



*Empowering Elders.  
Strengthening Communities.*

**Mike DeWine**, Governor  
**Ursel J. McElroy**, Director

**PUBLIC-COMMENT PERIOD**  
**PROVIDER CERTIFICATION**  
FEBRUARY 28, 2020

ODA reviewed rules 173-39-02, 173-39-02.7, 173-39-02.12, 173-39-02.23, 173-39-03.5, and 173-39-04 of the Administrative Code and now proposes to amend those rules. Because the amendments to 173-39-02.7 and 173-39-02.12 will comprise more than 50% of those rules, ODA will file proposed new rules with JCARR although they appear in this comment period as amended rules. ODA also proposed to adopt a new rule on vehicle modification (173-39-02.26).

Please review the attached business impact analysis (BIA) for details.

Any person may offer recommendations for improving these rules or their BIA. Those who are interested should submit their recommendations to [rules@age.ohio.gov](mailto:rules@age.ohio.gov) no later than **Thursday, March 12, 2020** at 11:59PM.

For more information on proposed new rules 5160-44-21 and 5160-44-23, please contact the [Ohio Department of Medicaid](#) (ODM). Please submit any recommendations on those rules to ODM.



## 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Rescinded/ 2 rules (FYR?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.

**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.

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<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.

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- 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.

**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:

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- 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

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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.

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**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

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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.

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- 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>

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<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.

173-39-02

**ODA provider certification: requirements for providers to become, and to remain, certified.**

Introduction: This rule presents requirements for every type of provider to become, and to remain, certified. For agency and assisted living providers, the requirements in this rule include requirements for each provider's employees.

(A) Requirements for every type of provider to become certified:

(1) Qualifications: The provider shall meet all of the following:

- (a) Any qualifications (e.g., licensure, training requirements, staffing levels) required by this chapter.
- (b) Any qualifications (e.g., licensure, certification, registration) required by applicable federal, state, and local laws.
- (c) Criminal records check and database reviews: The provider shall comply with sections 173.38 and 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code, unless rule 173-9-02 of the Administrative Code exempts the provider. The provider shall also comply with rule 5160-1-17.8 of the Administrative Code.

(2) Business site:

- (a) The provider shall maintain a business site(s) from which to conduct business.
- (b) The provider's business site(s) for providing services shall meet the HCBS setting requirements in rule 5160-44-01 of the Administrative Code. A business site for providing ADS or assisted living services may be subject to federal heightened scrutiny under 42 C.F.R. 441.301(c)(5)(v) and rules 173-39-03 and 173-39-03.1 of the Administrative Code.
- (c) Each business site in which the provider retains records (e.g., headquarters, regional offices) shall have a designated, locked storage space for retaining records that is accessible to ODA and its designee.

(3) Contact information: The provider shall have a valid email address and primary business telephone number locally listed under the provider's name or a toll-free telephone number available through directory assistance.

(4) Insurance: The provider shall have the following, unless the provider is a

participant-directed provider:

- (a) A minimum of one million dollars in commercial liability insurance, which includes coverage for individuals' losses due to theft or property damage. In lieu of commercial liability insurance, a non-agency provider may have a minimum of one million dollars in professional liability insurance, which includes coverage for individuals' losses due to theft or property damage.
  - (b) Written instructions any individual may use to obtain payment for loss due to theft or property damage caused by the provider, or if applicable, the provider's employee.
- (5) Provider agreements: The provider shall enter into, comply with, and maintain an active status with the following:
- (a) A medicaid-provider agreement, as required by rules 5160-1-17.2 and 5160-1-17.4 of the Administrative Code.
  - (b) A provider agreement with ODA's designee for the region in which the provider seeks certification to provide services pursuant to rule 173-39-03 of the Administrative Code.
- (6) Incident reporting: The provider shall have a written policy on documenting incidents that complies with paragraph (B)(3)(b) of this rule.
- (7) Electronic visit verification (EVV): The provider shall have an ODM-approved EVV system in place compliant with rule 5160-1-40 of the Administrative Code, if that rule requires the provider to do so.
- (B) Requirements for every type of provider to remain certified:
- (1) Continuation: The provider shall remain in compliance with all requirements under paragraph (A) of this rule.
  - (2) Service-related: For any service ODA certified the provider to provide, the provider shall comply with any rule in this chapter regulating the provision of that service.
  - (3) Reporting:

- (a) APS: As applicable, the provider shall report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the local adult protective services program, as required by section 5101.63 of the Revised Code. The provider shall also notify ODA or its designee within one business day after becoming aware of the reasonable cause.
- (b) Incidents: The provider shall notify ODA or its designee of an incident no later than one business day after the provider is aware of the incident.
- (c) Significant changes: The provider shall notify ODA or its designee no later than one business day after the provider is aware of any significant change that may affect the individual's service needs, including one or more of the following:
  - (i) The provider does not provide an authorized service at the time, or for the period of time, authorized by ODA's designee.
  - (ii) The individual moves to another address.
  - (iii) The individual's repeated refusal of services.
  - (iv) There is a significant change in the individual's physical, mental, or emotional status; environment; or, safety.
- (d) Contact information: The provider shall notify ODA or its designee of any change in the provider's telephone number, mailing address, or email address.
- (e) Last day of service: Unless the provider is an assisted living provider, the provider shall notify the individual and ODA's designee in writing at least thirty days before the last day the provider provides services to the individual, unless one or more of the following occurs:
  - (i) The individual has been hospitalized, placed in a long-term care facility, or is deceased.
  - (ii) The health or safety of the individual or provider is at serious, imminent risk.
  - (iii) The individual chooses to no longer receive services from the

provider.

- (4) Confidentiality: The provider shall comply with all state and federal laws and regulations governing individual confidentiality including sections 5160.45 to 5160.481 of the Revised Code, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. parts 160, 162, and 164.
- (5) Legally-responsible family members: The provider shall not provide a service to an individual if the provider is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (6) Volunteers:
  - (a) For agency and assisted living providers, the provider shall not allow a volunteer to provide any services ODA certified the provider to provide unless the volunteer is supervised by the provider's supervisory staff.
  - (b) For non-agency providers, the provider shall not allow a volunteer to provide any service ODA certified the provider to provide unless ODA's designee authorizes the provider to do so.
  - (c) For participant-directed providers, the provider shall not allow a volunteer to provide any service ODA certified the provider to provide unless ODA's designee and the individual authorize the provider to do so.
- (7) Person-centered planning: The provider shall comply with the person-centered planning requirements in rule 5160-44-02 of the Administrative Code.
- (8) Ethical, professional, respectful, and legal service standards: The provider shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following:
  - (a) Consuming alcohol while providing services to the individual.
  - (b) Consuming medicine, drugs, or other chemical substances in a way that is illegal, unprescribed, or impairs the provider from providing services to the individual.
  - (c) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the individual or his or her household or

family members.

- (d) Engaging the individual in sexual conduct, or in conduct a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (e) Leaving the individual's home when scheduled to provide a service for a purpose not related to providing the service without notifying the agency supervisor, the individual's emergency contact person, any identified caregiver, or ODA's designee.
- (f) Engaging in any activity while providing a service that may distract the provider from providing ~~services~~ the service, including the following:
  - (i) Watching television, movies, videos, or playing games on computers, personal phones, or other electronic devices whether owned by the individual, provider, or the provider's staff.
  - (ii) Non-care-related socialization with a person other than the individual (e.g., a visit from a person who is not providing care to the individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, email, or video).
  - (iii) Providing care to a person other than the individual.
  - (iv) Smoking tobacco or any other material in any type of smoking equipment, including cigarettes, electronic cigarettes, vaporizers, hookahs, cigars, or pipes.
  - (v) Sleeping.
  - (vi) Bringing a child, friend, relative, or anyone else, or a pet, to the individual's place of residence.
  - (vii) Discussing religion or politics with the individual and others while providing services.
  - (viii) Discussing personal issues with the individual or any other person while providing services.
- (g) Engaging in behavior that causes, or may cause, physical, verbal, mental,

or emotional distress or abuse to the individual including publishing photos of the individual on social media without the individual's written consent.

- (h) Engaging in behavior a reasonable person would interpret as inappropriate involvement in the individual's personal relationships.
  - (i) Making decisions, or being designated to make decisions, for the individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship, or authorized representative.
  - (j) Selling to, or purchasing from, the individual products or personal items, unless the provider is the individual's family member who does so only when not providing services.
  - (k) Consuming the individual's food or drink, or using the individual's personal property without his or her consent.
  - (l) Taking the individual to the provider's business site, unless the business site is an ADS center, RCF, or (if the provider is a participant-directed provider) the individual's home.
  - (m) Engaging in behavior constituting a conflict of interest, or taking advantage of, or manipulating services resulting in an unintended advantage for personal gain that has detrimental results to the individual, the individual's family or caregivers, or another provider.
- (9) Training: The provider shall participate in ODA's or its designee's mandatory free provider training sessions.

(10) Records and monitoring:

(a) Records retention:

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

(a) Six years after the date the provider receives payment for the service.



(d) The provider may provide a service not authorized by the individual's person-centered services plan, but ODA (or its designee) shall only pay the provider for providing services authorized by the individual's person-centered services plan.

(12) Other laws: The provider shall comply with all applicable federal, state, and local laws, rules, and regulations.

(C) Requirements for specific types of providers to become certified:

(1) Agency providers:

(a) Experience: On the day the provider applies to become certified by ODA, the provider shall submit records verifying the provider has at least three months of experience providing the specific service for which it seeks certification from ODA to at least two Ohio adults in a HCBS setting. The provider's experience shall include all of the following related to providing those services:

(i) The provider was a business entity with an active registration from the Ohio secretary of state.

(ii) The provider was paid for providing the services.

(iii) The services occurred during the twelve months preceding the day the provider applies to become certified by ODA.

(b) Identifying key persons: The provider shall disclose the following:

(i) The name of any person with an ownership interest in the provider.

(ii) The name of any person with an ownership interest in the provider who was convicted of a felony under a state or federal law.

(iii) A written table of organization clearly identifying lines of administrative, advisory, contractual, and supervisory responsibilities.

(c) Statements: The provider shall provide ODA or its designee with written statements on the following:

- (i) The purpose of the provider's business.
  - (ii) The provider's compliance with 45 C.F.R. 80.4 regarding the provision of services.
  - (iii) The provider's compliance with the Equal Employment Opportunity Act of 1972, federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
  - (iv) The provider's payment of all applicable federal, state, and local income and employment taxes for the most recent year.
- (d) Policies: 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. The policies, bylaws, or articles of incorporation shall include requirements for its employees to provide services in a manner compliant with ~~paragraphs~~ paragraph (B)(8) ~~and (D)(1)(b)~~ of this rule.
- (2) Non-agency providers: The provider shall provide a written statement to ODA or its designee certifying that he or she paid all applicable federal, state, and local income and employment taxes.
- (3) Participant-directed providers:
- (a) Age: The provider shall be at least eighteen years of age.
  - (b) Identification: 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.
    - (iii) United States of America permanent resident card.
  - (c) Communication:

- (i) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and any rule in this chapter to which the provider is subject.
- (ii) The provider shall be able to effectively communicate with the individual.

(4) Assisted living providers:

- (a) Preemption: The provider shall acknowledge that any statute governing, or rule regulating, the assisted living program supersedes any clause in the RCF's resident agreement.
- (b) License: The provider shall have an RCF license issued under Chapter 3701-16 of the Administrative Code, ~~including complying~~ [and comply](#) with section 3721.121 of the Revised Code.
- (c) Identifying key persons: The provider shall disclose the following:
  - (i) The name of any person with an ownership interest in the provider.
  - (ii) The name of any person with an ownership interest in the provider who was convicted of a felony under a state or federal law.
  - (iii) A written table of organization clearly identifying lines of administrative, advisory, contractual, and supervisory responsibilities.
- (d) Statements: The provider shall provide ODA or its designee with written statements on the following:
  - (i) The provider's compliance with 45 C.F.R. 80.4 regarding the provision of services.
  - (ii) The provider's compliance with the Equal Employment Opportunity Act of 1972, federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (e) Policies: 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. The policies, bylaws, or articles of incorporation shall include the following:

- (i) Ethical, professional, respectful, and legal service provision: In the residents' rights policy the provider adopts to comply with section 3721.12 of the Revised Code, the provider shall require its employees to comply with ~~paragraphs~~ paragraph (B)(8) ~~and (D)(1)(b)~~ of this rule.
- (ii) Abuse, neglect, and exploitation: To comply with paragraph (B)(3)(a) of this rule, in the policy the provider adopts under rule 3701-64-02 of the Administrative Code on reporting abuse, neglect, or exploitation to ODH, the provider shall also require reporting abuse, neglect, or exploitation to ODA or its designee.
- (iii) Incident reporting: To comply with paragraph (A)(6) of this rule, in the policy the provider adopts under paragraph (B) of rule 3701-16-12 of the Administrative Code, the provider shall also require reporting incidents to ODA or its designee according to paragraph (B)(3)(b) of this rule.

(D) Requirements for specific types of providers to remain an ODA-certified provider:

- (1) Agency providers: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(1) of this rule.
  - ~~(a) Continuation: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(1) of this rule.~~
  - ~~(b) Ethical, professional, respectful, and legal service provision: The provider shall not engage in the following behaviors in addition to those in paragraph (B)(8) of this rule:~~
    - ~~(i) Consuming the individual's food or drink, or using the individual's personal property without his or her consent.~~
    - ~~(ii) Bringing a child, friend, relative, or anyone else, or a pet, to the individual's place of residence.~~
    - ~~(iii) Taking the individual to the provider's business site, unless the business site is an ADS center.~~

~~(iv) Discussing religion or politics with the individual and others while providing services.~~

~~(v) Discussing personal issues with the individual or any other person while providing services.~~

~~(vi) Engaging in behavior constituting a conflict of interest, or taking advantage of, or manipulating services resulting in an unintended advantage for personal gain that has detrimental results to the individual, the individual's family or caregivers, or another provider.~~

(2) Non-agency providers: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(2) of this rule.

~~(a) Continuation: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(2) of this rule.~~

~~(b) Ethical, professional, respectful, and legal service provision: In addition to the list of unethical, unprofessional, disrespectful, or illegal behaviors in paragraph (B)(8) of this rule, the provider shall also not engage in the behaviors listed in paragraph (D)(1)(b) of this rule.~~

(3) Participant-directed providers:

(a) Continuation: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(3) of this rule.

(b) Records retention: The provider shall store the individual's records in a place in the home of the individual that is accessible to the provider, individual, and ODA or its designee.

(4) Assisted living providers:

(a) Continuation: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(4) of this rule.

(b) Abuse, neglect, or exploitation: The provider shall report when it has reasonable cause to believe an individual suffered abuse, neglect, or exploitation to ODH, as required by rule 3701-64-02 of the Administrative Code. The provider shall also notify ODA or its designee.

(c) Payment:

(i) The assisted living program shall not pay for any service the provider provides to an individual before ODA's designee enrolls the individual into the program and before ODA's designee authorizes the service in the individual's person-centered services plan.

(ii) If an individual is absent from the RCF, the provider shall not accept a payment for the service under rule 173-39-02.16 of the Administrative Code or charge the individual an additional fee for the service or charge the individual an additional fee to hold the unit during the individual's absence.

(d) Transfers/discharges: The provider shall transfer or discharge an individual under the terms of section 3721.16 of the Revised Code.

(e) Last day of service: If the provider terminates its medicaid-provider agreement, pursuant to section 3721.19 of the Revised Code, it shall provide written notification to the individual and to ODA's designee at least ninety days before terminating the provision of services to the individual.

(E) ODA shall not certify a provider if ODA previously revoked the provider's certification with ODA.

173-39-02.7

ODA provider certification: **home specialized** medical equipment, **and** supplies, **and** devices.

~~(A) "Home medical equipment and supplies" (HME) means a service providing rented or purchased home medical equipment and supplies to individuals to enable those individuals to function safely in their homes with greater independence, thereby eliminating the need for placement in a nursing facility.~~

~~HME is limited to equipment and supplies allowed under Chapter 5160-10 of the Administrative Code, miscellaneous equipment and supplies, equipment repairs, and equipment and supplies not paid (in full or in part) by medicare, state plan medicaid, or another third-party payer.~~

(A) "Specialized medical equipment, supplies, and devices" has the same meaning as in rule 5160-44-23 of the Administrative Code.

(B) Requirements for ODA-certified providers of **home specialized** medical equipment, **and** supplies, **and** devices:

(1) Provider type: Only an agency or non-agency provider qualifies for ODA certification to provide specialized medical equipment, supplies, and devices.

~~(1)(2) General requirements: The agency provider shall comply with the requirements for every ODA-certified agency provider in rule 173-39-02 of the Administrative Code and the non-agency provider shall comply with the requirements for every ODA-certified agency provider in rule 173-39-02 of the Administrative Code.~~

(3) Requirements specific to specialized medical equipment, supplies, and devices: The provider shall comply with the requirements in rule 5160-44-23 of the Administrative Code.

(4) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-23 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code instead of the conflicting requirement in rule 5160-44-23 of the Administrative Code.

~~(2) Ongoing assistance: The provider shall provide professional, ongoing assistance when needed to evaluate and adjust equipment and supplies delivered, and/or to instruct the individual or the individual's caregiver in the use of equipment and supplies.~~

~~(3) Repairs and replacements: The provider shall assume liability for equipment warranties and shall install, maintain, and/or replace any defective parts or items specified in those warranties. Replacement items or parts for HME are not payable as rental equipment.~~

~~(4) Billing:~~

- ~~(a) Before ODA's designee may authorize equipment or supplies, the provider shall document the equipment and supplies to be purchased were not covered (in full or in part) by medicare, state plan medicaid, and any other third-party payer.~~
- ~~(b) The provider shall, in collaboration with the case manager, ascertain and recoup any third-party resource(s) available to the individual before billing ODA or its designee. ODA or its designee may then pay the unpaid balance up to the lesser of the provider's billed charge or the maximum allowable payment established in appendix A to rule 5160-1-06.1 of the Administrative Code.~~
- ~~(c) The provider shall submit the price for an item to be purchased or rented no more than two business days after the case manager's request. The provider shall purchase, deliver, and install (as appropriate) the authorized item(s) before submitting a bill to ODA's designee. The billed amount for each item shall not exceed the item rate authorized by the case manager.~~

~~(5) Delivery and verification:~~

- ~~(a) The provider shall verify the successful completion of each activity (i.e., delivery, installation, or education) it provides using either an electronic or manual system and shall retain documentation verifying the delivery of HME. Regardless of the system used, the verification shall include the individual's name, date of delivery, installation, or education, and itemization of each activity completed.~~
- ~~(b) Delivery verification methods: Delivery of HME shall be verified by one of the following methods:~~
  - ~~(i) The individual's signature.~~
  - ~~(ii) If a provider uses a common carrier to deliver HME, the provider shall verify the success of the delivery by using the method in paragraph (B)(5)(b)(i) of this rule or by retaining the common carrier's tracking statement or returned postage paid delivery invoice. A provider using common carriers shall replace any HME item lost or stolen between the time of delivery and receipt by the individual at no cost to the individual, ODA or its designee.~~
- ~~(c) If a single visit by the provider includes more than one HME activity, the provider may verify the success of all the activities it provides by~~

~~obtaining only one verification.~~

~~(d) The provider shall not verify an HME activity was successfully provided with the signature of the provider, an employee of the provider, or any other person with a financial interest in the HME.~~

(C) ~~Units~~ Unit and rates:

- (1) A unit of ~~HME~~ specialized medical equipment, supplies, and devices is the item purchased or rented, and the unit rate is the purchase, installation, and/or rental price authorized for the item by ODA's designee.
- (2) Appendix A to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate ~~allowable~~ allowed for one unit of ~~HME~~ specialized medical equipment, supplies, and devices provided through the PASSPORT program.
- (3) Rule 5160-31-07 of the Administrative Code establishes the rate-setting methodology for ~~units of HME~~ specialized medical equipment, supplies, and devices provided through the PASSPORT program.

173-39-02.23

**ODA provider certification: out-of-home respite.**

- (A) "Out-of-home respite" means the service defined in rule 5160-44-17 of the Administrative Code.
- (B) Every ODA-certified provider of a ~~waiver nursing service~~ out-of-home respite shall comply with the following requirements:
- (1) General requirements: The provider shall comply with the requirements for every ODA-certified agency provider in rule 173-39-02 of the Administrative Code.
  - (2) Requirements specific to ~~a waiver nursing service~~ out-of-home respite: The provider shall comply with the requirements in rule 5160-44-17 of the Administrative Code.
  - (3) If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-17 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code.
- (C) Units and rates:
- (1) A unit of out-of-home respite under the PASSPORT program equals a unit of out-of-home respite that rule 5160-46-06 of the Administrative Code establishes for the Ohio home care waiver program.
  - (2) Rule 5160-46-06 of the Administrative Code establishes the maximum rate allowable for a unit of out-of-home respite.
  - (3) Rule 5160-31-07 of the Administrative Code establishes rate-setting methodology for units out-of-home respite.

173-39-02.26

**ODA provider certification: vehicle modification.**

(A) "Vehicle modification" has the same meaning as in rule 5160-44-21 of the Administrative Code.

(B) Requirements for an ODA-certified provider of vehicle modification:

(1) Provider type: Only an agency provider qualifies for ODA certification to provide vehicle modification.

(2) General requirements: The provider shall comply with rule 173-39-02 of the Administrative Code.

(3) Requirements specific to vehicle modification: The provider shall comply with the requirements in rule 5160-44-21 of the Administrative Code.

(4) Conflicting requirements: If a conflict exists between a requirement in rule 173-39-02 of the Administrative Code and a requirement in rule 5160-44-21 of the Administrative Code, the provider shall comply with the requirement in rule 173-39-02 of the Administrative Code instead of the conflicting requirement in rule 5160-44-21 of the Administrative Code.

(C) Unit and rates:

(1) One unit of vehicle modification is one job.

(2) Appendix A to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowed for a unit of vehicle modification provided through the PASSPORT program.

(3) Rule 5160-31-07 of the Administrative Code establishes the rate-setting methodology for vehicle modification provided through the PASSPORT program.

173-39-03.5

**ODA provider certification: military provisions.**

- (A) Applications: ~~Individuals that~~ Persons who submit with their applications for ODA provider certification proof that they are a service member or veteran, as section 5903.01 of the Revised Code defines those terms, or the spouse or surviving spouse of a service member or veteran, shall receive priority processing of their applications.
- (1) If an applicant answers affirmatively that he or she is a service member, veteran, or the spouse or surviving spouse of a service member or veteran, the applicant shall submit supporting documents along with their application. Acceptable forms of documentation include:
- (a) A copy of a document issued by the armed forces, such as an identification card or military discharge certificate; and
- (b) A marriage certificate or other document showing the applicant and service member or veteran are spouses.
- (2) ODA or its designee shall track and monitor the total number of applications submitted by service members, veterans, or their spouse or surviving spouse, and the average number of business days it takes to process the applications.
- (B) Training: Pursuant to section 5903.03 of the Revised Code, ~~an individual~~ a person subject to the training requirements in this chapter may request that ODA or its designee consider their successfully completed military training to satisfy the training requirements in this chapter. The ~~individual~~ person shall provide ODA or its designee with supporting documents demonstrating that the military training was successfully completed and is substantially equivalent to or exceeds the training requirements in this chapter.

173-39-04

**ODA provider certification: structural compliance reviews.**

Introduction: Each ODA-certified provider is subject to a regular structural compliance review (review) to ascertain if it complies with this chapter.

(A) First review:

- (1) No later than three hundred sixty-five days after the date of ODA's initial certification, ODA's designee shall conduct the first review of each provider unless the provider is a provider of community transition through the ~~home~~ HOME choice program under rule ~~5160-44-50~~ 5160-51-10 of the Administrative Code.
- (2) No later than three hundred sixty-five days after the date of ODA's initial certification, ODA or, at ODA's sole discretion, ODA's designee shall conduct the first review of each provider of community transition through the ~~home~~ HOME choice program under rule ~~5160-44-50~~ 5160-51-10 of the Administrative Code.

(B) Subsequent reviews:

- (1) ODA's designee shall conduct subsequent reviews of providers of personal emergency response systems; home maintenance and chores; ~~home medical equipment and supplies;~~ specialized medical equipment, supplies, and devices; home modification; non-emergency medical transportation; ~~or~~ non-medical transportation no later than seven hundred thirty days after the date of the previous review.
- (2) No later than three hundred sixty-five days after the date of the previous review, ODA's designee shall conduct subsequent reviews of providers of services not listed in paragraph (B)(1) of this rule, unless the provider is a provider of community transition through the ~~home~~ HOME choice program under rule ~~5160-44-50~~ 5160-51-10 of the Administrative Code.
- (3) No later than three hundred sixty-five days after the date of the previous review, ODA or, at ODA's sole discretion, ODA's designee shall complete the subsequent reviews of a provider of community transition through the ~~home~~ HOME choice program under rule ~~5160-44-50~~ 5160-51-10 of the Administrative Code.

(C) The review may be an on-site or a desk review based on the following:

- (1) ODA's designee shall conduct an on-site review in accordance with paragraph (D) of this rule when:

- (a) The provider has at least one business site located within the designee's region. If the provider has multiple business sites in the designee's region, ODA's designee shall conduct an on-site review of each business site.
  - (b) The provider is certified in only one region of the state and the provider's business site(s) is located within Ohio but outside of the designee's region.
  - (c) The provider is an assisted living provider.
  - (d) The provider is a participant-directed provider. If a participant-directed provider provides services in multiple regions, ODA's designee in each region shall conduct an on-site review.
- (2) ODA's designee shall conduct a desk review of each provider in the designee's region when:
- (a) The provider does not have a business site located within Ohio. In such cases, ODA's designee shall review the following:
    - (i) Compliance with all requirements listed under paragraph (D) of this rule if ODA's designee conducting the review is in the region of the state in which the provider was first certified.
    - (ii) Compliance with all requirements listed under paragraph (D) of this rule except the requirements in paragraph (D)(2) of this rule if ODA's designee is not in the region where the provider was first certified.
  - (b) The provider is certified in multiple regions but does not have a business site located in the designee's region. In such cases, ODA's designee shall review the following:
    - (i) Compliance with all requirements listed under paragraph (D) of this rule if ODA's designee is in the region where the provider was first certified.
    - (ii) Compliance with all requirements listed under paragraph (D) of this rule except the requirements in paragraph (D)(2) of this rule if ODA's designee is not in the region where the provider was first certified.

certified.

- (3) ODA or, at ODA's sole discretion, ODA's designee shall conduct an on-site or desk review of each provider of community transition through the ~~home~~ HOME choice program under rule ~~5160-44-50~~ 5160-51-10 of the Administrative Code.

(D) Each review shall:

- (1) Be announced by ODA's designee by placing a telephone call, or sending a written announcement, to the provider before the visit and conducting an introductory conference with the provider explaining the purpose and scope of the review, except as noted in paragraph (F) of this rule.
- (2) Include a review of compliance with each applicable requirement in rule 173-39-02 of the Administrative Code.
- (3) Include a review of compliance with each applicable requirement in rules 173-39-02.1 to ~~173-39-02.24~~ 173-39-02.26 of the Administrative Code.
- (4) Verify that a sample of paid service units were provided according to the applicable requirements in rules 173-39-02.1 to ~~173-39-02.24~~ 173-39-02.26 of the Administrative Code.
- (5) Include an exit conference with the provider.
- (6) Be based on a sample of paid service units for ten per cent of the individuals the provider served during the calendar quarter preceding the date of the review so long as the sample is based on no fewer than three individuals and no more than thirty individuals, with the following exceptions:
  - (a) If non-compliance is identified, ODA or its designee may expand the sample size, expand the time period the review covers, or require an independent audit to be conducted at the provider's expense.
  - (b) If the provider operates from multiple business sites, the review shall be based upon a sample of paid service units for ten per cent of the individuals the provider served from each business site.
  - (c) If the provider has fewer than three service delivery records for the

preceding calendar quarter, ODA or its designee shall expand its review to include previous calendar quarters beginning from the date of the last completed review to gather sufficient service delivery records to meet the sample size in paragraph (D)(6) of this rule.

(d) If the provider has no service delivery records for the period in paragraph (D)(6)(c) of this rule, ODA or its designee shall note such in the review record and complete the remaining elements of the review required by this rule.

(e) If the provider is a participant-directed provider, ODA or its designee shall review records for each individual served during the calendar quarter preceding the review.

(i) If the provider has no service delivery records for the preceding calendar quarter, ODA or its designee shall expand its review to include previous calendar quarters beginning from the date of the last completed review.

(ii) If the provider has no service delivery records for the period in paragraph (D)(6)(e)(i) of this rule, ODA or its designee shall note such in the review record and complete the remaining elements of the review required by this rule.

(f) The review for certified providers of both personal care and homemaker services shall be a combined review and the total sample shall equal the sample size required in paragraph (D)(6) of this rule.

~~(7) Include a review of the qualifications of each employee providing services to the individuals identified in the sample in paragraph (D)(6) of this rule. If one of ODA's designees already reviewed the qualifications of an employee providing services to the individuals identified in the sample in paragraph (D)(6) of this rule when conducting a review of the same provider at a different business site within the past three hundred sixty five days, ODA's designee does not need to review the employee's qualifications again in its current review.~~

(7) Include a review of the qualifications of employees providing services to individuals in the sample in paragraph (D)(6) of this rule according to the following standards:

(a) The sample size of employees corresponds to the sample size of individuals in Table 1 to this rule.

- (b) If the provider hired or subcontracted with RNs or LPNs under the direction of RNs, the number of RNs or LPNs in the sample corresponds to the sample size of individuals in Table 1 to this rule.
- (c) The sample of employees includes any employees providing services to individuals in the sample in paragraph (D)(6) of this rule that the provider hired since the previous review.
- (d) The sample of employees does not need to include an employee providing services to individuals in the sample in paragraph (D)(6) of this rule if one or more of ODA's designees already reviewed the employee's qualifications when conducting a review of the same provider at a different business site within the past three hundred sixty-five days.

Table 1

<u>IF THE SAMPLE OF INDIVIDUALS IS THIS SIZE</u>	<u>THEN THE SAMPLE OF EMPLOYEES IS THIS SIZE</u>	<u>AND, IF THE PROVIDER HIRED AN RN, OR LPN UNDER THE DIRECTION OF AN RN, THE SAMPLE OF EMPLOYEES INCLUDES THIS MANY RNs OR LPNs</u>
<u>0-3</u>	<u>3</u>	<u>2</u>
<u>4-7</u>	<u>4</u>	<u>2</u>
<u>8-11</u>	<u>5</u>	<u>3</u>
<u>12-15</u>	<u>6</u>	<u>3</u>
<u>16-19</u>	<u>7</u>	<u>3</u>
<u>20-23</u>	<u>8</u>	<u>4</u>
<u>24-27</u>	<u>9</u>	<u>4</u>
<u>28-30</u>	<u>10</u>	<u>5</u>

- (8) Be conducted at the individual's home and include the participation of the individual if the provider is a participant-directed provider, unless the individual agrees, in writing, to an alternate location and to not participate. An individual's written authorization to conduct the review at an alternate location and to not be present shall be obtained by ODA's designee for each review.

(E) At the conclusion of the review:

(1) If ODA's designee conducted the review, the following apply:

(a) If ODA's designee determines a provider engaged in conduct determined injurious or posing a threat to the health or safety of an individual, ODA's designee shall notify the provider of the same at the exit interview, and ensure all of the following occur:

(i) ODA's designee shall notify ODA within one business day.

(ii) The provider shall demonstrate compliance within seven days after receiving notification from ODA's designee.

(iii) ODA or its designee shall determine if an immediate disciplinary action shall be imposed as established in rule 173-39-05 of the Administrative Code.

(b) Within sixty days after the review, ODA's designee shall issue a written structural compliance review report to the provider, including a summary of all areas of non-compliance and disciplinary action imposed by ODA or its designee.

(c) Within sixty days after the date ODA's designee issues the written structural compliance review report to the provider, the provider shall submit evidence of compliance with the laws, rules, or regulations determined to have been violated during the review which were not subject to disciplinary action under rule 173-39-05 of the Administrative Code.

(d) If a unit-of-service error is detected during unit-of-service verification, the provider shall return the overpayment of funds to ODA or its designee. The repayment shall be completed using appropriate auditing procedures.

(2) If ODA conducted a review under paragraph (A)(2) or (B)(3) of this rule, the following apply:

(a) If ODA determines a provider engaged in conduct determined injurious or posing a threat to the health or safety of an individual, ODA shall notify the provider and ensure all of the following occur:

- (i) The provider shall demonstrate compliance within seven days after receiving notification from ODA.
  - (ii) ODA shall determine if an immediate disciplinary action shall be imposed as established in rule 173-39-05 of the Administrative Code.
- (b) Issue a written structural compliance review report to the provider.
- (c) If a unit-of-service error is detected, direct repayment using appropriate auditing procedures.
- (F) ODA or its designee may exercise the right to conduct an unannounced review of a provider at any time to review compliance with this chapter.
- (G) ODA or its designee may impose disciplinary action for non-compliance identified through any review under this rule in accordance with rule 173-39-05 of the Administrative Code.
- (H) As specified in rule 173-39-02 of the Administrative Code, all providers shall retain records to verify each episode of service delivery. Providers shall provide such records and documentation to ODA, its designee, the secretary of HHS, the auditor of state, and ODM upon request.