~~(B) Definitions for Chapter 173-51 of the Administrative Code:~~

- ~~(1) "Assisted living program" ("program") means the state-funded component of the home and community-based program created under section 5111.89 of the Revised Code that provides consumers in the program with the assisted living service under rule 173-39-02.16 of the Administrative Code and, in some cases, the community transition service under rule 173-39-02.17 of the Administrative Code, if the consumers reside in a residential care facility and would otherwise receive services in a nursing facility if the program was not available.~~
- ~~(2) "Authorized representative" means a person, eighteen years of age or older, who is chosen by, and acts on behalf of, an individual who is applying for, or receiving, medical assistance. In accordance with rule 5101:1-38-01.2 of the Administrative Code, the individual must provide a written statement naming the authorized representative and the duties that the named authorized representative may perform on the individual's behalf.~~
- ~~(3) "CDJFS" means "county department of job and family services."~~
- ~~(4) "Form JFS02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS).'"~~
- ~~(5) "Form JFS07200" means "form JFS07200 'Request for Cash, Food and Medical Assistance.'"~~
- ~~(6) "Form ODA1115" means "form ODA1115 'Financial Assessment Worksheet.'" The \_\_\_\_\_ form \_\_\_\_\_ is \_\_\_\_\_ readily \_\_\_\_\_ available \_\_\_\_\_ on <http://www.aging.ohio.gov/information/rules/forms.aspx>.~~
- ~~(7) "Form ODA1116" means "form ODA1116 'Enrollment Agreement.'" The form is \_\_\_\_\_ readily \_\_\_\_\_ available \_\_\_\_\_ on <http://www.aging.ohio.gov/information/rules/forms.aspx>.~~
- ~~(8) "Nursing facility" has the same meaning as in section 5111.20 of the Revised Code.~~
- ~~(9) "ODA" means "the Ohio department of aging."~~

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- ~~(10) "ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."~~
- ~~(11) "Service plan" means the written outline of the services that ODA's designee expects a provider to furnish to a consumer, regardless of the funding source for those services.~~

(B) Definitions for this chapter:

"Assisted living program" ("program") means the state-funded component of the assisted living program. ODA created the component under the authority of section 173.543 of the Revised Code to temporarily provide eligible individuals with the assisted living service under rule 173-39-02.16 of the Administrative Code, and in some cases, the community transition service under rule 173-39-02.17 of the Administrative Code.

"Authorized representative" has the same meaning as in rule 5160:1-1-55.1 of the Administrative Code.

"Form JFS07200" means "form JFS07200 'Request for Cash, Food, and Medical Assistance.' (rev. 9/2014)" The Ohio department of job and family services publishes the form on <http://www.odjfs.state.oh.us/forms/>." It is available to the general public at no cost.

"Form ODA1115" means "form ODA1115 'Financial Assessment Worksheet.'" (September, 2011). ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODA1116" means "form ODA1116 'Enrollment Agreement.'" (September, 2011) ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODA1117 means "form ODA1117 'Notice of Proposed Action and Opportunity for Hearing" (April, 2012). ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"Form ODM02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS)' (07/2014)." ODM publishes the form on <http://medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx>. It is available to the general public at no cost

"Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

"ODA" means "the Ohio department of aging."

"ODA's designee" has the same meaning as in rule 173-39-01 of the Administrative Code.

"ODM" means "the Ohio department of medicaid."

"ODM's administrative agency" has the same meaning as "administrative agency" in rule 5160:1-1-01 of the Administrative Code.

"Residential care facility" has the same meaning as in section 3721.01 of the Revised Code.

"Service plan" means the written outline of the goods or services that a case manager authorizes a provider to provide to an individual, regardless of the funding source for those goods or services. "Service plan" includes the person-centered planning in rule 5160-44-02 of the Administrative Code.