



PUBLIC-COMMENT PERIOD
PROVIDER CERTIFICATION

November 1, 2021

ODA reviewed rules 173-39-01, 173-39-02, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, 173-39-02.20, 173-39-03, 173-39-03.1, 173-39-03.2, 173-39-03.3, 173-39-03.4, and 173-39-04 of the Administrative Code and now proposes to amend these rules.

Please feel free to review these rules and their business impact analysis offer recommendations for improving them. Submit recommendations to rules@age.ohio.gov no later than **November 14, 2021** 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

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

ODA PROVIDER CERTIFICATION

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

Rule Number(s): 173-39-01, 173-39-02, 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.13, 173-39-02.20, 173-39-03, 173-39-03.1, 173-39-03.2, 173-39-03.3, 173-39-03.4, 173-39-04

Date of Submission for CSI Review: November 1, 2021

Public Comment Period End Date: November 14, 2021 at 11:59PM.

Rule Type/Number of Rules:

New/ # rules

No Change/ # rules (FYR?)

Amended/ 16 rules (FYR?)

Rescinded/ # rules (FYR?)

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

Reason for Submission

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

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

Please review the next page.

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.

Rule 173-39-01 of the Administrative Code introduces Chapter 173-39 of the Administrative Code and defines terms used in that chapter.

Rule 173-39-02 of the Administrative Code establishes the general requirements to become, and to remain, an ODA-certified provider. Rules 173-39-02.1, 173-39-02.4, 173-39-02.7, 173-39-02.8, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, and 173-39-02.20 of the Administrative Code establish the specific requirements to become, and to remain, an ODA-certified provider of an adult day service, choices home care attendant service, home medical equipment and supplies, homemaker, nutritional consultations, personal care, social work counseling, non-emergency medical transportation, and enhanced community living (respectively).

Rule 173-39-03 of the Administrative Code establishes the general application process to become an ODA-certified provider. Rules 173-39-03.1, 173-39-03.2, 173-39-03.3, 173-39-03.4 of the Administrative Code establish the specific processes related to application including federal heightened scrutiny of provider settings with institutional characteristics, changes of ownership interest or organizational structure, applying to be certified to provide additional services, and applying to be certified in additional regions or to certify additional business sites (respectively).

Rule 173-39-04 of the Administrative Code establishes the requirements for structural compliance reviews.

On January 10, 2021, ODA adopted amendments to rules 173-39-02, 173-39-02.10, 173-39-03, 173-39-03.3, 173-39-03.4, and 173-39-04 of the Administrative Code to create flexibilities during a state of emergency declared by the governor or on an ongoing basis (as is the case for an adult day service provided in a consumer's home). On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order [2021-09D](#) to authorize ODA to adopt emergency rule [173-1-04](#) of the Administrative Code, which declared that providers have the same flexibility until the end of the federal public health emergency. ODA has since adopted a regular version of rule [173-1-04](#) of the Administrative Code and now proposes to amend the rules in this package to implement the flexibilities authorized by rule 173-1-04 into the rules of this package.

Similarly, ODA proposes to amend rules 173-39-02.8 and 173-39-02.11 to give providers the following flexibilities during a state of emergency declared by the governor or a federal public health emergency:

- Flexibility to conduct the initial supervisor's visit by telephone, video conference, or in person.

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- Flexibility to conduct subsequent supervisor's visits by telephone, video conference, or in person, depending upon the individual's needs, but only if at least two of the supervisor's visits per year are conducted in person.
- Flexibility to verify that they have conducted initial and subsequent visits without collecting a unique identifier of the individual or the individual's caregiver.

ODA proposes to make the following amendments to reduce requirements in rules for outdated modes of communication or unnecessary in-person interaction:

- Throughout this rule package, ODA proposes to either (1) eliminate the unnecessary use of words that imply requirements for paperwork (e.g., "writing," "written," "document," "documentation," and "copy") or (2) if verbal compliance is not an option, indicate that provider may also comply electronically or by email.
- Throughout this rule package, ODA proposes to replace terms indicating options for unique identifiers of an individual, driver, or provider (e.g., "signature," "initials," "fingerprint," "mark," "stamp") with "unique identifier," which is a term ODA defines in rule 173-39-01 of the Administrative Code.

In rule 173-39-01 of the Administrative Code, ODA also proposes to do the following:

- Revise paragraph (A)(1) of the rule to reflect amendments made to R.C. §§ 173.39 and 173.391 by Am. Sub. H.B. 110 (134th G.A.).
- Remove the regulatory restriction from the definition of "activity plan."
- Define "competency evaluation" rather than do so in rule 173-39-02.11 of the Administrative Code.
- Remove the regulatory restrictions from the definition of "complete application."
- Delete the definitions of "consumer," "governing body or managing employee," and "individual's signature" because these terms either do not occur in the chapter or will not occur in the chapter after ODA adopts proposed amendments to the chapter.
- Implement Senate Bills 3, 5, 6, and 7 and House Bill 252 (134th G.A.) by (1) defining "licensed healthcare professional" and (2) amending the definitions of "registered nurse" and "licensed practical nurse."
- Revise the definition of "unique identifier" to include the unique identifier of a driver under rule 173-39-02.13 of the Administrative Code, the unique identifier of a participant-directed provider under rules 173-39-02.4 and 173-39-02.11 of the Administrative Code, a homemaker aide under rule 173-39-02.8 of the Administrative Code, and the unique identifier of a PCA under rule 173-39-02.20 of the Administrative Code.

In rule 173-39-02 of the Administrative Code, ODA also proposes to do the following:

- Renumber paragraph (A)(1)(a) as paragraph (A)(2) and delete "unless rule 173-9-02 of the Administrative Code exempts the provider" from that paragraph because there is no reason to highlight rule 173-9-02 of the Administrative Code when the entirety of Chapter 173-9 of the Administrative Code applies.
- Insert "report all reportable items to verify the service to ODA or its designee and" between "shall" and "comply" in paragraph (B)(2) of this rule.
- Insert "within seven days after the change" to the end of paragraph (B)(3)(d) of this rule. This arises from ODA's experience of trying to contact providers about COVID-19 issues during the COVID-19 public health emergency and finding that much of the contact information was outdated.

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- Insert examples of “all records necessary” into paragraph (B)(10)(a)(i) of this rule.
- Insert examples of “qualifications” into paragraph (B)(10)(a)(ii) of this rule.

In rule 173-39-02.1 of the Administrative Code, ODA also proposes to do the following:

- Replace the requirement for an outdated mode of communication to post (as in a “poster”) daily and monthly planned activities throughout the center with a requirement to announce daily and monthly planned activities through two or more of four different media options.
- Delete requirements related to fire safety. The state fire marshal established fire-safety requirements the in the Ohio Fire Code (Chapter [1301:7-7](#) of the Administrative Code) and the Board of Building Standards established the building standards in the Ohio Building Code (Agency [4101:1](#) of the Administrative Code). Adult day centers are classified in those codes as “institutional group I-4.”
- Replace the requirement for the provider to provide orientation to PCAs with a requirement for the provider comply with the requirements for providing orientation to PCAs in rule 173-39-02.11 of the Administrative Code.
- Deem that any successfully-completed continuing education or in-service training completed to maintain a professional license, certification, or registration counts toward the requirements for continuing education or in-service training in this rule if complete during the same calendar year.
- Replace the requirements on retaining records on compliance with training requirements with a requirement to comply with the requirements for records on training PCAs in rule 173-39-02.11 of the Administrative Code.

In rule 173-39-02.4 of the Administrative Code, ODA also proposes to do the following:

- Add an introductory paragraph to the rule to explain that the rule’s requirements apply to both a participant-directed provider and an agency provider and to further explain that, for an agency provider, a requirement for a provider in the rule may apply to an employee of the agency.
- Explain that the rule’s requirements to complete time sheets apply only until rule 5160-1-40 of the Administrative Code requires the provider to use EVV to verify the provision of a service.
- Require providers and individuals to prove their unique identifier to verify the accuracy of the task sheet.

In rule 173-39-02.7 of the Administrative Code, ODA also proposes to replace occurrences of “the case manager” in paragraphs (B)(4)(b) and (B)(4)(c) of the rule with “OODA’s designee.”

In rule 173-39-02.8 of the Administrative Code, ODA also proposes to do the following:

- Define “aide” and use the term throughout the rule (instead of “homemaker aide”).
- Combine the first 4 ways that a person may qualify to be an aide into “The person meets at least one of the qualifications to be a PCA under...” since they are identical to the requirements to qualify to be a PCA.
- No longer require the verification of training to include a list of instruction materials or the signatures of the trainer and tester.
- Move the paragraph on service verification to the last subparagraph of paragraph (B) of the rule.

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- Require service verification records to include the individual's name.

In rule 173-39-02.10 of the Administrative Code, ODA also proposes to delete the requirements for clinical records.

In rule 173-39-02.11 of the Administrative Code, ODA proposes to do the following:

- Give agency providers flexibility to *ensure* that its employees successfully complete orientation, rather than require the providers to *provide* that orientation.
- Give agency providers flexibility to *ensure* each PCA successfully completes any required additional training and competency evaluation, rather than require the provider to *conduct* that training.
- Indicate that any training successfully completed through <https://mylearning.dodd.ohio.gov/> or <https://collinslearning.com/home-health-care/> is approved.
- Allow the portions of training that are not competency evaluation to occur online.
- Establish a standard for initial qualification that requires the portion of a PCA's competency evaluation that involves return demonstration to be in person.
- Require the provider to comply with the requirements for EVV in rule 5160-1-40 of the Administrative Code.
- Indicate that a person may qualify to be a participant-directed provider if the person is listed in the nurse aide registry as "expired" or "there are no records matching your search."
- Give the participant-directed provider flexibility to obtain training from any organization that uses an RN (or LPN under the direction of an RN) to conduct the training and testing.

In rule 173-39-02.12 of the Administrative Code, ODA also proposes do the following:

- Replace, at the request of the Counselor, Social worker, and Marriage and Family Therapist Board, occurrences of "social work counseling service" and "social work counseling" with "social work or counseling."
- Implement Senate Bill 2 (134th G.A.), which allows a licensed psychologist from another state with an e.passport to provide services in Ohio.
- List the Ohio Board of Psychology and the State Medical Board in paragraph (B)(2) of this rule.
- Remove supervisory requirements, since those are regulated by licensing agencies.
- Remove requirements for clinical records.

In rule 173-39-02.20 of the Administrative Code, ODA also proposes to do the following:

- Use *PCA* instead of *direct-care staff* throughout the rule.
- Require the provider to comply with the requirements and flexibilities in rule 173-39-02.11 of the Administrative Code regarding PCA supervisor qualifications.
- Require the provider to comply with the requirements and flexibilities in rule 173-39-02.11 of the Administrative Code regarding PCA qualifications, orientation, and training.

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- Require the individual's caregiver (if the individual has a caregiver) to be part of the in-person review of the person-centered activity plan.
- Delete a duplicate paragraph on adequate staffing levels.

In rule 173-39-03 of the Administrative Code, ODA also proposes to do the following:

- Require itself to use form ODM 10172 to determine if a setting is presumed to have the qualities of an institution.
- Replace "on June 11, 2020" in paragraph (G) of this rule with "when the provider completes an online application followed with an email to provider_enrollment@age.ohio.gov."

In rule 173-39-04 of the Administrative Code, ODA also proposes to do the following:

- Clarify in paragraph (C) of this rule that ODA has authority to authorize ODA's designee to miss a deadline in this rule.
- Announce that ODA may suspend any review during a state of emergency declared by the governor or a federal public health emergency.

Lastly, ODA also proposes to make non-substantive changes throughout this rule package to comply with LSC's *Rule Drafting Manual* or to update or improve cross-references, terminology, URLs, clarity, punctuation, spelling, and grammar.

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

R.C. §§ [121.07](#), [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.

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 C.F.R. 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.

These 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.

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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 them during structural compliance reviews or investigations of alleged incidents.

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

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

No.

Development of the Regulation

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

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

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

On April 27, 2021, ODA emailed the following stakeholders to request their input on a proposal to amend rule 173-39-02.11 of the Administrative Code to allow the following during a state of emergency declared by the governor: If the PCA supervisor conducts at least two subsequent visits per year in person, the PCA supervisor may conduct the remainder of the subsequent visits during the same year by telephone, video conference, or in person based upon the individual's needs. In the same email, ODA said it would accept recommendations for improving any other part of the rule.

- LeadingAge Ohio.
- Ohio Association of Area Agencies on Aging (OAA).
- Ohio Council for Home Care and Hospice.
- Ohio Health Care Association.
- Ohio Association of Senior Centers.
- Ohio Jewish Communities.
- 13 PASSPORT Administrative Agencies (PAAs)—one of which also reached out to personal care providers in its region.
- State Long-Term Care Ombudsman.

On July 12, 2021, ODA sent an email to the following stakeholders to request their recommendations for improving the current version of all the rules in this package, including their recommendations for removing any requirements for outdated modes of communication:

- Catholic Social Services of the Miami Valley.

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- LeadingAge Ohio.
- Ohio Assisted Living Association.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Association of Area Agencies on Aging (OAA).
- Ohio Association of Medical Equipment Suppliers.
- Ohio Association of Senior Centers.
- Ohio Council for Home Care and Hospice.
- Ohio Health Care Association.
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

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

In response to ODA’s April 27, 2021 email, ODA received the following 9 comments from 7 stakeholders on rule 173-39-02.11 of the Administrative Code:

- Regarding PCA supervisor visits:
 - A PAA said it is supportive of this change.
 - In support of the proposal, a provider association said the proposed change would minimize exposure to individuals and PCA supervisors, but would also ensure that at least two visits per year were in person to allow for proper assessment.
 - A provider association recommended requiring “safe engagement” protocols (e.g., COVID-19 pre-screen, PPE, social distancing) for in-person visits. ODA emailed the association on November 1, 2021 to explain that it does not intend to duplicate CDC guidance or public health orders in its rules.
 - Another PAA asked if the initial PCA supervisor visit is in person, can it count as one of the two in-person PCA supervisor visits required per year if offering PCA supervisor visits by telephone or video conference at other times of the year? ODA emailed the PAA on November 1, 2021 to explain that it proposes to amend the rule to clarify that a PCA supervisor may conduct two subsequent in-person visits in the same year or the combination of an initial in-person visit and an in-person subsequent visit in the same year.
 - A provider offered appreciation for the flexibility to conduct supervisors’ visits to individuals by telephone or video conference during the state of emergency and recommended giving individuals the option to request that supervisor’s visits to them be in person, by telephone, or by video conference. On November 1, 2021, ODA emailed a response to explain that in-person visits by the PCA supervisor are necessary even if the individual would prefer to only have visits by telephone or video conference. Individuals need PCA supervisors to visit them in person for their own sake. Some individuals are not capable of visits by telephone or video conference. Plus, individuals may try to protect their honor by not being honest about

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their true condition during a visit by telephone or video conference. For example, they may say that they have been taking baths when they have not (or the PCA has not been giving the individual baths).

- A provider recommended requiring case managers to conduct risk assessments to determine which individual may require more in-person visits by PCA supervisors and which individuals would benefit from PCA supervisor visits by telephone or video conference. On November 1, 2021, ODA emailed a response to explain the following: (1) This rule establishes the requirements to become, and to remain, an ODA-certified provider of personal care. It doesn't establish requirements for case managers at PASSPORT administrative agencies. (2) In-person visits by the PCA supervisor are necessary even if the individual would prefer to only have visits by telephone or video conference. Individuals need PCA supervisors to visit them in person for their own sake. Some individuals are not capable of visits by telephone or video conference. Plus, individuals may try to protect their honor by not being honest about their true condition during a visit by telephone or video conference. For example, they may say that they have been taking baths when they have not (or the PCA has not been giving the individual baths).
- A provider asked for clarification on how often a provider must provide subsequent PCA supervisor visits. On November 1, 2021, ODA responded in email that the proposed amendment to this rule will give providers flexibility during a state of emergency declared by the governor or a federal public health emergency. If a PCA supervisor conducts at least two in-person visits per year to an individual, the proposed amendment to this rule will allow the PCA supervisor to conduct remaining visits to that individual by telephone, video conference, or in-person, based upon the individual's needs.
- Regarding online training:
 - PAA asked for clarification on how a provider should verify the qualifications of trainers, testers, and educational materials when the training is obtained online. ODA emailed the PAA on November 1, 2021 to explain that it does not require the provider to verify these things. Likewise, Medicare does not require such verification for Medicare-certified home health agencies.
 - A PAA asked for a definition of "remote learning platform." ODA emailed the PAA on November 1, 2021 to announce that it proposes to amend the rule to allow portions of training that are not competency evaluation to occur online. In doing so, ODA proposes to use "online" rather than "remote learning platform." There is, therefore, no need to define "remote learning platform."

In response to ODA's July 12, 2021 email, ODA received a recommendation from a provider association to remove a requirement in rule 173-39-02.11 of the Administrative Code to verify the accuracy of monitoring systems with random checks if the provider uses electronic visit verification (EVV). On November 1, 2021, ODA emailed the provider association to explain that the requirement to verify the accuracy of monitoring systems with random checks is found in section 121.36 of the Revised Code, not in rule 173-39-02.11 of the Administrative Code. Section 121.36 of the Revised Code does not make any exceptions for EVV. Additionally, that section requires ODA to adopt rules to implement its requirements. To not create any additional burdens on providers, ODA simply alerts providers in rule 173-39-02.11 that they are also subject to section 121.36 of the Revised Code.

ODA did not receive a recommendation on any rule other than rule 173-39-02.11 of the Administrative Code.

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

Individuals enrolled in the PASSPORT and Assisted Living Programs have a higher risk for contracting COVID-19 than the general population. Accordingly, many of ODA's proposals in this rule package are influenced by guidelines from the Centers for Disease Control and Prevention (CDC) on reducing on reducing in-person interaction to limit exposure to COVID-19.

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

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

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

Before the proposed new rule takes effect, ODA will send an email to subscribers of our rule-notification service to feature the rule.

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 amendments to these rules take effect, ODA will email subscribers of our rule-notification service to feature the rules.

Through regular monitoring activities, ODA and its designees will monitor ODA-certified 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

Every ODA-certified provider.

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

The following are the adverse impacts of these rules:

- The requirement to apply to become certified.
- Base requirements for all ODA-certified providers in rule 173-39-02 of the Administrative Code. (e.g., To be certified by ODA, a provider must comply with licensure laws and background check laws, provide ODA with contact information, and have a commercial liability insurance policy.)

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- Basic requirements unique to each service. (e.g., The requirements for a transportation requirement include inspecting vehicles and hiring qualified drivers while the requirements for a provider of an adult day service include using a qualified adult day center and having an inter-disciplinary team.).
- Structural compliance reviews and potential disciplinary actions for non-compliance.

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

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

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

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

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 this rule. 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?

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

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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;~~ to become, and to remain, certified by ODA, compliance reviews of ODA-certified providers, and disciplinary actions that may be imposed upon ODA-certified providers.
- (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~~ schedule for when to provide ~~the~~ those 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.

"Competency evaluation" includes both standardized testing (whether written or electronic) and skills testing by return demonstration to ensure an applicant or employee is able to address the care needs of the individual to be served.

"Complete application" means the application and all ~~documentation—and information records~~ 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~~ Although ODA cannot approve an application to become an ODA-certified assisted living provider unless the RCF is licensed, the application 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 record" has the same meaning as in section 1306.01 of the Revised Code. For a health care record, "electronic record" has the same meaning as in section 3701.75 of the Revised Code.

"Electronic signature" has the same meaning as in section 1306.01 of the Revised Code. If attached to, or associated with, a health care record, "electronic signature" has the same meaning as in section 3701.75 of the Revised Code.

"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.

"Health care record" has the same meaning as in section 3701.75 of the Revised Code. Examples of a health care record are a plan of treatment or diet order received from a licensed healthcare professional.

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

"Incident" means any event or situation that is not consistent with providing routine care ~~of or~~ a service to an individual that may result in injury to a person or damage to property or equipment. Examples of an incident are abuse, neglect, abandonment, accidents, and exploitation ~~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 or situation impacts the individual), a provider, a facility, or a staff member of a provider, facility, ODA, ODA's designee, or ~~other~~ another 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 healthcare professional" includes a physician with an "expedited license," as defined in section 4731.11 of the Revised Code; or a licensed audiologist, occupational therapist, occupational therapy assistant, physical therapist, physical therapy assistant, or speech-language pathologist from another state with "compact privilege," as defined in section 4753.17, 4755.14, or 4755.57 of the Revised Code. Beginning on January 1, 2023, "licensed healthcare professional" also includes an RN or LPN with a "multistate license" from another state with "multistate licensure privilege," as those terms are defined in section 4723.11 of the Revised Code.

"Licensed practical nurse" (LPN) has the same meaning as in section 4723.01 of the Revised Code. Beginning on January 1, 2023, "licensed practical nurse" also includes a licensed practical nurse with a "multistate license" from another state with "multistate licensure privilege," as those terms are defined in section 4723.11 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. Beginning on January 1, 2023, "registered nurse" also includes a registered nurse with a "multistate license" from another state with "multistate licensure privilege," as those terms are defined in section 4723.11 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, driver (in the case of rule 173-39-02.13 of the Administrative Code), participant-directed provider (in the cases of rules 173-39-02.4 and 173-39-02.11 of the Administrative Code), aide (in the case of rule 173-39-02.8 of the Administrative Code), or PCA (in the case of rule 173-39-02.20 of the Administrative Code) 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, driver, participant-directed provider, aide, or PCA 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

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

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

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

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

- (a) Any qualification (e.g., licensure, training requirements, staffing levels) required by this chapter.
- (b) Any qualification (e.g., licensure, certification, registration) required by applicable federal, state, and local laws, including the requirement under 45 C.F.R. Part 162 to have a national provider identifier (NPI), if applicable.

~~(e)~~(2) Criminal records ~~check~~ checks and database reviews: The provider shall comply with sections 173.38 and 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code, ~~unless rule 173-9-02 of the Administrative Code exempts the provider.~~ The provider shall also comply with rule 5160-1-17.8 of the Administrative Code.

~~(2)~~(3) Business site:

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

~~(3)~~(4) Contact information: The provider shall have a valid email address and telephone number.

~~(4)~~(5) Insurance: The provider shall have the following, unless the provider is a participant-directed provider:

- (a) A minimum of one million dollars in commercial liability insurance, which includes coverage for individuals' losses due to theft or property damage. In lieu of commercial liability insurance, a non-agency provider may have a minimum of one million dollars in professional liability insurance, which includes coverage for individuals' losses due to theft or property damage.
- (b) Written instructions any individual may use to obtain payment for loss due to theft or property damage caused by the provider, or if applicable, the provider's employee.

~~(5)~~(6) Provider agreements: The provider shall enter into, comply with, and maintain an active status with the following:

- (a) A medicaid-provider agreement, as required by rules 5160-1-17.2 and 5160-1-17.4 of the Administrative Code.
- (b) A provider agreement with ODA's designee for the region in which the provider seeks certification to provide services pursuant to rule 173-39-03 of the Administrative Code.

~~(6)~~(7) Incident reporting: The provider shall have a written or electronic policy on documenting incidents ~~that~~ which complies with paragraph (B)(3)(b) of this rule.

~~(7)~~(8) Electronic visit verification (EVV): The provider shall have an ODM-approved EVV system in place compliant with rule 5160-1-40 of the Administrative Code, if that rule requires the provider to do so.

(B) Requirements for every type of provider to remain certified:

- (1) Continuation: The provider shall remain in compliance with all requirements under paragraph (A) of this rule.
- (2) Service-related: For any service ODA certified the provider to provide, the provider shall report all reportable items to verify the service to ODA or its designee and comply with any rule in this chapter regulating the provision of ~~that~~ the service. If the provider's only means to comply with

service-verification requirements in those rules is to collect the individual's handwritten or electronic signature (or electronic or handwritten initials), the provider may collect the individual's handwritten or electronic signature (or electronic or handwritten initials) on a date later than the date of service. If there is any conflict between this paragraph and a rule in this chapter, this paragraph overrides the conflicting requirement in another rule of this chapter.

(3) Reporting:

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

- (i) The individual has been hospitalized, placed in a long-term care facility, or is deceased.
 - (ii) The health or safety of the individual or provider is at serious, imminent risk.
 - (iii) The individual chooses to no longer receive services from the provider.
- (4) Confidentiality: The provider is subject to all state and federal laws and regulations governing individual confidentiality including sections 5160.45 to 5160.481 of the Revised Code, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. parts 160, 162, and 164.
- (5) Legally-responsible family members: The provider shall not provide a service to an individual if the provider is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative. During a state of emergency declared by the governor [or a federal public health emergency](#), a provider may provide a service to an individual if the provider is the individual's spouse, parent, or step-parent. The period in which a spouse, parent, or step-parent is qualified to provide a service to an individual [during a state of emergency declared by the governor or a federal public health emergency](#) ends when the provider's medicaid provider agreement is terminated.
- (6) Volunteers:
 - (a) For agency and assisted living providers, the provider shall not allow a volunteer to provide any service ODA certified the provider to provide unless the volunteer is supervised by the provider's supervisory staff.
 - (b) For non-agency providers, the provider shall not allow a volunteer to provide any service ODA certified the provider to provide unless ODA's designee authorizes the provider to do so.
 - (c) For participant-directed providers, the provider shall not allow a volunteer to provide any service ODA certified the provider to provide unless ODA's designee and the individual authorize the provider to do so.
- (7) Person-centered planning: The provider shall comply with the person-centered planning requirements in rule 5160-44-02 of the Administrative Code.

- (8) Ethical, professional, respectful, and legal service standards: The provider shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following:
- (a) Consuming alcohol while providing services to the individual.
 - (b) Consuming medicine, drugs, or other chemical substances in a way that is illegal, unprescribed, or impairs the provider from providing services to the individual.
 - (c) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the individual or his or her household or family members.
 - (d) Engaging the individual in sexual conduct, or in conduct a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
 - (e) Leaving the individual's home when scheduled to provide a service for a purpose not related to providing the service without notifying the agency supervisor, the individual's emergency contact person, any identified caregiver, or ODA's designee.
 - (f) Treating ODA or its designee disrespectfully.
 - (g) Engaging in any activity while providing a service that may distract the provider from providing the service including the following:
 - (i) Watching television, movies, videos, or playing games on computers, personal phones, or other electronic devices whether owned by the individual, provider, or the provider's staff.
 - (ii) Non-care-related socialization with a person other than the individual (e.g., a visit from a person who is not providing care to the individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, email, or video).
 - (iii) Providing care to a person other than the individual.
 - (iv) Smoking tobacco or any other material in any type of smoking

equipment, including cigarettes, electronic cigarettes, vaporizers, hookahs, cigars, or pipes.

- (v) Sleeping.
- (vi) Bringing a child, friend, relative, or anyone else, or a pet, to the individual's place of residence.
- (vii) Discussing religion or politics with the individual and others.
- (viii) Discussing personal issues with the individual or any other person.
- (h) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including publishing photos of the individual on social media without the individual's written [or electronic](#) consent.
- (i) Engaging in behavior a reasonable person would interpret as inappropriate involvement in the individual's personal relationships.
- (j) Making decisions, or being designated to make decisions, for the individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship, or authorized representative.
- (k) Selling to, or purchasing from, the individual products or personal items, unless the provider is the individual's family member who does so only when not providing services.
- (l) Consuming the individual's food or drink, or using the individual's personal property without his or her consent.
- (m) Taking the individual to the provider's business site, unless the business site is an ADS center, RCF, or (if the provider is a participant-directed provider) the individual's home.
- (n) Engaging in behavior constituting a conflict of interest, or taking advantage of, or manipulating services resulting in an unintended advantage for personal gain that has detrimental results to the

individual, the individual's family or caregivers, or another provider.

(9) Training: The provider shall participate in ODA's or its designee's mandatory free provider training sessions.

(10) Records and monitoring:

(a) Records retention:

(i) Service records: The provider shall retain all records necessary (including activity plans, assessments (if required), permits (if required), and all reportable information to verify an episode of service), and in such form, so as to fully disclose the extent of the services the provider provided, and significant business transactions, until ~~the latter~~ all of the following ~~dates~~ periods of time have passed:

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

(b) The date on which ODA, its designee, ODM, or a duly-authorized law enforcement official concludes a review of the records and any findings are resolved.

(c) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are resolved.

(ii) Employee records: The provider shall retain all records regarding an employee's background checks and qualifications (including records on initial qualifications and successful completion of orientation and subsequent training (if required)) for the duration of their employment and for six years after the provider no longer ~~employs~~ retains the employee.

(iii) Electronic records: The provider may use ~~an~~ electronic ~~system for retaining the~~ records ~~required in this rule~~.

(b) Compliance reviews: The provider shall participate in good faith, and assist ODA and its designee with scheduling, any compliance reviews

under rule 173-39-04 of the Administrative Code.

- (c) Access: The provider shall, upon request, immediately provide representatives of ODA or its designee with access to its business site(s) during the provider's normal business hours, a place to work in its business site(s), and access to policies, procedures, and records, ~~and documentation~~ for each unit of service billed.

(11) Payment:

- (a) The provider shall bill only for a service if the provider complies with the requirements under all applicable laws, rules, and regulations, including service-verification requirements.
- (b) ODA's obligation to pay the provider for the costs of services the provider provides as a certified provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.
- (c) The provider shall accept the payment rates established in its provider agreement with ODA's designee as payment in full for the services it provides, and not seek any additional payment for services from the individual or any other person.
- (d) The provider may provide a service not authorized by the individual's person-centered services plan, but ODA (or its designee) shall only pay the provider for providing services authorized by the individual's person-centered services plan.

- (12) Other laws: The provider shall comply with all applicable federal, state, and local laws, rules, and regulations and is responsible for ensuring all subcontractors comply with all applicable federal, state, and local laws, rules, and regulations.

- (13) Rules updates: The provider shall subscribe to receive email updates on ODA's rules on <https://aging.ohio.gov>.

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

- (1) Agency providers:

- (a) Experience: On the day the provider applies to become certified by ODA, the provider shall ~~submit~~ provide records to ODA verifying the provider has at least three months of experience providing the specific service for which it seeks certification from ODA to at least two Ohio adults in a HCBS setting. The provider's experience shall include all of the following related to providing those services:
- (i) The provider was a business entity with an active registration from the Ohio secretary of state.
 - (ii) The provider invoiced and was paid for providing the services.
 - (iii) ~~The~~ Evidence that the services occurred during the twelve months preceding the day the provider applies to become certified by ODA.
- (b) Identifying key persons: The provider shall disclose the following:
- (i) The name of any person with an ownership interest in the provider.
 - (ii) The name of any person with an ownership interest in the provider who was convicted of a felony under a state or federal law.
 - (iii) A ~~written~~ table of organization clearly identifying lines of administrative, advisory, contractual, and supervisory responsibilities.
- (c) Statements: The provider shall provide ODA or its designee with ~~written~~ statements on the following:
- (i) The purpose of the provider's business.
 - (ii) The provider's compliance with 45 C.F.R. 80.4 regarding the provision of services.
 - (iii) The provider's compliance with the Equal Employment Opportunity Act of 1972, federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.

- (iv) The provider's payment of all applicable federal, state, and local income and employment taxes for the most recent year.
- (d) Policies: The provider shall have written policies or an electronic record of written policies. Additionally, if the provider has a governing board, the provider shall have written bylaws or an electronic record of written policies; and, if the provider is incorporated, the provider shall have written articles of incorporation or an electronic record of written policies. The policies, bylaws, or articles of incorporation shall include requirements for its employees to provide services in a manner compliant with paragraph (B)(8) of this rule.
- (2) Non-agency providers: The provider shall provide a ~~written~~ statement to ODA or its designee certifying that he or she paid all applicable federal, state, and local income and employment taxes.
- (3) Participant-directed providers:
 - (a) Age: The provider shall be at least eighteen years of age.
 - (b) Identification: The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:
 - (i) Driver's license.
 - (ii) State of Ohio identification card.
 - (iii) United States of America permanent resident card.
 - (c) Communication:
 - (i) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and any rule in this chapter to which the provider is subject.
 - (ii) The provider shall be able to effectively communicate with the individual.
- (4) Assisted living providers:

- (a) Preemption: The provider shall acknowledge that any statute governing, or rule regulating, the assisted living program supersedes any clause in the RCF's resident agreement.
- (b) License: The provider shall have an RCF license issued under Chapter 3701-16 of the Administrative Code and comply with section 3721.121 of the Revised Code.
- (c) Identifying key persons: The provider shall disclose the following:
 - (i) The name of any person with an ownership interest in the provider.
 - (ii) The name of any person with an ownership interest in the provider who was convicted of a felony under a state or federal law.
 - (iii) A **written** table of organization clearly identifying lines of administrative, advisory, contractual, and supervisory responsibilities.
- (d) Statements: The provider shall provide ODA or its designee with **written** statements on the following:
 - (i) The provider's compliance with 45 C.F.R. 80.4 regarding the provision of services.
 - (ii) The provider's compliance with the Equal Employment Opportunity Act of 1972, federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (e) Policies: The provider shall have written policies or an electronic record of policies. Additionally, if the provider has a governing board, the provider shall have written bylaws or an electronic record of bylaws; and, if the provider is incorporated, the provider shall have written articles of incorporation or an electronic record of articles of incorporation. The policies, bylaws, or articles of incorporation shall include the following:
 - (i) Ethical, professional, respectful, and legal service provision: In the residents' rights policy the provider adopts to comply with section 3721.12 of the Revised Code, the provider shall require its

employees to comply with paragraph (B)(8) of this rule.

- (ii) Abuse, neglect, and exploitation: To comply with paragraph (B)(3)(a) of this rule, in the policy the provider adopts under rule 3701-64-02 of the Administrative Code on reporting abuse, neglect, or exploitation to ODH, the provider shall also require reporting abuse, neglect, or exploitation to ODA or its designee.
- (iii) Incident reporting: To comply with paragraph ~~(A)(6)~~ (A)(7) of this rule, in the policy the provider adopts under paragraph (B) of rule 3701-16-12 of the Administrative Code, the provider shall also require reporting incidents to ODA or its designee according to paragraph (B)(3)(b) of this rule.

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

- (1) Agency providers: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(1) of this rule.
- (2) Non-agency providers: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(2) of this rule.
- (3) Participant-directed providers:
 - (a) Continuation: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(3) of this rule.
 - (b) Records retention: In addition to the records-retention requirements under paragraph (B)(10)(a) of this rule, the provider shall store the individual's records ~~in a place or an electronic device~~ in the home of the individual in a physical location or an electronic device that is accessible to the provider, individual, and ODA or its designee.
- (4) Assisted living providers:
 - (a) Continuation: The provider shall remain in compliance with all requirements under paragraphs (B) and (C)(4) of this rule.
 - (b) Payment:

- (i) The assisted living program shall not pay for any service the provider provides to an individual before ODA's designee enrolls the individual into the program and before ODA's designee authorizes the service in the individual's person-centered services plan.
 - (ii) If an individual is absent from the RCF, the provider shall not accept a payment for the service under rule 173-39-02.16 of the Administrative Code or charge the individual an additional fee for the service or to hold the unit during the individual's absence.
 - (c) Transfers/discharges: The provider shall transfer or discharge an individual under the terms of section 3721.16 of the Revised Code.
 - (d) Last day of service: If the provider terminates its medicaid-provider agreement, pursuant to section 3721.19 of the Revised Code, it shall provide written notification to the individual and to ODA's designee at least ninety days before terminating the provision of services to the individual.
- (E) ODA may certify a provider that was previously certified by ODA, but voluntarily withdrew its certification, but shall not certify a provider if ODA previously revoked the provider's certification with ODA.

173-39-02.1

ODA provider certification: adult day service.

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an **ADS adult day center** ([center](#)), ~~which is in~~ 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

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

"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

	ADS ACTIVITIES PROVIDED IN PERSON IN THE INDIVIDUAL'S HOME	ADS ACTIVITIES PROVIDED BY TELEPHONE OR VIDEO CONFERENCE TO THE INDIVIDUAL'S HOME
Allowable ADS activities in the individual's home	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.	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.
Duration/frequency of allowable ADS activities in the individual's home	Authorization is possible for a half or full day of ADS activities if authorized in the individual's person-centered services plan.	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.

(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) Transportation: The provider shall transport each individual to and from the **ADS** center by performing transportation complying with rule 173-39-02.13 of the Administrative Code, unless the provider subcontracts with another provider complying 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.

(b) Case manager's assessment:

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

(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~~ the provider's staff members.
 - (b) A social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.

(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.

- (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~~ provide a unique identifier as an attestation that the provider, or the provider's staff, completed an activity or unit of service.
- (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 5160-44-11 of the Administrative Code.

(g) Interdisciplinary care conference ([conference](#)):

(i) Frequency: The provider shall conduct ~~an interdisciplinary care~~ [a](#) 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 [at least](#) 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~~ [announce](#) daily and monthly planned activities ~~in prominent locations throughout the center.~~ [through two or more of the following media:](#)

[\(i\) Posters in prominent locations throughout the center.](#)

[\(ii\) An electronic display \(e.g., a television\) in a prominent location in the center.](#)

[\(iii\) The center's website.](#)

[\(iv\) Email sent to individuals \(and others\) who agree to receive the email.](#)

(i) Lunch and snacks:

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

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

(3) Center requirements: A provider only qualifies to be an ODA-certified ADS provider if the provider's center has the following specifications:

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

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

~~(ii)(b)~~ The center complies with the "ADA Accessibility Guidelines for Buildings and Facilities" in Appendix A to 28 C.F.R. Part 36.

~~(iii)(c)~~ The center 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)(d)~~ The provider stores individuals' medications in a locked area the provider maintains at a temperature complying with the storage requirements of the medications.

~~(v)(e)~~ The provider stores toxic substances in an area which is inaccessible to individuals.

~~(vi)(f)~~ The center has at least one working toilet for every ten individuals present that the center serves (not just individuals who are enrolled in an ODA-administered program) and at least one wheelchair-accessible toilet.

~~(vii)(g)~~ If the center seeks certification to provide intensive ADS, 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 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 individuals at all times.

(c) The provider shall have ~~a~~ an RN, or LPN under the direction of ~~a~~ an RN, available to provide nursing services that require the skills of ~~a~~ an RN, or LPN under the direction of ~~a~~ an 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~~ an RN, social worker, physical therapist, physical therapy assistant, speech therapist, licensed dietitian, occupational therapist, occupational therapy assistant, or other licensed professional planning to practice in the adult day center, shall possess a current, and 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~~ home.
- (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.

~~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~~ successfully complete at least eight hours of continuing education or in-service training on appropriate topics each calendar year; ~~unless the staff person holds a professional certification requiring~~ A staff member's successful completion of at least one to eight hours of continuing education or in-service training ~~each calendar year~~ to maintain ~~their~~ a professional license, certification, or registration used to provide ADS counts towards this eight-hour requirement if successfully completed during the same calendar year.

(iv) Records: The provider shall ~~retain~~ comply with paragraph (C)(3)(f)(i) of rule 173-39-02.11 of the Administrative code regarding records ~~showing the provider complies with the of each PCA's successful completion of any training requirements under paragraph (B)(5)(e) 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~~ and competency evaluation program, orientation, and in-service 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 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 a unique identifier of the individual.
 - (ii) Completes form ODA1200, titled "Adult Day Service: In-Home and Telephonic Service Checklist" (July 2020), for any allowable ADS activities (described in Table 2 to this rule) provided in-person in the individual's home or by telephone or video conference to 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)."~~
 - (iii) Retains the information it collects.
 - (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) 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 of ADS per day.
 - (ii) One unit is four ~~through to~~ of eight hours of 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: If the service is provided to an individual enrolled in the PASSPORT program. ~~A~~ 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 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) If the service is provided to an individual enrolled in the PASSPORT program. ~~The~~ the appendix to rule 5160-1-06.1 of the Administrative Code establishes the maximum rates allowable for units of ADS attendance and ADS transportation.
- (4) If the service is provided to an individual enrolled in the PASSPORT program. ~~The~~ the rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

173-39-02.4

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

- (A) "Choices home care attendant service" (~~"CHCAS"~~) (service) means a participant-directed service that provides specific activities to support the needs of an individual with impaired physical or cognitive functioning, 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~~ provide 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 does not replace it.
- (B) Requirements for an ODA-certified provider of the choices home care attendant service:
- (1) General requirements: The provider is subject to the requirements in rule 173-39-02 of the Administrative Code.
 - (2) Availability: The provider shall maintain availability to provide this service as agreed upon with the individual and as authorized in the individual's person-centered service plan.
 - (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.

(4) Provider qualifications:

(a) General qualifications:

- (i) Only ~~a~~ an ODA-certified participant-directed individual provider ~~that ODA-certifies~~ or an ODA-certified agency provider ~~that ODA-certifies~~ qualifies to provide this service.
- (ii) The provider shall complete an application to become an ODA-certified 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~~ which 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~~ which 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~~ provide ~~an email or a~~ written or electronic attestation to ODA's designee ~~that declares that~~ declaring the provider will not transport the individual unless the provider complies with paragraph (B)(4)(a)(viii)(a) of this rule before the first episode of transportation.

(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 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 under paragraph (B)(4)(b)(i) of this rule before 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 under paragraph (B)(4)(b)(i) of this rule before continuing to provide ~~services~~ this service to an individual.
- (c) Continuing education: Each year, the provider shall successfully complete at least eight hours of continuing education before the provider's anniversary date of ~~enrollment~~ certification as an ODA-certified participant-directed provider or the agency employee's anniversary date of hire.
- (d) Person-centered training: The provider shall successfully complete any training, including person-centered 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.
- (e) Training records:
 - (i) Initial training verification: The individual shall ~~submit to~~ provide ODA with, and retain a copy, of a completed and signed form ODA1042, ~~along with~~ and evidence of successful completion of the training listed on the form, to verify that the provider complied with 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' (March, 2014)."
 - (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~~ verifying the provider complied with this rule's continuing education requirements. As used in this paragraph, "form ODA1043" means "ODA1043 'Employee

Continuing Education Verification' (March, 2014)."

(5) Service verification:

(a) ~~The~~ Until rule 5160-1-40 of the Administrative Code requires a provider of this service to use EVV, the provider shall complete the time sheets the individual ~~furnishes~~ provides through the financial management service, which shall include the date of service, the individual's name, ~~the individual's signature,~~ a unique identifier of the individual, the provider's name, the provider's arrival and departure times, and ~~the provider's written or electronic signature~~ a unique identifier of the provider to verify the accuracy of the record.

(b) If rule 5160-1-40 of the Administrative Code requires a provider of this service to use EVV, the provider is not subject to paragraph (B)(5)(a) of this rule.

~~(b)~~(c) The For each episode of service, the provider shall complete the service task sheet with a description of the activities the provider ~~furnished~~ provided and verify the accuracy of the record with a unique identifier of the provider and a unique identifier of the individual.

(C) Unit and rates:

(1) One unit of choices home care attendant service is fifteen minutes.

(2) 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) 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.

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~~ [ODA's designee](#), 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 [the](#) appendix ~~A~~ to rule 5160-1-06.1 of the Administrative Code.

- (c) The provider shall ~~submit~~ provide the price for an item to be purchased or rented to the ODA's designee no more than two business days after the ~~case manager's~~ ODA's designee's request. The provider shall purchase, deliver, and install (as appropriate) the authorized item(s) before ~~submitting a bill to~~ billing ODA's designee. The billed amount for each item shall not exceed the item rate authorized by ~~the case manager~~ ODA's designee.

(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~~ records 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~~ The provider shall ~~be verified~~ verify the delivery of HME by one of the following methods:
- (i) 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.
- (c) If a provider leaves ~~a~~ an 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) 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.

- (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) 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) Definitions for this rule:

~~(A)~~(1) "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, 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)~~(a) Assistance with meal planning.

~~(2)~~(b) Meal preparation, grocery purchase planning, and assisting individuals with shopping and other errands.

~~(3)~~(c) Laundry, including folding, ironing, and putting away laundry.

~~(4)~~(d) 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)~~(e) Errands outside of the presence of the individual ~~that is~~ which are needed by the individual to maintain the individual's health and safety (e.g., picking up a prescription or groceries for the individual).

(2) "Aide" means the person who provides homemaker activities.

(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)~~(3) 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)~~(4) Provider policies: The provider shall develop written or electronic 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)~~(5) Staff qualifications:

(a) Aides:

(i) ~~Homemaker aides~~ Initial qualifications: The provider shall only allow a person to serve as an aide if the person meet meets at least one of the following ~~requirements~~ qualifications:

~~(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.~~

(a) The person meets at least one of the qualifications to be a PCA under paragraph (C)(3)(a) of rule 173-39-02.11 of the Administrative Code.

~~(e)~~(b) The person ~~Successful completion~~ successfully completed ~~of at least twenty hours of a~~ training and ~~skill testing by return demonstration~~ competency evaluation program that includes with all the following ~~topics~~ characteristics:

(i) The training lasted at least twenty hours.

(ii) All the following subjects were included in the program's training and its competency evaluation:

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

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

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

~~(iv)~~(D) Basic home safety.

~~(v)~~(E) 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)~~(F) Body mechanics.

~~(vii)~~(G) Communication skills.

~~(viii)~~(H) Emergency protocols.

~~(ix)~~(I) ~~Documentation~~ Record-keeping skills.

- (ii) Before providing ~~homemaker~~ activities to an individual, the provider shall conduct ~~written testing, and skill testing by return demonstration,~~ a competency evaluation of all ~~homemaker~~ aides not listed on ~~the Ohio department of health's~~ ODH's nurse aide registry for all subject areas listed ~~in~~ under paragraph ~~(D)(6)(a)(i)(e)~~ (B)(5)(a)(i)(b)(ii) of this rule. The ~~training and testing provider~~ 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~~ retain records for the name of the school or training organization, name of the course, training dates, and training hours successfully completed.
- (b) Supervisors: ~~Homemaker supervisors~~ The provider shall only allow a person to serve as an aide supervisor if the person meet meets at least one or more of the following ~~requirements~~ qualifications:
- (i) The person has ~~A~~ a bachelor's or associate's degree in a health and human services area.
- (ii) The person is ~~A current, valid license to be~~ an RN or an LPN under the direction of an RN.
- (iii) The person completed ~~At~~ at least two years of ~~experience~~ work as a ~~homemaker~~ an aide, as defined by this rule.
- (c) All staff:
- (i) Orientation: Before allowing any staff member to provide homemaker activities to an individual, 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) In-service training: The provider shall ~~assure and document~~ retain records to show that each aide successfully completes a minimum of eight hours of in-service training ~~for each staff member~~ every twelve months on topics listed ~~in~~ under paragraph ~~(B)(6)(e)(i)~~ (B)(5)(a)(i)(b)(ii) of this rule.

~~(7)(6)~~ (6) Supervisory requirements:

- (a) Initial: The supervisor shall complete ~~and document~~ an initial visit, which may occur at the aide's initial homemaker visit to the individual to define the expected activities of the homemaker aide and prepare a written or electronic 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. During a state of emergency declared by the governor or federal public health emergency, the supervisor may conduct the visit by telephone, video conference, or in person at the individual's home.
- (b) Subsequent: The supervisor shall complete ~~and document~~ 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 each visit with or without the presence of the aide being evaluated. The supervisor

may conduct the visit by telephone, video conference, or in person.

(c) Records: The supervisor shall ~~document~~ retain a record of each the initial visit and each 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. During a state of emergency declared by the governor or a federal public health emergency, the provider may verify that the PCA supervisor provided the initial or subsequent visit without collecting a unique identifier of the individual or the individual's caregiver.

(7) Service verification: The provider shall verify each episode of homemaker activities provided to each individual by using the provider's choice of either an electronic or manual system which collects all the following information: the individual's name, the date of service, a description of the activities provided, the name of the aide providing the activities, the aide's arrival and departure times, the unique identifier of the aide, and the unique identifier of the individual to attest to the accuracy of the record.

(C) Units and rates:

- (1) One unit of homemaker service is fifteen minutes.
- (2) The appendix to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowable for a unit of homemaker activities.
- (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) ~~mean~~ means 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~~ individual's well-being.
 - (b) A consultation provided to an individual if the individual receives a similar ~~services~~ service paid (in full or in part) by medicare state plan medicaid, or another third-party payer.
- (2) "Nutritional 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) 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: 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.
- (4) Venue:
 - (a) The dietitian ~~shall~~ may 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) The dietitian may conduct subsequent consultations by telephone, video conference, or in person in the individual's home.

(5) Nutritional 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 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 in paragraph~~

~~(B)(3) of this rule.~~

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

~~(vi) 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)~~(7) 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)~~ a unique identifier ~~to~~ of the individual.

(ii) Retains the information it collects.

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

- (b) The provider may use a manual system if the provider ~~documents~~ records the date of service, time of day that each consultation begins and ends, name of the person providing the consultation, and collects the handwritten signature of the person providing the consultation and a unique identifier of the individual.

(C) Unit and rate:

- (1) A unit of a nutritional consultation is 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:~~

~~(A)~~(A) "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)~~(1) 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)~~(2) Assisting the individual with ADLs and IADLs.

~~(c)~~(3) 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)~~ (A)(1) and ~~(A)(1)(b)~~ (A)(2) of this rule; or are essential to the health and welfare of the individual; rather than the individual's family.

~~(d)~~(4) Providing respite services to the individual's caregiver.

~~(e)~~(5) 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.~~

(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, ~~the provider meets the verification requirements under paragraph (C)(3)(e) of this rule, and~~ the training and competency evaluation ~~meet the standards under~~ comply with paragraph ~~(C)(3)(f)~~ (C)(3)(e) of this rule, and the provider meets the verification requirements 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~~ in-person contact with an individual, the provider shall ~~provide~~ ensure the PCA or other employee ~~with~~ successfully completed orientation ~~training, that~~ which, at a minimum, ~~addresses~~ addressed 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~~ ensure each PCA successfully completes additional training and competency evaluation ~~for PCAs who are~~ if the PCA is expected to perform activities for which ~~they~~ the PCA did not receive training or undergo competency evaluation under paragraph (C)(3)(a) of this rule.

- (d) In-service training: The provider shall ensure each PCA successfully completes eight hours of in-service training every twelve months. Agency- and program-specific orientation ~~shall~~ do not count toward the eight hours.

(e) Training sources:

(i) An organization other than the provider may provide the orientation and training required in paragraphs (C)(3)(b) to (C)(3)(d) of this rule. Any training completed through <https://mylearning.dodd.ohio.gov/> or <https://collinslearning.com/home-health-care/> is approved.

(ii) The portion of training that is not competency evaluation may occur online.

(iii) 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.

~~(e)~~(f) 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 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): 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://nurseaideregistry.odh.ohio.gov/Public/PublicNurseAideSearch>) to verify the registry listed the person as "active," "in good standing," ~~or "expired."~~ "expired," or "there are no records matching your search."

(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 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~~ an RN (or ~~a~~ LPN under the direction of ~~a~~ an 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~~ an 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.~~

~~(e)~~(b) 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.~~

(i) Initial: The PCA supervisor shall visit each individual in person at the individual's home to define the expected activities of the PCA and develop a written or electronic activity plan with the individual either before allowing a PCA to provide an episode of service to the individual or during the PCA's initial episode of service to the individual. During a state of emergency declared by the governor, the PCA supervisor may conduct the visit by telephone, video conference, or in person at the individual's home.

~~(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.~~

(ii) Subsequent: The PCA supervisor shall visit the individual at least once every sixty days after the PCA's initial episode of service with the individual to evaluate compliance with the activities plan, the individual's satisfaction, and the PCA's performance. The PCA supervisor may conduct subsequent visits with or without the presence of the PCA being evaluated. During a state of emergency declared by the governor, if the PCA supervisor conducts at least two in-person visits per year, the PCA supervisor may conduct the remainder of the subsequent visits during the same year by telephone, video conference, or in person based upon the individual's needs. To comply, the PCA supervisor may conduct two subsequent in-person visits in the same year or the combination of an initial in-person visit and an in-person subsequent visit in the same year.

(iii) Verification: In the individual's record, the PCA supervisor shall retain a record of the initial visit and each subsequent visit that includes the date of the visit; whether the visit occurred by telephone, video conference, or in person at the individual's home; the PCA supervisor's name and signature; the individual's name; and a unique identifier of the individual or the individual's caregiver. During a state of emergency declared by the governor, the provider may verify that the PCA supervisor provided the initial or subsequent visit without collecting a unique identifier of the individual or the individual's caregiver.

- (5) Provider policies: The provider shall develop, implement, comply with, and maintain written or electronic 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 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, 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~~ comply with the requirements for EVV in rule 5160-1-40 of the Administrative Code. ~~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 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 individual complies with paragraph (C)(1)(a) of rule 173-42-06 of the Administrative Code and 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://nurseaideregistry.odh.ohio.gov/Public/PublicNurseAideSearch>) to verify the registry listed the person as ~~"active" or "in good standing."~~ as "active," "in good standing," "expired," or "there are no records matching your search."

(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) In-service training: The provider shall only continue to provide personal care if 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.

(c) Training sources: The participant-directed provider is subject to the standards for training sources under paragraph (C)(3)(e) of this rule for the training required in paragraphs (D)(5)(a)(ii), (D)(5)(a)(iii), and (D)(5)(b) of this rule.

(d) Verification of qualifications and training requirements: The participant-directed provider is subject to the verification requirements for initial qualifications and in-service training in paragraph (C)(3)(f) of this rule.

(6) Service verification:

(a) ~~The~~ Until rule 5160-1-40 of the Administrative Code requires a provider of this service to use EVV, 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~~ unique identifier of the individual, the provider's name, the provider's arrival and departure times, and the provider's ~~written or electronic signature~~ signature unique identifier to verify the accuracy of the record.

(b) If rule 5160-1-40 of the Administrative Code requires a participant-directed provider of this service to use EVV, the provider is not subject to paragraph (D)(6)(a) of this rule.

~~(b)~~(c) 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 is fifteen minutes.
- (2) 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.efr.gov/> on or after the effective date of the federal rules.~~

173-39-02.12

ODA provider certification: social work or counseling ~~service~~.

(A) Definitions for this rule:

~~(A)~~(1) "Social work or counseling" (service) means a service to an individual or to an individual's caregiver to promote the individual's physical, social, or emotional well-being; and the development and maintenance of a stable and supportive environment for the individual.

~~(1)~~(a) "Social work or counseling" includes crisis interventions, grief counseling, and other social work and counseling interventions that support the individual's health and welfare.

~~(2)~~(b) "Social work or counseling" does not include any of the following:

~~(a)~~(i) A service provided in place of case management.

~~(b)~~(ii) A service provided to the individual's authorized representative or caregiver that is unrelated to the individual's well-being.

~~(c)~~(iii) A service provided if the individual receives a similar service paid (in full or in part) by medicare, state plan medicaid, or another third-party payer.

(2) "E.passport" has the same meaning as in section 4732.40 of the Revised Code.

(B) Requirements for a provider of social work or counseling:

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

(2) ~~In-home:~~ Venue: The provider shall provide this service in the individual's home, or by telephone or video conference as permitted by the ~~counselor, social worker, and marriage and family therapist~~ licensing board for the licensed healthcare professional providing this service or the state medical board if the licensed healthcare professional is an advanced practice RN designated as a clinical nurse practitioner (CNP) or clinical nurse specialist (CNS) and certified as a psychiatric-mental health CNP or CNS by the American nurses credentialing center .

(3) Assessment:

(a) The provider shall assess each individual, including the individual's

psycho-social, financial, and environmental statuses.

- (b) The provider shall provide the case manager with ~~a copy of~~ the assessment report no later than fourteen days after the provider completes the assessment.

(4) Treatment plan:

- (a) With the assistance of the individual, caregiver, and case manager, the provider shall develop and revise, as necessary, a treatment plan that recommends a method of treatment and number of ~~counseling~~ sessions.

- (b) The provider shall provide the case manager with ~~a copy of~~ the treatment plan no later than fourteen days after the provider completes the assessment.

- (c) The provider shall offer the individual ~~a copy of~~ the treatment plan no later than fourteen days after the provider completes the assessment, unless there are clinical indications against providing the individual with ~~a copy of his or her~~ the treatment plan. If the individual declines to receive ~~a copy of his or her~~ the treatment plan, the provider shall retain a record that the provider offered to provide the individual with ~~a copy of his or her~~ the treatment plan, but that the individual declined.

- (d) The provider shall implement the treatment plan.

~~(5) Clinical record: The provider shall develop and retain a clinical record for each individual that includes the following information about the individual:~~

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

- ~~(b) Medical history, if supplied by the individual, the individual's case manager, or the individual's physician.~~

- ~~(c) Treating physician's name.~~

- ~~(d) Person-centered service plan (initial and revised versions).~~

- ~~(e) Individualized assessment (initial and revised versions).~~

- ~~(f) Treatment plan (initial and revised versions).~~

~~(g) Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions, if supplied by the individual, the individual's case manager, or the individual's physician.~~

~~(h) Discharge summary, which the professional who provided the service shall sign and date at the point he or she is no longer going to provide the service to the individual or the individual no longer needs the service. In the summary, the professional shall include records on the outcomes and the progress made toward the goals specified in the individual's person-centered service plan, and shall record any follow-ups or referrals that the professional recommends. The provider shall provide a copy of the summary to the individual and the individual's case manager.~~

~~(6)~~(5) Provider qualifications: No person shall provide the service unless the person is employed by a provider that ODA certifies as an agency provider, or unless ODA certifies the person as a non-agency provider.

(a) Agency provider:

~~(i) Staffing requirements:~~

~~(a)~~(i) An agency provider shall assure that the agency's direct-care staff includes a licensed professional clinical counselor (LPCC), a licensed professional counselor (LPC), a licensed psychologist ~~(MA or PhD)~~ or a licensed psychologist with an e.passport, an independent marriage and family therapist (IMFT), a marriage and family therapist (MFT), a licensed independent social worker (LISW), or a licensed social worker (LSW), ~~or a marriage and family therapists (MFT).~~

~~(b)~~(ii) No ~~individual employee~~ shall provide the service under the employment of the agency provider unless the individual is a ~~licensed professional clinical counselor (LPCC)~~ LPCC, a ~~licensed professional counselor (LPC)~~ LPC, a licensed psychologist ~~(MA or PhD)~~ or a licensed psychologist with an e.passport, an ~~independent marriage and family therapist (IMFT)~~ IMFT, MFT, a ~~licensed independent social worker (LISW)~~ LISW, a ~~licensed social worker (LSW)~~ LSW, a ~~marriage and family therapist (MFT)~~, or a registered nurse (RN) who holds a certificate of authority from the Ohio board of nursing in ~~psych-mental health nursing specialty~~ or an advanced practice RN designated as a CNP or CNS and certified as a psychiatric-mental health CNP or CNS by the American nurses credentialing center.

~~(e)~~(iii) The provider shall retain records to show that each social work or counseling staff member holds a license in good standing with ~~his or her~~ their respective Ohio professional licensure board or an e.passport, and has at least one year of social work or counseling experience.

~~(ii) Supervisory requirements:~~

~~(a) The provider shall supervise any licensed social worker (LSW), licensed professional counselor (LPC), or marriage and family therapist (MFT) whom the provider employs according to the requirements of Chapter 4757. of the Revised Code.~~

~~(b) The supervisor of an LSW, LPC, or MFT shall co-sign all initial assessments and all treatment plans prepared by the LSW, LPC, or MFT~~

(b) Non-agency provider:

(i) No person shall provide the service as a non-agency provider unless the person is an ~~independent marriage and family therapist (IMFT)~~ IMFT, ~~licensed professional clinical counselor (LPCC)~~ LPCC, licensed psychologist ~~(MA or PhD)~~ or a licensed psychologist with an e.passport, ~~licensed independent social worker (LISW)~~ LISW, or ~~registered nurse (RN) who holds a certificate of authority from the Ohio board of nursing in psych-mental health nursing specialty~~ an advanced practice RN designated as a CNP or CNS and certified as a psychiatric-mental health CNP or CNS by the American nurses credentialing center.

(ii) The provider shall retain records to show that ~~he or she~~ the provider holds a license in good standing with ~~his or her~~ their Ohio professional licensure board or an e.passport, and has at least one year of social work or counseling experience.

~~(7)~~(6) Service verification:

(a) For each ~~episode of service provided~~ session, the provider shall retain a record of all the following:

(i) Individual's name.

(ii) Date of service.

(iii) Time of day each ~~service~~ session begins and ends.

(iv) Name of staff member providing social work or counseling to the individual or the individual's caregiver (if an agency provider).

(v) ~~Individual's signature~~ A unique identifier of the individual.

(b) The provider may use an electronic system to collect or retain the records required under this rule.

(C) Unit and rate:

(1) A unit of a social work or counseling is fifteen minutes of session time with the individual.

(2) ~~Appendix A~~ The appendix to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowed for a unit of social work or counseling provided through the PASSPORT program.

(3) Rule 5160-31-07 of the Administrative Code establishes the rate-setting methodology for social work or counseling provided through the PASSPORT program.

173-39-02.13 **ODA provider certification: non-emergency medical transportation.**

(A) Definitions for this rule:

- (1) "Non-emergency medical transportation" (transportation) means using a provider's vehicle and driver to transport individuals from one place to another for a non-emergency medical purpose. "Non-emergency medical transportation" does not include the following:
 - (a) Trips otherwise available, or funded by, Ohio's medicaid program or another source.
 - (b) Trips for a non-medical purpose. (See rule 173-39-02.18 of the Administrative Code.)
 - (c) Trips provided through a similar service in this chapter.
 - (d) Trips the individual's family, neighbors, friends, or community agencies are willing to, or required to provide to the individual free of charge.
 - (e) Escort or trip by a participant-directed provider. (See rule 173-39-02.4 of the Administrative Code.)
- (2) "Board of EMFTS" means the Ohio board of emergency medical, fire, and transportation services.
- (3) "Bus" has the same meaning as in section 4513.50 of the Revised Code.
- (4) "CLIA-certified laboratory" means a laboratory ODH lists as a "CLIA Lab" in active status on the "Long-Term Care, Non Long-Term Care, & CLIA Health Care Provider Search" (http://publicapps.odh.ohio.gov/eid/Provider_Search.aspx).
- (5) "EMT" means any of the emergency medical technicians defined in paragraph (A), (B), or (C) of section 4765.01 of the Revised Code.
- (6) "First responder" has the same meaning as in division (A) of section 4765.01 of the Revised Code.

(B) Requirements for ODA-certified providers of non-emergency medical transportation:

(1) General requirements:

- (a) The provider shall comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code.
- (b) Availability: The agency provider shall possess a back-up plan for transporting individuals when a driver or vehicle is unavailable. A non-agency provider shall possess a back-up plan for transporting individuals when the provider or the provider's vehicle is unavailable.
- (c) Transferring: As part of each trip, the driver shall help the individual safely transfer between the pick-up point and the vehicle, safely enter and exit the vehicle, and safely transfer between the vehicle and the destination point.
- (d) Provider types: ODA only certifies agency and non-agency providers to provide the transportation under this rule.

(2) Vehicle requirements:

- (a) Maintenance: The provider shall maintain vehicles according to the manufacturer's maintenance schedule for each vehicle used to transport individuals. If the vehicle includes a wheelchair lift, the provider shall maintain the wheelchair lift according to the manufacturer's maintenance schedule for the wheelchair lift.
- (b) Inspections: The provider shall conduct the following inspections on each vehicle used to transport individuals. If the vehicle includes a wheelchair lift, the provider's inspection shall include inspecting the wheelchair lift:
 - (i) "Annual Vehicle Inspection" on form ODA0004 (rev. 12/15/2010):
The provider shall only use a vehicle for transporting individuals if a mechanic who is certified by the national institute for automotive service excellence (i.e., "ASE-certified") or another mechanic approved by ODA's designee inspected it no more than twelve months before and the answers to all questions on the form were "yes."
 - (ii) "Daily Vehicle Inspection" on form ODA0008 (rev. 02/01/2019) or form ODA0011 (rev. 02/01/2019): The provider shall only use a

vehicle if, before providing the first trip of the day, the provider inspected it and the answers to all questions required by the form were "yes."

(c) Exemptions:

- (i) A vehicle possessing a current, valid ambulette license is deemed to comply with paragraph (B)(2)(b)(i) of this rule. Providers using a vehicle with a current, valid ambulette license may demonstrate compliance with paragraph (B)(2)(b)(i) of this rule by providing ODA or its designee with evidence of the vehicle's current, valid ambulette license.
- (ii) A bus displaying a current, valid safety-inspection decal issued by the state highway patrol under Chapter 4501-52 of the Administrative Code is deemed to comply with paragraph (B)(2)(b)(i) of this rule.

(3) Driver requirements:

- (a) Statutory requirements to hire: The provider shall not hire a person to be a driver unless the person meets all the requirements for drivers under divisions (A)(3) and (B) of section 4766.14 of the Revised Code, subject to the following conditions:
 - (i) To comply with the first-aid requirement, the applicant's training shall come from a training organization approved by the board of EMFTS (<http://www.ems.ohio.gov/medical-transportation-faq.aspx>).
 - (ii) To comply with the cardiopulmonary-resuscitation requirement, the applicant's training shall come from a training organization approved by the board of EMFTS (<http://www.ems.ohio.gov/medical-transportation-faq.aspx>).
 - (iii) To comply with the drug-testing requirement, the applicant's test results shall come from a CLIA-certified laboratory and shall declare the applicant to be free of alcohol, amphetamines, cannabinoids (THC), cocaine, opiates, or phencyclidine (PCP).
 - (iv) To comply with the background-check requirement, the provider

shall comply with the background-check requirements in Chapter 173-9 of the Administrative Code, which exempts an applicant for a volunteer driver position and an applicant for a position solely involving transporting individuals while working for a county transit system, regional transit authority, or regional transit commission.

- (b) Additional requirements to hire: The provider shall not hire a person to be a driver unless the person meets all the following requirements:
 - (i) The applicant has held a current, valid driver's license for at least two years.
 - (ii) The applicant holds any driver's license endorsement necessary to operate the type of vehicle the applicant would drive.
 - (iii) The applicant understands written and oral instructions.
 - (iv) The applicant has the ability to comply with paragraph (B)(1)(c) of this rule.
 - (v) The applicant has the ability to conduct the daily vehicle inspection in paragraph (B)(2)(b)(ii) of this rule.
 - (vi) The applicant has the ability to comply with the trip-verification requirements in paragraph (B)(4)(a) of this rule.
- (c) Passenger-assistance training: No later than six months after the provider hires a driver, the driver shall successfully complete a passenger-assistance training course approved by the board of EMFTS (<http://www.ems.ohio.gov/medical-transportation-faq.aspx>).
- (d) Exempted professionals: An applicant with a current, valid license or certificate to be one or more of the following professionals is deemed to meet the requirements in paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule. Providers hiring an applicant with a current, valid license or certificate to be one or more of the following professionals may demonstrate compliance with paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule by providing ODA or its designee with evidence the applicant possesses a current, valid license or certificate as one of the following professionals:

- (i) An ambulette driver.
- (ii) An EMT or first responder. Additionally, an applicant is deemed to meet the requirements in paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule if the applicant passed the board of EMFTS' curriculum for an EMT or first responder, but does not hold a current, valid certification for either profession. Providers hiring such applicants may demonstrate compliance with paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule by providing ODA or its designee with evidence the applicant passed the board of EMFTS' curriculum for an EMT or first responder.
- (iii) A driver for a county transit system, regional transit authority, or regional transit commission.

(4) Trip verification:

- (a) For each trip provided, the driver shall record the individual's name; date of trip; pick-up point and time of the pick up; destination point and time of the drop off; driver's name; ~~driver's signature~~ a unique identifier of the driver; and a unique identifier of the individual which by offering, the individual attests to the completion of the trip. ~~The individual's unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.~~
- (b) The provider may use an electronic system to collect or retain the records required in paragraph (B)(4)(a) of this rule.

(C) Jobs and rates:

- (1) One trip, whether a one-way trip or a round trip, ~~equals~~ is one job of non-emergency medical transportation.
- (2) The per-job rate for a trip is negotiable, but is finalized by the individual's case manager before the provision of the trip. A finalized rate is renegotiable if the case manager revises the rate before the trip is provided.

173-39-02.20

ODA provider certification: enhanced community living.

(A) Definitions for this rule:

(1) "Enhanced community living" (ECL) means a service promoting aging in place, in multi-family affordable housing, through access to on-site, individually-tailored, health-related, and supportive interventions for individuals who have functional deficits resulting from one or more chronic health conditions.

(a) ECL includes the following activities:

- (i) The establishment of measurable health goals.
- (ii) The identification of modifiable healthcare risks.
- (iii) The provision of regular health-status monitoring interventions. "Health-status monitoring interventions" mean taking and recording vital signs, weight, nutrition, and hydration statuses.
- (iv) Assistance with accessing additional allied health services.
- (v) The provision of, or arrangement for, education on self-managing chronic diseases or chronic health conditions.
- (vi) Daily wellness checks. "Daily wellness check" means an activity of ECL through which a ~~direct service staff member~~ PCA has face-to-face contact with the individual to observe observes any changes in the individual's level of functioning and determine what, if any, modifications to the activity plan are needed.
- (vii) Access to planned and intermittent personal care under rule 173-39-02.11 of the Administrative Code, excluding respite care.
- (viii) Activities to assist an individual who is returning home following a hospital or nursing facility stay.

(b) ECL does not include activities provided while the individual is receiving a similar service under this chapter.

(2) "Chronic health condition" means a condition that lasts twelve months or longer and meets one or both of the following tests:

- (a) It places limitation on self-care, independent living, and social interactions.
 - (b) It results in the need for ongoing intervention with medical services, products, and equipment.
- (3) "Intermittent" means stopping and starting at intervals; pausing from time to time; periodic, not pre-determined designated time periods (e.g., ten a.m. to eleven a.m.) or for designated lengths of time (e.g., fifteen minutes or two hours).
- (4) "Multi-family affordable housing" means a housing site meeting all of the following requirements:
- (a) The housing site uses a landlord-tenant rental agreement that complies with Chapter ~~5321~~. [5321](#) of the Revised Code.
 - (b) The housing site provides a minimum of six units of housing under one roof.
 - (c) The housing site receives assistance through one of the following programs:
 - (i) Federally-assisted housing program under 24 C.F.R. Part 5.
 - (ii) Project-based voucher program under 24 C.F.R. Part 983.
 - (iii) Low-income housing tax credit program based on Section 42 of the Internal Revenue Code.
- (5) "Person-centered activity" means an activity directed by the individual's informed choices that is offered at the time and place most preferable to the individual, in a safe and unhurried manner, and in a way that honors the individual's individuality and preferences.
- (B) Every ODA-certified ECL provider 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) Person-centered activity plan:

(a) Development: Before the provider provides the initial episode of ECL to an individual, the ~~direct-service staff~~ PCA supervisor shall:

(i) Assess the individual's health goals, modifiable health risks, and planned and anticipated intermittent personal care needs; and,

(ii) Develop a person-centered activity plan with the individual that describes the interventions the individual has chosen to reach his or her identified health goals, to minimize his or her modifiable health risks, and to meet his or her planned and anticipated intermittent personal care needs. The provider shall obtain ~~the individual's signature~~ a unique identifier of the individual to verify that the individual was involved in the development of his or her person-centered activity plan.

(b) Regular monitoring: After the individual begins to receive ECL, the ~~direct-service staff~~ PCA supervisor shall do both of the following:

(i) Revise the person-centered activity plan in fewer than five days after each hospital or nursing facility stay, and as otherwise needed to reflect changes in the individual's status, condition, preferences, and response to ECL; ~~and,~~

(ii) Facilitate an in-person review of the person-centered activity plan with the individual, the primary team, the individual's case manager, the individual's caregiver (if the individual has a caregiver), and the housing site's service coordinator (if the housing site has a service coordinator) every sixty days to evaluate the effectiveness of the plan in addressing the individual's health goals, reducing modifiable risks, and meeting planned and anticipated intermittent personal care needs.

(c) Records-retention: The provider shall retain a record of the person-centered activity plan, including any revisions to the person-centered activity plan and the in-person review of the person-centered activity plan:

~~(i) Any revisions to the person-centered activity plan; and,~~

~~(ii) The in-person review of the person-centered activity plan.~~

(3) Staffing levels:

- (a) The provider shall maintain adequate staffing levels to provide each ECL activity.
- (b) The [PCA](#) supervisor shall maintain accessibility to respond to ~~individual's~~ [individuals'](#) emergencies in the housing site during any time that a ~~staff member~~ [PCA](#) is providing ECL to an individual in the housing site.
- (c) The provider shall maintain adequate staffing levels to provide ~~face-to-face~~, person-centered ECL seven days a week for a minimum of six hours a day.
- ~~(d) The provider shall maintain adequate staffing levels to provide each ECL activity.~~
- ~~(e)~~(d) During each hour the provider has a ~~staff member~~ [PCA](#) providing ECL to an individual in a housing site, the provider shall ensure that any other individual has a mechanism to contact a ~~direct-service staff member~~ [PCA](#) to request assistance with intermittent and unplanned personal care needs related to the measurable health goals and modifiable healthcare risks described in the individual's activity plan.
- ~~(f)~~(e) Each day, the provider shall provide adequate [staffing levels of](#) on-site ~~staff members~~ [PCAs](#) for no fewer than six hours (or, twenty-four units) to meet the individuals' assessed, intermittent, and unscheduled healthcare needs.
- ~~(g)~~(f) The ~~provider~~ [PCA supervisor or another RN \(or LPN under the direction of an RN\)](#) shall ~~provide an RN to~~ monitor the health status of individuals. ~~In doing so, the provider shall schedule adequate on-site nursing staff~~ for no fewer than three hours (or, twelve units) each week.

(4) Provider qualifications:

- (a) Type of provider: A provider shall only provide ECL if both of the following conditions are met:
 - (i) ~~The provider is an agency~~ ODA certifies [the provider](#) as an agency provider ~~to provide~~ [of both](#) personal care [and ECL](#).

(ii) The provider is a legal entity distinct from the housing site owner and property manager so the site is not subject to licensure, as defined in Chapters ~~3721~~, 3721 and ~~5119~~, 5119 of the Revised Code, and safeguards are in place to prevent any unremedied conflicts of interest.

(b) Staff designations and minimum staff qualifications:

(i) ~~Direct service staff~~ PCA supervisor: The provider shall only employ a person as a PCA supervisor if the person ~~is currently licensed as an RN~~ if the person meets the qualifications in paragraph (C)(4)(a) of rule 173-39-02.11 of the Administrative Code.

(ii) ~~Direct service staff:~~ PCAs: The provider shall only employ a person to ~~provide face-to-face activities to individuals if the provider received evidence, and retains evidence, that the person successfully completed an ODA-approved home health aide training program listed on <http://aging.ohio.gov/services/homehealthtraining>~~ serve as a PCA if the person meets at least one of the qualifications under paragraph (C)(3)(a) of rule 173-39-02.11 of the Administrative Code, the training and competency evaluation meet the standards under paragraph (C)(3)(e) of rule 173-39-02.11 of the Administrative Code, and the provider meets the verification requirements under paragraph (C)(3)(f) of rule 173-39-02.11 of the Administrative Code.

(iii) Primary team: The provider shall provide ~~face-to-face,~~ person-centered activities to individuals through a primary team that consists of ~~direct service staff members~~ PCAs and ~~RNs~~ PCA supervisors who regularly provide activities within a given housing site and, as a result, are familiar with the individuals in the housing site. The provider shall replace any PCA on the primary ~~staff member~~ team who is absent with a back-up ~~staff member~~ PCA who is familiar with the housing site and the individuals residing in the housing site. ~~An RN~~ A PCA supervisor shall supervise the primary team and also any back-up ~~direct service staff members~~ PCAs.

(c) Staff training:

~~(i) Orientation: Before allowing any staff member to provide ECL:~~

~~(a)(i) Before allowing any PCA to have direct, in-person contact with an individual. The the provider shall train the staff member in areas that include, but are not limited to, the following: comply with the orientation requirements in paragraphs (C)(3)(b), (C)(3)(e), and (C)(3)(f) of rule 173-39-02.11 of the Administrative Code.~~

~~(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.~~

~~(b) An RN shall provide a basic overview of the chronic disease(s) or chronic health condition(s) specific to the individuals being served, the principles of self-managing chronic diseases or chronic health conditions, and a individual's right to assume responsibility for his or her own healthcare decisions.~~

~~(c) The provider shall orient the staff member with the housing site and introduce to the individuals he or she will serve.~~

~~(ii) Continuing education: In-service training: Each direct service staff person of the provider PCA shall complete at least eight hours of comply with the in-service continuing education every twelve months, excluding agency and program specific orientations training requirements in paragraphs (C)(3)(d), (C)(3)(e), and (C)(3)(f) of rule 173-39-02.11 of the Administrative Code.~~

(5) Service verification:

(a) The provider shall develop and retain a daily activity record for each individual that includes all of the following:

(i) Individual's name.

- (ii) Date of service.
 - (iii) Activities provided as authorized in the person-centered activity plan.
 - (iv) Activities provided in response to daily, intermittent needs.
 - (v) Description of the individual's status and response to the activities provided.
 - (vi) Total number of units provided to the individual.
 - (vii) Name and signature of the provider's staff person who provided the activities.
 - (viii) ~~Individual's handwritten signature or initials; stamp; mark; or electronic signature~~ Unique identifier of the individual, which by offering the individual attests to receiving the activities.
- (b) The provider may use ~~a technology-based~~ an electronic system to collect or retain the records required under this rule.

(C) Unit and rates:

- (1) One unit of ECL is ~~equal to~~ fifteen minutes ~~of ECL~~.
- (2) ~~The maximum rates allowable for a unit of ECL are established in Appendix A~~ The appendix to rule 5160-1-06.1 of the Administrative Code establishes the maximum rate allowable for one unit of ECL.
- (3) ~~The payment 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 ECL provided through the PASSPORT program.

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~~ complete 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~~ completes 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.

(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, a federal public health emergency, 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 (D) of this rule applies.
 - (e) ODA's designee 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.
- (D) HCBS settings requirements: HCBS shall only be provided in an individual's residence or another setting ~~that meets~~ meeting the HCBS settings requirements specified in 42 C.F.R. 441.301 and rule 5160-44-01 of the Administrative Code. ODA shall use form ODM10172, "Home and Community Based Services (HCBS) Settings Evaluation Tool" (revised, June 2021), to 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 (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.

(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.

(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~~ when the provider completes an online application followed with an email to provider_enrollment@age.ohio.gov 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.

(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.

173-39-03.1

ODA provider certification: federal heightened scrutiny of provider settings with institutional characteristics.

Introduction: In 42 C.F.R. 441.301(c)(5)(v), HHS requires heightened scrutiny by HHS's secretary to determine if a setting presumed to have the qualities of an institution meets HCBS settings requirements. This rule applies to settings subject to heightened scrutiny to become or remain an ODA-certified provider.

(A) Scope: A setting presumed to have the qualities of an institution requires heightened scrutiny by HHS's secretary, based on information presented by the state or other parties, to determine whether the setting has the qualities of an institution or has the qualities of a HCBS setting. A setting is presumed to have the qualities of an institution if it has any of the following characteristics:

- (1) The entire setting is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment.
- (2) The setting is in a building on the grounds of, or immediately adjacent to, a public institution.
- (3) The setting has the effect of isolating individuals receiving medicaid HCBS from the broader community of individuals not receiving medicaid HCBS.

(B) Process: ODA shall determine if a setting requires heightened scrutiny by HHS's secretary. If ODA determines a setting requires heightened scrutiny under paragraph (A) of this rule, ODA shall review information submitted by the provider, conduct an on-site visit of the setting, and complete form ~~ODM-10204~~ [ODM10204](#), ~~titled~~ "Heightened Scrutiny Evidence Package" ~~(02/2017)~~ [\(February 2017\)](#). ODA may recommend the provider undertake remediation of any possible deficiencies in its compliance with HCBS settings requirements and may establish deadlines for completion of any remediation. If the provider fails to complete requested remediation or provide evidence of the same to ODA, ODA may withhold submission of the provider's application for heightened scrutiny.

(C) Public-comment periods: Before ~~submitting~~ [providing](#) an application for heightened scrutiny to the HHS secretary, ODA shall offer the public a thirty-day opportunity to comment on the application. ODM, on behalf of ODA, shall offer public-comment periods four times per year.

(D) Request for heightened scrutiny: Following the completion of the public-comment period, ODM, on behalf of ODA, shall ~~submit~~ [provide](#) form ODM 10204 and any supplemental material, if requested, to HHS's secretary for heightened scrutiny of the setting.

(E) HHS heightened scrutiny determination:

(1) For providers seeking ODA certification:

- (a) If HHS's secretary determines the setting meets HCBS settings requirements, ODA may approve the provider's application for certification.
- (b) If HHS's secretary determines the provider's setting does not meet HCBS settings requirements, ODA shall notify the provider of the final determination and any applicable hearing rights established in section 173.391 of the Revised Code. If ODA denies a provider's certification, the provider is ineligible to reapply for certification for one year after the mailing date of ODA's final determination.

(2) For certified providers:

- (a) If HHS's secretary determines the provider's setting meets HCBS settings requirements, the provider shall retain its certification so long as it continues to comply with this chapter.
- (b) If HHS's secretary determines the provider's setting does not meet HCBS settings requirements, ODA may impose discipline against the provider and notify the provider of any applicable hearing rights established in section 173.391 of the Revised Code.

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~~ [provided to ODA](#). 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~~ [provides](#) 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 evidence 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~~ provided evidence the change was finalized to ODA, such as a bill of sale or an executed purchase.
 - (b) The new owner(s) ~~submitted~~ provided 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~~ provide 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, a federal public health emergency, 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.
- (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 (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~~ provide 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, a federal public health emergency, 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.
- (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 (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.

173-39-04

ODA provider certification: structural compliance reviews.

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

(A) First review: No later than three hundred sixty-five days after the date of ODA's initial certification, ODA's designee shall conduct the first review of each provider.

(B) Subsequent reviews:

(1) ODA's designee shall conduct subsequent reviews of providers of personal emergency response systems; home maintenance and chores; home medical equipment and supplies; home modification; non-emergency medical transportation; and non-medical transportation no later than seven hundred thirty days after the date of the previous review.

(2) No later than three hundred sixty-five days after the date of the previous review, ODA's designee shall conduct subsequent reviews of providers of services not listed in paragraph (B)(1) of this rule.

(C) ODA may authorize ODA's ~~designees~~ designee may to miss ~~the deadlines~~ a deadline under ~~paragraphs~~ paragraph (A) ~~and or~~ (B) of this rule if ODA's designee provides ODA with a request for an extension that includes ~~has an appropriate the~~ rationale for a delay and the expected timeframe to conduct the review and ~~documents the rationale for the delay~~ is retained in the provider's file.

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

(1) In any of the following situations, ODA's designee shall conduct an on-site review in accordance with paragraph (E) of this rule, unless ODA's designee obtains ODA's authorization to conduct a desk review:

(a) The provider has at least one business site located within the designee's region. If the provider has multiple business sites in the designee's region, ODA's designee shall conduct an on-site review of each business site.

(b) The provider is certified in only one region of the state and the provider's business site(s) is located within Ohio but outside of the designee's region.

(c) The provider is an assisted living provider.

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

(E) Each review shall:

- (1) Be announced by ODA's designee ~~by placing a telephone call, or sending a written announcement,~~ in a notice to the provider before the visit and conducting an introductory conference with the provider explaining the purpose and scope of the review, except as noted in paragraph (H) of this rule.
- (2) Include a review of compliance with each applicable requirement in rule

173-39-02 of the Administrative Code.

- (3) Include a review of compliance with each applicable requirement in rules 173-39-02.1 to 173-39-02.24 of the Administrative Code.
- (4) Verify that a sample of paid service units were provided according to the applicable requirements in rules 173-39-02.1 to 173-39-02.24 of the Administrative Code.
- (5) Include an exit conference with the provider.
- (6) Be based on a sample of paid service units for ten per cent of the individuals the provider served during the calendar quarter preceding the date of the review so long as the sample is based on no fewer than three individuals and no more than thirty individuals, with the following exceptions:
 - (a) If non-compliance is identified, ODA or its designee may expand the sample size, expand the time period the review covers, or require an independent audit to be conducted at the provider's expense.
 - (b) If the provider operates from multiple business sites, the review shall be based upon a sample of paid service units for ten per cent of the individuals the provider served from each business site.
 - (c) If the provider has fewer than three service delivery records for the preceding calendar quarter, ODA or its designee shall expand its review to include previous calendar quarters beginning from the date of the last completed review to gather sufficient service delivery records to meet the sample size in paragraph (E)(6) of this rule.
 - (d) If the provider has no service delivery records for the period in paragraph (E)(6)(c) of this rule, ODA or its designee shall note such in the review record and complete the remaining elements of the review required by this rule.
 - (e) If the provider is a participant-directed provider, ODA or its designee shall review records for each individual served during the calendar quarter preceding the review.
 - (i) If the provider has no service delivery records for the preceding calendar quarter, ODA or its designee shall expand its review to

include previous calendar quarters beginning from the date of the last completed review.

- (ii) If the provider has no service delivery records for the period in paragraph (E)(6)(e)(i) of this rule, ODA or its designee shall note such in the review record and complete the remaining elements of the review required by this rule.
 - (f) The review for certified providers of both personal care and homemaker services shall be a combined review and the total sample shall equal the sample size required in paragraph (E)(6) of this rule.
 - (g) During a state of emergency declared by the governor [or a federal public health emergency](#), ODA may determine a lesser review sample and issue by notice.
- (7) Include a review of the qualifications of employees providing services to individuals in the sample in paragraph (E)(6) of this rule according to the following standards:
- (a) The sample size of employees corresponds to the sample size of individuals in table 1 to this rule.
 - (b) If the provider hired or subcontracted with RNs or LPNs under the direction of RNs, the number of RNs or LPNs in the sample corresponds to the sample size of individuals in ~~Table~~ [table](#) 1 to this rule.
 - (c) The sample of employees includes any employees providing services to individuals in the sample in paragraph (E)(6) of this rule that the provider hired since the previous review.
 - (d) The sample of employees does not need to include an employee providing services to individuals in the sample in paragraph (E)(6) of this rule if one or more of ODA's designees already reviewed the employee's qualifications when conducting a review of the same provider at a different business site within the past three hundred sixty-five days.

Table 1

IF THE SAMPLE OF INDIVIDUALS IS THIS	THEN THE SAMPLE OF EMPLOYEES IS THIS	AND, IF THE PROVIDER HIRED AN RN, OR LPN
--------------------------------------	--------------------------------------	--

SIZE	SIZE	UNDER THE DIRECTION OF AN RN, THE SAMPLE OF EMPLOYEES INCLUDES THIS MANY RNs OR LPNs
0-3	3	2
4-7	4	2
8-11	5	3
12-15	6	3
16-19	7	3
20-23	8	4
24-27	9	4
28-30	10	5

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

(F) If ODM or the department of developmental disabilities (ODODD) reviewed a provider during the past three hundred sixty-five days, ODA or its designee may use information gathered by ODM or ODODD to satisfy ODA's or its designee's oversight requirements.

(G) At the conclusion of the review:

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

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

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

- (ii) The provider shall demonstrate compliance within seven days after receiving notification from ODA's designee.
 - (iii) ODA or its designee shall determine if an immediate disciplinary action shall be imposed as established in rule 173-39-05 of the Administrative Code.
 - (b) Within sixty days after the review, ODA's designee shall issue a written or electronic structural compliance review report to the provider, including a summary of all areas of non-compliance and disciplinary action imposed by ODA or its designee.
 - (c) Within sixty days after the date ODA's designee issues the written or electronic structural compliance review report to the provider, the provider shall ~~submit~~ provide evidence of compliance with the laws, rules, or regulations determined to have been violated during the review which were not subject to disciplinary action under rule 173-39-05 of the Administrative Code.
 - (d) If a unit-of-service error is detected during unit-of-service verification, the provider shall return the overpayment of funds to ODA or its designee. The repayment shall be completed using appropriate auditing procedures.
- (2) If ODA conducted a review under paragraph (A)(2) or (B)(3) of this rule, the following apply:
- (a) If ODA determines a provider engaged in conduct determined injurious or posing a threat to the health or safety of an individual, ODA shall notify the provider and ensure all of the following occur:
 - (i) The provider shall demonstrate compliance within seven days after receiving notification from ODA.
 - (ii) ODA shall determine if an immediate disciplinary action shall be imposed as established in rule 173-39-05 of the Administrative Code.
 - (b) Issue a written or electronic structural compliance review report to the provider.

(c) If a unit-of-service error is detected, direct repayment to ODA or its designee using appropriate auditing procedures.

(H) ODA or its designee may exercise the right to conduct an unannounced review of a provider at any time to review compliance with this chapter.

(I) ODA may suspend any review during a state of emergency declared by the governor or a federal public health emergency.

~~(J)~~ ODA or its designee may impose disciplinary action for non-compliance identified through any review under this rule in accordance with rule 173-39-05 of the Administrative Code.

~~(K)~~ As specified in rule 173-39-02 of the Administrative Code, all providers shall retain records to verify each episode of service delivery. Providers shall provide such records and documentation to ODA, its designee, the secretary of HHS, the auditor of state, and ODM upon request.