

## NF-Based Level of Care Waivers, Specialized Recovery Services Program, MyCare Ohio, and Medicaid Managed Care

### Provider Emergency Protocol: Response to COVID-19

July 30, 2020

The Ohio Department of Aging (ODA) and the Ohio Department of Medicaid (ODM) are providing guidance to implement emergency protocols as part of the state's response to COVID-19. This document replaces all previously issued Emergency Protocols and FAQ documents. The state expects this document to be shared with all appropriate staff.

Effective June 11, 2020, Governor DeWine issued Executive Order 2020-23D, which authorized emergency amendments to Ohio Administrative Code (OAC) rules, incorporating emergency protocols previously issued into applicable OAC rules. This document has been updated with rule references associated with the protocol requirements previously and newly issued. All emergency amendments are effective from June 11, 2020, through October 10, 2020.

To review all the emergency amendments included in the Governor's Executive Order, please visit the following website: <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/>

ODA has developed an inventory of rule changes for all programs which can be found here: <https://aging.ohio.gov/wps/portal/gov/aging/agencies-and-service-providers/rules-and-forms/emergency-rules>.

### Provider Certification and Enrollment

#### Provider Certification (ODA Providers only)

- A. Pre-certification reviews for all provider types may be completed telephonically with document review conducted through a desk review to determine if a provider meets the requirements for the service they are applying for certification.
- B. ODA will permit flexibility to PASSPORT Administrative Agencies (PAAs) with meeting timelines outlined in OAC [173-39-03](#).
  - If a delay is determined to be the best course of action, the provider application will remain in a pending status until an on-site review may be completed. PAA staff shall document the delay in PIMS using the following language: **Precertification review delayed due to COVID-19 emergency as directed by ODA.**
- C. If provider oversight agencies learn of delays in completing the criminal records checks, please email ODA at [Provider\\_Network\\_Mgmt@age.ohio.gov](mailto:Provider_Network_Mgmt@age.ohio.gov).

**Provider Enrollment (ODM Providers only)**

ODM Provider Enrollment on-line application can be accessed at <https://medicaid.ohio.gov/Provider/EnrollmentandSupport/ProviderEnrollment>.

**Deeming Providers (New)**

ODM and ODA are authorized to consider any ODM, ODA or the Ohio Department of Developmental Disabilities (DODD) waiver service provider as having satisfied ODM or ODA requirements for same or similar services.

- ODM Rules: 5160-31-06, 5160-44-11, 5160-44-12, 5160-44-13, 5160-44-14, 5160-44-16, 5160-44-17, 5160-44-22, 5160-44-26, 5160-44-27, and 5160-46-04.
- ODA Comparable Rules: 173-39-02, 173-39-02.4, 173-39-02.5, 173-39-02.6, 173-39-02.9, 173-39-02.10, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.22, 173-39-02.23, 173-39-02.24.

The provider must comply with all the requirements of Chapter 173-9 of the Administrative Code within sixty days after initial deeming to remain a provider in the ODA system. Providers must use a compliant reason code known to comply with the requirements of R.C. 109.572(A)(3) and (B)(1). Reason code, “173 38”, should be used by all employees providing paid direct care services to individuals enrolled in the PASSPORT program funded through ODA. However, ODA and the PAAs may accept the results for any criminal records checks conducted using the following reason codes: “173 27,” “173 38,” “173 381,” “3701 881,” “5123 081,” or “5123 169”.

Please note, a process and further guidance on provider deeming is still under development and will be issued in a future update.

**Expanding Direct Care Workforce (New)**

***Agency Providers***

Spouses, parents of minor children, foster children caregivers, and other legally responsible persons may be eligible to provide waiver nursing and personal care if they are employed by an agency.

- ODM Rules: 5160-44-22, 5160-44-31, and 5160-46-04(A)(6)).
- ODA Comparable Rules: 173-39-02.4, 173-39-02.11, 173-39-02.22.

***Consumer-Directed Providers***

Spouses, parents of minor children, foster children caregivers, and other legally responsible persons who want to be hired by a PAA to provide personal care or nursing services to their family member, may be eligible to be conditionally hired under OAC 173-9-05; however, any applicant must submit to a criminal records check pursuant to ORC 173.38, and also have the database reviews conducted pursuant to 173-9-03 before conditionally hiring.

## **Service Rule Updates**

### **Adult Day Service (ADS) Telephonic or In-home (ODA and ODM Providers-NEW)**

While emergency amendments are in effect, ADS may be delivered telephonically or in the individual's home as follows:

- ADS providers may only serve individuals the provider had authorization to serve during the month of March 2020.
- Individuals may choose to receive in-home ADS or telephonic health status check. If ADS is provided in-home, there is no change to service interventions.
- Providers must complete a monitoring checklist for each episode of telephonic and in-home ADS.
- This policy change applies to ADS available in the My Care Ohio, PASSPORT, and Ohio Home Care waivers. This policy change does not apply to ADS available in DODD-operated waivers.
- All information, including the monitoring checklist, can be found here:
  - [Ohio Department of Aging providers](#)
  - [Ohio Department of Medicaid providers](#)

### **Out of Home Respite (ODA and ODM Providers- New)**

**173-39-02.23:** Allows providers to offer out-of-home respite in either a residential care facility (RCF) or another setting if the provider receives ODA's approval to use the setting. Pursuant to 173-39-02.23:

- If ODA receives CMS approval, the provider may provide out-of-home respite in either of the following:
  - An RCF.
  - Another setting if the provider receives ODA's approval to use the setting. The option to use another setting begins on the effective date of this rule or the date of CMS approval, whichever occurs later.
- If ODA does not receive CMS approval, the provider shall be permitted to provide out-of-home respite in a RCF.
- All providers who elect to provide out-of-home respite shall also comply with the requirements in OAC 5160-44-17.

### **Other Service Modifications – (ODA Providers NEW)**

#### ***Home-Delivered Meals and Home Medical Equipment and Supplies: Participant Contact***

OAC 173-39-02.7, 173-39-02.14: Providers of home-delivered meals and home medical equipment and supplies are required to contact program participants at least once a month to alert them to deliveries left outside their door if no signature is obtained.

#### ***PASSPORT Homemaker, Personal Care, and Non-Medical Transportation: On Behalf of Services***

OAC 173-39-02.8, OAC 173-39-02.11, OAC 173-39-02.18: Providers are permitted to perform certain interventions on behalf of the individual including picking up prescriptions or groceries.

## Provider Oversight

### Structural Compliance Reviews

**For ODA Providers:** Structural reviews have been suspended for an additional 45 days from July 8, 2020, unless otherwise notified by ODA. Please see Notice 0420503.

**For ODM Providers:** ODM's Provider Oversight Contractor, Public Consulting Group (PCG) will continue to conduct and complete structural reviews through telephone contact and desk review.

### Compliance

- A. The COVID-19 emergency does not change a provider's responsibility to meet program conditions of participation, criminal records check requirements, and all applicable service specific requirements.
- B. Each area of provider non-compliance should be reviewed on a case-by-case basis to determine if disciplinary action is warranted. Consideration will be given for providers having difficulty requesting criminal records checks, if the provider has shown a good faith effort.
- C. **For ODA Providers:** Evidence of compliance and/or plan of correction due dates for PAA issued disciplinary actions which have already been issued related to criminal records checks may be extended for 90-days, unless otherwise notified by ODA.
  - New disciplinary actions issued shall follow the same evidence of compliance and/or plan of correction due dates in OAC 173-39-05. PAAs will work with providers on a case-by-case basis regarding compliance dates for criminal records checks.
- D. **For ODM Providers:** Plans of Correction for Structural Review compliance and Incident Management compliance will follow existing timeframes as outlined in OAC 5160-45-06, and OAC 5160-44-05, respectively. PCG and ODM will work with providers to allow additional time for response on a case-by-case basis.

### Criminal Records Checks

Providers are advised to contact WebCheck locations or their local law enforcement office prior to visiting these locations. This will enable the provider to confirm if the location is open performing criminal records checks. The following link provides a directory of all the WebCheck locations in the state: <https://www.ohioattorneygeneral.gov/Business/Services-for-Business/Webcheck>

#### A. **For ODA Providers:**

- If the provider is unable to request a criminal records check for an applicant, the provider **shall NOT** conditionally hire an applicant until the provider is able to request a criminal records check.
- If an applicant's criminal records check results do not come back within 60-days of when the provider requests the criminal records check, please email the ODA Provider Network Management team at [Provider\\_Network\\_Mgmt@age.ohio.gov](mailto:Provider_Network_Mgmt@age.ohio.gov).
- ODA-certified providers and direct-care employees who are required to have a criminal records check every 5-years, but who cannot have their criminal records check completed timely due to the COVID-19 emergency, may continue to provide services while attempting in good faith to complete a criminal records check as

quickly as possible.

**B. ODM Providers:**

- If the provider or a provider's direct-care employee is unable to complete their 5-year criminal records check, they must notify the provider oversight agency (PAA or PCG).
- If the provider is an agency provider, they must check local courts' websites for convictions of their direct-care employees. If any disqualifying offenses are found, the provider must determine if there are exclusion periods by reviewing OAC Chapter 173-9 for ODA providers or OAC rule 5160-45-07 for ODM agency providers.
- Provider oversight entities shall document (For ODA: in PIMS) the provider is attempting to conduct the 5-year criminal records check and periodically contact the provider to ensure they continue their attempt to complete the 5-year criminal records check.

## General Requirements

### Virtual Provider Training

- A. Home Health Aide training may be conducted through virtual systems. The trainee will still be required to complete the written testing and skills testing by return demonstration on-site by the provider.
- B. ODM Provider Trainings for Ohio Home Care Waiver providers are available on-line and can be found at <http://ohiohcbs.pcgus.com/>.

### Provider Capacity/Access to Services

- A. Providers must work with case managers and prioritize individuals with no natural supports in the home based on their needs (highest need to lowest) and case management direction.
- B. Staff at provider oversight agencies are expected to notify case management staff and the state if they become aware of provider shortage(s)/capacity concerns.
  - **For ODA Providers:** The PAA provider staff shall contact appropriate clinical staff in the PAA. The PAA shall notify ODA by email at the following mailbox: [Provider\\_Network\\_Mgmt@age.ohio.gov](mailto:Provider_Network_Mgmt@age.ohio.gov);
  - **For ODM Providers:** The provider oversight agency shall notify ODM at the following mailbox: [BureauNetworkManagement@medicaid.ohio.gov](mailto:BureauNetworkManagement@medicaid.ohio.gov).
- C. If a provider oversight agency learns of a provider suspending service delivery during the COVID-19 emergency, the provider oversight agency shall document the occurrence in the provider's electronic record, noting the provider ceased to do business.
  - After the COVID-19 emergency, the state will work with the provider oversight agency to determine if the provider wishes to remain a provider.
  - When a provider completely closes with notice, the state may consider this a voluntary provider closure and, in such cases, will terminate the provider agreement. Providers can reapply at any time.

### Rates

ODA and ODM are aware providers face increased costs obtaining PPE for staff. Currently, the state

is not proposing to modify provider rates. On March 23, 2020, rates for certain services did increase. Current fee-for-service waiver program rates (Nursing Facility Level of Care waivers) can be found in the following rules:

- For PASSPORT waiver rates review the Appendix to OAC [5160-1-06.1](#).
- For Assisted Living waiver rates review the Appendix to OAC [5160-1-06.5](#).
- For Ohio Home Care waiver rates review OAC [5160-46-06](#).

#### **Modified Supervisory Visit Schedule**

- A. Initial supervisory visits for hands-on waiver services, including personal care and homemaking services (to initiate an activity plan), may be completed telephonically.
- B. All subsequent supervisory visits may be completed telephonically.
- C. If the initial and/or supervisory visit is completed telephonically:
  - The modified supervisory schedule must be documented in the individual's activity plan.
  - The provider must notify the case manager when performing the supervisory visit telephonically.
  - The provider is still required to meet all requirements for initial activity plan development as outlined in applicable OAC rules.

#### **Modified Signature Requirements – REVISED May 8, 2020**

- A. Effective April 30, 2020: An individual's signature or other documentation as permitted by applicable OAC rule is required to validate service delivery. If the provider is collecting individual signatures and the individual is unable to provide their signature at the time of the service delivery, the individual must submit an electronic signature or standard signature via regular mail, or otherwise provide a signature no later than the next face-to-face visit with the provider. This is applicable to the following services:
  - Home Medical Equipment and Supplies/Supplemental Adaptive and Assistive Device Services.
  - Home Delivered Meals.
- B. Rules for ODA and ODM home delivered meals (OAC 5160-44-11) and ODA home medical equipment and supplies service (OAC 173-39-02.7) have provisions for accepting documentation from a delivery driver to verify service delivery. If the rules governing a program require signature as outlined in OAC 5160-44-31 (including ODM's Supplemental Adaptive and Assistive Device Services), or a provider is collecting signatures under existing rule authority, the provider is to obtain signatures as described in paragraph A above.
  - A provider is permitted to change their method for documenting service delivery if that change is supported by rule and implemented according to program requirements (e.g. notifying a case manager).
- C. The state will issue future guidance regarding the documentation of services delivered prior to this policy change.

#### **Personal Emergency Response System (PERS) Providers**

- A. PERS providers may ship products directly to individuals and conduct installation

telephonically, via skype, or any other means available to both the provider and individual. PERS providers completing the installation remotely:

- May still bill for installation upon successful activation of the bill for installation.
  - If an item, such as a medicine dispenser, is being delivered, the provider must complete the installation in-person.
  - The provider must obtain documentation to demonstrate the completed installation complies with OAC rules governing PERS. This may include obtaining electronic signature or signature via regular mail.
- B. PERS providers may send new units and provide installation instructions telephonically when existing units malfunction and require replacement.
- PERS providers may manually retrieve the malfunctioning unit after the COVID-19 emergency is over.
  - PERS providers may also utilize pre-paid packaging for the individual to return the malfunctioning unit by mail.

### **Telephonic Counseling**

The use of telephonic counseling for social work services is permitted. The Counselor, Social Worker and Marriage and Family Therapist Board has recommendations and requirements regarding services during the COVID-19 emergency. Information can be found on their website at: <https://cswmft.ohio.gov>

### **Ohio Board of Nursing – Temporary License**

Information on obtaining initial nursing licensure (for temporary licenses and volunteer nurses) can be found on the Ohio Board of Nursing website: <https://nursing.ohio.gov/wp-content/uploads/2020/03/General-Information-COVID-19-2.pdf>.

### **Medical Transportation – Application & Renewal Process**

Vehicle inspections currently have a temporary application and renewal process. Please see the following link on the Emergency Management Services (EMS) web page for details: <https://www.ems.ohio.gov/medical-transportation.aspx>.

### **Assisted Living Providers (REVISED)**

- A. COVID-19 Positive/Probable Notification Requirement:
- Assisted living providers are required by the Ohio Department of Health (ODH) to notify residents and their sponsor and/or guardian if an individual at the setting is COVID-19 positive or probable.
  - If the setting is certified by ODA to provide assisted living services, the provider is also required to contact the PAA and MyCare Ohio plans in that region (if appropriate).
  - This requirement applies regardless if the individual who tested COVID-19 positive or probable is a waiver enrollee. Additional guidance concerning this requirement can be found online on the ODH website at: <https://coronavirus.ohio.gov/static/publicorders/SignedNursingHomeOrder-041520.pdf>
- B. Use of ODA Approved Living Units (OAC 173-38-03):

- An individual may enroll in the assisted living program in a unit not approved by ODA during the COVID-19 emergency. Upon enrollment, the provider must have an approved plan to transition the individual into an approved unit or, to obtain ODA approval of the unit.