



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### Business Impact Analysis

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

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

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

#### ODA PROVIDER CERTIFICATION

These rules establish the requirements to become, and to remain, ODA certified providers.

**Rule Number(s):** 173-39-02, 173-39-02.7, 173-39-02.12, 173-39-02.23, 173-39-02.26, 173-39-03.5, 173-39-04

**Date of Submission for CSI Review:** February 28, 2020.

**Public Comment Period End Date:** March 12, 2020 at 11:59PM.

#### Rule Type/Number of Rules:

☒ **New/ 3 rules**

173-39-02.7, 173-39-02.12, 173-39-02.26

☒ **Amended/ 4 rules (FYR? ☒)**

173-39-02, 173-39-02.23, 173-39-03.5, 173-39-04

☐ **No Change/ 0 rules (FYR? ☒)**

☒ **Rescinded/ 2 rules (FYR? ☒)**

173-39-02.7, 173-39-02.12

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

#### Reason for Submission

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

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

Please review the next page.

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

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

**The rule(s):**

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

**Regulatory Intent**

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

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

**173-39-02:** This rule establishes the requirements to become, and to remain, an ODA-certified provider. ODA proposes to amend this rule to do the following:

- Prohibit participant-directed providers from engaging in the same list of unethical, unprofessional, disrespectful, and illegal behaviors as the other provider types by consolidating the prohibitions on unethical, unprofessional, disrespectful, and illegal behaviors into (B)(8), deleting (D)(1)(b) and (D)(2), and making corresponding amendments to paragraph numbers and cross-references.
- Indicate in (B)(8)(f) that the prohibition on engaging in any activity that may distract from providing a service only applies while providing the service.
- Indicate in (B)(8)(l) that the prohibition on taking an individual to the provider's business site does not apply if the business site is a residential care facility (RCF) or the individual's home (in the case of a participant-directed provider).

**173-39-02.7:** This rule establishes the requirements to become, and to remain, an ODA-certified provider of home medical equipment and supplies. ODA proposes to rescind the current rule and to replace it with a new rule of the same number. ODA's proposed new rule differs from the current rule in the following ways:

- In the proposed new rule, the name of the service is *specialized medical equipment, supplies, and devices* instead of *home medical equipment and supplies*.
- The proposed new rule refers to 5160-44-23 for the definition of *specialized medical equipment, supplies, and devices* and the specific requirements for providers of that service. The Ohio Dept. of Medicaid (ODM) is simultaneously proposing to adopt in 5160-44-23.<sup>1</sup>
- If a conflict exists between 173-39-02 and 5160-44-23, the proposed new rule requires the provider to comply with 173-39-02 instead of the conflicting requirement in 5160-44-23.

---

<sup>1</sup> For more information on ODM's proposed new rule, please review ODM's BIA for 5160-44-23.

**173-39-02.12:** This rule establishes the requirements to become, and to remain, an ODA-certified provider of social work counseling. ODA proposes to rescind the current rule and to replace it with new rule of the same number. ODA's proposed new rule differs from the current rule in the following ways:

- The current rule prohibits paying for social work counseling if the individual receives a similar service *under Chapter 173-39 of the Administrative Code*. There is not a similar service under that chapter. ODA proposes clarify its intent by prohibiting paying for social work counseling if the individual receives a similar service *paid (in full or in part) by Medicare, state plan Medicaid, or another third-party payer*.
- Deadline extensions:
  - The current rule requires providing the case manager with a copy of the assessment report no later than *seven business days* after the provider completes the assessment. ODA proposes to extend the deadline to *fourteen days*.
  - The current rule requires providing the individual's case manager with a copy of the treatment plan no later than *seven business days* after the provider completes the assessment. ODA proposes to extend the deadline to *fourteen days*.
  - The current rule requires offering the individual a copy of their treatment plan no later than *seven business days* after the provider completes the assessment. ODA proposes to extend the deadline to *fourteen days*.
- Follow the standard pattern in [Chapter 173-39](#) for service definitions. ODA proposes to take the last sentence in (A) in the current rule and make it (A)(1) in the amended rule, which will begin with "*Social work counseling*" includes.... ODA also proposes to take the limitations in (B)(6)(c) to (B)(6)(e) and place them under (A)(2) in the amended rule, which will begin with "*Social work counseling*" does not include....
- Move the cross-reference to 173-39-02 from (B) to (B)(1).
- Update the terminology, as follows:
  - *Social work counseling service* → *social work counseling*.
  - *Family caregiver* → *caregiver*.
  - *Residence* → *home* (as in *home* and community-based service).
  - *Furnish or deliver* → *provide*.
  - *Service plan* → *person-centered service plan*.
  - *Technology-based system* → *electronic system*.
  - *Is equal to* → *is*.
- Separate the 2 requirements in (B)(5)(a)(iv) in the current rule into 2 separate paragraphs.
- Clarify that service verification is required for each *episode of service*, since the term *service* by itself refers to social work counseling in general.
- Clarify that retaining a record of the staff member counseling the individual only applies if the provider is an agency provider.
- Redraft (C)(2) and (C)(3) to use the active voice instead of the passive voice and to indicate that the rates only apply to the PASSPORT Program.

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

**CSIPublicComments@governor.ohio.gov**

- Delete (B)(6)(a), (B)(6)(b), (B)(7)(a), and the last two sentences of (B)(7)(b)(v) from the rule, because those paragraphs/sentences duplicate paragraphs/sentences in 173-39-01 or 173-39-02, which apply to every service under Chapter 173-39 including social work counseling, without restatement in this rule.
- Make additional non-substantive changes.

**173-39-02.23:** This rule establishes the requirements to become, and to remain, an ODA-certified provider of out-of-home respite. ODA proposes to amend this rule to replace 2 occurrences of *waiver nursing service* with *out-of-home respite*.

**173-39-02.26:** Simultaneous to this rule filing, Ohio has submitted a waiver application to the Centers for Medicare and Medicaid Services (CMS) to offer vehicle modification as a new service for the PASSPORT Program. This proposed new rule will establish the requirements to become, and to remain, an ODA-certified provider of vehicle modification. The new rule will do all of the following:

- Limit the types of providers who qualify to provide this service to agency providers.
- Require providers to comply with 173-39-02.
- Refer to 5160-44-21 for the definition of *vehicle modification* and the specific requirements for providers of that service. ODM is simultaneously proposing to adopt in 5160-44-21.<sup>2</sup>
- If a conflict exists between 173-39-02 and 5160-44-21, the proposed new rule requires the provider to comply with 173-39-02 instead of the conflicting requirement in 5160-44-21.

**173-39-03.5:** This rule implements the special handling of applications and qualifications from military personnel or their spouses under R.C. §§ 5903.03 and 5903.04. ODA proposes to amend this rule to replace *individual* (which means the recipient of a service) with *person*.

**173-39-04:** This rule establishes the requirements for ODA and its designees regarding structural compliance reviews of ODA-certified providers. ODA proposes to amend this rule to do all the following:

- Incorporate vehicle modification into the rule.
- Correct references to an ODM rule.
- Correct references to the HOME Choice Program.
- Replace references to *home medical equipment and supplies* with references to *specialized medical equipment, supplies, and devices*.
- Adopt new requirements for determining samples and sample sizes for reviewing employee qualifications.

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

173-39-02.7, 173-39-02.12, 173-39-02.23, and 173-39-02.26: R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.391](#), [173.52](#), and [173.522](#).

173-39-02 and 173-39-04<sup>3</sup>: R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.391](#), [173.52](#), [173.522](#), [173.54](#), and [173.543](#).

<sup>2</sup> For more information on ODM's proposed new rule, please review ODM's BIA for 5160-44-21.

<sup>3</sup> These are the only 2 rules in this rule package that pertain to the Assisted Living Program.

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

**CSIPublicComments@governor.ohio.gov**

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

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

In order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio's application for a Medicaid waiver authorizing the state to launch and maintain the PASSPORT and Assisted Living Programs, 42 CFR 441.352 requires ODA to assure CMS in the waiver application that ODA established adequate these requirements for providers (*i.e.*, adopted these rules) and that ODA monitors the providers to assure they comply with these requirements (*i.e.*, comply with these rules).

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

The rules exist to comply with the state laws mentioned in ODA's response to #2, which require ODA to establish the standards for ODA-certified providers and the PASSPORT and Assisted Living Programs.

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

These rules exist to comply with the state laws mentioned in ODA's response to #2, which require ODA to establish standards for ODA-certified providers and the PASSPORT and Assisted Living Programs.

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

ODA and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from ODA-certified providers. ODA will judge the proposed amendments to these rules to be a success when ODA and its designees find few violations against these rules during structural compliance reviews or investigations of alleged incidents.

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

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

No.

### **Development of the Regulation**

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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

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

Since 173-39-02.12 took effect on December 1, 2015, ODA received the following 2 requests to amend it:

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

CSIPublicComments@governor.ohio.gov

- On August 23, 2019, Leslie Brody of Jewish Family Service (a provider) emailed ODA to request that ODA amend this rule to allow social work trainees (*i.e.*, students) to provide social work counseling paid the the PASSPORT Program.
- In August 2019, Debbie Gulley of Area Agency on Aging, District 7 (one of ODA's designees) emailed ODA to say that this rule's deadlines to provide copies of the assessment/treatment plan in fewer than 7 business days were too short.

On June 19, 2019 and January 14, 2020, ODA and ODM held stakeholder meetings to solicit stakeholder input on (1) the transition of the requirements specific to home medical equipment and supplies (to become *specialized medical equipment, supplies, and devices*) to ODM's proposed new 5160-44-23. ODA's rule on home medical equipment and supplies (173-39-02.7) to ODM's rule and (2) adding vehicle modification to the PASSPORT Program, ODA's proposed new rule (173-39-02.26), and ODM's proposed new rule (5160-44-21) which contains the requirements specific to vehicle modification.

On February 13, 2020, ODA emailed drafts of the rules in this package to the following 13 entities and requested their input on those drafts no later than February 26, 2020: Catholic Social Services of the Miami Valley (CSS), LeadingAge Ohio, Ohio Academy of Senior Health Sciences, Inc., Ohio Assisted Living Assn (OALA), Ohio Association of Area Agencies on Aging (which also represent 12 of ODA's 13 PASSPORT administrative agencies), Ohio Association of Medical Equipment Services (OAMES), Ohio Association of Senior Centers (OASC), Ohio Council for Home Care and Hospice (OCHCH), Ohio Counselor, Social Worker and Marriage and Family Therapist Board, Ohio Health Care Association (OHCA), Ohio Jewish Communities (OJC), and the state long-term care ombudsman.

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

At the July 19, 2019 stakeholder meeting, no person raised concerns about ODA's proposed new drafts for 173-39-02.7 or 173-39-02.26.

At the January 14, 2020 stakeholder meeting, no person raised concerns about ODA's proposed new drafts for 173-39-02.7 or 173-39-02.26.

On January 16, 2020, ODA emailed Jewish Family Service to indicate that, due to the nature of social work counseling and the complexity of needs of individuals enrolled in the PASSPORT Program, ODA plans for the program to continue paying only for social work counseling provided by licensed professionals. ODA will not amend 173-39-02.12 to allow paying unlicensed persons to provide social work counseling.

On January 16, 2020, ODA emailed Area Agency on Aging, District 7 to announce that ODA planned to amend 173-39-02.12 to extend the deadlines for social work counseling from 7 business days to 14 days.

To its February 13, 2020 email, ODA did not receive any comments/questions from the provider associations who would be regulated by these rules, except a question about ODM's rules, to which ODA responded by putting the provider association in contact with ODM. Aside from provider associations, ODA received the following 11 comments/questions from 5 stakeholders (the Ohio Counseling, Social Work, and Marriage and Family Therapy Board and 4 of ODA's PASSPORT administrative agencies):

- 173-39-02:
  - One stakeholder asked ODA to consider exempting participant-directed providers from the requirement to have either a listed local telephone number or a toll-free number. ODA is continuing to decide whether to offer these stakeholders technical assistance in lieu of revising the wording of the requirement.
  - One stakeholder asked ODA to reconcile the prohibition against taking an individual to the providers' business site, when the definition of "business site" in 173-39-01 includes the individual's home when the

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

**CSIPublicComments@governor.ohio.gov**



provider is a participant-directed provider. In response, ODA proposes to exempt the individual's home if the provider is a participant-directed provider.

- Two stakeholders asked for clarification on the record-keeping requirements for participant-directed providers in 173-39-02(D)(3)(b). ODA is continuing to decide whether to offer these stakeholders technical assistance in lieu of revising the wording of the requirement.
- One comment requested the deletion of "paragraph (D)(1)(b)" from (C)(1)(d). In response, ODA agreed to this mistake and deleted the obsolete reference.
- 173-39-02.7: A stakeholder requested 2 technical corrections to the rule. In response, ODA agreed and made the technical corrections.
- 173-39-02.12:
  - One stakeholder asked ODA to replace the part of the definition of "social work counseling" in 173-39-02.12 that said, *includes...and other social-service interventions* with *includes...and other social work counseling interventions*. In response, ODA implemented this suggestion.
  - One stakeholder requested using "fourteen *calendar* days" instead of "fourteen days." ODA explained that *calendar* is unnecessary and may create confusion between the meaning of *calendar days* and the many occurrences of *days* in ODA's rules.
- 173-39-02.23: ODA received no comments upon this rule.
- 173-39-02.26: ODA received no comments upon this rule.
- 173-39-03.5: ODA received no comments upon this rule.
- 173-39-04:
  - One stakeholder asked if the numbers in the table would be different if the provider provided more services than personal care (*e.g.*, social work counseling). ODA is continuing to decide whether to offer the stakeholder technical assistance in lieu of revising the wording of the requirement.
  - One stakeholder asked if the sample size in (D)(6) and (D)(7) included individuals enrolled in the MyCare Ohio program. ODA is continuing to decide whether to offer the stakeholder technical assistance in lieu of revising the wording of the requirement.
  - One stakeholder commented on (D)(7)(c) by recommending that the sample of employees be from all employees, regardless of whether they provided a service or whether they were previously reviewed. ODA is continuing to decide whether to offer the stakeholder technical assistance in lieu of revising the wording of the requirement.

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

ODA obtained data on the volume of providers and the amounts providers charge the PASSPORT Program from its databases. Find them in ODA's response to #16.

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

**CSIPublicComments@governor.ohio.gov**

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

R.C. §173.391 requires ODA to adopt rules to establish requirements for ODA-certified providers. Additionally, federal rules require ODA to establish adequate requirements for providers to assure the health and safety of individuals enrolled in ODA-administered programs.

**13. Did the Agency specifically consider a performance-based regulation? Please explain.**  
*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

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

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

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

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

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

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

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

**Adverse Impact to Business**

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

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

173-39-02 and 173-39-04: These rules apply to every ODA-certified provider whether that provider operates in the PASSPORT Program or the Assisted Living Program.

173-39-02.7, 173-39-02.12, 173-39-02.23: The table below shows the number of ODA-certified providers the PASSPORT Program paid for providing services in 2019.

PASSPORT PROGRAM	
2019	
SERVICE	# OF CERTIFIED PROVIDERS
Home Medical Equipment + Supplies	114
Social Work Counseling	41
Out-of-Home Respite	0

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

CSIPublicComments@governor.ohio.gov



173-39-02.26: Vehicle modification is not currently offered through the PASSPORT Program, so there are currently 0 providers.

173-39-03.5: Since this rule took effect on July 1, 2019, at least 4 providers have identified a military status that required special handling of their certification applications or training requirements. Based upon this experience, ODA estimates that less than 10 providers per year will request the special handling offered under this rule.

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

173-39-02:

The requirements for any provider to become certified includes the following:

- Meeting licensure requirements (if applicable).
- Meeting background check requirements.
- Having a place of business that meets the home and community-based setting requirements in [5160-44-01](#) and has a place to store records in a designated, locked storage space.
- Having valid email address and either a locally-listed or toll-free business telephone number.
- Having \$1-million in commercial liability insurance and coverage for individuals' losses due to theft or property damage.
- Having a provider agreement with ODM and ODA's designee.
- Having a written procedure for documenting individual's incidents.
- Having an ODM-approved electronic visit verification (EVV) system if ODM adopts an amendment to rule [5160-1-40](#) to require the provider to use EVV.

The requirements for every ODA-certified provider to remain certified are the following:

- Continuing to meet the requirement to become certified.
- Complying with requirements in [Chapter 173-39](#) for the specific services the provider. For example, if the provider provides home medical equipment and supplies, the provider shall also comply with the requirements for providers of home medical equipment and supplies in 173-39-02.7.
- Reporting abuse, neglect, or exploitation to APS.
- Reporting incidents, significant changes, changes to email address or telephone number, and the last day of service to ODA or its designee.
- Complying with federal confidentiality laws.
- Not using legally-responsible family members to provide a service to an individual. • Not using unsupervised volunteers to provide a service.
- Complying with each individual's person-centered services plan.

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

**CSIPublicComments@governor.ohio.gov**

- Providing services in an ethical, professional, respectful, and legal manner.
- Participating in ODA's or its designee's mandatory free provider training sessions.
- Using EVV if [5160-1-40](#) requires the provider to use EVV.
- Complying with records-retention and monitoring requirements.
- Complying with the requirements on accepting payments.
- Complying with other federal, state, and local laws when applicable.

This rule also makes unique requirements for certain types of providers. The unique requirements include the following:

- Participant-directed providers must be at least 18 years of age and be able to read, write, and understand English at a level enabling the provider to comply with this rule.
- Assisted-living providers must have an RCF license from ODH.

**173-39-02.7:** The adverse impact of ODA's proposed new rule is the requirement to comply with other rules. This rule will require ODA-certified providers to comply with the following:

- General requirements for ODA-certified providers, which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of community transition, which ODM is simultaneously proposing to adopt in 5160-44-23.<sup>4</sup>

**173-39-02.12:** The following are the adverse impacts of this proposed new rule:

- Requirements endemic to social work counseling (e.g., conduct an assessment, develop a treatment plan, keep a clinical record, and maintain a professional license).
- A requirement to verify each episode of service.

**173-39-02.23:** The adverse impact of ODA's proposed new rule is the requirement to comply with other rules. This rule will require ODA-certified providers of out-of-home respite to comply with the following:

- General requirements for ODA-certified providers, which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of out-of-home respite, which ODM established in [5160-44-17](#).

**173-39-02.26:** The adverse impact of ODA's proposed new rule is the requirement to comply with other rules. This proposed new rule will require ODA-certified providers of vehicle modification to comply with the following:

- General requirements for ODA-certified providers, which ODA established in 173-39-02.
- Specific requirements for ODA-certified providers of vehicle modification, which ODM is simultaneously proposing to adopt in 5160-44-21.<sup>5</sup>

---

<sup>4</sup> For more information on ODM's proposed new rule, please review ODM's BIA for 5160-44-23.

<sup>5</sup> For more information on ODM's proposed new rule, please review ODM's BIA for 5160-44-21.

173-39-03.5: This rule does not create any adverse impacts upon providers.

173-39-04: There are no adverse impacts for providers other than to allow ODA and its designees to regularly conduct structural compliance reviews and have access its records.

**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.*

173-39-02, 173-39-02.7, 173-39-02.12, and 173-39-02.23:

The amount ODA pays providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in providing the service plus costs related to the employees. The costs incurred as a result of these rules are likely calculated as part of a provider's operational budget—the cost of doing business and clerical jobs, such as retaining records and updating policies.

Providers set the prices they bill to the PASSPORT Program. In turn, the PASSPORT Program pays each provider the amount the provider bills, so long as the price billed does not exceed the maximum the Ohio Dept. of Medicaid (ODM) allows per unit (in the case of social work counseling and out-of-home respite), per item (in the case of home medical equipment and supplies), or per job (in the case of vehicle modification). In the appendix to [5160-1-06.1](#), ODM establishes the maximum-allowed payment of Medicaid funds for these services provided through the PASSPORT Program. The table below compares the average price billed to the program to the maximum allowed.

2019				
SERVICE	UNIT	UNITS PAID	AVERAGE BILLED PER UNIT	MAXIMUM ODM ALLOWS PER UNIT
Home Medical Equipment + Supplies	1 nutrition/supplement item	1,945	\$103.19	\$5,224.93
Home Medical Equipment + Supplies	1 ambulatory item (1 <sup>st</sup> item)	4,292	\$361.41	\$5,224.93
Home Medical Equipment + Supplies	1 ambulatory item (2 <sup>nd</sup> item)	134	\$181.45	\$5,224.93
Home Medical Equipment + Supplies	1 ambulatory item (3 <sup>rd</sup> item)	24	\$126.31	\$5,224.93
Home Medical Equipment + Supplies	1 equipment repair	1,271	\$164.07	\$5,224.93
Home Medical Equipment + Supplies	1 hygiene item (1 <sup>st</sup> item)	16,937	\$43.80	\$5,224.93
Home Medical Equipment + Supplies	1 hygiene item (2 <sup>nd</sup> item)	1,117	\$52.10	\$5,224.93
Home Medical Equipment + Supplies	1 hygiene item (3 <sup>rd</sup> item)	427	\$59.51	\$5,224.93
Home Medical Equipment + Supplies	1 non-ambulatory item (1 <sup>st</sup> item)	17,950	\$65.57	\$5,224.93
Home Medical Equipment + Supplies	1 non-ambulatory item (2 <sup>nd</sup> item)	356	\$141.44	\$5,224.93
Home Medical Equipment + Supplies	1 non-ambulatory item (3 <sup>rd</sup> item)	87	\$145.62	\$5,224.93
Out-of-Home Respite	1 day	0	0	\$199.82
Social Work Counseling	15 minutes	52,991	\$14.11	\$16.26

Because providers on average billed less for each service than ODM's maximum-allowable rate, the adverse impact of the current rule is being covered by the amount the PASSPORT Program pays providers.

173-39-02.26: The specific requirements for ODA-certified providers of vehicle modification will be in 5160-44-21, which ODM is simultaneously proposing to adopt.<sup>6</sup>

173-39-03.5: This rule does not create any adverse impacts upon providers.

<sup>6</sup> For more information on ODM's proposed new rule, please review ODM's BIA for 5160-44-21.

173-39-04: There are no adverse impacts for providers other than to allow ODA and its designees to regularly conduct structural compliance reviews and have access to its records. The costs incurred as a result of this rule is likely calculated as part of a provider's operational budget (i.e., the cost of doing business and clerical jobs, such as retaining records).

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

ODA is required to develop rules establishing requirements for ODA-certified providers and to ensure the health and safety of individuals enrolled in the PASSPORT and Assisted Living programs.

Providers voluntarily apply for ODA certification. Certification is not required to provide a service unless a provider wants a government program that requires certification to pay the provider for the service. The PASSPORT and Assisted Living Programs require providers to be certified. Therefore, compliance with these rules is only required if a provider voluntarily chooses to participate in those programs.

**Regulatory Flexibility**

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

Because the primary purpose of these rules is to ensure the health and safety of individuals enrolled in ODA-administered programs, the rules treat all providers the same, regardless of their size.

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

ODA is concerned primarily about protecting the health and safety of individuals receiving services from ODA-certified providers through compliance with these rules. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

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

ODA and its designees are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rules.

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