



**PUBLIC-COMMENT PERIOD**  
**ODA PROVIDER CERTIFICATION**

September 28, 2020

ODA reviewed rules 173-39-01, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-03, 173-39-03.2, 173-39-03.3, and 173-39-03.4 of the Administrative Code and now proposes to amend these rules.

Please feel free to review the proposed amendments to these rules and the business impact analysis (BIA) associated with them and offer recommendations for improving the rules and BIA. Submit recommendations to [rules@age.ohio.gov](mailto:rules@age.ohio.gov) no later than **October 11, 2020** at 11:59PM.

***Fostering sound public policy, research, and initiatives that benefit older Ohioans.***



## 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): 173-39-01, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-03, 173-39-03.2, 173-39-03.3, 173-39-03.4

Date of Submission for CSI Review: September 28, 2020

Public Comment Period End Date: October 11, 2020 at 11:59PM.

**Rule Type/Number of Rules:**

New/ 0 rules

No Change/ 0 rules (FYR? )

Amended/ 11 rules (FYR? )

Rescinded/ 0 rule (FYR?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?

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.*

There is no requirement for a provider to obtain ODA's certification in order to provide services in this state. These rules are not a gateway to doing business in Ohio. Instead, a provider who wants to add the PASSPORT Program or Assisted Living Program to its lines of business must become certified by ODA in order for those programs to pay the provider for services the provider wants to provide to individuals enrolled in those programs. Thus, these rules are a gateway to being paid for business conducted through these ODA-administered programs. Specifically, the rules in this package establish requirements related to certification by ODA.

- Rule 173-39-01 of the Administrative Code introduces Chapter 173-39 of the Administrative Code and defines terms used throughout that chapter. ODA proposes to amend this rule to define "unique identifier."
- Rules 173-39-02.1, 173-39-02.7, and 173-39-02.8 of the Administrative Code establish requirements applying only to the certification of providers of adult day services, home medical equipment and supplies, and homemaker (respectively). On June 11, 2020, ODA adopted one or more emergency amendment(s) into each of these rules to temporarily allow providers to decide whether to collect a unique identifier of the individual (*e.g.*, a handwritten signature) to verify that an activity or unit of service was provided. This has been allowing the provider and individual to maintain social distancing. Through this rule package ODA proposes to amend the verification requirements to allow providers to decide whether, during any state of emergency declared by the governor, to collect a unique identifier of the individual to verify that an activity or unit of service was provided.
- In rule 173-39-02.1 of the Administrative Code, ODA also proposes to do the following:
  - On June 11, 2020, ODA also adopted an emergency amendment to the definition of "adult day service." The amendment temporarily gave ADS providers flexibility to provide ADS activities in individual's homes. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis.
  - Move the text that defines the levels and activities of ADS from a paragraph under paragraph (B) of the rule, which should be reserved for requirements for certified providers, to under paragraph (A) of the rule, which is the paragraph that defines "adult day service." In doing so, ODA proposes to no longer include the long-form text that itemizes what Table 1 to the rule conveys with much less text.

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- Add Table 2 to the rule to define which individuals are eligible to receive ADS activities in their homes, which ADS activities are allowable in their homes, and the allowable duration or frequency of allowable ADS activities in their homes.
- Replace a reference to requirements for therapeutic diets in rule 173-39-02.14 of the Administrative Code, to requirements for therapeutic diets in rule 5160-44-11 of the Administrative Code, since the requirements for therapeutic diets are no longer in rule 173-39-02.14 of the Administrative Code. Similarly, ODA also proposes to add rule 5160-44-11 of the Administrative Code to a reference to requirements for home-delivered meals in rule 173-39-02.14 of the Administrative Code.
- Transform the requirement in paragraph (B)(3)(a) of the rule from a list of requirements for a provider's adult day center to a list of specifications an adult day center must meet to qualify to be a center where an ODA-certified provider may be paid to provide ADS.
- Replace "paid personal care staff member" in paragraph (B)(4)(a) of the rule with "paid staff member who provides hands-on activities."
- Replace "on sit at the ADS center" in paragraph (B)(4)(c) of the rule with "available," which would make it possible to provide ADS in an individual's home without having an RN, or LPN under the direction of a RN, on site at the ADS center.
- Change the staffing ratios in paragraph (B)(4)(b) of the rule from 1:6 to 1:10.
- Add "based on the needs of the individual and" to paragraph (B)(4)(c) of the rule.
- Replace "acting as a personal care staff member" from paragraph (B)(5)(b)(i) of the rule with "planning to practice in the adult day center." This will align the wording with a similar paragraph in rule 173-3-06.1 of the Administrative Code. It would also remove language that appears to require licensure when a licensed professional practices personal care, which is not a service that requires licensure.
- Delete "to verify each ADS session" from paragraph (B)(6)(a) of the rule because it duplicates language in paragraph (B)(6) of the rule.
- Require providers to complete form ODA1200 when providing ADS activities in individuals' homes.
- Rule **173-39-02.4** of the Administrative Code establishes requirements applying only to the certification of providers of the choices home care attendant service. To this rule, ODA proposes to make the following amendments:
  - Replace "may not" in paragraph (A)(5) of the rule with "does not" because a definition describes what is, not what may or may not be done.
  - Replace the requirement to "furnish the service as agreed upon with the individual and as authorized in the individual's service plan" in paragraph (B)(1)(a) of the rule with a requirement in [renumbered] paragraph (B)(2) of the rule to "maintain availability to provide this service as agreed upon with the individual and as authorized in the individual's person-centered service plan."
  - Replace "Only a...that ODA certifies shall furnish the service" in paragraph (B)(2)(a)(i) of the rule with "Only a...that ODA certifies qualifies to provide this service" in [renumbered] paragraph (B)(4)(a)(i) of the rule.

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- Add a clarification to paragraph (B)(3)(a) of the rule [renumbered as paragraph (B)(4)(e)(i) of the rule] that verifying continuing education includes documenting evidence of successful completion of training on required on the form.
  - Delete paragraphs (B)(4) and (C)(4) of this rule as redundancies of rule 173-39-02 of the Administrative Code.
  - Make other non-substantive amendments such as updating terminology, moving paragraphs, renumbering paragraphs, and updating cross-references.
- In rule **173-39-02.7** of the Administrative Code, ODA also proposes to do the following:
    - On June 11, 2020, ODA adopted an emergency amendment to temporarily replace the requirement for *a provider using a common carrier* to replace any home medical equipment that was lost or stolen between the time of delivery and receipt by the individual to a requirement or *every provider* to do the same. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis.
    - On June 11, 2020, ODA also adopted an emergency amendment to temporarily require providers to contact the individual by telephone at least once per month to alert the individual to any delivery left outside the door to their home. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis.
  - Rule **173-39-02.8** and **173-39-02.11** of the Administrative Code establish requirements applying only to the certification of providers of homemaker and personal care (respectively). On June 11, 2020, ODA also adopted emergency amendments to the definition of “homemaker” and “personal care” (respectively) in those rules. The amendments temporarily gave providers flexibility to consider errands outside the presence of the individual (e.g., picking up a prescription) as part of “homemaker” or “personal care.” Through this rule package, ODA proposes to adopt these amendments on an ongoing basis.
  - In rule **173-39-02.8** of the Administrative Code, ODA also proposes to do the following:
 

On June 11, 2020, ODA temporarily amended the supervisory requirements to allow subsequent supervisor visits to occur by telephone, video conference, or in person, rather than only in person. Through this rule package ODA proposes to adopt this amendment on an ongoing basis.

Insert “, when authorized in a person-centered services plan” after “Homemaker activities include the following” in paragraph (A) of the rule, ODA proposes to insert. ODA also proposes to delete “as authorized by their case manager” from the same paragraph. This amendment brings the definition into alignment with the person-centered planning requirements in rule 5160-44-02 of the Administrative Code.
  - Rule **173-39-02.10** of the Administrative Code establishes the requirements applying only to the certification of providers of nutritional consultations. To this rule, ODA proposes to do the following:
    - Move paragraphs (B)(3)(b) and (B)(3)(e) of the rule to the definition of “nutritional consultation” in paragraph (A) of the rule and to modify the limitation when the individual receives a similar services under Chapter 173-39 of the Administrative Code to a limitation when the individual receives a similar service paid (in full or in part) by Medicare, state plan Medicaid, or another third-party payer.
    - Replace occurrences of “nutrition assessment” with “nutritional assessment” to align the terminology with rule 4759-2-01 of the Administrative Code.

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- Delete paragraph (B)(3)(c) of this rule because paragraph (B)(11)(d) of rule 173-39-02 of the Administrative Code already requires the same.
- Delete paragraph (B)(3)(d) of this rule because paragraphs (B)(11)(c) and (B)(11)(d) of rule 173-39-02 of the Administrative Code already require the same.
- Replace “face-to-face” in paragraph (B)(4) of the rule with “in person” and to replace “telecommunications system” with “telephone” and “video conference.” This will align the terminology with other rules in Chapter 173-39 of the Administrative Code.
- Allow providers, in paragraph (B)(4) of the rule, to provide an initial consultation by telephone or video conference during a state of emergency declared by the governor. This will allow for social distancing during the state of emergency.
- Replace the language in paragraph (B)(8)(b) of the rule on a handwritten signature with language on a unique identifier.
- Indicate in paragraph (C)(1) of the rule that a unit of service is 15 minutes *of session time*.
- In rule 173-39-02.11 of the Administrative Code, ODA also proposes to do the following:
  - Insert “when authorized in a person-centered services plan” after “Personal care activities include the following” in paragraph (A)(1) of the rule. This amendment brings the definition into alignment with the person-centered planning requirements in rule 5160-44-02 of the Administrative Code.
  - Delete the definition of “PCA,” because ODA is simultaneously proposing to add a definition of “PCA” to rule 173-39-01 of the Administrative Code that will apply to the entire chapter.
  - Replace occurrences of “continuing education and “in-service continuing education” with “in-service training.”
  - Replace “training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each trainer and of each tester: in paragraph (B)(3)(e)(i) of the rule with “name of the school or training organization, name of the course, training dates, and training hours successfully completed.
  - Add “expired” as a valid option in paragraph (B)(3)(e)(ii) of the rule.
  - Delete the need to verify a person's name in paragraph (B)(3)(e)(iii) of the rule.
  - Add paragraph (B)(3)(f) of the rule to establish standards that remote training is acceptable, but skills testing by return demonstration is only acceptable if conducted in person.
  - Delete from paragraph (B)(5)(d) of the rule an obsolete paragraph citation from a reference to rule 173-39-02 of the Administrative Code.
- Rule 173-39-03 of the Administrative Code establishes the process for the initial application process for a provider to be certified by ODA. In this rule, ODA proposes to do the following:
  - Add an introductory statement to indicate that ODA will be unable to process applications during a period in which it works with ODM to implement a new application system.

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- On June 11, 2020, ODA adopted an emergency amendment to temporarily allow its designees to conduct a desk review of a provider's business site for a pre-certification review. Through this rule package ODA proposes to give its designees flexibility to determine when to visit or conduct a desk review of the provider's business site for a pre-certification review.
- On June 11, 2020, ODA adopted an emergency amendment to temporarily allow ODA to approve an extended deadline for its designees to complete pre-certification reviews. Through this rule package, ODA proposes to adopt the amendment on an ongoing basis.
- On June 11, 2020, ODA adopted an emergency amendment to temporarily allow its designees to decide whether to conduct a pre-certification of a participant-directed provider with or without the individual who directs the participant-directed provider. Through this rule package, ODA proposes to adopt the amendment on an ongoing basis.
- On June 11, 2020, ODA adopted an emergency amendment to temporarily deem any provider certified by ODM or ODODD to provide one or more services through a Medicaid-waiver program as having satisfied the requirements for certification by ODA for the same or similar services under Chapter 173-39 of the Administrative Code. Through this rule package, ODA proposes to adopt the amendment on an ongoing basis.
- Rule **173-39-03.2** of the Administrative Code establishes the process for reporting changes of ownership interest or organizational structure to ODA. ODA proposes to amend this rule to add a statement that ODA will be unable to process a change of ownership interest or organizational structure.
- Rule **173-39-03.3** of the Administrative Code establishes the process for an already-certified provider to apply for certification to provide additional services. On June 11, 2020, ODA adopted an emergency amendment to temporarily allow its designees to decide whether to conduct a visit or desk review of a provider's business site during pre-certification review. Through this rule package ODA proposes to adopt the amendment on an ongoing basis.
- Rule **173-39-03.4** of the Administrative Code establishes the process for an already-certified provider to apply for certification to provide services in additional regions. On June 11, 2020, ODA adopted an emergency amendment to temporarily allow its designees to decide whether to conduct a visit or desk review of a provider's business site during pre-certification review. Through this rule package ODA proposes to adopt the amendment on an ongoing basis.
- Throughout all of the rules in this package, ODA also proposes to make non-substantive amendments to correct cross-references, eliminate unnecessary words, use uniform terminology, and comply with the Legislative Service Commission's requirements in the 5<sup>th</sup> edition of *Rule Drafting Manual* (June, 2020).

**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.**

173-39-02.1, 173-39-02.7, 173-39-02.8, 173-39-02.11, and 173-39-03.4: R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.391](#), [173.52](#), and [173.522](#).

173-39-01, 173-39-03, and 173-39-03.3: R.C. §§ [121.07](#), [173.01](#), [173.02](#), [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.*

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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 Program, 42 CFR 441.352 requires ODA to assure CMS in the waiver application that ODA established adequate requirements for providers (*i.e.*, adopted these rules) and that ODA monitors the providers to assure they comply with those 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.

**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 Program.

**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 [this 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 ODA adopted the emergency amendments to the rules now in this package on June 11, 2020, ODA's policy development manager has received no input from stakeholders or the general public on those amendments.

On August 21, 2020, ODA presented its 4<sup>th</sup> webinar to providers, PASSPORT administrative agencies (PAAs), and others concerning matters relating to the COVID-19 state of emergency. During the meeting, ODA announced that was considering adopting many of the emergency amendments on an ongoing basis. ODA, then fielded questions from providers, AAAs, *et al.*

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

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During the August 21, 2020 webinar, ODA received questions on whether ODA would propose to adopt all, or only some, of the emergency amendments on an ongoing basis. ODA explained that it only planned to adopt some and was open to input. ODA did not receive any such input during the question and answer portion of the webinar and has not since received any such input.

**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?**

Many of ODA's proposals in this rule package are based upon CDC guidelines for social distancing to reduce exposure to COVID-19.

**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**

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173-39-01, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-03, 173-39-03.2, 173-39-03.3, and 173-39-03.4 regulate provider certification for providers operating in the PASSPORT Program.

173-39-01, 173-39-03, 173-39-03.2, and 173-39-03.3 regulate provider certification for providers operating in the PASSPORT Program and the Assisted Living Program.

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

Rule 173-39-01 of the Administrative Code merely introduces Chapter 173-39 of the Administrative Code and, therefore, creates no adverse impact.

The adverse impact of rules 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, and 173-39-02.11 of the Administrative Code is the requirement for every ODA-certified provider to comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code plus specific requirements for each service listed in rules 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, and 173-39-02.11 of the Administrative Code.

Rules 173-39-03, 173-39-03.2, 173-39-03.3, and 173-39-03.4 of the Administrative Code establish requirements for ODA' designees when processing applications for certification from providers. The only requirement upon a provider in these rules is the requirement to apply for certification if the provider wants to add the PASSPORT Program or Assisted Living Program to its lines of business or to notify ODA of a change of ownership interest or organizational structure.

**c. Quantify the expected adverse impact from the regulation.**

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

The amount ODA pays a provider 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 the rules in this package 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.

The rules in this package do not determine the amount ODA pays a provider. Instead, a provider sets the price it bills to the PASSPORT Program or Assisted Living Program. In turn, the program pays the 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 per unit {i.e., per job (e.g., a home modification), per unit (e.g., a home-delivered meal), or per a period of time (e.g., personal care)}. In the appendix to rule [5160-1-06.1](#) of the Administrative Code, ODM establishes the maximum-allowed payment of Medicaid funds for these services provided through the PASSPORT Program. In the appendix to rule [5160-1-06.4](#) of the Administrative Code, ODM establishes the maximum-allowed payment of Medicaid funds for these services provided through the Assisted Living Program.

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

R.C. [§173.391](#) requires ODA to develop rules establishing standards for ODA-certified providers and R.C. [§173.01](#) requires ODA to represent the interests older Ohioans. Establishing standards for ODA-certified providers in the rules of this package ensures the health and safety of the older Ohioans enrolled in the PASSPORT Program and Assisted Living Program, which fulfills both statutes.

Most of ODA's proposed amendments in this package will give providers flexibility to maintain social distancing during the COVID-19 state of emergency. Specifically, these amendments will allow providers to (1) conduct supervisory visits (for

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personal care and homemaker) by telephone or video conference instead of only in person, and (2) verify that they provided services without making unnecessary physical contact with the individual (e.g., to collect a unique identifier, such as a handwritten signature, from the individual).

There is no requirement for a provider to obtain ODA's certification in order to provide services in this state. Certification by ODA not a gateway to doing business in Ohio. Instead, a provider who wants to add the PASSPORT Program or Assisted Living Program to its lines of business must become certified by ODA in order for those programs to pay the provider for the services the provider wants to provide to individuals enrolled in those programs. Thus, certification by ODA is a gateway to being paid for services a provider wants to provide to individuals enrolled in those programs.

Additionally, providers voluntarily apply for certification from ODA. A provider is only required to comply with the rules in this package if the provider applies for certification from ODA.

### **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.

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(A) Introduction:

- (1) This chapter establishes the certification requirements for providers who provide services to individuals through an ODA-administered medicaid waiver program or the state-funded components of the assisted living or PASSPORT programs; the requirements for providing services through those programs; and disciplinary actions that may be imposed.
- (2) Rule 5160-58-04 of the Administrative Code requires providers to comply with many of the requirements for providing services in this chapter when the provider provides those services to individuals in the mycare Ohio program.

(B) Definitions for this chapter:

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

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

"ADS" has the same meaning as in rule 173-39-02.1 of the Administrative Code.

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

"Business site" includes any location at which the provider retains records or provides services. "Business site" does not include the home of an individual receiving services unless the individual employs a participant-directed provider.

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

"Case manager" means the registered nurse, licensed social worker, or licensed independent social worker that ODA's designee employs to plan, coordinate, monitor, evaluate, and authorize services for ODA-administered programs that require provider certification under this chapter.

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

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

"CMS" means centers for medicare and medicaid services.

"Complete application" means the application and all documentation and information required by rule 173-39-03, 173-39-03.1, 173-39-03.2, 173-39-03.3, or 173-39-03.4 of the Administrative Code. An application to become an ODA-certified assisted living provider is a complete application if the provider indicates in its application that it applied for a RCF license and the provider submits the required RCF licensure information to ODA as soon as it is available. An application to become an ODA-certified assisted living provider shall not be approved until an RCF license is issued by ODH.

"Continuing care retirement communities" has the same meaning as in rule 5160:1-6-02.3 of the Administrative Code.

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

"Current owner" means a person with an ownership interest in an ODA-certified provider whose interest in the provider is being sold or transferred.

"Electronic visit verification" (EVV) means using the ODM-approved EVV system to verify the provision of any service required by ODM, pursuant to rule 5160-1-40 of the Administrative Code.

"Emergency contact person" means a person the individual or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.

"Governing body or managing employee" means chief executive officer(s) or other individuals who are responsible to establish and implement policies regarding the management and/or operations of a provider.

"HCBS" means home and community-based services.

"HHS" means the United States department of health and human services.

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

"Individual" has the same meaning in rule 5160-31-02 of the Administrative Code.

"Individual's signature" means the individual's signature or that of the individual's

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

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

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

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

"Medicaid provider number" means a number ODM issued to a provider with whom ODM has entered into a medicaid-provider agreement.

"National provider identifier" (NPI) means a number issued to a provider by HHS.

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

"ODA" means the Ohio department of aging.

"ODA-certified provider" means a provider certified by ODA according to this chapter.

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

"ODH" means the Ohio department of health.

"ODM" means the Ohio department of medicaid.

"Ownership interest" means interest totaling five per cent or more in the provider, indirect ownership interest equal to five percent or more in the provider, a combination of direct and indirect ownership interest equal to five per cent or more in the provider; or an interest of five per cent or more in any mortgage, deed of trust, note, or other obligation if that interest equals at least five per cent of the value of the property or assets of the provider.

["PCA" means "personal care aide."](#)

"Plan of treatment" means the orders of a licensed healthcare professional whose scope of practice includes making plans of treatment.

"Provider" has the same meaning as in section 173.39 of the Revised Code. ODA certifies the following categories of providers: agency providers, assisted living providers, non-agency providers, and participant-directed providers. "Agency provider" means a legally-organized entity that employs staff. "Assisted living provider" means a licensed residential care facility. "Non-agency provider" (i.e., "self-employed provider") means a legally-organized entity that is owned and controlled by one self-employed person who does not employ, either directly or through a contract, anyone else to provide services, and who is unsupervised. "Participant-directed provider" means a person that an individual (participant) directly employs and supervises to provide a service.

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

"Region" means a distinct geographic area in which ODA's designee administers the PASSPORT and assisted living programs. Each region consists of the counties assigned to similarly-numbered planning and service areas (PSAs) in rule 173-2-02 of the Administrative Code, except for "PSA2." In that PSA, Clark, Greene, and Montgomery counties comprise "Region 2" and Champaign, Darke, Logan, Miami, Preble, and Shelby counties comprise "Region CSS."

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

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

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

"Services" has the same meaning as "community-based long-term care services" in section 173.39 of the Revised Code.

"Significant change" means a variation in the health, care, or needs of an individual that warrants further evaluation to determine if changes to the type, amount, or scope of services are needed. Significant changes include differences in health status, caregiver status, residence, service location, service delivery, hospitalization, and emergency department visits that result in the individual not receiving services for thirty days.

["Unique identifier" means an item belonging to a specific individual or caregiver](#)

that identifies only that individual or caregiver. Examples of a unique identifier are a handwritten or electronic signature or initials, fingerprint, mark, stamp, password, barcode, or swipe card. An individual or caregiver offers their unique identifier to a provider as an attestation that the provider, or the provider's staff, completed an activity or unit of service.

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

173-39-02.1

**ODA provider certification: adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an ADS center, which is a non-institutional, community-based setting. ADS includes recreational and educational programming to support an individual's health and independence goals; at least one meal, but no more than two meals per day; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the ADS center. [Table 1 to this rule defines the levels and activities of ADS.](#)

Table 1: ADS Activities by Level of ADS

	<u>ENHANCED ADS</u>	<u>INTENSIVE ADS</u>
<u>Structured activity programming</u>	<u>Yes</u>	<u>Yes</u>
<u>Health assessments</u>	<u>Yes</u>	<u>Yes</u>
<u>Supervision of ADLs</u>	<u>All ADLs</u>	<u>All ADLs</u>
<u>Hands-on assistance with ADLs</u>	<u>Yes, one or more ADL (bathing excluded)</u>	<u>Yes, minimum of two ADLs (bathing included)</u>
<u>Hands-on assistance with medication administration</u>	<u>Yes</u>	<u>Yes</u>
<u>Comprehensive therapeutic activities</u>	<u>Yes</u>	<u>Yes</u>
<u>Monitoring of health status</u>	<u>Intermittent</u>	<u>Regular, with intervention</u>
<u>Hands-on assistance with personal hygiene activities</u>	<u>Yes</u>	<u>Yes</u>
<u>Social work services</u>	<u>No</u>	<u>Yes</u>
<u>Skilled nursing services and rehabilitative nursing services</u>	<u>No</u>	<u>Yes</u>
<u>Rehabilitative and restorative services</u>	<u>No</u>	<u>Yes</u>

"Adult day service" also includes ADS activities provided to the individual in the individual's home in person, by telephone, by video conference, or by a combination of in person, telephone, or video conference. Table 2 to this rule defines which individuals are eligible to receive ADS activities in their homes.

which ADS activities are allowable in their homes, and the allowable duration or frequency of allowable ADS activities in their homes.

Table 2: ADS Activities Provided in the Individual's Home

	<u>ADS ACTIVITIES PROVIDED IN PERSON IN THE INDIVIDUAL'S HOME</u>	<u>ADS ACTIVITIES PROVIDED BY TELEPHONE OR VIDEO CONFERENCE TO THE INDIVIDUAL'S HOME</u>
<u>Individuals eligible to receive ADS activities in the individual's home</u>	<u>Individuals with ADS authorization in March 2020, including those not attending the ADS center during the state of emergency declared by the governor.</u>	<u>Individuals with ADS authorization in March 2020, including those not attending the ADS center during the state of emergency declared by the governor.</u>
<u>Allowable ADS activities in the individual's home</u>	<u>ADS activities addressing the individual's ADS and IADL needs. No authorization for any ADS activities in the individual's home on the same day that the individual receives personal care. No authorization for meals through ADS if the individual receives home-delivered meals.</u>	<u>Regular monitoring of health status with intervention and documentation/referrals in the intensive ADS level. No authorization for any ADS activities in the individual's home on the same day that the individual receives personal care.</u>
<u>Duration/frequency of allowable ADS activities in the individual's home</u>	<u>Authorization is possible for a half or full day of ADS activities if authorized in the individual's person-centered services plan.</u>	<u>Authorization is possible for a minimum of two episodes of allowable ADS activities per week, but no more than one episode of allowable ADS activities per day.</u>

(B) Every ODA-certified provider of ADS shall comply with the following requirements:

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

(2) Service requirements:

~~(a) Service levels: The required components of the two service levels are presented in this paragraph and in "Table 1" to this rule:~~

~~(i) Enhanced ADS: Enhanced ADS includes structured activity programming, health assessments, supervision of all ADLs; supervision of medication administration, hands-on assistance with ADL activities (except bathing) and hands-on assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status; and, hands-on assistance with personal hygiene activities (except bathing).~~

~~(ii) Intensive ADS: Intensive ADS includes all the components of enhanced ADS plus hands-on assistance with two or more ADLs; hands-on assistance with bathing; regular monitoring of, and intervention with, health status; skilled nursing services (e.g., dressing changes and other treatments) and rehabilitative nursing procedures; rehabilitative and restorative services, including physical therapy, speech therapy, and occupational therapy; and, social work services.~~

~~Table 1: Levels and Components of ADS~~

	<del>ENHANCED ADS</del>	<del>INTENSIVE ADS</del>
<del>Structured activity programming</del>	<del>Yes</del>	<del>Yes</del>
<del>Health assessments</del>	<del>Yes</del>	<del>Yes</del>
<del>Supervision of ADLs</del>	<del>All ADLs</del>	<del>All ADLs</del>
<del>Hands-on assistance with ADLs</del>	<del>Yes, one or more ADL (bathing excluded)</del>	<del>Yes, minimum of two ADLs (bathing included)</del>
<del>Hands-on assistance with medication administration</del>	<del>Yes</del>	<del>Yes</del>
<del>Comprehensive therapeutic activities</del>	<del>Yes</del>	<del>Yes</del>
<del>Monitoring of health status</del>	<del>Intermittent</del>	<del>Regular, with intervention</del>
<del>Hands-on assistance with personal hygiene activities</del>	<del>Yes</del>	<del>Yes</del>

<del>Social work services</del>	<del>No</del>	<del>Yes</del>
<del>Skilled nursing services and rehabilitative nursing services</del>	<del>No</del>	<del>Yes</del>
<del>Rehabilitative and restorative services</del>	<del>No</del>	<del>Yes</del>

~~(b)~~(a) Transportation: The provider shall transport each individual to and from the ADS center by performing ~~a~~ transportation ~~service~~ that complies with rule 173-39-02.13 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-39-02.13 of the Administrative Code, or unless the caregiver provides or designates another person or non-provider, other than the ADS center provider, to transport the individual to and from the ADS center.

~~(e)~~(b) Case manager's assessment:

- (i) The case manager shall assess each ~~consumer's~~ individual's needs and preferences then specify which service level will be approved for each ~~consumer~~ individual.
- (ii) The provider shall retain records to show that it provides the service at the level that the case manager authorized.

~~(d)~~(c) Provider's initial assessment:

- (i) The provider shall assess the individual before the end of the individual's second day of attendance at the center. The provider may substitute a copy of the case manager's assessment of the individual if the case manager assessed the individual no more than thirty days before the individual's first day of attendance at the center.
- (ii) The initial assessment shall include both of the following components:
  - (a) Functional and cognitive profiles that identify the ADLs and IADLs that require the attention or assistance of ADS center staff; ~~and,~~

(b) A social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.

~~(e)~~(d) Health assessment: No later than thirty days after the individual's initial attendance at the ADS center or before the individual receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain a health assessment of each individual from a licensed healthcare professional whose scope of practice includes health assessments or shall require a staff member who is such a licensed healthcare professional to perform a health assessment of each individual. The health assessment shall include the individual's psychosocial profile and shall identify the individual's risk factors, diet, and medications. If the licensed healthcare professional who performs the health assessment is not a staff member of the provider, the provider shall retain a record of the professional's name and phone number.

~~(f)~~(e) Activity plan: No later than thirty days after the individual's initial attendance at the ADS center or before the individual receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain the services of a licensed healthcare professional whose scope of practice includes developing activity plans to draft an activity plan for each individual or the provider shall require a staff member who is such a licensed healthcare professional to draft an activity plan for each individual. The plan shall identify the individual's strengths, needs, problems or difficulties, goals, and objectives. The plan shall describe the individual's:

- (i) Interests, preferences, and social rehabilitative needs;
- (ii) Health needs;
- (iii) Specific goals, objectives, and planned interventions of ADS services that meet the goals;
- (iv) Level of involvement in the drafting of the plan, and, if the individual has a caregiver, the caregiver's level of involvement in the drafting of the plan; and,
- (v) Ability to sign his or her signature versus alternate means for the individual's signature.

~~(g)~~(f) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition consultation, physical therapy, or speech therapy, the provider shall obtain a plan of treatment from a licensed healthcare professional whose scope of practice includes making plans of treatment. The provider shall obtain the plan of treatment at least every ninety days for each individual that receives medication, a nursing service, nutrition consultation, physical therapy, or speech therapy. For diet orders that may be part of a plan of treatment, a new diet order is not required every ninety days. Instead, the provider shall comply with the diet-order requirements for therapeutic diets under rule ~~173-39-02.14~~ [5160-44-11](#) of the Administrative Code.

~~(h)~~(g) Interdisciplinary care conference:

- (i) Frequency: The provider shall conduct an interdisciplinary care conference for each individual at least once every six months.
- (ii) Participants: The provider shall conduct the conference between the provider's staff members and invitees who choose to participate. The provider shall invite the case manager to participate in the conference. The provider shall invite any licensed healthcare professional who does not work for the provider, but who provided the provider with a health assessment of the individual or an activity plan for the individual, to participate in the conference. If the individual has a caregiver, the provider shall invite the caregiver to the conference. The provider shall also invite the individual to the conference. The provider shall invite the case manager, licensed healthcare professional, caregiver, or individual by providing the date and time to the case manager seven days before the conference begins.
- (iii) Revise activity plan: If the conference participants identify changes in the individual's health needs, condition, preferences, or responses to the service, the provider shall obtain the services of a licensed healthcare professional whose scope of practice includes developing activity plans to revise the activity plan accordingly or shall require a staff member who is such a licensed healthcare professional to revise the activity plan accordingly.
- (iv) Records: The provider shall retain records on each conference's determinations.

(h) Activities: The provider shall post daily and monthly planned activities in prominent locations throughout the center.

(i) Lunch and snacks:

(i) The provider shall provide lunch and snacks to each individual who is present during lunchtime or snacktime.

(ii) Each meal that the provider provides shall comply with all the requirements for ~~the~~ home-delivered ~~meal-service meals~~ under ~~rule~~ rules 173-39-02.14 and 5160-44-11 of the Administrative Code, except for the requirements in ~~that rule~~ those rules that pertain to the delivery of the meal.

(3) Center requirements:

(a) Specifications: Only The a provider ~~shall only provide~~ providing ADS ~~in a~~ center with the following specifications: qualifies for certification by ODA:

(i) If the center is housed in a building with other services or programs other than ADS, the provider ~~shall assure that~~ uses a separate, identifiable space and staff ~~is available~~ for ADS during all hours that the provider provides ADS in the center.

(ii) The center ~~shall comply~~ complies with the "ADA Accessibility Guidelines for Buildings and Facilities" in ~~appendix~~ Appendix A to 28 C.F.R., Part 36 (~~July 1, 2015~~).

(iii) The center ~~shall have~~ has at least sixty square feet per individual that it serves (not just individuals who are enrolled in an ODA-administered program), excluding hallways, offices, rest rooms, and storage areas.

(iv) The provider ~~shall store~~ stores individuals' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.

(v) The provider ~~shall store~~ stores toxic substances in an area that is inaccessible to individuals.

- (vi) The center ~~shall have~~ has at least one working toilet for every ten individuals present that it serves (not just individuals who are enrolled in an ODA-administered program) and at least one wheelchair-accessible toilet.
- (vii) ~~ODA shall only certify the provider~~ If the center seeks certification to provide intensive ADS, ~~if~~ the center has bathing facilities suitable to the needs of individuals who require intensive ADS.

(b) Emergency safety plan:

- (i) The provider shall develop and annually review a fire inspection and emergency safety plan.
- (ii) The provider shall post evacuation procedures in prominent areas throughout the center.

(c) Evacuation drills:

- (i) At least quarterly, the provider shall conduct an evacuation drill from the center while individuals are present.
- (ii) The provider shall retain records on the date and time it completes each evacuation drill.

(d) Fire extinguishers and smoke alarms:

- (i) The provider shall have fire extinguishers and smoke alarms in the center and shall routinely maintain them.
- (ii) At least annually, the provider shall inspect the fire extinguishers and smoke alarms. The provider shall retain records on the date and time it completes each inspection.

(4) Staffing levels:

- (a) The provider shall have at least two staff members present whenever more than one individual is present, including one who is a paid ~~personal-care~~ staff member who provides hands-on activities and one who is certified in CPR.

- (b) The provider shall maintain a staff-to-individual ratio of at least one staff member to ~~six~~ ten individuals at all times.
  - (c) The provider shall have a RN, or LPN under the direction of a RN, ~~on-site at the ADS center~~ available to provide nursing services that require the skills of a RN, or LPN under the direction of a RN, and that are based on the needs of the individuals and within the nurse's scope of practice.
  - (d) The provider shall employ an activity director to direct activities.
- (5) Provider qualifications:
- (a) Type of provider:
    - (i) A provider shall only provide the service if ODA certifies the provider as an agency provider.
    - (ii) For each provider that ODA certifies, ODA shall certify the provider as an enhanced or intensive provider. If ODA certifies a provider to provide an intensive service level, the provider may also directly provide, or arrange for, the enhanced service level.
  - (b) Staff qualifications:
    - (i) Every RN, LPN under the direction of a RN, social worker, physical therapist, physical therapy assistant, speech therapist, licensed dietitian, occupational therapist, occupational therapy assistant, or other licensed professional ~~acting as a personal care care staff member~~ planning to practice in the adult day center, shall possess a current, valid license to practice in their profession.
    - (ii) Each activity director shall possess at least one of the following:
      - (a) A baccalaureate or associate degree in recreational therapy or a related degree.
      - (b) At least two years of experience as an activity director, activity coordinator, or a related position.
      - (c) Compliance with the qualifications under rule 3701-17-07 of

the Administrative Code for directing resident activities in a nursing facility.

(d) A certification from the national certification council for activity professionals (NCCAP).

(iii) Each activity assistant shall possess at least one of the following:

(a) A high school diploma~~;~~.

(b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code~~;~~~~or~~.

(c) At least two years of employment in a supervised position to provide personal care, to provide activities, or to assist with activities.

(iv) Each ~~personal care aide~~ PCA shall possess at least one of the following:

(a) A high school diploma~~;~~.

(b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code~~;~~.

(c) At least two years of employment in a supervised position to provide personal care, to provide activities, or to assist with activities~~;~~~~or~~.

(d) The successfully completion of a vocational program in a health or human services field.

(v) Each staff member who provides transportation to individuals shall comply with all requirements under rule 173-39-02.13 of the Administrative Code.

(vi) The provider shall retain records to show that each staff member who has in-person interaction with individuals complies with paragraph (B)(4)(b) of this rule.

(c) Staff training:

- (i) Orientation: Before each new personal care staff member provides ADS, the provider shall train the staff member on all of the following:
    - (a) The expectation of employees;
    - (b) The provider's ethical standards, as required under rule 173-39-02 of the Administrative Code;
    - (c) An overview of the provider's personnel policies;
    - (d) A description of the provider's organization and lines of communication;
    - (e) Incident reporting procedures; and,
    - (f) Universal precautions for infection control.
  - (ii) Task-based training: Before each new personal care staff member provides ADS, the provider shall provide task-based training.
  - (iii) Continuing education and in-service training: Each staff member shall participate in at least eight hours of ~~in-service or~~ continuing education or in-service training on appropriate topics each calendar year, unless the staff person holds a professional certification that requires at least eight hours of continuing education or in-service training each calendar year ~~in order~~ to maintain ~~the~~ their license, certification, or registration.
  - (iv) Records: The provider shall retain records showing that it complies with the training requirements under paragraph (B)(5)(c) of this rule. In doing so, the provider shall list the instructor's title, qualifications, and signature; date and time of instruction; content of the instruction; and name and signature of ADS personal care staff completing the training.
- (d) Performance reviews:
- (i) The provider shall complete a performance review of each staff member in relation to the staff member's job description.

- (ii) The provider shall retain records to show that it complies with paragraph (B)(4)(d)(i) of this rule.
- (6) Service verification: By one of the following two methods, the provider shall verify that each ADS session for which it bills was provided:
- (a) The provider may use an electronic system ~~to verify each ADS session~~ if the system does all of the following:
    - (i) Collects the individual's name, date of service, arrival and departure times (if provided the service is provided in the ADS center), mode of transportation, and ~~an a unique~~ identifier ~~(e.g., electronic signature, fingerprint, password, swipe card, bar code)~~ unique to of the individual.
    - (ii) Completes form ODA1200, if the service is provided in the individual's home. As used in this paragraph, "form ODA1200" means "Form ODA1200 'Adult Day Service: In-Home and Telephonic Service Checklist' (July 10, 2020)."
    - ~~(ii)~~(iii) Retains the information it collects.
    - ~~(iii)~~(iv) Produces reports, upon request, that ODA or its designee can monitor for compliance.
  - (b) The provider may use a manual system, including a daily-attendance roster (if the service is provided in the ADS center), ~~to verify ADS session if the provider documents the individual's name, date of service, arrival and departure times, and mode of transportation; and collects the handwritten signatures of an ADS staff person and the individual. If the individual is unable to produce a handwritten signature, the individual's handwritten initials, stamp, or mark are acceptable if the case manager recorded the alternative in the individual's service plan~~ if the provider's system meets all the requirements under paragraph (B)(6)(a) of this rule.

(C) Units and rates:

(1) Attendance:

- (a) Units of ADS attendance are calculated as follows:

- (i) One-half unit is less than four hours ADS per day.
  - (ii) One unit is four through eight hours ADS per day.
  - (iii) A fifteen-minute unit is each fifteen-minute period of time over eight hours up to, and including, a maximum of twelve hours of ADS per day.
- (b) A unit of ADS attendance does not include transportation time.
- (c) A unit of ADS provided in person in the individual's home is limited to one-half unit or one unit.
- (d) A unit of ADS provided by telephone or video conference to the individual's home is allowable for a minimum of two episodes of allowable ADS activities per week, but no more than one episode of allowable ADS activities per day.
- (2) Transportation: A unit of ADS transportation is a round trip, a one-way trip, or one mile with the trip cost based on a case manager's pre-determined calculation of distance between the individual's ~~residence~~ home and the ADS center multiplied by an established ADS mileage rate. If the provider provides the transportation simultaneously to more than one PASSPORT-enrolled individual who resides in the same household in the same vehicle to the same destination, the provider's payment rate for that trip is seventy-five per cent of the per-unit rate, in accordance with rule 5160-31-07 of the Administrative Code.
- (3) The ~~maximum rates allowable for units of ADS attendance and ADS transportation are established in~~ appendix ~~A~~ to rule 5160-1-06.1 of the Administrative Code establishes the maximum rates allowable for units of ADS attendance and ADS transportation.
- (4) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

### ADULT DAY SERVICE – IN – HOME AND TELEPHONIC SERVICE CHECKLIST

*This form is to be used by Adult Day Service providers to document completion of in-home and telephonic Adult Day Service authorized in a participant's service plan.*

#### DEMOGRAPHICS

--	--	--

Name of individual

Date of birth

Date

--	--

Program name

MMIS ID

--

Name of caregiver spoken to (if present)

--

Staff member name and title

#### HEALTH STATUS

##### COVID-19 Checklist

YES | NO

Fever over 100.4

Sore throat

Nausea/Diarrhea

Unexplained body aches

YES | NO

Cough

Shortness of breath

Vomiting

Contact with anyone diagnosed with COVID-19 or symptoms

YES | NO

Headache

Fatigue

Loss of taste or smell

##### Healthcare - other

#### 1. Other healthcare issues identified/complaint

--

#### 2. Have you been hospitalized since we last spoke?

Yes  No

--

If yes, please explain

--

7/10/2020

**3. Triage**

a. Symptoms

---

---

b. Onset

---

---

c. Intensity/Severity

---

---

d. Aggravating factors

---

---

e. Self-Mitigation

---

---

**4. Make referral (consult with internal nursing staff)**

---

---

a. Hospital

---

---

b. Physician

---

---

**Health, Safety, Welfare**

**1. Identification of concern(s)**

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---

**2. Individual(s) impacted**

---

---

**3. APS/Law Enforcement Referral**

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**4. Have you communicated with your case manager about this concern?**

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**Need/Social Determinants (questions)**

**1. Do you have enough food to eat?**

Yes  No

2. Are you able to contact your healthcare provider(s)?

Yes  No

3. Are you able to participate in activities in your community?

Yes  No

4. Do you have enough money to purchase food and supplies?

Yes  No

5. Do you have concern with your housing?

Yes  No

If **yes**, what are they?

### Medication Management

1. Do you have all of your medications?

Yes  No

If **no**, what medication are you out of?

2. Do you need assistance with prescription refills?

Yes  No

3. Do you need help being reminded to take your medication?

Yes  No

7/10/2020

**Activities of Daily Living**

**1. Are you having difficulty with any of the following:**

Yes  No  Using the bathroom

Yes  No  Bathing/Grooming

Yes  No  Getting dressed

Yes  No  Eating

Yes  No  Moving from room to room/getting out of bed

**2. Who is helping you? (only if yes to any of the above)**

**3. Are you communicating needs with case manager?**

**ADDITIONAL NEEDS/CONCERNS**

**ID additional care/service/social needs**

**CASE MANAGER COMMUNICATION**

**SIGNATURES:**

Provider signature

Date

Participant/Authorized  
representative signature (if applicable)

7/10/2020

173-39-02.4

**ODA provider certification: ~~Choices~~ choices home care attendant service (CHCAS).**

(A) "Choices home care attendant service" ("CHCAS") means a participant-directed service that ~~furnishes~~ provides specific activities to support the needs of an individual with impaired physical or cognitive functioning. ~~Activities of the service include, including~~ the following activities:

- (1) Personal assistance with bathing; dressing; grooming; caring for nail, hair and oral hygiene; shaving; deodorant application; skin care; foot care; ear care; feeding; toileting; ambulation; changing position in bed; assistance with transfers, normal range of motion, and nutrition and fluid intake.
- (2) General household assistance with the planning; preparation and clean-up of meals; laundry; bed-making; dusting; vacuuming; shopping and other errands; the replacement of furnace filters; waste disposal; seasonal yard care; and snow removal.
- (3) Heavy household chores including washing floors; windows and walls; tacking down loose rugs and tiles; moving heavy items of furniture to furnish safe access and egress.
- (4) Assistance with money management and correspondence as directed by the individual.
- (5) Escort and transportation to community services, activities, and resources. This activity is offered in addition to medical transportation available under the medicaid state plan, and ~~may~~ does not replace it.

(B) Requirements for ~~a~~ an ODA-certified provider of the choices home care attendant service ~~in addition to the requirements for every ODA-certified provider under rule 173-39-02 of the Administrative Code:~~

(1) ~~In general:~~ General requirements: The provider is subject to the requirements in rule 173-39-02 of the Administrative Code.

~~(a)~~(2) Availability: The provider shall ~~furnish~~ maintain availability to provide the ~~this~~ service as agreed upon with the individual and as authorized in the individual's person-centered service plan.

~~(b)~~(3) Oversight: The individual who receives the service is the employer of record and is responsible for supervising the provider. As used in this paragraph, "employer of record" means the individual who employs the provider;

supervises the provider; pays the appropriate state, federal, and local taxes; and pays premiums for worker's compensation and unemployment compensation insurance. A financial management service acts as the agent of the common-law employer with the participant-directed individual provider that the individual employs.

~~(2)~~(4) Provider qualifications:

(a) General qualifications:

- (i) Only a participant-directed individual provider that ODA certifies or an agency provider that ODA certifies ~~shall furnish the~~ qualifies to provide this service.
- (ii) The provider shall complete an application to become an ODA-certified ~~long-term care consumer directed~~ participant-directed individual provider.
- (iii) At the request of an individual, the provider shall participate in an interview with the individual before providing the first episode of service to the individual.
- (iv) The provider shall be at least eighteen years of age.
- (v) The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:
  - (a) Driver's license.
  - (b) State of Ohio identification card.
  - (c) United States of America permanent residence card.
- (vi) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and rule 173-39-02 of the Administrative Code.
- (vii) The provider shall be able to effectively communicate with the individual.

(viii) Transporting the individual:

(a) If the provider intends to transport the individual, before providing the first episode of transportation, the provider shall show ODA's designee a valid driver's license and a valid insurance identification card to show that the provider has liability insurance for driving a vehicle that complies with the financial responsibility requirements in Chapter 4501:1-02 of the Administrative Code. The provider shall only transport the individual in a vehicle for which ODA's designee has verified is insured.

(b) If the provider does not intend to transport the individual, the provider shall submit an email or written attestation to ODA's designee that declares that the provider will not transport the individual unless the provider complies with paragraph ~~(B)(2)(a)(viii)(a)~~ (B)(4)(a)(viii)(a) of this rule.

(b) Initial training:

(i) There are five areas of core competency for a participant-directed individual provider:

(a) Maintaining a clean and safe environment. Training on this competency shall include the following topics:

(i) Basic home safety.

(ii) Universal precautions for the prevention of disease transmission, including hand-washing and proper disposal of bodily waste and medical instruments that are sharp or may produce sharp pieces if broken.

(b) Promoting the individual's development.

(c) Assisting with ~~activities of daily living~~ ADLs.

(d) Communicating the individual's information to authorized persons.

- (e) Performing administrative tasks.
- (ii) Beginning on July 1, 2014, every participant-directed provider that an individual hired on or after July 1, 2014 shall successfully complete training in the core competencies that ODA listed ~~in~~ under paragraph ~~(A)(2)(b)(i)~~ (B)(4)(b)(i) of this rule before ~~furnishing~~ providing the first episode of service to an individual.
- (iii) Beginning on September 1, 2014, every participant-directed provider that an individual hired before July 1, 2014 shall successfully complete training in the core competencies that ODA listed ~~in~~ under paragraph ~~(A)(2)(b)(i)~~ (B)(4)(b)(i) of this rule before continuing to ~~furnishing~~ provide services to an individual.
- (c) Continuing education: Each year, the provider shall successfully complete at least eight hours of continuing education before ~~his or her~~ the provider's anniversary date of enrollment as an ODA-certified participant-directed provider.
- (d) Person-centered training: The provider shall successfully complete any training that the individual or ODA's designee consider necessary to meet the individual's needs. This training is in addition to the eight hours of continuing education.

~~(3)~~(e) RecordsTraining records:

- ~~(a)~~(i) Initial training verification: The individual shall submit to ODA, and retain a copy, of a completed and signed form ODA1042, along with evidence of successful completion of training listed on the form, to verify that the provider complied with ~~this rule's~~ the initial training requirements in this rule and rule 173-42-06 of the Administrative Code. As used in this paragraph, "form ODA1042" means "ODA1042 'Employee Core Competencies Verification'. (October, 2020)"
- ~~(b)~~(ii) Continuing education verification: The individual shall retain a completed and signed form ODA1043 to verify that the provider complied with the continuing education requirements in this rule and rule 173-42-06 of the Administrative Code. The individual shall also retain a copy of each certificate of completion and course syllabus that verifies that the provider complied with this rule's continuing education requirements. As used in this

paragraph, "form ODA1043" means "ODA1043 'Employee Continuing Education Verification'. (October, 2020)"

~~(e)~~(5) Service verification:

~~(i)~~(a) The provider shall complete the time sheets the ~~consumer~~ individual furnishes through the financial management service, which shall include the date ~~the provider furnished the~~ of service, the individual's name, the individual's signature, the provider's name, the provider's arrival and departure times, and the provider's written or electronic signature to verify the accuracy of the record.

~~(ii)~~(i) The provider shall complete the service task sheet with a description of the activities the provider furnished. ~~The provider shall retain the service task sheet in the individual's home records.~~

~~(4) The provider shall continue to meet all the criteria under paragraph (B) of this rule in order to continue providing the service.~~

~~(C) Rates and units~~Unit and rates:

(1) One unit of ~~the~~ choices home care attendant service is ~~equal to~~ fifteen minutes.

(2) The ~~maximum rate allowable for the service is established in the~~ appendix to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowable for a unit of choices home care attendant service when provided through the PASSPORT program.

(3) ~~The rates are subject to the rate-setting methodology in rule~~ Rule 5160-31-07 of the Administrative Code establishes the rate-setting methodology for the choices home care attendant service when provided through the PASSPORT program.

~~(4) The provider may furnish a service that is not authorized by the individual's service plan, but ODA (or ODA's designee) only pays the provider for furnishing a service that is authorized by the individual's service plan.~~

~~(D) Definitions for this rule:~~

(1) ~~"Form ODA1042" means "ODA1042 'Employee Core Competencies Verification. (March, 2014)" The form is available to the general public on ODA's website.~~

~~(2) "Form ODA1043" means "ODA1043 Employee Continuing Education Verification. (March, 2014)" The form is available to the general public on ODA's website.~~

173-39-02.7

**ODA provider certification: home medical equipment and supplies.**

- (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.

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

(1) 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.

(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.~~ A unique identifier of the individual.

- (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 provider leaves a HME item outside the door of an individual's home, the provider shall contact the individual by telephone at least once per month to alert them to any delivery left outside the door to their home.

- (d) The provider shall replace (at no cost to the individual, ODA, or ODA's designee) any HME item lost or stolen between the time of delivery and receipt by the individual.

- ~~(e)~~(e) 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)~~(f) 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 and rates:

- (1) A unit of HME 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~~ [The appendix](#) to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowable for one unit of HME.
- (3) Rule 5160-31-07 of the Administrative Code establishes rate-setting methodology for units of HME.

173-39-02.8

**ODA provider certification: homemaker.**

(A) "Homemaker" means a service enabling individuals to achieve and maintain clean, safe and healthy environments, assisting individuals to manage their personal appointments and day-to-day household activities ~~as authorized by their case manager~~, and ensuring individuals maintain their current living arrangements. The service consists of general household activities, such as meal preparation and routine household care when persons regularly responsible for these activities are temporarily absent or unable to manage the home. Homemaker staff may act as travel attendants for individuals. Homemaker activities include the following [when authorized in the person-centered services plan](#):

- (1) Assistance with meal planning.
- (2) Meal preparation, grocery purchase planning, and assisting individuals with shopping and other errands.
- (3) Laundry, including folding, ironing, and putting away laundry.
- (4) House cleaning including dusting furniture, sweeping, vacuuming, and mopping floors; kitchen care including dishes, appliances, and counters; bathroom care; emptying and cleaning bedside commodes; changing bed linens; washing inside windows within reach from the floor; and removing trash.
- [\(5\) Errands outside of the presence of the individual that is needed by the individual to maintain the individual's health and safety \(e.g., picking up a prescription or groceries for the individual\).](#)

(B) Requirements for ODA-certified providers of homemaker:

- (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) Eligible providers of homemaker are ODA-certified long-term care agency providers.
- (3) Service verification: The provider shall maintain a record documenting each episode of homemaker activities provided to each individual. The record shall include the date of service, a description of the activities performed, the name of the aide providing the activities, the aide's arrival and departure time, and the aide's written or electronic signature to verify the accuracy of the record. A provider that does not utilize an electronic verification system to document services and keep records shall also obtain the individual's signature for each

episode of service.

(4) Availability: The provider shall maintain adequate staffing levels to provide the service at least five days per week and shall possess a back-up plan to ensure the service is provided during staff absences.

(5) Provider policies: The provider shall develop written personnel requirements, including all the following:

(a) Job descriptions for each position.

(b) Documentation of each employee's qualifications for the homemaker activities to be provided.

(c) Performance appraisals for all staff.

(6) Staff qualifications:

(a) Aides:

(i) Homemaker aides shall meet at least one of the following requirements:

(a) Successful completion of the nurse aide training and competency evaluation program conducted by the Ohio department of health under section 3721.31 of the Revised Code within the last twenty-four months.

(b) One year of supervised employment experience in a health or human services field, and successful written and skill testing by return demonstration.

(c) Successful completion of the medicare training and competency evaluation program for home health aides required under 42 C.F.R. Part 484 (October, 2016 edition) and compliance with any additional requirements under 42 C.F.R. Part 484 (October, 2016 edition).

(d) Successful completion of a certified vocational program in a health-related field and successful written and skill testing

by return demonstration.

(e) Successful completion of at least twenty hours of training and skill testing by return demonstration that includes all the following topics:

(i) Universal precautions for infection control, including hand washing and the disposal of bodily waste.

(ii) Meal preparation/nutrition that includes special diet preparation, grocery purchase planning and shopping; and other errands, such as picking up prescriptions.

(iii) Laundry, including folding, ironing, and putting away laundry.

(iv) Basic home safety.

(v) House cleaning skills that include dusting furniture; sweeping, vacuuming and washing floors, kitchen care (including washing dishes, appliances and counters), bathroom care, emptying and cleaning bedside commodes, changing bed linens, washing inside windows within reach from the floor, and removing trash.

(vi) Body mechanics.

(vii) Communication skills.

(viii) Emergency protocols.

(ix) Documentation skills.

(ii) Before providing homemaker activities to an individual, the provider shall conduct written testing, and skill testing by return demonstration, of all homemaker aides not listed on the Ohio department of health's nurse aide registry for all subject areas listed in paragraph (D)(6)(a)(i)(e) of this rule. The training and testing shall be documented by the provider, and the documentation shall include training site information, the date of

training, the number of hours of training, a list of instruction materials and the subject areas covered, the qualifications of the trainer and the tester, the signatures of the trainer and tester verifying the accuracy of the record, and all testing results.

(b) Supervisors: Homemaker supervisors shall meet at least one of the following requirements:

(i) A bachelor's or associate's degree in a health and human services area.

(ii) A current, valid license to be an RN or an LPN under the direction of an RN.

(iii) At least two years of experience as a homemaker aide.

(c) All staff:

(i) Orientation: Before allowing any staff member to provide homemaker activities, the provider shall train the staff member on all the following:

(a) The provider's expectations of homemaker staff.

(b) The provider's ethical standards, as required under rule 173-39-02 of the Administrative Code.

(c) An overview of the provider's personnel policies.

(d) The organization and lines of communication of the provider's agency.

(e) Incident-reporting procedures.

(f) Emergency procedures.

(g) Person-centered planning process.

(ii) ~~Continuing education:~~ In-service training: The provider shall assure

and document a minimum of eight hours of ~~continuing education~~ in-service training for each staff member every twelve months on topics listed in paragraph (B)(6)(c)(i) of this rule.

(7) Supervisory requirements:

- (a) Initial: The supervisor shall complete and document ~~a individual home~~ an initial visit, which may occur at the initial homemaker visit to the individual to define the expected activities of the homemaker aide and prepare a written activities plan consistent with the case manager authorized plan that has been completed by the case manager and the individual before the individual's first episode of service.
  
- (b) Subsequent: The supervisor shall complete and document ~~evaluate an~~ evaluation of the homemaker aide's compliance with the activities plan, the individual's satisfaction, and job performance during a home visit with the individual at least every ninety three days to evaluate the homemaker aide's compliance with the plan. The homemaker aide need not be present during the visit. The supervisor may conduct the visit by telephone, video conference, or in person. ~~The visit shall be documented, including the date of the visit, the name of the homemaker supervisor, name of the individual, and shall include the signature of the individual and the homemaker supervisor or the electronic signature of the homemaker supervisor.~~
  
- (c) Records: The supervisor shall document each initial and subsequent visit in the individual's activity plan, including the date of the visit, individual's name, the supervisor's name, and the supervisor's handwritten or electronic signature, and a unique identifier of the individual.

(C) Units and rates:

- (1) One unit of homemaker service equals fifteen minutes.
  
- (2) The maximum rate allowable for a unit of homemaker activities is established in appendix A to rule 5160-1-06.1 of the Administrative Code.
  
- (3) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

173-39-02.10

**ODA provider certification: nutritional consultations.**

(A) Definitions for this rule:

(1) "Nutritional consultation" (~~"consultation"~~) (consultation) mean individualized guidance to an individual who has special dietary needs. Consultations take into consideration the individual's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions. Consultations are also known as medical nutrition therapy. "Nutritional consultation" does not include either of the following:

(a) A consultation provided to an individual's authorized representative or caregiver to improve the individuals well-being.

(b) A consultation provided to an individual if the individual receives a similar services paid (in full or in part) by medicare state plan medicaid, or another third-party payer.

(2) "Nutritional assessment" (~~"assessment"~~) (assessment) has the same meaning as in rule 4759-2-01 of the Administrative Code.

(B) Every ODA-certified provider of nutritional consultations shall comply with the following requirements:

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

(2) Dietitian: Only a licensed dietitian (~~"dietitian"~~) (dietitian) working for an ODA-certified agency provider, or a licensed dietitian working as an ODA-certified non-agency provider shall provide consultations to individuals.

(3) Orders ~~and limits: The PASSPORT program shall only pay for consultations under the following circumstances:~~ Before the provider provides a consultation to an individual or to the individual's authorized representative or caregiver, the provider shall obtain an order for the consultation from a licensed healthcare professional whose scope of practice includes ordering consultations.

~~(a) Before the provider provides a consultation to an individual, the provider obtains an order for the individual's consultation from a licensed healthcare professional whose scope of practice includes ordering consultations.~~

~~(b) The provider shall not provide a consultation to an individual's authorized~~

~~representative or caregiver unless the licensed healthcare professional ordered the consultation to improve the individual's well-being.~~

~~(c) The provider shall not provide consultations to an individual in excess of what the case manager authorizes in the individual's service plan.~~

~~(d) The provider shall only bill ODA's designee for a consultation if the case manager identifies the provider in the service order for the individual.~~

~~(e) The provider shall not provide consultations to an individual if the individual is receiving a similar service under Chapter 173-39 of the Administrative Code.~~

(4) ~~Face-to-face vs. telecommunications:~~ Venue:

(a) ~~For an initial consultation, the~~ The dietitian shall ~~only provide a face-to-face~~ conduct the initial consultation in person in the individual's home. During a state of emergency declared by the governor, the dietitian may conduct the initial consultation by telephone, video conference, or in person in the individual's home.

(b) ~~For subsequent consultations, the~~ The dietitian shall ~~only provide the~~ may conduct subsequent consultations ~~if the consultations occur on a face-to-face basis or by a telecommunication system~~ by telephone, video conference, or in person in the individual's home.

(5) ~~Nutrition~~ Nutritional assessment ("~~assessment~~"):

(a) The provider shall conduct an initial, individualized assessment of the individual's nutritional needs and, when necessary, subsequent assessments, using a tool that identifies whether the individual is at nutritional risk or identifies a nutritional diagnosis that the dietitian will treat. The tool shall include the following:

(i) An assessment of height and weight history.

(ii) An assessment of the adequacy of nutrient intake.

(iii) A review of medications, medical diagnoses, and diagnostic test results.

(iv) An assessment of verbal, physical, and motor skills that may affect, or contribute to, nutrient needs.

- (v) An assessment of interactions with the caregiver during feeding.
  - (vi) An assessment of the need for adaptive equipment, other community resources, or other services.
  - (b) The provider shall provide the case manager, the individual, and the individual's authorized representative (if the individual has authorized a representative) with a copy of the assessment no later than seven business days after the provider completes the assessment.
  - (c) The provider may use an electronic system to develop and retain a ~~nutrition~~ an assessment.
- (6) Nutrition intervention plan:
- (a) The provider shall develop, evaluate, and revise, as necessary, a nutrition intervention plan with the individual's and case manager's assistance and, when applicable, the assistance of the licensed healthcare professional who authorized the consultations. In the plan, the provider shall outline the purposely-planned actions for changing nutrition-related behavior, risk factors, environmental conditions, or health status, which, at a minimum, shall include the following information about the individual:
    - (i) Food and diet modifications.
    - (ii) Specific nutrients to require or limit.
    - (iii) Feeding modality.
    - (iv) Nutrition education and consultations.
    - (v) Expected measurable indicators and outcomes related to the individual's nutritional goals.
  - (b) The provider shall use the nutrition intervention plan to prioritize and address the identified nutrition problems.
  - (c) The provider shall provide the case manager, the individual, and the licensed healthcare professional who ordered the consultations with a

copy of the nutrition intervention plan no later than seven business days after the provider develops or revises the plan.

- (d) The provider may use an electronic system to develop and retain the nutrition intervention plan.

(7) Clinical record:

- (a) The provider shall develop and retain a clinical record for each individual that includes the individual's:

- (i) Identifying information, including name, address, date of birth, sex, race, marital status, significant phone numbers, and health insurance identification numbers.

- (ii) Medical history.

- (iii) The name of the licensed healthcare professional who authorized consultations.

- (iv) The authorization for consultations that is required ~~under~~ in paragraph ~~(B)(1)~~ (B)(3) of this rule.

- (v) Service plan (initial and revised versions).

- (vi) ~~Nutrition~~ Nutritional assessment (initial and revised versions).

- (vii) Plan of care for consultations (initial and revised versions), specifying the type, frequency, scope, and duration of the consultations to provide.

- (viii) Nutrition intervention plan (initial and revised versions that were implemented).

- (ix) Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions.

- (x) Discharge summary, which the dietitian who provided the consultations shall sign and date at the point he or she is no longer going to provide consultations to the individual or the individual

no longer needs consultations. The summary shall indicate what progress the individual made towards achieving the measurable outcomes of the individual's nutritional goals and any recommended follow-up consultations or referrals.

(b) The provider may use an electronic system to develop and retain the clinical record.

(8) Service verification: By one of the following two methods, the provider shall verify that each consultation for which it bills was provided:

(a) The provider may use an electronic system if the system does all of the following:

(i) Collects the individual's name, date of consultation, time of day each consultation begins and ends, name of licensed dietitian providing consultation, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the individual.

(ii) Retains the information it collects.

(iii) Produces reports, upon request, that ODA (or ~~ODA's~~ its designee) can monitor for compliance.

(b) The provider may use a manual system if the provider documents the date of service, time of day that each consultation begins and ends, name of the person providing the consultation, and collects the handwritten ~~signatures~~ signature of the person providing the consultation and a unique identifier of the individual. ~~If the individual is unable to produce a handwritten signature, the individual's handwritten initials, stamp, or mark are acceptable if the case manager authorizes such an alternative in the individual's service plan.~~

(C) Unit and rate:

(1) A unit of a nutritional consultation is ~~equal to~~ fifteen minutes of session time with the individual.

(2) The maximum rate allowable for a unit of nutritional consultations is listed in the appendix to rule 5160-1-06.1 of the Administrative Code.

- (3) The rate is subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

173-39-02.11

**ODA provider certification: personal care.**

(A) Definitions for this rule:

(1) "Personal care" means hands-on assistance with ADLs and IADLs (when incidental to providing ADLs) in the individual's home and community. Personal care activities include the following, when authorized in a person-centered services plan:

(a) Assisting the individual with managing the home, handling personal affairs, and providing assistance with self-administration of medications, as defined in rule 173-39-01 of the Administrative Code.

(b) Assisting the individual with ADLs and IADLs.

(c) Homemaker activities listed in rule 173-39-02.8 of the Administrative Code when those activities are specified in the individual's service plan and are incidental to the activities in paragraphs (A)(1)(a) and (A)(1)(b) of this rule, or are essential to the health and welfare of the individual, rather than the individual's family.

(d) Providing respite services to the individual's caregiver.

(e) Providing an errand outside of the presence of the individual that is needed by the individual to maintain the individual's health and safety (e.g., picking up a prescription or groceries for the individual).

(2) "Competency evaluation" includes both written testing and skills testing by return demonstration to ensure the PCA is able to address the care needs of the individual to be served.

~~(3) "PCA" means "personal care aide."~~

(B) Qualifying provider types: Eligible providers of personal care are ODA-certified agency providers and ODA-certified participant-directed personal care providers.

(C) Requirements for ODA-certified agency providers of personal care:

(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) Availability: The provider shall maintain staffing at adequate levels to provide

personal care seven days a week, including possessing a back-up plan for providing personal care when the provider has no PCA or PCA supervisor available.

(3) PCA requirements:

(a) Initial qualifications: The provider shall only allow a person to serve as a PCA if the person meets at least one of the following qualifications ~~and~~, the provider meets the verification requirements under paragraph (C)(3)(e) of this rule, and the training and competency evaluation meet the standards under paragraph (C)(3)(f) of this rule:

(i) STNA: The person successfully completed a nurse aide training and competency evaluation program approved by ODH under section 3721.31 of the Revised Code.

(ii) Medicare: The person met the qualifications to be a medicare-certified home health aide according to one of the following sets of standards:

(a) The standards in 42 C.F.R. 484.4 and 484.36, if the person met those standards on or before January 12, 2018.

(b) The standards in 42 C.F.R. 484.80 and 484.115, if the person met those standards on or after January 13, 2018.

(iii) Previous experience: The person has at least one year of supervised employment experience as a home health aide or nurse aide, and has successfully completed a competency evaluation covering the topics listed under paragraph (C)(3)(a)(v)(b) of this rule.

(iv) Vocational programs: The person successfully completed the COALA home health training program or a certified vocational training and competency evaluation program in a health care field covering the topics listed under paragraph (C)(3)(a)(v)(b) of this rule.

(v) Other programs: The person successfully completed a training and competency evaluation program with the following characteristics:

- (a) The training lasted at least sixty hours.
- (b) All the following subjects were included in the program's training and its competency evaluation:
  - (i) Communication skills, including the ability to read, write, and make brief and accurate reports (oral, written, or electronic).
  - (ii) Observation, reporting, and retaining records of an individual's status and activities provided to the individual.
  - (iii) Reading and recording an individual's temperature, pulse, and respiration.
  - (iv) Basic infection control.
  - (v) Basic elements of body functioning and changes in body function that should be reported to a PCA supervisor.
  - (vi) Maintaining a clean, safe, and healthy environment, including house cleaning and laundry, dusting furniture, sweeping, vacuuming, and washing floors; kitchen care (including dishes, appliances, and counters), bathroom care, emptying and cleaning beside commodes and urinary catheter bags, changing bed linens, washing inside window within reach from the floor, removing trash, and folding, ironing, and putting away laundry.
  - (vii) Recognition of emergencies, knowledge of emergency procedures, and basic home safety.
  - (viii) The physical, emotional, and developmental needs of individuals, including privacy and respect for personal property.
  - (ix) Appropriate and safe techniques in personal hygiene and grooming including bed, tub, shower, and partial bath techniques; shampoo in sink, tub, or bed; nail

and skin care; oral hygiene; toileting and elimination; safe transfer and ambulation; normal range of motion and positioning; and adequate nutrition and fluid intake.

- (x) Meal preparation and nutrition planning, including special diet preparation; grocery purchase, planning, and shopping; and errands such as picking up prescriptions.
- (b) Orientation: Before allowing a PCA or other employee to have direct, face-to-face contact with an individual, the provider shall provide the PCA or other employee with orientation training, that, at a minimum, addresses the following topics:
  - (i) The provider's expectations of employees.
  - (ii) The provider's ethical standards, as required under rule 173-39-02 of the Administrative Code.
  - (iii) An overview of the provider's personnel policies.
  - (iv) The organization and lines of communication of the provider's agency.
  - (v) Incident-reporting procedures.
  - (vi) Emergency procedures.
- (c) Additional training: The provider shall conduct additional training and competency evaluation for PCAs who are expected to perform activities for which they did not receive training or undergo competency evaluation under paragraph (C)(3)(a) of this rule.
- (d) ~~Continuing education:~~ In-service training: The provider shall ensure each PCA successfully completes eight hours of in-service ~~continuing education~~ training every twelve months. Agency- and program-specific orientation shall not count toward the eight hours.
- (e) Verification of compliance with PCA requirements:

- (i) The provider shall retain copies of certificates of completion earned by each PCA after the PCA meets requirements under paragraph (C)(3) of this rule for successfully completing any training and competency evaluation program, orientation, additional training, and ~~continuing education~~ in-service training under paragraph (C)(3) of this rule. Additionally, the provider shall also record the following information for each PCA, and retain it, if it does not appear on the PCA's certificate of completion (or if the PCA did not receive a certificate of completion): ~~training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each trainer and of each tester~~ name of the school or training organization, name of the course, training dates, and training hours successfully completed.
- (ii) If a person meets the initial qualifications to be a PCA under paragraph (C)(3)(a) of this rule by successfully completing a nurse aide training and competency evaluation program described in paragraph (C)(3)(a)(i) of this rule, the provider shall retain a copy of the search results from ODH's nurse aide registry ([https://odhgateway.odh.ohio.gov/nar/nar\\_registry\\_search.aspx](https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx)) to verify the registry listed the person as ~~"active" or "in good standing."~~ "active," "in good standing," or "expired."
- (iii) If a person meets the initial qualifications to be a PCA under paragraph (C)(3)(a) of this rule only by the previous employment experience described in paragraph (C)(3)(a)(iii) of this rule, the provider shall also retain records to verify ~~the person's name,~~ the former employer's name and contact information, the former PCA supervisor's name, the date the person began working for the former employer, and the date the person stopped working for the former employer.

(f) Training and competency-evaluation standards:

- (i) Training may be completed on a remote learning platform to meet one or more of the qualifications under paragraph (C)(3)(a) of this rule.
- (ii) The portion of competency evaluation that involves return demonstration only qualifies as competency evaluation under paragraph (C)(3)(a) of this rule if it is conducted in person.

(4) PCA supervisors, trainers, and testers:

(a) Qualifications: The provider shall only allow a RN (or a LPN under the direction of a RN) to be a PCA supervisor, trainer, or tester. The provider shall retain records to show each PCA supervisor maintains a current, valid license to practice as an RN (or a LPN under the direction of a RN).

(b) PCA supervisor availability: The provider shall ensure that a PCA supervisor is available to respond to emergencies when the PCAs are scheduled to work.

(c) PCA supervisor visits:

(i) Before allowing a PCA to begin providing personal care to an individual, a PCA supervisor shall complete and document a visit to the individual, which may occur at the initial PCA visit to the individual, to define the expected activities of the PCA and prepare a written activity plan. The PCA supervisor shall document this visit, including the date of the visit, the PCA supervisor's name, the individual's name, the individual's signature, and the PCA supervisor's signature.

(ii) After the PCA's initial visit to an individual, the PCA supervisor shall conduct and document a visit to the individual at least once every sixty days to evaluate compliance with the activity plan, the individual's satisfaction, and the PCA's performance. The PCA supervisor shall discuss recommended modifications to the activity plan with the case manager and PCA. The PCA does not need to be present during this visit. The PCA supervisor shall document these visits, including the date of the visit, the PCA supervisor's name, the individual's name, the individual's signature, and PCA supervisor's signature.

(5) Provider policies: The provider shall develop, implement, comply with, and maintain written policies on all the following topics:

(a) Job descriptions for each position.

(b) Documentation of how each PCA meets the qualifications in paragraph (C)(3) of this rule.

- (c) Performance appraisals for each staff position.
  - (d) Implementing the written procedure for documenting individual's incidents required ~~under paragraph (B)(2)(a) of~~ in rule 173-39-02 of the Administrative Code.
  - (e) Obtaining an individual's written permission to share or release an individual's confidential information pursuant to the state and federal laws and regulations governing individual confidentiality laws listed in rule 173-39-02 of the Administrative Code.
  - (f) Retaining individuals' records in the designated, locked storage space required in rule 173-39-02 of the Administrative Code.
- (6) Service verification:
- (a) The provider shall comply with section 121.36 of the Revised Code.
  - (b) For each episode of personal care a PCA provides, the provider shall document and retain a record of the date of service ~~delivery~~, a description of the activities provided, the PCA's name, the PCA's arrival and departure time, and the PCA's written or electronic signature to verify the accuracy of the record. A provider that does not use an electronic verification system shall also obtain the individual's signature for each episode of personal care.
  - (c) The provider may use a technology-based system to collect or retain the records required under this rule.
- (D) Every ODA-certified participant-directed provider of personal care shall comply with the following requirements:
- (1) General requirements: The provider shall comply with the requirements for every ODA-certified participant-directed ~~personal-care~~ provider in rule 173-39-02 of the Administrative Code.
  - (2) Availability: The provider shall provide personal care as agreed upon with the individual and as authorized in the individual's service plan.
  - (3) Activity plan: The individual shall develop his or her own activity plan with the

provider. The individual and the provider shall date and sign a copy of the plan. The provider shall retain a copy of the plan.

(4) Oversight: The individual is the employer of record and is responsible for supervising the provider. As used in this paragraph, "employer of record" means the individual who employs the provider; supervises the provider; pays the appropriate state, federal, and local taxes; and pays premiums for worker's compensation and unemployment compensation insurance. ODA provides the support of a financial management service (FMS) to the individual to act as the agent of the common-law employer with the participant-directed personal care provider that he or she employs.

(5) Provider qualifications:

(a) Initial qualifications: A provider shall only begin to provide personal care if the provider meets the following requirements and retains records to show that he or she meets the following requirements :

(i) The provider shall meet at least one of the following qualifications:

(a) STNA: The provider successfully completed a nurse aide training and competency evaluation program approved by ODH under section 3721.31 of the Revised Code, which the provider shall verify by retaining a copy of the search results from ODH's nurse aide registry ([https://odhgateway.odh.ohio.gov/nar/nar\\_registry\\_search.aspx](https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx)) to verify the registry listed the person as "active" or "in good standing."

(b) ODA-approved training program: The provider successfully completed an ODA-approved home health aide training and competency evaluation program.

(c) DOL-approved training: The provider successfully completed an apprenticeship program in home health, health, or a related subject approved by the United States department of labor.

(ii) The provider successfully completed any additional training the individual or ODA's designee considers necessary to meet the individual's needs.

(iii) The provider successfully completed any training that ODA (or its designee) or ODM mandates.

(iv) The provider successfully demonstrated his or her competence or mastery of an activity in a specific area in which the individual may require the provider to demonstrate the competence or mastery.

(b) Continuing qualifications: The provider shall only continue to provide personal care if he or she meets the following requirements:

(i) The provider meets the qualifications under paragraph (D)(5)(a) of this rule. If the provider no longer meets these qualifications, the provider shall no longer provide personal care.

(ii) The provider successfully completed at least twelve hours of in-service training during the previous twelve months on a subject related to the individual's activity plan.

(6) Service verification:

(a) The provider shall complete the time sheets the individual provides through the FMS, which shall include the date the provider provided personal care, a description of the activities the provider provided, the individual's name, the individual's signature, the provider's name, the provider's arrival and departure times, and the provider's written or electronic signature to verify the accuracy of the record.

(b) The provider shall retain records required under this rule and provide access to those records for monitoring according to rule 173-39-02 of the Administrative Code.

(E) Units and rates:

(1) One unit of personal care ~~equals~~ is fifteen minutes.

(2) ~~Appendix A~~ The appendix to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowable for one unit of personal care.

(3) In accordance with rule 5160-31-07 of the Administrative Code, if the same

provider provides personal care during the same visit to more than one but fewer than four PASSPORT individuals in the same home, as identified in the individuals' service plans, the provider's payment rate for personal care provided to one person in the home shall be one hundred per cent of the per-unit rate listed in the provider agreement and seventy-five per cent of the per-unit rate for each subsequent PASSPORT individual in the home receiving services during the visit. As used in this paragraph, "in the same home" does not refer to a PASSPORT individual who resides alone in an apartment building where another individual may reside alone in a separate apartment.

(F) Incorporation by reference:

- (1) All references in this rule to 42 C.F.R. 484.4 and 484.36 are to the October, 2016 editions of the Code of Federal Regulations, which the United States government printing office publishes for the general public to review, free of charge, on <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.
- (2) All references in this rule to 42 C.F.R. 484.80 and 484.115 are to the rules as they took effect on January 13, 2018, which the United States office of the federal register publishes for the general public to review, free of charge, on <https://www.ecfr.gov/> on or after the effective date of the federal rules.

173-39-03

**ODA provider certification: applying for certification.**

ODA will be unable to process any applications while ODA and ODM develop a new electronic infrastructure for processing applications. ODA will reject any incomplete applications in the current system. If ODA rejects a provider's incomplete application, the provider may reapply for certification when the new electronic infrastructure is operational.

(A) Initial steps:

- (1) To apply for certification, a provider shall submit an online application on <http://www.aging.ohio.gov/>. The provider shall complete the application within ninety days after the provider starts the online application. If the provider does not complete the application within ninety days, the application shall expire.
- (2) If an individual (i.e., participant) wishes to employ (i.e., direct) a provider as his or her participant-directed provider, the individual shall interview the provider before the provider submits an online application.

(B) Withdrawal:

- (1) A provider may withdraw its application at any time.
- (2) A provider that withdrew its application may later reapply for certification.

~~(B)~~(C) Pre-certification review:

- (1) For all providers except providers of community transition provided through the home choice program under rule 5160-51-10 of the Administrative Code:
  - (a) ODA's designee shall visit the provider's business site to determine if the provider meets the applicable requirements in rule 173-39-02 of the Administrative Code and any additional requirements in this chapter regulating a service the provider is seeking certification to provide. During a state of emergency declared by the governor, or during another time if authorized by by ODA, ODA's designee may conduct a desk review of the provider's business site in lieu of a visit.
  - (b) ODA's designee shall complete the review and notify ODA of its recommendation within ninety days after receiving a complete application, unless ODA approves an extended deadline.
  - (c) If ODA's designee determines a provider, other than an ADS or assisted

living provider, complies with all applicable requirements, it shall recommend approval of the provider's application.

- (d) If ODA's designee determines a provider for ADS or assisted living complies with all applicable requirements, paragraph ~~(E)~~ (D) of this rule applies.
  - (e) ODA's designee ~~shall~~ may conduct the review of a participant-directed provider at the individual's home and the individual must be present for the review, unless the individual agrees, in writing, to an alternate location and to not participate.
  - (f) If ODA's designee determines the provider does not comply with all applicable requirements, it shall recommend denial of the application.
- (2) For providers of community transition provided through the home choice program under rule 5160-51-10 of the Administrative Code:
- (a) ODA or, at ODA's sole discretion, ODA may direct its designee to conduct the pre-certification review to determine if the provider meets the applicable requirements in rules 173-39-02 and 173-39-02.17 of the Administrative Code.
  - (b) ODA or its designee shall determine whether the provider complies with all applicable requirements, and either approve or deny the provider's application pursuant to this rule.

~~(E)~~(D) HCBS settings requirements: HCBS shall only be provided in an individual's residence or another setting that meets the HCBS settings requirements specified in 42 C.F.R. 441.301 and rule 5160-44-01 of the Administrative Code. ODA shall determine if a setting is presumed to have the qualities of an institution.

- (1) If ODA determines the setting is presumed to have the qualities of a HCBS setting, the setting does not require heightened scrutiny as described in rule 173-39-03.1 of the Administrative Code and ODA may certify the provider.
- (2) If ODA determines the setting is presumed to have the qualities of an institution, the setting shall undergo heightened scrutiny as described in rule 173-39-03.1 of the Administrative Code.
- (3) If paragraph ~~(E)(2)~~ (D)(2) of this rule requires a setting to undergo heightened

scrutiny, ODA shall defer action on the application for certification until the conclusion of the review described in rule 173-39-03.1 of the Administrative Code. ODA shall notify the provider if action on its application is deferred under this paragraph.

~~(D)~~(E) Final determination: ODA shall base its final determination of whether to certify a provider based on the review of the application materials and the recommendation of ODA's designee.

~~(E)~~(F) Approved application:

(1) Applications for all services except community transition provided through the home choice program under rule 5160-51-10 of the Administrative Code:

(a) If ODA approves the application, ODA shall notify ODA's designee for the region in which the provider is being certified to provide services.

(b) ODA's designee shall enter into an agreement with each provider specifying, at a minimum, the following:

(i) The time period during which the agreement is in effect.

(ii) The region for which the provider is certified.

(iii) The rate of payment per unit the provider is willing to accept, which shall not exceed any limits ODM establishes in rule 5160-31-07 of the Administrative Code and appendix A to rule 5160-1-06.1 of the Administrative Code for the PASSPORT program, and rule 5160-33-07 of the Administrative Code and appendix A to rule 5160-1-06.5 of the Administrative Code for the assisted living program.

(2) Applications for community transition provided through the home choice program under rule 5160-51-10 of the Administrative Code: If ODA approves an application to be a provider of community transition through the home choice program, ODA shall enter into an agreement with the provider or, at ODA's sole discretion, ODA may direct its designee to enter into an agreement with the provider specifying the items in paragraphs (E)(1)(b)(i) to (E)(1)(b)(iii) of this rule.

(G) Deemed providers: ODA may deem any provider certified by ODM or the department of developmental disabilities to provide one or more services through a

medicaid-waiver program as having satisfied the requirements for certification by ODA for the same or similar services under this chapter, as determined by ODA. The effective period for a provider to be deemed an ODA-certified provider under this paragraph begins on June 11, 2020 and ends if the provider cannot comply with all the requirements of Chapter 173-9 of the Administrative Code and this chapter within sixty days after initial deeming or a medicaid provider agreement is terminated, whichever occurs first.

~~(F)~~(H) Denied application:

- (1) ODA may deny a provider's application for any of the following reasons:
  - (a) The provider made false representations, by omission or commission, on the provider's application.
  - (b) The provider made false statements, provided false information, or altered records or documents.
  - (c) The provider is prohibited from being certified pursuant to section 173.38 or 173.381 of the Revised Code, or Chapter 173-9 of the Administrative Code.
  - (d) The provider does not meet the applicable requirements in rule 173-39-02 of the Administrative Code or any requirements in this chapter regulating a service the provider is seeking certification to provide.
  - (e) Any reason permitted or required by state or federal law.
- (2) If ODA denies a provider's application, ODA shall notify the provider of its final determination and any applicable hearing rights established in section 173.391 of the Revised Code.
- (3) If ODA denies a provider's application, the provider is ineligible to reapply for certification for one year after the mailing date of ODA's final adjudication order.

173-39-03.2

**ODA provider certification: changes of ownership interest or organizational structure.**

Introduction: Section 173.39 of the Revised Code prohibits ODA from paying a provider for services provided to individuals enrolled in the PASSPORT or assisted living programs unless the provider is an ODA-certified provider. ODA-certification is assigned to a provider's federal taxpayer identification number (TIN) and is not transferable. This rule shall apply in all instances where there is a change of ownership interest involving an ODA-certified provider obtaining a new TIN according to any rule adopted by the internal revenue service (IRS) or any change in organizational structure of an ODA-certified provider involving a person with an ownership or management interest, including non-profit providers.

[ODA will be unable to process a change of ownership interest or organizational structure while ODA and ODM develop a new electronic infrastructure for processing applications.](#)

(A) Requirements:

(1) Notification: The provider's current owner(s) shall notify ODA in writing of a change of ownership interest or change of organizational structure (change) no later than forty-five days before the change, unless this chapter requires notifying ODA sooner. The current owner(s) shall email their written notice to ODA at "provider\_enrollment@age.ohio.gov." In the notice, the current owner(s) shall include a notarized statement including all of the following information, as applicable and to the extent it is available to the current owner(s) at the time the notice is submitted. In the event information is not available at the time written notice is required, the current owner(s) shall supplement the written notice until all the following information is provided:

(a) Name of the provider undergoing the change.

(b) Name of each current owner, and, if any, the name of each current owner's authorized agent.

(c) Medicaid provider number and NPI of the provider after the change, if known. ODA considers the notice to be complete if the notice is complete except for indicating the provider's number if ODM has not yet granted the provider a number, so long as the provider submits the number to ODA as soon as it is available.

(d) The following information about each new owner(s):

(i) Name.

- (ii) Date of birth.
  - (iii) Social security number.
  - (iv) Percentage of ownership or control in the provider.
  - (v) Whether each new owner has been a resident of Ohio for the five-year period immediately preceding the date of the change of ownership interest.
- (e) Date the change takes effect, as evidenced by a bill of sale or purchase contract executed by both parties.
  - (f) Statement indicating whether the provider intends to seek payment from ODA for services it provides after the change.
  - (g) Names and addresses of the persons to whom ODA and its designee should send correspondence regarding the change.
  - (h) Any information required to show the ongoing compliance required by paragraph (B) of this rule.
  - (i) Signatures of the current and new owner(s).
- (2) Current certification ends: If IRS rules require a provider to obtain a new TIN, the provider's certification ends on the date the change is finalized. The relinquishment of the provider's certification means a provider shall not bill ODA after the date the change is finalized.
- (3) New certification required: If a provider with a new TIN intends to seek payment from ODA for services it provides after a change, the provider shall apply to become an ODA-certified provider according to the application process in rule 173-39-03 of the Administrative Code.
- (4) Payment for authorized services: If ODA approves an application to become an ODA-certified provider, ODA may pay for authorized services provided during a change back to the first date on which both of the following have occurred:
- (a) The provider submitted evidence the change was finalized to ODA, such

as a bill of sale or an executed purchase.

(b) The new owner(s) submitted a complete application, as defined in rule 173-39-01 of the Administrative Code, to become an ODA-certified provider.

(5) Discharging residents: After an assisted-living provider has applied for new certification from ODA during a change, neither the current nor the new owner(s) shall discharge residents from the RCF for non-payment until ODA makes a final determination regarding certification of the provider.

(B) Compliance with HCBS settings requirements:

(1) Every provider is subject to the HCBS settings requirements in state and federal law, including rule 5160-44-01 of the Administrative Code and 42 C.F.R. Part 441, as indicated in rule 173-39-02 of the Administrative Code. Every provider shall maintain compliance with those requirements from the effective date of ODA certification and thereafter to maintain ODA certification.

(2) For a provider subject to federal heightened scrutiny under rule 173-39-03.1 of the Administrative Code, the new owner(s) shall, at a minimum, implement policies, procedures, to maintain compliance with the HCBS settings requirements under rules 173-39-02 and 5160-44-01 of the Administrative Code, and any other requirements under 42 C.F.R. Part 441 at the time of the change of ownership interest and thereafter. When applying for ODA certification, the new owner(s) shall email a notarized statement demonstrating compliance with this requirement to ODA at "provider\_enrollment@age.ohio.gov."

173-39-03.3

**ODA provider certification: applying to be certified to provide additional services.**

Introduction: After ODA initially certifies a provider in a region, the provider may apply to become certified to provide an additional service in that region.

(A) Application: The provider shall submit a complete application to become certified to provide an additional service in a region in which it is already certified. Only complete applications shall be processed. If the provider does not complete the application within ninety days of the date the application is requested, the application shall expire.

(B) Pre-certification review: ODA's designee shall visit the provider's business site to conduct an on-site pre-certification review to determine if the provider meets the requirements of this chapter to be certified to provide the additional service. For agency providers, this includes compliance with paragraph (C)(1)(a) of rule 173-39-02 of the Administrative Code. During a state of emergency declared by the governor, or during another time if authorized by by ODA, ODA's designee may conduct a desk review of the provider's business site in lieu of a visit.

~~(1) ODA's designee shall complete the on-site review and notify ODA of its recommendation within ninety days after receiving a complete application, unless the situation in paragraph (B)(2) or (B)(3) of this rule applies.~~

~~(2) ODA's designee may conduct a desk review in lieu of an on-site review if the provider's business site is located outside of Ohio. ODA's designee shall complete this review and notify ODA of its recommendation within ninety days after receiving a complete application.~~

~~(3) ODA's designee may conduct a desk review in lieu of an on-site review if the provider does not have a business site in the region in which the provider is seeking to be certified. ODA's designee shall complete this review and notify ODA of its recommendation within ninety days after receiving a complete application.~~

(C) Approved application: ODA and its designee shall follow the process under paragraph (E) of rule 173-39-03 of the Administrative Code for an approved application for certification to provide an additional service in a region for which it is already certified.

(D) Denied application: ODA and its designee shall follow the process under paragraph ~~(F)~~ (G) of rule 173-39-03 of the Administrative Code for a denied application to become certified to provide an additional service in a region for which it is already certified.

173-39-03.4

**ODA provider certification: applying to be certified in additional regions or to certify additional business sites.**

Introduction: After ODA initially certifies a provider in a region, the provider may apply to become certified to provide the service for which it is already certified in an additional region or additional business site within the same region.

An assisted-living provider certified by ODA for one RCF shall obtain a new certification for each additional RCF pursuant to rule 173-39-03 of the Administrative Code. This rule would not apply.

(A) Application: The provider shall submit a complete application to become certified to provide the service for which it is already certified in an additional region or additional business site within the same region. Only complete applications shall be processed. If the provider does not complete the application within ninety days of the date the application is requested, the application shall expire.

(B) Pre-certification review: ODA's designee shall visit the provider's business site to conduct an on-site pre-certification review to determine if the provider meets the requirements of this chapter to provide the service for which it is already certified in the additional region or additional business site within the same region. For agency providers seeking certification in an additional region, this includes compliance with paragraph (C)(1)(a) of rule 173-39-02 of the Administrative Code. During a state of emergency declared by the governor, or during another time if authorized by ODA, ODA's designee may conduct a desk review of the provider's business site in lieu of a visit.

~~(1) ODA's designee shall complete the on-site review and notify ODA of its recommendation within ninety days after receiving a complete application, unless the situation in paragraph (B)(2) or (B)(3) of this rule applies.~~

~~(2) ODA's designee may conduct a desk review in lieu of an on-site review if the provider's business site is located outside of Ohio. ODA's designee shall complete this review and notify ODA of its recommendation within ninety days after receiving a complete application.~~

~~(3) ODA's designee may conduct a desk review in lieu of an on-site review if the provider's operations in the region in which the provider is seeking to be certified would not have a business site in that region. ODA's designee shall complete this review and notify ODA of its recommendation within ninety days after receiving a complete application.~~

(C) Approved application: ODA and its designee shall follow the process under paragraph (E) of rule 173-39-03 of the Administrative Code for an approved application for certification to provide the service for which it is already certified in an additional region or additional business site within the same region.

- (D) Denied application: ODA and its designee shall follow the process under paragraph ~~(F)~~ (G) of rule 173-39-03 of the Administrative Code for a denied application to become certified to provide the service for which it is already certified in an additional region or additional business site within the same region.