

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: BLTCSS-Assisted Living Waiver FYR

Rule Number(s): 5160-33-04, 5160-33-05, and 5160-33-07

(Additional OAC Rules 5160-1-06.5, 5160-33-02, and 5160-33-06 are also attached for informational purposes only.

Date 11/10/16

Rule Type:

New

Amended

X 5-Year Review
Rescinded

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.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

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

OAC 5160-33-04. The draft regulation authorizes the components of the enrollment process for the assisted living waiver program.

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OAC 5160-33-05. The draft regulation establishes the conditions of participation required for a business to be able to participate in the assisted living waiver program.

OAC Rule 5160-33-07. The draft regulation describes the rate setting methods used to determine provider rates for all services available through the assisted living waiver program.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 5166.02.

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.

OAC 5160-33-04

The proposed regulation is being adopted to enable the state to maintain federal approval to administer the waiver. In order to participate in a waiver, a person not only must require the level of care specified for the waiver and meet the waiver's target group criteria but also be a member of one of the Medicaid eligibility groups that the state has decided to include in the waiver.

The enrollment process outlined in the proposed regulation confirms that individuals who are requesting waiver enrollment:

- Are determined eligible for medicaid as an SSI recipient or as a member of one of the Medicaid eligibility groups as specified in Sec. 1902(a)(10)(A)(i)(VIII), Sec.1902(a)(10)(A)(i)(IX), 1902(a)(10)(A)(ii)(XV), 1902(a)(10)(A)(ii)(XVI), 42 CFR 435.110, 42 CFR 435.116, or 42 CFR 435.210;
- Meet the level of care requirements to participate in the waiver, as specified in 42 CFR §441.302(c);
- Meet the non-financial eligibility requirements (e.g. the individual is determined to be included in the target group and has been found to meet other requirements of eligibility specified in the approved waiver) as specified in 42 CFR §441.301(b)(6);, and
- Has an approved service plan developed that includes at least one waiver service, as specified in 42 CFR §441.301(b)(4).

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OAC 5160-33-05

The proposed regulation is being adopted to enable the state to maintain federal approval to administer the waiver. In order for CMS to approve a 1915(c) home and community-based services waiver, a state must meet certain assurances concerning the operation of the waiver. These assurances are spelled out in 42 C.F.R 441.302, and include:

(a) “Health and Welfare - Assurance that necessary safeguards have been taken to protect the health and welfare of the beneficiaries of the services. Those safeguards must include—

- (1) Adequate standards for all types of providers that provide services under the waiver;
- (2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver;....”

The ODA certification process ensures that businesses who obtain a medicaid provider agreement have demonstrated compliance with the established standards prior to furnishing services to individuals enrolled on the waiver.

OAC 5160-33-07

The proposed regulation is being adopted to enable the state to maintain federal approval to administer the waiver. Payments for HCBS waiver services must be consistent with the provisions of §1902(a)(30)(A) of the Social Security Act and the related Federal regulations at 42 CFR §447.200-205. The amended rule will enable the state to continue to operate the Assisted Living waiver in accordance with the federal requirements.

Resource: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/rate-setting-methodology.pdf>

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

OAC 5160-33-04, OAC 5160-33-05

These rules do not exceed the provisions specifically required by the federally approved assisted living waiver program.

OAC 5160-33-07

These rules do not exceed the provisions specifically required by the federal requirements outlined in §1902(a)(30)(A) of the Social Security Act, the related Federal regulations at 42 CFR §447.200-205, or the federally approved assisted living waiver.

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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)?

OAC 5160-33-04

The public purpose of this regulation is to describe the components of the assisted living waiver program enrollment process.

OAC 5160-33-05

The public purpose of this regulation is to ensure the health and safety of individuals enrolled in the assisted living waiver by verifying that businesses have capacity to furnish the assisted living waiver service in accordance with the OAC 173-39-02 and 173-39-02.16.

OAC 5160-33-07

The public purpose of this regulation is to provide the business communities with current information on the rate setting methodologies employed to determine the maximum billing reimbursement for assisted living covered services listed in OAC 5160-1-06.5, Appendix A.

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

OAC 5160-33-04

The success of this regulation is measured through the specific federally approved waiver performance measures demonstrating compliance with the waiver assurances pertaining to level of care and service planning.

In addition the monthly activity reports, submitted by the Ohio Department of Aging to ODM, reflect the number of individuals enrolled and the number of individuals not enrolled or disenrolled and the reason(s).

OAC 5160-33-05

Each business seeking to furnish the assisted living waiver services must first apply directly through the Ohio Department of Aging. After ODA has completed their review and certified the provider, they approve an initial review and notify ODM the provider is ready for Medicaid enrollment. Consequently, due to the process that has been created, success of this regulation is 100%.

OAC 5160-33-07

Success outputs are measured through a finding of compliance with the provider's billing practices as determined by the Ohio Department of Aging's provider monitoring and oversight function.

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.

The ODM HCBS Rules Workgroup meets monthly with the Agency to review HCBS rules. In addition, these rules were emailed to the stakeholder group on July 5, 2016 requesting input on the draft regulation. The workgroup consists of the stakeholders listed below.

AARP

Brain Injury Association of Ohio

Caregiver Homes

CareSource

CareStar

Council on Aging

Disability Rights Ohio

Easter Seals of Ohio

Help 4 Seniors

Individuals served through the Ohio Medicaid program, including HCBS waivers

LeadingAge Ohio

LEAP

Molina Healthcare

NAMI Ohio

Ohio Academy of Senior Health Sciences, Inc.

Ohio Assisted Living Association

Ohio Association of Area Agencies on Aging

Ohio Association of County Behavioral Health Authorities

Ohio Association of Senior Centers

Ohio Council for Home Care and Hospice

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Ohio Council of Behavioral Health & Family Services Providers
Ohio Department of Developmental Disabilities
Ohio Health Care Association
Ohio Long Term Care Ombudsman
Ohio Olmstead Task Force
Public Consulting Group (PCG) (provider oversight contractor)
Senior Resource Connection
United Healthcare

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

The input received from stakeholders on this rule package focused primarily on technical edits. As a result of this input, ODM made the following technical edits to the draft regulations in this package:

- Replaced “consumer” with “individual.”
- Replaced “PAA” with “ODA’s designee.”

In regard to the provision in OAC 5160-33-05 (B) that requires a provider to obtain ODA certification prior to obtaining a medicaid provider agreement, one stakeholder suggested ODA certification process could be simplified so that it would be easier to comply with and take less time. Since the ODA certification process is established in OAC 173-39-03, no change was made to the rule in response to this recommendation.

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?

No scientific data was used to develop any of the rules or the measurable outcomes of the rules.

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?

OAC 5160-33-04

No alternative regulations or specific provisions within the regulation were considered. The enrollment process is the method used to identify and enroll only those individuals who have

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been determined to meet the applicable medicaid financial eligibility criteria and have been found to require a nursing-facility level of care and meet the non-financial eligibility criteria prior to receiving a waiver service.

OAC 5160-33-05

No alternative regulations or specific provisions within the regulation were considered. The ODA-certification process is the primary strategy employed to demonstrate that the assisted living provider network is equipped to furnish waiver services in accordance with the federally approved 1915(c) waiver and in a manner that provides the necessary safeguards to protect the health and welfare of the individuals receiving the services.

OAC 5160-33-07

No alternatives were considered. The proposed rule language is necessary to describe the rate setting methodology and reimbursement policy in order for businesses to submit Medicaid reimbursable claims.

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.

OAC 5160-33-04

The Agency did not specifically consider a performance-based regulation. The rule is intended to inform the public and individuals seeking assisted living waiver services about the enrollment process.

OAC 5160-33-05

The Agency did not specifically consider a performance-based regulation. The rule is intended to inform providers that ODA-certification is required in order to obtain a medicaid provider agreement.

OAC 5160-33-07

The Agency did not specifically consider a performance-based regulation. The rule is intended to educate providers on the methods used to determine provider rates in the Assisted Living waiver and outline the conditions under which an eligible provider will be reimbursed for services and the billing maximums of those services.

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

OAC 5160-33-04 is the authorizing language outlining the components of the assisted living enrollment process.

OAC 5160-33-05 is the only regulation that requires ODA-certification for ODA-operated Medicaid waivers.

OAC 5160-33-07 is the only regulation that outlines the waiver rate setting methodology.

In accordance with Ohio Revised Code Section 5162.03, ODM is the single state agency to supervise the administration of the Medicaid program, and under Ohio Revised Code Section 5162.022, ODM's regulations governing Medicaid are binding on other agencies that administer components of the Medicaid program. No agency may establish, by rule or otherwise, a policy governing Medicaid that is inconsistent with a Medicaid policy established, in rule or otherwise, by the medical assistance director.

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.

OAC 5160-33-04, OAC 5160-33-05, and OAC 5160-33-07

Initial notification of rule promulgation will occur using standard communication methods including, but not email distribution to ODM-administered waiver stakeholder groups, including state agency partners.

OAC 5160-33-04

As the operating agency for the Assisted Living waiver, the Ohio Department of Aging and its designees will provide guidance to individuals seeking waiver services on the enrollment process.

OAC 5160-33-05

As the operating agency for the Assisted Living waiver, the Ohio Department of Aging will provide guidance to businesses on the process of obtaining a Medicaid provider agreement to furnish the assisted living service.

OAC 5160-33-07

As the operating agency for the Assisted Living waiver, the Ohio Department of Aging will provide training to and oversight of the PASSPORT Administrative Agencies to ensure consistent and timely implementation.

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;

OAC 5160-33-04

The business communities most likely to be impacted by the rule are Ohio Department of Aging's (ODA) designees (i.e., the 13 PASSPORT Administrative Agencies (PAA).

OAC 5160-33-05

The business communities most likely to be impacted by the rule are residential care facilities licensed by the Ohio Department of Health (ODH) that are seeking Medicaid reimbursement for services furnished to individuals enrolled on the Assisted Living Medicaid waiver.

OAC 5160-33-07

The business communities most likely to be impacted by the rule are Ohio Department of Aging's (ODA) designees (i.e., the 13 PASSPORT Administrative Agencies (PAA).

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

OAC 5160-33-04

The rule requires the PAAs to initiate contact with individuals to complete the enrollment process, conduct in-person assessments to determine eligibility for the waiver program and when applicable, offer assistance to initiate an application for medicaid.

When an individual has been determined eligible, the rule requires the PAA to establish a waiver program enrollment date and authorize the provision of wavier services.

OAC 5160-33-05

Each business is required to obtain ODA-certification as an assisted living provider before obtaining the medicaid provider agreement. In order to obtain ODA-certification, the business must submit an application and required supporting

documentation in the Medicaid Information Technology System (MITS), prepare for the on-site pre-certification visit conducted by ODA's designee, participate in the on-site pre-certification visit, educate staff on the assisted living waiver program rules, review the contract with ODA's designee, and pay the medicaid provider enrollment fee.

OAC 5160-33-07

The rule requires the PAAs to authorize the assisted living services on the individual's service plan, and negotiate and approve the per job bid rate for the community transition service.

(c) Quantify the expected adverse impact from the regulation

OAC 5160-33-04

The PAAs estimated the amount of time required to initiate contact with an individual and conduct an in-person assessment to determine eligibility, including establishing a waiver enrollment date and authorizing waiver services is approximately 4 hours per individual. The projected hourly cost is \$40.00 per hour. Pursuant to the three-party agreement and in accordance with the interagency agreement, the Ohio Department of Medicaid supplies funding to the PASSPORT Administrative Agency (PAA) for these activities, so the actual financial impact is expected to be minimal.

OAC 5160-33-05

Leading Age Ohio provided the following input quantifying the expected adverse impact of obtaining ODA certification prior to obtaining a medicaid provider agreement includes: submitting an application and required supporting documentation (2 hours @ \$29.00 per hour), prepare for on-site pre-certification visit (16 hours @ \$29.00 per hour), On-site certification visit (administrator/ 5 hours @ \$29.00 per hour and nurse 5 hours @ \$20.00 per hour), staff education (1 hour @ \$20.00 per hour), contract review (administrator/ 30 minutes @ \$29.00 per hour and attorney/ 1 hour @ \$200.00 per hour), billing staff training (1 hour @ \$16.00 per hour) and Medicaid provider enrollment fee (\$554.00). Projected Cost for a business to obtain ODA certification in order to obtain a medicaid provider agreement: \$ 1571.50.

OAC 5160-33-07

The PAAs estimated the approximate amount of case management time required to negotiate unit the per job rate of community transition service and record the rate on the service plan ranges from 30 to 60 minutes per individual. The projected hourly cost is

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\$40.00 per hour. Pursuant to the three party agreements and in accordance with the interagency agreement, the Ohio Department of Medicaid supplies funding to the PASSPORT Administrative Agency (PAA) for these activities, so the actual financial impact is expected to be minimal.

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

OAC 5160-33-04

The Agency determined the impact on the regulated business community is justified for the following reasons: **Transparency-** The rule provides information regarding the process used to enroll individuals in the assisted living waiver. **Accountability-** The enrollment process is the mechanism the state uses to confirm waiver enrollment is only offered to eligible individuals. **Consistency:** The rule describes the procedures to be used by ODA's designees in order to properly perform the tasks associated with the enrollment process.

OAC 5160-33-05

The Agency determined the impact on the regulated business community is justified for the following reasons: **Transparency-** The ODA-certification process provides information regarding the scope of responsibility of an assisted living waiver provider, including the differences between the ODH licensure and ODA waiver requirements. This transparency allows the business to make an informed decision regarding participation in the Assisted Living waiver program; **Quality Outcomes for Individuals-** The ODA-certification process ensures the business is equipped to furnish the assisted living waiver service in accordance with the waiver requirements; **Accountability-** The ODA-certification process educates the business on the ongoing monitoring processes to ensure the health and safety of individuals is maintained and ensure compliance with the federally approved waiver.

OAC 5160-33-07

The Agency determined the impact is justified for the following reason: **Transparency-** The accessibility of the information allows the regulated business community to make an informed decision regarding participation in the assisted living waiver program and to stay current on any changes made to the methodology.

Regulatory Flexibility

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

OAC 5160-33-04

In order to ensure uniform and consistent treatment of individuals seeking enrollment in the assisted living waiver, the rule does not provide any exemptions or alternative means of compliance and no exception can be made specifically for small businesses.

OAC 5160-33-05

In order to ensure uniform and consistent treatment of Medicaid providers, the rule does not provide any exemptions or alternative means of compliance and no exception can be made specifically for small businesses.

OAC 5160-33-07

In order to ensure uniform and consistent treatment of Medicaid providers, the rule does not provide any exemptions or alternative means of compliance and no exception can be made specifically for small businesses.

16. 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?

OAC 5160-33-04, 5160-33-05, and 5160-33-07

There are no fines or penalties for paperwork violations associated with these regulations.

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

OAC 5160-33-04

The Ohio Department of Aging (ODA) maintains a dedicated webpage for individuals and providers about the assisted living waiver.

<http://www.aging.ohio.gov/services/assistedliving>.

5160-33-05 and 5160-33-07

The Agency has a designated web page tailored to provider enrollment and support where many resources can be found to assist all providers, including small businesses.

<http://medicaid.ohio.gov/PROVIDERS/EnrollmentandSupport/ProviderEnrollment.aspx>.

Businesses seeking technical assistance can contact the Medicaid Provider Hotline (1-800-686-1576) or the Ohio Department of Aging (1-800- 266-4346).

The Ohio Department of Aging (ODA) maintains a dedicated webpage about certification.

<http://aging.ohio.gov/resources/providerinformation>.

*** DRAFT - NOT YET FILED ***

5160-1-06.5 **Home and community based services (HCBS) waivers: assisted living.**

- (A) The Ohio department of aging (ODA) is responsible for the daily administration of the assisted living HCBS waiver. ODA will administer this waiver pursuant to an interagency agreement with the Ohio department of medicaid (ODM), in accordance with section 5162.35 of the Revised Code.
- (B) The assisted living HCBS waiver is an alternative to nursing facility placement for persons age twenty-one and over who require an intermediate level of care or a skilled level of care as set forth in rule ~~5101:3-3-08~~5160-3-08 of the Administrative Code and are enrolled in the waiver.
- (1) The assisted living HCBS waiver's services and program eligibility criteria are set forth in Chapter ~~5101:3-33~~5160-33 of the Administrative Code.
- (2) The maximum allowable reimbursement rates for assisted living HCBS waiver program services are listed in appendix A to this rule and are effective on September 27, 2013.
- (3) Assisted living HCBS reimbursement shall be provided in accordance with rule ~~5101:3-1-60~~ 5160-1-60 of the Administrative Code.
- (4) The billing maximum for the community transition service listed in appendix A to this rule represents the cumulative maximum for the items purchased or deposits made through the community transition service as set forth in rule 173-39-02.17 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

| | |
|------------------------|--|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/06, 3/22/08, 7/1/11 (Emer.), 9/29/11, 7/1/13(Emer.) |

APPENDIX A
5160-1-06.5
ASSISTED LIVING WAIVER RATES

| WAIVER SERVICE | BILLING MAXIMUM | UNIT |
|---------------------------------|------------------------|--|
| Assisted Living Service- Tier 1 | \$49.98 | 1 Day |
| Assisted Living Service-Tier 2 | \$60.00 | 1 Day |
| Assisted Living Service- Tier 3 | \$69.98 | 1 Day |
| Community Transition Service | \$1,477.50 | 1 Completed Job Order or Deposit Made |

*** DRAFT - NOT YET FILED ***

5160-33-02

Definitions for the assisted living home and community based services waiver (HCBS) program.

(A) The purpose of this rule is to define the terms used in Chapter ~~5101:3-33~~5160-33 of the Administrative Code governing the medicaid assisted living HCBS waiver program.

As used in this chapter:

(B) "ADL" means activities of daily living including bathing; grooming; toileting; dressing; eating; and mobility, which refers to bed mobility, transfer, and locomotion as these are defined in ~~Chapter 5101:3-3~~ 5160-3-05 of the Administrative Code.

(C) "Assessment" means a face-to-face evaluation used to obtain information about an individual including his or her condition, personal goals and preferences, functional limitations, health status and other factors that are relevant to the authorization and provision of services. Assessment information supports the determination that an individual requires waiver services as well as the development of a service plan.

(D) "Assisted living HCBS waiver" means the medicaid program that serves individuals residing in licensed residential care facilities that are certified by the Ohio Department of Aging (ODA) and enrolled on the waiver who would otherwise receive services in a nursing facility if the waiver program were not available.

(E) "Authorized representative" ~~means a person eighteen years of age or older, who is chosen by and acts on behalf of an individual who is applying for or receiving medical assistance. In accordance with rule 5101:1-38-01.2 5160:1-1-55 of the Administrative Code, the individual must provide a written statement naming the authorized representative and the duties that the named authorized representative may perform on the individual's behalf. has the same meaning as in rule 5160-1-33 (A)(1) and (B)(3) of the Administrative Code.~~

(F) "CDJFS" means a county department of job and family services.

(G) "C.F.R." means the code of federal regulations.

(H) "CMS" means the centers for medicare and medicaid services, a federal agency that is part of the United States department of health and human services, and that administers the medicaid program and approves HCBS waivers.

- (I) "Case management" means a set of person centered activities provided by ~~the PASSPORT administrative agency~~ ODA's designee that are undertaken to ensure that the ~~waiver consumer~~ individual receives appropriate and necessary services. Under a HCBS waiver, these activities may include, but are not necessarily limited to, assessment, service plan development, service plan implementation and service monitoring as well as assistance in accessing waiver, state plan, and other non-medicaid services and resources.
- (J) "Certified" or "certification" means providers certified by the Ohio department of aging (ODA) to provide services for assisted living HCBS waiver ~~consumer~~ individuals pursuant to Chapter 173-39 of the Administrative Code.
- ~~(K) "Consumer" means the program participant and the representative who assists in directing the consumer's care.~~
- ~~(L)~~(K) "HCBS" or "home and community-based services" means services furnished under the provisions set forth in 42 C.F.R. 441 Subpart G (~~October 1, 2009~~ October 1, 2016) that permit individuals to live in a home setting rather than a nursing facility (NF) or hospital. HCBS waiver services are approved by CMS for specific populations and are not otherwise available under the medicaid state plan.
- ~~(M)~~(L) "Home first" means the component of the assisted living HCBS waiver program that offers priority enrollment in the waiver for certain individuals in accordance with section ~~5111.894~~ 173.542 of the Revised Code.
- (M) "Individual" is a person enrolled on the Assisted Living HCBS waiver.
- (N) "Level of care" (LOC) means the designation describing an individual's functional levels and nursing needs pursuant to the criteria set forth in rules ~~5101:3-3-05, 5101:3-3-06, 5101:3-3-07 and 5101:3-3-08~~ 5160-3-05, 5160-3-06, 5160-3-07, and 5160-3-08 of the Administrative Code.
- (O) "NF" means a nursing facility as defined in section ~~5111.205~~ 165.01 of the Revised Code.
- (P) "ODA" means the Ohio department of aging.
- (Q) "ODJFS" means the Ohio department of job and family services.
- (R) "PASSPORT" means preadmission screening system providing options and resources today.

(S) "ODA's designee" has the same meaning as in rule 173-39-01 of the Administrative Code. PAA" means PASSPORT administrative agency .

(T) "Residential care facility" means a residential care facility as defined in section 3721.01 of the Revised Code that is issued a license pursuant to section 3721.02 of the Revised Code.

(U) "Room and board" means a payment made by an consumer individual enrolled in the assisted living waiver directly to the ODA certified assisted living waiver provider. When paying "room" the consumer individual shall not be charged for the same furnishings and other shelter expenses the residential care facility provides at no cost to private pay non-waiver residents pursuant to the facility's resident agreement. The term "board" means three meals a day or any other full nutritional regimen.

Room and board does not include charges for ancillary items, services, and/or social activities purchased or paid for by the consumer individual including hygiene and supplies not provided through medicaid and reflected on the consumer individual's care plan, recreation and activities, and/or other items or services purchased by the consumer individual; however ODA certified assisted living providers may, at their own discretion, provide ancillary items, services and/or social activities as part of the room and board payment.

(V) "Service Plan" ~~means a written, person centered plan between the consumer, the consumer's case manager at the PAA and, as applicable, the consumer's caregiver(s). The service plan specifies the services that are provided to the consumer, regardless of funding source, to address the consumer's individual care needs as identified in the consumer's assessment.~~ has the same meaning as the person-centered service plan in paragraph (B) in rule 5160-44-02 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

| | |
|------------------------|-----------------------------|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/06, 12/31/09, 9/29/2011 |

*** DRAFT - NOT YET FILED ***

5160-33-04

Enrollment process for assisted living home and community based services (HCBS) waiver program.

(A) Individuals who wish to enroll in the assisted living HCBS waiver must have an eligibility determination made by the county department of job and family services (CDJFS) and an assessment of assisted living HCBS waiver eligibility made by the ~~PASSPORT administrative agency (PAA)~~ODA's designee. The individual may contact either the CDJFS or ~~the PAA~~ODA's designee to start the enrollment process and the two agencies shall coordinate processing the request for enrollment into the assisted living HCBS waiver program:

(1) Individuals initially contacting the CDJFS will complete the JFS 07200 "Request for Cash, Food Stamps, and Medical Assistance" (rev. 03/10) and the JFS 02399 "Request for Medicaid Home and Community Based Services" (rev. 01/06) in accordance with rules ~~5101:1-38-01.2 and 5101:1-38-01.6~~ 5160:1-1 to 5160:1-5 of the Administrative Code. The CDJFS shall notify the ~~PAA~~ ODA's designee of the individual's application for waiver services. The ~~PAA~~ ODA's designee shall initiate contact with the individual to complete the enrollment process.

(2) Individuals initially contacting ~~the PAA~~ODA's designee will receive an in-person assessment to determine eligibility for the assisted living HCBS waiver program. If the individual has not already initiated an application for medicaid or waiver eligibility as described in paragraph (A)(1) of this rule, ~~the PAA~~ODA's designee may assist the individual.

(B) If the individual has been determined eligible and a waiver slot is available, the ~~consumer~~individual shall be enrolled in accordance with the assisted living HCBS waiver's home first component, if applicable, and rule 173-38-03 of the Administrative Code.

(C) Pursuant to rule ~~5101:1-38-01.6~~ 5160:1-2-01.6 of the Administrative Code, if a ~~consumer~~individual is determined eligible for medicaid by the CDJFS, the ~~consumer~~individual shall not enroll in the assisted living HCBS waiver program until ~~the PAA~~ODA's designee establishes a waiver program enrollment date and authorizes the provision of waiver services by an ODA certified ~~RCF~~assisted living provider. The waiver program enrollment date shall in no way restrict retroactive eligibility for non-assisted living waiver services available to ~~consumers~~individuals through the medicaid state plan.

(D) Any applicant for assisted living services HCBS waiver program services is entitled to notice and hearing rights as set forth in section 5101.35 of the Revised Code and

division 5101:6 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

| | |
|------------------------|-------------------------------------|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/06, 3/22/08, 9/19/09, 9/29/2011 |

*** DRAFT - NOT YET FILED ***

5160-33-05

Provider conditions of participation for the assisted living home and community based services (HCBS) waiver program.

- (A) The purpose of this rule is to establish the conditions under which providers are able to participate in the assisted living HCBS waiver program.
- (B) In order to obtain a medicaid provider agreement to be an assisted living services provider, the provider must be certified by the Ohio department of aging (ODA) or its designee in accordance with the provisions of rule 173-39-03 of the Administrative Code.
- (C) Individuals enrolled in the assisted living HCBS waiver shall be given a free choice of qualified providers in accordance with rule 173-42-06 of the Administrative Code and 42 C.F.R. 431.51 (as in effect on ~~October 1, 2010~~October 1, 2016).

Effective:

Five Year Review (FYR) Dates:

Certification

Date

| | |
|------------------------|---------------------|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/2006, 9/29/2011 |

*** DRAFT - NOT YET FILED ***

5160-33-06

Covered services for the assisted living services home and community based services (HCBS) waiver program.

- (A) The purpose of this rule is to establish the services covered by the assisted living HCBS waiver program.
- (B) The assisted living HCBS waiver benefit package is limited to the following services:
- (1) Assisted living services as ~~defined~~ set forth in rule 173-39-02.16 of the Administrative Code, and
 - (2) Community transition services as ~~defined~~ set forth in rule 173-39-02.17 of the Administrative Code.
- (C) Services will be delivered consistent with the ~~consumer's~~ individual's person-centered service plan.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/2016, 9/29/2011 |

*** DRAFT - NOT YET FILED ***

5160-1-06.5 **Home and community based services (HCBS) waivers: assisted living.**

- (A) The Ohio department of aging (ODA) is responsible for the daily administration of the assisted living HCBS waiver. ODA will administer this waiver pursuant to an interagency agreement with the Ohio department of medicaid (ODM), in accordance with section 5162.35 of the Revised Code.
- (B) The assisted living HCBS waiver is an alternative to nursing facility placement for persons age twenty-one and over who require an intermediate level of care or a skilled level of care as set forth in rule ~~5101:3-3-08~~5160-3-08 of the Administrative Code and are enrolled in the waiver.
- (1) The assisted living HCBS waiver's services and program eligibility criteria are set forth in Chapter ~~5101:3-33~~5160-33 of the Administrative Code.
 - (2) The maximum allowable reimbursement rates for assisted living HCBS waiver program services are listed in appendix A to this rule and are effective on September 27, 2013.
 - (3) Assisted living HCBS reimbursement shall be provided in accordance with rule ~~5101:3-1-60~~ 5160-1-60 of the Administrative Code.
 - (4) The billing maximum for the community transition service listed in appendix A to this rule represents the cumulative maximum for the items purchased or deposits made through the community transition service as set forth in rule 173-39-02.17 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

| | |
|------------------------|--|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/06, 3/22/08, 7/1/11 (Emer.), 9/29/11, 7/1/13(Emer.) |

*** DRAFT - NOT YET FILED ***

5160-33-07 **Assisted living home and community based services (HCBS) waiver rate setting.**

(A) The purpose of this rule is to describe the methods used to determine provider rates for the assisted living HCBS waiver as set forth in appendix A to rule ~~5101:3-1-06.5~~ 5160-1-06.5 of the Administrative Code.

(B) Provider rates will be determined for the following categories:

(1) Per job bid rate or deposit made.

(2) Unit rate.

(C) A per job bid rate or deposit made shall be determined on a per job basis for the community transition service as set forth in rule 173-39-02.17 of the Administrative Code. The cost per job shall be reimbursed at a per job bid rate that is negotiated and approved by Ohio department of aging's (ODA) designee and accepted by the ~~consumer~~ individual. The per job bid rate includes the cost of the purchase, delivery, and set-up of items. Deposits made include set-up fees or deposits for utility service access.

(D) A unit rate shall be based on a three-tiered model, and shall not exceed the amounts in appendix A to rule ~~5101:3-1-06.5~~ 5160-1-06.5 of the Administrative Code. These rates will be used for assisted living services as set forth in rule 173-39-02.16 of the Administrative Code.

(1) The rate for assisted living services for each ~~consumer~~ individual shall be determined by the ~~ODA's designee preadmission screening system providing options and resources today (PASSPORT) administrative agency~~ through an assessment of the ~~consumer~~ individual's service needs in four areas:

(a) Cognitive impairments,

(b) Medication administration,

(c) Nursing services, and

(d) Functional impairments.

(2) The assisted living HCBS waiver provider must agree to provide the services in

the ~~consumer's~~ individual's person-centered service plan~~plan of care~~ at the rate determined by the assessment.

- (E) ODA certified assisted living providers shall only be reimbursed for assisted living services authorized by ~~the PASSPORT administrative agency (PAA)~~ ODA's designee and reflected on the ~~consumer's~~individual's person-centered service plan.
- (F) Assisted living service payment constitutes payment in full and may not be construed as a partial payment when the payment amount is less than the provider's charge. The provider may not bill the ~~consumer~~individual of assisted living HCBS waiver program services for any difference between the medicaid payment and the provider's charge or request that the ~~consumer~~individual share in the cost through a co-payment or other similar charge.
- (G) The assisted living service payment is for assisted living services as defined in rule 173-39-02.16 of the Administrative Code and does not include payment for room and board as calculated pursuant to rule ~~5101:3-33-03~~ 5160-33-03 of the Administrative Code, which is the responsibility of the ~~consumer~~individual.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

| | |
|------------------------|---|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5166.02 |
| Rule Amplifies: | 173.54 |
| Prior Effective Dates: | 7/1/06, 3/22/08, 9/19/09, 7/1/07, 9/29/2011 |