



## Common Sense Initiative

**Mike DeWine**, Governor  
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### 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

Chapter 173-39 of the Administrative Code establishes the requirements to become, and to remain, an ODA-certified provider.

**Rule Number(s):** 173-39-02, 173-39-02.4, 173-39-02.11, 173-39-02.21, 173-39-03, 173-39-04, 173-39-05

**Date of Submission for CSI Review:** March 3, 2023

**Public Comment Period End Date:** March 19, 2023 at 11:59PM

**Rule Type/Number of Rules:**

☐ New/ # rules

☐ No Change/ # rules (FYR? ☐)

☒ Amended/ 6 rules (FYR? ☒)

☒ Rescinded/ 1 rules (FYR? ☒)

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

#### **Reason for Submission**

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

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

Please review the next page.

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**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.*

ODA proposes to reduce the use of unnecessary regulatory restrictions (*e.g., shall*) in every rule in this package to comply with R.C. §§ [106.03](#) and [121.951](#).<sup>1</sup> This proposal includes some substantive changes noted below. This proposal also includes numerous non-substantive changes, which may account for a majority of the changes being proposed in the rules of this package.

ODA proposes for all amendments in this rule package to take effect on July 1, 2023, which is the anticipated effective date for the renewal application to the Centers for Medicare and Medicaid Services (CMS) for the PASSPORT Program to be a Medicaid-waiver program.

Rule 173-39-02 of the Administrative Code establishes the general requirements to become, and to remain, an ODA-certified provider. ODA proposes to amend this rule to achieve the following:

- No longer require participant-directed providers to maintain a business site. [¶(A)(3)] For more information, please review ODA's response to BIA questions #9 and #10.
- Move the requirement for the records to be accessible to HHS, the state auditor, and ODM from rule 173-39-04 to ¶¶ (A)(3)(b) and (B)(10)(c) of this rule.
- No longer require providers who have a home health license under [R.C. Chapter 3740](#) to have commercial liability insurance in addition to the surety bond required under R.C. Chapter 3740. [¶(A)(5)(a)(i)]
- Eliminate a flexibility related to the COVID-19 public health emergency (PHE). At the beginning of the PHE, ODA amended ¶(B)(2) of this rule to allow providers to collect an individual's handwritten or electronic signature on a date later than the date of service if the provider's only means to comply with service-verification requirements is to collect individual's handwritten or electronic signatures. The purpose for the amendment was to facilitate social distancing.
- Refer to the incident-reporting requirements in rule 5160-44-05 of the Administrative Code rather than establish incident-reporting requirements in this rule. [¶(B)(3)(b)]

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

- No longer require providers to report on significant changes in the individual's physical, mental, or emotional status; environment, or safety since these matters are now reported under the incident-reporting requirements in rule 5160-44-05 of the Administrative Code. [¶(B)(3)(c)(iv)]
- No longer exempt certain providers from the requirement to notify ODA's designee at least 30 days before the last day the provider provides services. [¶(B)(3)(e)(iv)]
- Insert *failing to cooperate with or before* treating ODA or its designee disrespectfully. [¶(B)(8)(f)]
- No longer require agency providers to have previous experience to be certified, but continue to require the provider to have an active registration with the Ohio Secretary of State. [¶(C)(1)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer repeat the specific requirements to become an ODA-certified participant-directed provider in ¶(C)(3) of this rule that are covered under rule 173-39-02.4 of the Administrative Code.
- Delete ¶(E) of this rule because it is off the topic of the rule and R.C. §[173.391](#) already allows providers to voluntarily relinquish their certification.

Rule 173-39-02.4 of the Administrative Code establishes the specific requirements to become, and to remain, an ODA-certified provider of the choices home care attendant service. ODA's proposals to amend this rule will result in amending approximately more than 50% of the rule, so ODA proposes to rescind the rule and to adopt a new rule in its place to comply with the 50% guideline in §4.3.1 of LSC's [Rule Drafting Manual](#). In doing so, ODA proposes to achieve the following:

- Reorganize the list of activities that comprise the choices home care attendant service to follow the format and wording under rule 173-39-02.11 of the Administrative Code since 5 of the 7 activities are also personal care activities.
- Move the scheduling requirements for participant-directed providers from rule 173-39-02.21 of the Administrative Code to ¶(B)(2)(b) of this rule.
- No longer require an interview with the individual in before providing the first episode of the service. [¶(B)(4)(a)] For more information, please review ODA's response to BIA questions #9 and #10.
- Reorganize paragraphs to clarify that a provider needs a driver's license and insurance to qualify to transport an individual, not to qualify to be a participant-directed provider. [¶(B)(4)(b)] For more information, please review ODA's response to BIA questions #9 and #10.
- Replace the requirements for specific initial training with requirements for the individual (as the employer of record) and ODA or its designee to confer with one another to determine what training or skills the individual deems as appropriate for their participant-directed provider. [¶(B)(4)(c)] For more information, please review ODA's response to BIA questions #9 and #10.
- Indicate that the individual (as the employer of record) determines what continuing education courses their participant-directed provider needs to meet the individual's needs and may seek assistance from ODA's designee to complete this responsibility. [¶(B)(4)(d)]
- No longer require completing form ODA1042 regarding initial training. [¶(B)(4)(e)] For more information, please review ODA's response to BIA questions #9 and #10.

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- No longer require completing form ODA1043 regarding continuing education. [¶(B)(4)(e)]

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

- Move the scheduling requirements for participant-directed providers from rule 173-39-02.21 of the Administrative Code to ¶(C)(2)(a) of this rule.
- Give flexibility to ODA-certified agency providers to conduct certain subsequent PCA supervisor visits in person or by telephone or video conference whether a public-health emergency exists or does not exist. [¶(C)(4)(b)(2)(b)]
- No longer require ODA-certified agency providers to develop, implement, comply with, or maintain policies on performance appraisals for each staff position. [¶(C)(5)(c)]
- Replace the requirements for ODA-certified participant-directed providers of personal care with a reference to the requirements for ODA-certified participant-directed providers of the choices home care attendant service, which makes the many of the qualifications and requirements for participant-directed providers the same for both services. [¶(D)]

Rule 173-39-02.21 of the Administrative Code establishes scheduling requirements for rules 173-39-02.4 and 173-39-02.11 of the Administrative Code. ODA proposes to rescind this rule and to move its contents to either rule 173-39-02.4 or 173-39-02.11 of the Administrative Code.

Rule 173-39-03 of the Administrative Code establishes the general application process to become an ODA-certified provider. ODA proposes to amend this rule to achieve the following:

- Delete the introductory paragraph.
- No longer require the applicant to participate in an interview with the individual (future employer of record) before applying for certification [¶(A)(2)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require the provider to complete the application in 90 days. [¶(A)(1)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require an on-site review of the applicant's place of business before certifying an applicant to be a participant-directed provider. [¶(C)(1)] For more information, please review ODA's proposal for ¶(A)(3) of rule 173-39-02 of the Administrative Code and ODA's response to BIA questions #9 and #10.
- Shorten the processing time between the date an applicant submits a complete application and the date of certification by requiring ODA's designee to complete a pre-certification review within 60 days (instead of 90 days) after receiving a complete application from most providers [¶(C)(1)(b)] and within 30 days (instead of 90 days) after receiving a complete application from an applicant to become a participant-directed provider [¶(C)(3)]. For ODA's designees, the trade off is the reduced frequency of reviews in rule 173-39-04 of the Administrative Code.
- Add *ODA previously revoked the provider's certification* as a reason that ODA may deny a provider's application. [¶(H)(1)(e)]

Rule 173-39-04 of the Administrative Code establishes the requirements for structural compliance reviews. ODA's proposals to amend this rule will result in amending approximately more than 50% of the rule, so ODA proposes to rescind the rule and to adopt a new rule in its place to comply with the 50% guideline in §4.3.1 of LSC's [Rule Drafting Manual](#). In doing so, ODA proposes to achieve the following:

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- Reduce the required frequency of compliance reviews for providers of most services from every year (under the current rule) to every three years ¶(B)] This proposal will have the effect of (1) reducing the number of compliance reviews for providers, and (2) reducing the number of compliance reviews that ODA's designees need to conduct. Please review the related proposal for ¶(G).
- Require ODA's designee to retain a request for an extension of their deadline to review a provider in the PASSPORT information management system (PIMS). ¶(C)(2)]
- Move the requirements for ODA's designees regarding (1) which designee is responsible to review certain providers, (2) the type of review that it shall conduct, and (3) the scope of that review from the text of the rule to table format in Appendix A.
- Clarify that ODA's designee is required to conduct an introductory conference with the provider to explain the purpose and scope of a review before conducting that review. ¶(E)(2)] This was implied, but not clearly required, in the current version of this rule.
- Move the table on sample sizes from the rule text to Appendix B.
- Require ODA's designees to email providers of the results of the review if the provider is not available for an exit interview. ¶(F)(1)(a)] This proposal will have the impact of not requiring providers to participate in exit interviews when they are unavailable to do so.
- Replace the requirement to demonstrate compliance in 7 days with a requirement to do so in 5 days. ¶(F)(1)(d)] Please review the proposal for ¶(J). This proposal will align with the deadline to demonstrate compliance in rule 173-39-05 of the Administrative Code.
- Indicate that ODA may consider the review of an ODA-certified provider by the Ohio Department of Developmental Disabilities (ODODD) or by ODM to satisfy the requirements to review the provider under this rule under certain circumstances. ¶(G)] This proposal will have the effect of (1) reducing the number of compliance reviews for providers who are regulated by ODA as a certified provider and also ODODD or ODM, and (2) reducing the number of compliance reviews that ODA's designees need to conduct.
- Indicate that if any deadline in this rule occurs on a Saturday, Sunday, or legal holiday under R.C. §1.14, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday under R.C. §1.14. ¶(J)] This is because ODA does not want to establish a deadline on a Saturday, Sunday, or legal holiday and does not want to use the term *business day*, which has no established meaning and could hold different meanings to different readers.

Rule 173-39-05 of the Administrative Code establishes disciplinary actions for non-compliant ODA-certified providers. ODA proposes to amend this rule to achieve the following:

- Indicate that if any deadline in this rule occurs on a Saturday, Sunday, or legal holiday under R.C. §1.14, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday under R.C. §1.14. ¶(F)] Please review the notes on ¶(J) of rule 173-39-04 of the Administrative Code for more information.
- Delete *business* as it occurs before *five days* in ¶(B)(1)(b)(1). Please review the notes on ¶(F) of this rule and ¶(F)(1)(d) of rule 173-39-04 of the Administrative Code for more information.

Lastly, ODA also proposes to make additional non-substantive changes to the rules in this package.

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- 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.**

R.C. §§ [121.07](#), [121.36](#),<sup>2</sup> [173.01](#), [173.02](#), [173.39](#), [173.391](#), [173.52](#), [173.522](#), [173.54](#), and [173.543](#).

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

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

In order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio's application for a Medicaid waiver authorizing the state to launch and maintain the PASSPORT and Assisted Living Programs, [42 C.F.R. 441.352](#) requires ODA to establish provider-certification requirements to safeguard the health and welfare of individuals who receive services through the program.

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

These rules exist to comply with the state laws mentioned in ODA's response to #2. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT and Assisted Living Programs.

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

These rules exist to comply with the state laws mentioned in ODA's response to #2. Those state laws require ODA to adopt rules to establish requirements for provider certification and the PASSPORT and Assisted Living Programs.

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

ODA and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from ODA-certified providers. [173-39-04] ODA will judge the proposed amendments to these rules to be a success when ODA and its designees find few violations against them during structural compliance reviews or investigations of alleged incidents.

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

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

No.

### **Development of the Regulation**

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

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

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<sup>2</sup> R.C. §121.36 applies to only rule 173-39-02.11 of the Administrative Code.



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. From each rule's effective date to the date of this BIA, ODA has received no input from stakeholders or the general public on any rule in this package.

On March 25, 2022, the Common-Sense Initiative (CSI) conducted a video conference with ODA to discuss the requirement in rule 173-39-02 of the Administrative Code for agency providers to have for three months of previous experience to be certified. A provider had informed CSI that the requirement created an adverse impact on her business. On March 30, 2022, CSI emailed a list of questions to ODA about this requirement. On September 28, 2022, CSI asked ODA to recommend ways to give agency providers flexibility regarding this requirement.

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

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

Over time, it has been a common occurrence for applicants for certification as participant-directed providers to begin the online application, but not finish it. Applicants emailed ODA at [provider.Enrollment@ag.ohio.gov](mailto:provider.Enrollment@ag.ohio.gov) or called ODA to explain that it was too difficult to provide the information necessary to apply. On October 1, 2022, PNM (an Ohio Dept. of Medicaid system) became the new online application system. This increased the number of applicants for certification as participant-directed providers with incomplete applications and increased the number of applicants informing ODA that the application process is too cumbersome.

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

On March 30, 2022, ODA provided responses to CSI's questions (from earlier on the same day) about the previous-experience requirement in rule 173-39-02 of the Administrative Code for agency providers. On November 16, 2022, ODA responded to CSI's request on September 28, 2022 to recommend ways to increase flexibility regarding the previous-experience requirement. ODA indicated that it proposes to eliminate the requirement, but proposes to keep the part of the requirement that requires the business to have an active business registration with the Ohio Secretary of State.

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

ODA proposes to simplify the application process to become a participant-directed provider in response to the incomplete applications and complaints from applicants. Specifically, ODA proposes to do the following:

- No longer require applicants to complete their applications in 90 days. [173-39-03]

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- No longer require the applicant to participate in an interview with the individual (future employer of record) before the first episode of service [173-39-02.4] or before applying for certification [173-39-03].
- No longer require a participant-directed provider to have a place of business. [173-39-02]
- No longer require an on-site review of the applicant's place of business before certifying. [173-39-03]
- Replace the initial training requirements with training that the individual (employer of record) determines to be appropriate. [173-39-02.4]
- No longer require form ODA1042 as evidence of successful completion of initial training. [173-39-02.4]
- Clarify that a driver's license and auto liability insurance are not qualifications for certification. [173-39-02.4]
- No longer establish qualifications to become a certified participant-directed provider of personal care that differ from the qualifications to become a certified participant-directed provider of the choices home care attendant service. [173-39-02.11]

The following explains ODA's rationale behind these proposals:

- A participant-directed provider is generally a family member of the individual who hires them and not a person who is pursuing a long-term care career as a participant-directed provider. A person may leave their current career to care for their family member, which may delay or prevent their family member's need to move into a nursing home. After their loved one enters a nursing home or expires, the participant-directed provider typically does not continue to provide services to other individuals.
- The individual who receives services is the employer of record for the participant-directed provider. As the employer, the individual is the person to determine what training their employee needs to provide the activities that they need to safely remain in their home.

#### **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?**

Individuals enrolled in the PASSPORT and Assisted Living Programs have a higher risk for contracting COVID-19 than the general population. Accordingly, the flexibility in rule 173-39-02 of the Administrative Code for providers who collect handwritten or electronic signatures to verify service provision to collect those unique identifiers on dates other than the date of service was based on guidelines from the Centers for Disease Control and Prevention (CDC) on reducing in-person interaction to limit exposure to COVID-19 (*i.e.*, social distancing). Because the COVID-19 public health emergency is coming to an end, ODA is no longer proposing to retain this flexibility.

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

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

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

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

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

**Adverse Impact to Business**

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

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

Every ODA-certified provider.

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

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.*

The following are the adverse impacts of these rules:

- The act of applying for certification. [173-39-03]
- General requirements to become and to remain an ODA-certified provider. These include compliance with (1) requirements established in rule 173-39-02 of the Administrative Code (e.g., providing ODA with contact information), (2) requirements on topics (e.g., background checks) that are referenced in rule 173-39-02 of the Administrative Code, but established outside of that rule (e.g., R.C. §§ [173.38](#) and [173.381](#)), and (3) requirements on topics (e.g., records retention) that are established in rule 173-39-02 of the Administrative Code and also outside of the rule (e.g., [45 C.F.R. 75.361](#)).
- Specific requirements unique to each service (e.g., availability, qualifications to provide the service, continuing education/in-service training, supervisory visits<sup>3</sup>). [173-39-02.4, 173-39-02.11, and 173-39-02.21]
- Compliance reviews, which involve a review of records and, in some circumstances, a provider’s place of business. [173-39-04] Although these requirements are primarily on ODA and its designees, providers must make their records and facilities available for review.
- Disciplinary actions, which impact only non-compliant ODA-certified providers. [173-39-05]

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<sup>3</sup> Requirements for supervisory visits apply only to agency providers under rule 173-39-02.11 of the Administrative Code because agency providers are not always in the individual’s home to evaluate the personal care aide’s (PCA’s) compliance with the activities plan, the individual’s satisfaction, and the PCA’s performance. As the employer of record, the individual receiving services is the supervisor of a participant-directed provider and is always in their home to supervise the participant-directed provider when that provider provides activities to/for the individual.

The amount the PASSPORT and Assisted Living Programs pay providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus employee-related costs. The costs incurred as a result of this rule are likely calculated as part of a provider's operational budget—the cost of doing business and clerical jobs, such as retaining records and updating policies and procedures.

Providers set the prices they bill to the PASSPORT and Assisted Living Programs. In turn, the PASSPORT and Assisted Living Programs pay each provider the amount the provider bills, so long as the price billed does not exceed the maximum that the Ohio Dept. of Medicaid (ODM) allows per unit. In the appendix to rule [5160-1-06.1](#) of the Administrative Code, ODM establishes the units of service for the PASSPORT Program and the maximum-allowable payment for each unit. In the appendix to rule [5160-1-06.5](#) of the Administrative Code, ODM establishes the units of service for the Assisted Living Program and the maximum-allowable payment for each unit.

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

Yes. Many of ODA's proposed amendments to the rules of this package will reduce regulatory impact.

ODA will reduce the regulatory impact of rule 173-39-02 of the Administrative Code with proposals to achieve the following:

- No longer require participant-directed providers to maintain a business site. [¶(A)(3)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require providers who have a home health license under [R.C. Chapter 3740](#) to have commercial liability insurance in addition to the surety bond required under R.C. Chapter 3740. [¶(A)(5)(a)(i)]
- No longer require providers to report on significant changes in the individual's physical, mental, or emotional status; environment, or safety since these matters are now reported under the incident-reporting requirements in rule 5160-44-05 of the Administrative Code. [¶(B)(3)(c)(iv)]
- No longer exempt certain providers from the requirement to notify ODA's designee at least 30 days before the last day the provider provides services. [¶(B)(3)(e)(iv)]
- No longer require agency providers to have previous experience to be certified, but continue to require the provider to have an active registration with the Ohio Secretary of State. [¶(C)(1)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer repeat the specific requirements to become an ODA-certified participant-directed provider in ¶(C)(3) of this rule that are covered under rule 173-39-02.4 of the Administrative Code.

ODA will reduce the regulatory impact of rule 173-39-02.4 of the Administrative Code with proposals to achieve the following:

- Move the scheduling requirements for participant-directed providers from rule 173-39-02.21 of the Administrative Code to ¶(B)(2)(b) of this rule.
- No longer require an interview with the individual in before providing the first episode of the service. [¶(B)(4)(a)] For more information, please review ODA's response to BIA questions #9 and #10.

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- Reorganize paragraphs to clarify that a provider needs a driver's license and insurance to qualify to transport an individual, not to qualify to be a participant-directed provider. [¶(B)(4)(b)] For more information, please review ODA's response to BIA questions #9 and #10.
- Replace the requirements for specific initial training with requirements for the individual (as the employer of record) and ODA or its designee to confer with one another to determine what training or skills the individual deems as appropriate for their participant-directed provider. [¶(B)(4)(c)] For more information, please review ODA's response to BIA questions #9 and #10.
- Indicate that the individual (as the employer of record) determines what continuing education courses their participant-directed provider needs to meet the individual's needs and may seek assistance from ODA's designee to complete this responsibility. [¶(B)(4)(d)]
- No longer require completing form ODA1042 regarding initial training. [¶(B)(4)(e)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require completing form ODA1043 regarding continuing education. [¶(B)(4)(e)]

ODA will reduce the regulatory impact of rule 173-39-02.11 of the Administrative Code with proposals to achieve the following:

- Move the scheduling requirements for participant-directed providers from rule 173-39-02.21 of the Administrative Code to ¶(C)(2)(a) of this rule.
- Give flexibility to ODA-certified agency providers to conduct certain subsequent PCA supervisor visits in person or by telephone or video conference whether a public-health emergency exists or does not exist. [¶(C)(4)(b)(2)(b)]
- No longer require ODA-certified agency providers to develop, implement, comply with, or maintain policies on performance appraisals for each staff position. [¶(C)(5)(c)]
- Replace the requirements for ODA-certified participant-directed providers of personal care with a reference to the requirements for ODA-certified participant-directed providers of the choices home care attendant service, which makes the many of the qualifications and requirements for participant-directed providers the same for both services. [¶(D)] This will also apply the proposals for ¶¶ (B)(4)(c) and (B)(4)(d) to participant-directed providers of personal care.

ODA will reduce the regulatory impact of rule 173-39-03 of the Administrative Code with proposals to achieve the following:

- No longer require the applicant to participate in an interview with the individual (future employer of record) before applying for certification to become a participant-directed provider. [¶(A)(2)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require the provider to complete the application in 90 days. [¶(A)(1)] For more information, please review ODA's response to BIA questions #9 and #10.
- No longer require an on-site review of the applicant's place of business before certifying an applicant to be a participant-directed provider. [¶(C)(1)] For more information, please review ODA's proposal for ¶(A)(3) of rule 173-39-02 of the Administrative Code and ODA's response to BIA questions #9 and #10.
- Shorten the processing time between the date an applicant submits a complete application and the date of certification by requiring ODA's designee to complete a pre-certification review within 60 days (instead of 90 days) after receiving a complete application from most providers [¶(C)(1)(b)] and within 30 days (instead of 90 days) after receiving a complete application from an applicant to become a participant-directed provider [¶(C)(3)].

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ODA will reduce the regulatory impact of rule 173-39-04 of the Administrative Code with proposals to achieve the following:

- Reduce the required frequency of compliance reviews for providers of most services from every year (under the current rule) to every three years [(F)(B)] This proposal will have the effect of (1) reducing the number of compliance reviews for providers, and (2) reducing the number of compliance reviews that ODA's designees need to conduct. Please review the related proposal for [(G)].
- Require ODA's designees to email providers of the results of the review if the provider is not available for an exit interview. [(F)(1)(a)] This proposal will have the impact of not requiring providers to participate in exit interviews when they are unavailable to do so.
- Replace the requirement to demonstrate compliance in 7 days with a requirement to do so in 5 days. [(F)(1)(d)] Please review the proposal for [(J)]. This proposal will align with the deadline to demonstrate compliance in rule 173-39-05 of the Administrative Code.
- Indicate that ODA may consider the review of an ODA-certified provider by the Ohio Department of Developmental Disabilities (ODODD) or by ODM to satisfy the requirements to review the provider under this rule under certain circumstances. [(G)] This proposal will have the effect of (1) reducing the number of compliance reviews for providers who are regulated by ODA as a certified provider and also ODODD or ODM, and (2) reducing the number of compliance reviews that ODA's designees need to conduct.
- Indicate that if any deadline in this rule occurs on a Saturday, Sunday, or legal holiday under R.C. §1.14, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday under R.C. §1.14. [(J)] This is because ODA does not want to establish a deadline on a Saturday, Sunday, or legal holiday and does not want to use the term *business day*, which has no established meaning and could hold different meanings to different readers.

ODA will reduce the regulatory impact of rule 173-39-05 of the Administrative Code with proposals to indicate that if any deadline in this rule occurs on a Saturday, Sunday, or legal holiday under R.C. §1.14, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday under R.C. §1.14. [(F)] Please review the notes on [(J)] of rule 173-39-04 of the Administrative Code for more information.

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

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

Providers voluntarily apply for ODA certification. Certification is not required to provide a service unless a provider wants a government program that requires certification to pay the provider. Compliance with these rules is only required if a provider voluntarily chooses to participate in a program requiring certification, such as the PASSPORT and Assisted Living Programs.

### **Regulatory Flexibility**

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

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

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

ODA's primary concern is the health and safety of individuals receiving services from ODA-certified providers. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

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

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