

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Aging

Package Title: ODA Provider Certification:
Shared Living

Rule Number(s): 173-39-02.25

Date: September 8, 2016

Rule Types:

5-Year Review:

Rescinded:

New: 173-39-02.25

Amended:

No change:

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the regulations in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The proposed new rule would regulate providers when they provide shared living to individuals enrolled in the PASSPORT Program. For more information, please review ODA's response to BIA question #5.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

ORC §§ [173.01](#), [173.02](#), [173.391](#), [173.52](#), and [173.522](#).

3. 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.

Ohio is applying to CMS to amend the Medicaid waiver authorizing the *Medicaid-funded component* of the PASSPORT Program. In the application, ODA is indicating it will adopt a rule on shared living and is citing future rule OAC173-39-02.25 as the rule to regulate the new service. If CMS authorizes ODA to offer shared living through the PASSPORT Program, ODA must adopt the rule in order for certify providers for shared living. (*cf.*, ORC§173.391).

If CMS approves Ohio's request to amend the Medicaid waiver, ODA would also offer shared living to individuals enrolled in the *state-funded component* of the PASSPORT Program. ODA offers all services available to individuals enrolled in the Medicaid-funded component of the program to individuals enrolled in the state-funded component.

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

ODA is not exceeding any federal requirements.

5. 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)?

Ohio is applying to CMS to amend the Medicaid waiver authorizing the Medicaid-funded component of the PASSPORT Program. If CMS approves, the amended waiver would authorize ODA to add shared living to the service options for individuals enrolled in the program. If CMS authorizes ODA to offer shared living through the PASSPORT Program, ODA must adopt a rule for ODA-certified providers to regulate the service. (*cf.*, ORC§173.391).

If CMS authorizes shared living, it would present a new opportunity for individuals in the program and a new opportunity for providers seeking to help those individuals.

Shared living would give Ohio a less-costly alternative to nursing facilities for individuals enrolled in the PASSPORT Program. Shared living would enable individuals with more intensive healthcare needs to retain their independence and dignity by remaining in their homes. Shared living includes specific training requirements for caregivers to complete to assure they have the skills necessary to meet the evolving needs of participants including those with Alzheimers or other dementia.

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

ODA and its designees will monitor the providers for compliance.

ODA can measure (1) the utilization of shared living, (2) disenrollments from Medicaid waiver programs to enter nursing facilities, and (3) the length of time individuals receive shared living services while on the waiver in comparison to individuals receiving similar services on PASSPORT.

Development of the Regulation

7. 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.

On November 23, December 3, and December 7, 2015, ODA conducted focus groups with caregivers, individuals enrolled in the PASSPORT Program, case managers for the PASSPORT Program, and representatives from the Alzheimer’s Association.

ODA invited Senior Link (of MA), REM Ohio, the Ohio Council for Home Care and Hospice (of OH), Ohio Association of Area Agencies on Aging, LeadingAge Ohio, and others to participate in stakeholder meetings on April 12, 2016, April 26, 2016, and June 28, 2016.

On August 15, 2016, ODA posted the proposed amendments to the Medicaid waiver application to for the PASSPORT Program in its [Online Rules Library](#). If CMS approves the proposed amendments, the amended application would authorize the PASSPORT Program to offer shared living. The comment period on the proposed amendments ends on September 15, 2016.

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

Focus Groups on November 23, December 3, and December 7, 2015:

FOCUS GROUP SUGGESTIONS	ODA’S RESPONSES
ODA heard repeated requests for home health providers to be appropriately trained, be consistent, be available in the evenings, etc.	ODA will better meet the needs of individuals enrolled in the PASSPORT Program, adding a shared living service requiring the caregiver to reside with the individual and to successfully complete training necessary to address the needs and preferences of the individual. The caregiver shall also complete and demonstrate competency with dementia

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FOCUS GROUP SUGGESTIONS	ODA'S RESPONSES
	care training, if applicable.

Stakeholder meetings on April 12, April 26, and June 28, 2016:

PROVIDERS' SUGGESTIONS	ODA'S RESPONSES
<p>Are 2 levels of shared living appropriate or is there a need for 3 levels to accommodate an individual who may not have dementia but may have other significant issues including loss of limb, visual impairment, etc.</p> <p style="text-align: center;"><i>Jennifer Crosbie, Senior Link (Boston, MA)</i></p>	<p>The PASSPORT Program requires ODA's designees to assess individuals enrolled in the PASSPORT Program to each individual's needs and preferences for goods and services. The Program already makes goods and services available to assist with many individuals who are unable to complete ADLs and IADLs without assistance. However, the Program is not always able to adequately assist individuals with dementia. Therefore, ODA is focused on offering shared living to fulfil this unmet need for home-based dementia-care services rather than offer additional services for individuals with non-dementia needs. ODA believes 2 levels of shared living are sufficient to focus on the needs of individuals with dementia.</p>
<p>Can providers working under a different Medicaid waiver for another state agency be deemed by ODA.</p> <p style="text-align: center;"><i>Sue Gregg, Caregiver Homes (Quincy, MA)</i></p>	<p>ORC§173.39 requires all providers of goods or services to individuals enrolled in the PASSPORT Program to be certified by ODA. However, certification by another state agency to provide shared living will better qualify a provider for ODA certification.</p> <p>When evaluating if the provider meets the "job experience" requirements in OAC173-39-02(B)(4)(a), ODA will consider a provider's experience providing shared living to individuals enrolled in another state-regulated home- and community-based long-term care program.</p> <p>OAC173-39-02(B)(4)(a) reads as follows:</p> <p>(a) At the point of application, the provider shall have at least three months of experience doing all of the following:</p> <ul style="list-style-type: none"> (i) The provider has been providing the specific goods and services for which it seeks certification from ODA to provide to at least two Ohio adults in the community. (ii) The provider has been providing the goods and services in paragraph (B)(4)(a)(i) of the rule as a business entity with an active registration from the Ohio secretary of state. (iii) The provider was paid for providing the goods and services in paragraph (B)(4)(a)(i) of the rule.

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

ODA is not proposing to adopt the proposed new rule based upon scientific data.

10. 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?

ODA did not consider any alternative regulations.

11. 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.

ODA did not consider performance-based regulations when considering whether to amend this rule.

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

ORCS [173.391](#) only authorizes ODA (*i.e.*, not any other state agency) to develop requirements for ODA-certified providers of goods and services to individuals enrolled in ODA-administered programs.

13. 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.

Although ORCS [119.037](#) only requires state agencies to publish a rule in the Register of Ohio 10 days before the rule would take effect, ODA also publishes the rule in its [Online Rules Library](#) and alerts subscribers of ODA's rule-notification service of the newly-published rule. Any person may [subscribe](#) to receive a notice from ODA.

Additionally, any may create a [RuleWatch Ohio account](#) to receive electronic notifications of rule filings made on rules the the person chooses to track. RuleWatch Ohio will direct subscribers to the Register of Ohio, not to ODA's Online Rules Library.

Through its regular monitoring activities under OAC [173-39-02](#), ODA and its designees monitor providers for compliance with the compliance with any new rule. When compliance is lacking, ODA and its designees offer technical assistance, and sometimes disciplinary actions, to ensure uniform compliance across Ohio. Under OAC [173-39-05](#), disciplinary actions range from simply requiring a plan of correction to—in cases of severe violations—revoking a provider's certification with ODA.

Adverse Impact to Business

14. 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;

The proposed new rule would create an opportunity for providers to provide a new service to individuals enrolled in the Medicaid- and state-funded components of the PASSPORT Program. Shared living is not yet available in the program, so ODA does not yet have any statistics on the number of providers who would be regulated by the proposed new rule. Yet, ODA is aware of at least one provider expressing interest and an Ohio-based association of providers expressing interest.

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

The proposed new rule would require providing shared-living activities to individuals and require shared-living caregivers to successfully complete training and to retain certain records in individual's homes. When the PASSPORT Program pays for a service, its payment covers all aspects of providing the service. Therefore, the payment would cover all aspects of providing the service, including shared-living activities, training, and records retention.

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 Ohio Dept. of Medicaid (ODM) plans to amend Appendix A to OAC5160-1-06.1 to establish the maximum-possible rates the PASSPORT Program would pay for each day of shared living with Medicaid funds.¹ For Level I, ODM proposes to establish a maximum-possible rate of \$77.20 per day. For Level II, ODM proposes to establish a maximum-possible rate of \$113.19 per day.

The proposed new rule would require shared-living caregivers to successfully complete core-competency training, which is the type of training also required for similar professions in nursing homes, assisted living, personal care, and home health. A shared-living caregiver could obtain cost-effective online training from the Alzheimer's Association, [CareStar](#), or [Collins Learning](#). The Alzheimer's Association offers [free training](#) (individual classes) and [for-fee training](#) (certificate program) ranging from \$24.95 to \$59.95 per shared-living caregiver, although discounted rates are available. CareStar's fees for core-competency training are typically \$7.00 per course, but the price drops to \$5.75 per course if the courses are purchased in bundles of 12. Collins Learning's fees for “personal care home administrator” classes are \$14.99 per class or \$99.00 per year for unlimited access to online training.

Before providing *Level II* shared-living activities to an individual, the proposed new rule would require a shared-living caregiver to successfully complete, and demonstrate competency with, training in dementia care. (The proposed rule would not require a shared-living caregiver to complete the same training to provide *Level I* shared-living activities to an individual.) An example of dementia-care training is the array of training options offered jointly by HealthCare Interactive and the Alzheimer's Association as [online dementia-care training and individual](#)

¹ Please see the Register of Ohio to review a draft of the proposed amendments to the rule and its appendix.

[certification programs](#). For one shared-living caregiver, course fees range from \$24.95 to \$59.95. Providers may pay discounted rates for purchasing training for 25 or more shared-living caregivers.

The proposed new rule would also require 8 hours of continuing education each year. A shared-living caregiver could obtain cost-effective online training from the following aforementioned sources: The Alzheimer's Association, CareStar, or Collins Learning.

The proposed new rule would also require storing records in the individual's home for the individual to review, which would require the provider to provide electronic copies to the individual if the individual prefers to review the documents electronically or hard-copy documents to the individual if the individual prefers to review hard-copy documents. This would involve the minimal expense of making copies and storing them in an electronic or hard-copy file accessible to the individual.

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

The proposed new rule would not require providers to comply with extraordinary requirements. The proposed new rule would require providers to meet the requirements for every ODA-certified provider in in [OAC173-39-02](#), to meet activity planning and care conference requirements similar to those for adult day services (*cf.*, [OAC173-39-02.1](#)), and to meet dementia-care training requirements if providing Level II share-living activities to individuals.

Shared living would give Ohio a less-costly alternative to nursing facilities for individuals enrolled in the PASSPORT Program by enabling individuals with advanced healthcare needs including Alzheimers or dementia to retain their independence and dignity by remaining in their homes. To make shared living a safe and effective alternative to nursing facilities, it seems reasonable to expect shared-living caregivers to be adequately trained in dementia care if providing Level II shared-living activities to individuals. Fortunately, the training is affordable.

Regulatory Flexibility

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

ODA does not discriminate between providers based upon their size. The proposed new rule would require equal compliance from large and small providers.

17. 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?

ORCS[119.14](#) establishes the exemption for small businesses from penalties for first-time paperwork violations.

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

ODA does not discriminate between providers based upon their size. According to ORC§[119.14](#), the proposed new rule would primarily regulate small businesses.

ODA maintains an [online rules library](#) to assist all providers (and the general public) to find the rules regulating them. Providers (and the general public) may access the online library 24 hours per day, 365 days per year.

ODA (and its designees) are available to help providers with their questions.

Additionally, any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rules.