PUBLIC-COMMENT PERIOD

ADULT DAY CARE

June 1, 2026

AGE reviewed rules 173-3-06.1 and 173-39-02.1 of the Administrative Code and now proposes to amend them.

Please feel free to review the proposed amendments to these rules and the business impact analysis and offer recommendations for improving the rules. Submit recommendations to rules@age.ohio.gov no later than **June 14, 2026** at 11:59PM.

30 E Broad St, 22nd Floor
Columbus, OH 43215-3414

Main: 1-800-266-4346
Fax: 614-466-5741

Aging.Ohio.gov
TTY: Dial 711

Common Sense Initiative

Mike DeWine, *Governor* Joseph Baker, *Director*
Jim Tressel, *Lt. Governor*

Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPT. OF AGING (AGE)

Rule Contact Name and Contact Information: Tom Simmons rules@age.ohio.gov

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

ADULT DAY CARE

Chapter 173-3 of the Administrative Code establishes the requirements for AAA-provider[1] agreements paid, in whole or in part, with Older Americans Act funds.
Chapter 173-39 of the Administrative Code establishes the requirements to become, and to remain, a certified provider.

Rule Number(s): 173-3-06.1 and 173-39-02.1

Date of Submission for CSI Review: June 1, 2026.

Public Comment Period End Date: June 14, 2026, at 11:59PM.

Rule Type/Number of Rules:

- ☐ **New: 0 rules**
- ☒ **Amended: 2 rules (FYR? ☒)**
- ☐ **No Change: 0 rules (FYR? ☐)**
- ☐ **Rescinded: 0 rules (FYR?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.**

[1] *AAA* means area agency on aging.

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

The rule(s):

a. ☐ **Requires 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.

173-3-06.1: This rule establishes requirements to include in, or exclude from, every AAA[2]-provider agreement (i.e., contract or grant) for an adult day service that is paid, in whole or in part, with Older Americans Act funds.

173-39-02.1: This rule establishes requirements to become, and to remain, a certified provider of an adult day service. Currently, AGE requires this certification before paying a provider to serve an individual enrolled in the PASSPPORT Program.

Both Rules:

AGE proposes to keep the standards in each rule as similar as possible so that the experience or providing, or receiving, adult day care in an Older Americans Act program and the PASSPORT Program is as similar as possible since AGE administers both programs.

Although AGE is open to considering public comments on any portion of either rule, this business impact analysis (BIA) is focused on the requirements in these rules on the center itself (i.e., the building). AGE proposes to retain, amend, or delete the standards for adult day care centers in each rule, as follows:

1. **Separate Identifiable Space and Staff:** AGE proposes to retain the requirement in paragraph (B)(3)(a) of each rule for each adult day care center that is housed in a building with services or programs other than adult day care to have separate, identifiable space and staff for adult day care. AGE proposes to improve the wording of this requirement without substantively changing it.

2. **Americans with Disabilities Act (ADA) Standards:** AGE proposes to delete paragraph (B)(3)(b) of each rule. The Board of Building Standards (BBS) informed AGE that (1) BBS regularly updates the Ohio Building Code to incorporate the latest ADA standards, (2) the U.S. Dept. of Justice issues the updates, possibly outside of the federal rules process, and (3) complying with the Ohio Building Code means complying with the latest ADA standards. Because adult day care centers are already subject to the Ohio Building Code, there is no reason to require compliance with ADA standards separately. 82% of the providers that participated in AGE's survey agreed with the proposed deletion of this reference. For more information, please review AGE's response to question #10.

3. **Ohio Fire Code:** AGE proposes to insert a new paragraph (B)(3)(b) in each rule that references the Ohio Fire Code. From 2017 to 2025, the Office of Inspector General (OIG) of the U.S. Dept. of Health and Human Services has been publishing audit reports on many states' adult day care centers that show non-compliance with state fire code

[2] "AAA" means "area agency on aging."

requirements. The OIG's April 2025 report showed this non-compliance in Ohio's centers. To highlight that adult day care centers are subject to the Ohio Fire Code, AGE proposes to reference the Ohio Fire Code in a way that does not create a new requirement for providers or AGE and its designees. The proposed reference will state that the local fire department or the state code enforcement bureau inspects each adult day care center annually and after receiving a report of non-compliance. 75% of the providers who participated in AGE's survey agreed with the addition of adding this reference. For more information, please review AGE's response to question #10.

4. **Ohio Building Code:** AGE proposes to insert a new paragraph (B)(3)(c) in each rule after the new paragraph (B)(3)(b), which will involve renumbering subsequent paragraphs in each rule. From 2017 to 2025, the Office of Inspector General (OIG) of the U.S. Dept. of Health and Human Services has been publishing audit reports on many states' adult day care centers that show non-compliance with state building code and plumbing code requirements. The OIG's April 2025 report showed this non-compliance in Ohio's centers. To highlight that adult day care centers are subject to these codes, AGE proposes to reference them in this paragraph in a way that does not create a new requirement for providers or AGE and its designees. The proposed reference will state that the building department having jurisdiction to issue a certificate of occupancy inspects each adult day care center after receiving a report of noncompliance. BBS publishes a directory of building departments to help Ohioans identify the building department having jurisdiction over a particular adult day care center. 75% of the providers who participated in AGE's survey agreed with the addition of this reference. For more information, please review AGE's response to question #10.

5. **Minimum Square Footage:** AGE proposes to retain the requirement in paragraph (B)(3)(c) [now (B)(3)(d)] of each rule for each adult day care center to have at least 60 ft^2/person served in the center. 85% of the providers who participated in AGE's survey said that 60 ft^2/person is an adequate amount of space. For more information, please review AGE's response to question #10. Rule 173-39-02.1 of the Administrative Code requires this minimum square footage per person served to be calculated with all clients served in the center and not just clients enrolled in AGE-administered programs. AGE proposes to amend rule 173-3-06.1 of the Administrative Code to add this caveat.

6. **Medication Storage:** AGE proposes to retain the requirement in paragraph (B)(3)(d) [now (B)(3)(e)] of each rule for the center to store clients' medications in a locked area at the appropriate temperature for each medication. AGE proposes to give providers flexibility regarding the storage of clients' self-administered medications by requiring each provider to establish a policy on storage of self-administered medications that ensures the least restrictive environment for clients and promotes their health and safety. For more information, please review AGE's response to question #10.

7. **Toxic Substances:** AGE proposes to amend the requirement in paragraph (B)(3)(e) [now (B)(3)(f)] of each rule, which requires the adult day care center to store toxic substances in an area that is inaccessible to clients. 69% of the providers who participated in AGE's survey agreed a proposal to replace the requirement to store toxic substances "in an area that is inaccessible to [clients]" with "in secured storage." For more information, please review AGE's response to question #10. AGE proposes to keep the intent of this proposed amendment, but to offer centers more flexibility by proposing to replace "in an area that is inaccessible to [clients]" with "in a secured location or secured storage container."

8. **Client-to-Toilet Ratio:** AGE proposes to retain the requirement in paragraph (B)(3)(f) [now (B)(3)(g)] of each rule for the center to have at least 1 working toilet for every 10 clients present in the center. 100% of providers who participated in AGE's survey indicated how many toilets were in their center and how many clients the center served on a typical weekday. As indicated in AGE's response to question #10, on average, these providers have more than double the number of toilets than AGE's rules require. On an average weekday, providers have 17.88 clients and 4.00 toilets, or 1 toilet for every 4.47 clients present. For more information, please review AGE's response to question #10.

9. **Bathing Facilities:** AGE proposes to retain the requirement in paragraph (B)(3)(g) [now (B)(3)(h)] of each rule for any adult day care center that provides intensive adult day care to have bathing facilities since it would not be possible to provide intensive adult day care without bathing facilities.

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

173-3-06.1: RC §§ 121.07, 173.01, 173.02, 173.392.

173-39-02.1: RC §§ 121.07, 173.01, 173.02, 173.39, 173.391, 173.52, 173.522.

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.

173-3-06.1:

- 42 USC 3025 establishes AGE's responsibility regarding Older Americans Act policy development in Ohio.
- 45 CFR 1321.9 requires AGE to "develop policies governing all aspects of [Older Americans Act] programs."

173-39-02.1: 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 Medicaid-funded component of the PASSPORT and Assisted Living Programs, 42 CFR 441.352 requires AGE to establish provider-certification requirements to safeguard the health and welfare of individuals who receive services through the program.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

These rules implement the laws and federal rules listed in AGE's response to questions #3 and #4.

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 implement the laws and federal rules listed in AGE's response to questions #3 and #4. They also exist to ensure that necessary safeguards are in place to protect the health and safety of recipients of an adult day service.

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

173-3-06.1: To ensure compliance fostering the health and safety of clients receiving services paid with Older Americans Act funds and compliance with monitoring (i.e., auditing) requirements under 2 CFR Part 200, Subpart F: (1) AGE regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements. The rule is judged as being successful when (1) AGE finds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

173-39-02.1: AGE and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services from certified providers. [173-39-04] AGE will judge the proposed amendments to this rule to be a success when AGE and its designees find few violations against it 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.

AGE's guide *Participating in Rule Development* and the main rules webpage on AGE's website encourage stakeholders and the public to contact AGE's rules and policy administrator at rules@age.ohio.gov to give input on improving AGE's rules. This email address has not received any email from any person or entity regarding these rules.

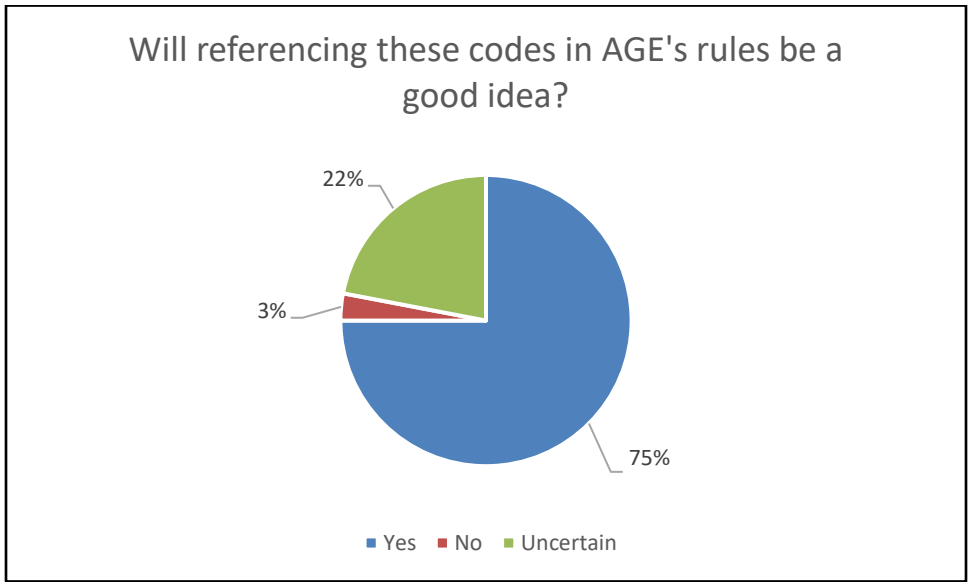
On May 12, 2026, AGE emailed a survey to 111 adult day care providers for whom AGE had an email address.

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

33 or (30%) of the 111 surveyed providers participated in AGE's May 12 survey. The survey's questions and results are listed below.

Question on the Ohio Fire Code, Ohio Building Code, and Ohio Plumbing Code: In 2025, the HHS Office of the Inspector General inspected 19 of Ohio's adult day care centers and cited many of them for noncompliance with the Ohio Fire Code, Ohio Building Code, and Ohio Plumbing Code. AGE proposes to reference these codes in AGE's rules to ensure that providers are aware of them. This reference will not create any additional requirements since adult day care centers are already subject to these building codes. Will referencing these codes in AGE's rules be a good idea?

The table below shows 33 providers' responses.



The survey also allowed providers to comment on the references. The following table shows 4 providers' comments and AGE's reply to them.

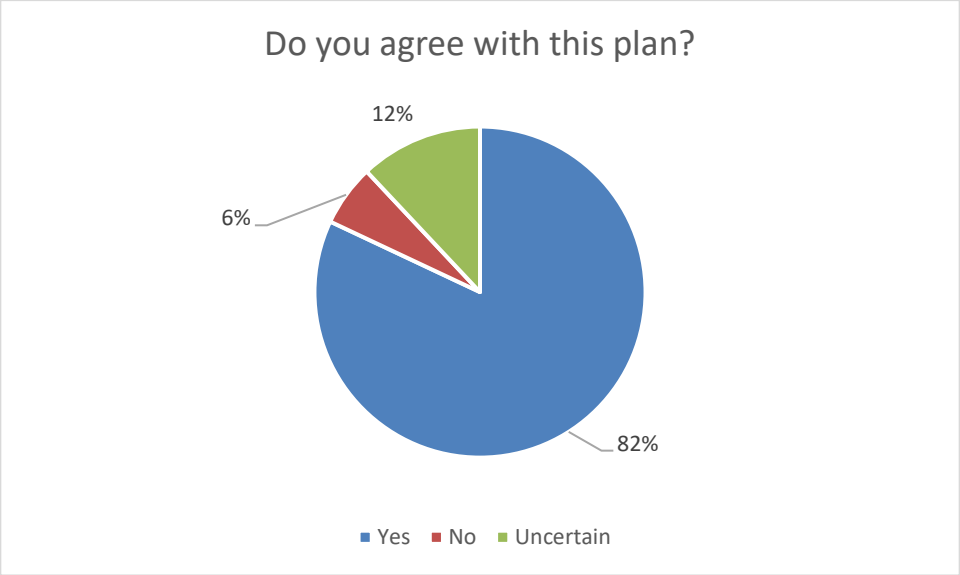
	Provider	Comment	AGE's Reply
1	**Gentle Hands Adult Day Center**	If the reference is just to make Providers aware, and not create any additional for the ADC, then no need to put in there. However, I also see where the Audit found some agencies not in compliance, and my question is why? What did they miss to not be in compliance?	The reference will refer to existing laws that already apply to adult day care centers. The reference will not create additional requirements for adult day care centers. The HHS Office of Inspector General's audit report lists areas of non-compliance found in Ohio's adult day care centers on pages 3-7 and 20 of that report.
2	**Our Home Adult Day Health Center**	Referencing the Ohio Fire Code, Ohio Building Code, and Ohio Plumbing Code within AGE's rules would be helpful for Adult Day Care providers because it creates clearer awareness of existing compliance requirements and may improve consistency during inspections and audits. Since providers are already subject to these codes, including references in AGE's rules would not create additional requirements but would help centers better understand expectations. At the same time, providers would benefit from clear educational guidance, practical compliance resources, and consistent interpretation between state agencies, local inspectors, and managed care oversight entities. Many providers operate in older buildings and face increasing operational and renovation costs, so reasonable implementation support and clear communication are important.	The Board of Building Standards (BBS) informed AGE of the following:[3] • BBS publishes BBS memos, interpretations, care facility tools, and building department resource packs to help understand the Ohio Building Code. Of these, the care facility tools help to determine the occupancy group classification, which is the first step in determining which requirements of the Ohio Building Code apply to a specific building or space. • The International Code Council (ICC) sells commentaries on its model codes. The 2024 Ohio Building Code is based on ICC's 2021 model code. • BBS also said, "We will often suggest to the building owner that consulting with a registered design professional is an option to consider when determining the feasibility of a particular building, space, or lot for an intended use or occupancy because many factors come into play other than building code compliance (e.g. programming, aesthetics, cost, zoning, licensure, financing, etc.); and should construction be necessary to make the lot or building meet the owner's need, the construction documents will need to be prepared by a registered design professional when submitting for plan approval from the building department."

[3] BOARD OF BUILDING STANDARDS, email to author, May 22, 2026.

	Provider	Comment	AGE's Reply
3	**Clermont Senior Services**	As long as the reference doesn't require additional paperwork or audits. We are already inundated with requirements that take away from customer care (such as CACFP).	They would merely be references to existing requirements. The references do not create new requirements.
4	**Sarah Adult Day Services**	There are so many codes (numbers/letters etc) that it gets difficult to identify them.	Please review AGE's reply to comment #2.

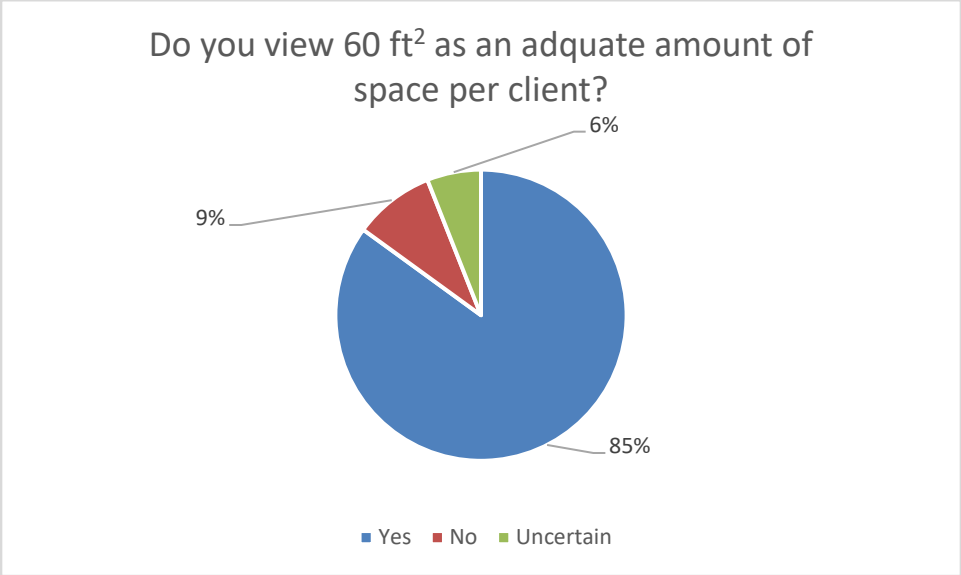
ADA Question: AGE's adult day care rules require centers to comply with the Americans with Disabilities Act (ADA). The Board of Building Standards regularly updates the Ohio Building Code with the latest ADA requirements. To avoid duplication, AGE is proposing to delete the separately listed ADA requirements, since complying with the Ohio Building Code will comply with ADA requirements. Do you agree with this plan?

The table below shows 33 providers' responses:



Square Footage Question: The MetLife National Study of Adult Day Services (2010) estimated that US adult day care centers had 194 square feet of space per client on average. AGE's adult day care rules require centers to have at least 60 square feet of space per client, excluding hallways, offices, rest rooms, and storage areas. Do you view 60 square feet of space as an adequate amount of space per client?

The table below shows 33 providers' responses:

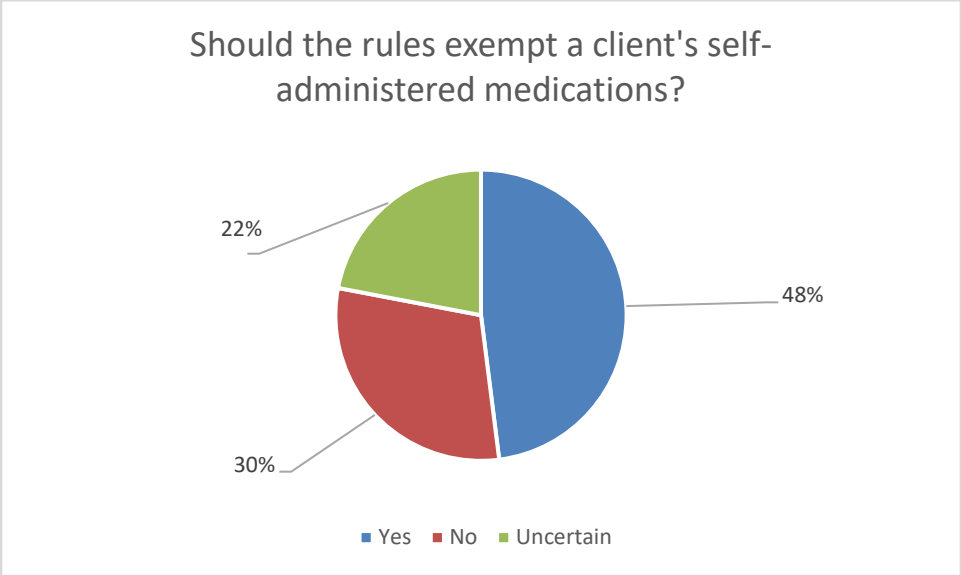


The survey also allowed providers to comment on square footage. The following table shows 6 providers' comments and AGE's reply to them.

	Provider	Comment	AGE's Reply
1	**Dayaway Adult Day Center**	I think it should be at least 80.	AGE's rules require *at least* 60 ft², which allows a center to have more square footage.
2	**King David Post-Acute Nursing & Rehab, LLC**	2 miles in between each person seems to be a bit accessive (*sic*).	AGE agrees.
3	**Clermont Senior Services, Inc.**	Larger spaces allow for more activity while accommodating various types of mobility and varied activities to meet differing interest.	AGE agrees.
4	**SARAH Adult Day Services**	Not sure how they come up with these specific numbers…	Both rules establish that the 60 ft² minimum is calculated by subtracting the square footage of the center's hallways, offices, restrooms, and storage areas from the center's overall square footage.
5	**Buckeye Adult Daycare—Northland Plaza**	My opinion 60 square feet of space is an adequate amount of space per client	Thank you!
6	**Buckeye Adult Daycare—Harrisburg Pike**	60 square feet of space is ideal per client	Thank you!

Question 4A: AGE's adult day care rules require centers to store clients' medications in a locked area at the appropriate temperature for each medication. Should the rules exempt a client's self-administered medications from this requirement?

The table below shows 33 providers' responses:



Question 4B: If you have clients who self-administer their medication, how do these clients get access to their medications while in the center?

The table below lists 20 providers' responses:

	Provider	How Do Clients Access Their Self-Administered Medications While in The Center?
1	Namaste Adult Community Center, LLC	I have no patients who do self-administer their medication. But I have polices (*sic*) and procedures and trained RN in the center who handle client's medication. The participant's medications are brought to the center in the original labeled container. Medications are stored securely but remain accessible to the participant when scheduled. Staff may provide "assistance with self-administration" if permitted by policy and care plan. Staff cannot independently administer medications unless appropriately licensed/delegated.
2	Compass Point Senior Enrichment Center (Erie County)	A nurse would need to be contacted to come over from our main campus so that she can remove the medication from the locked area and document its use.
3	Gentle Hands Adult Day Center	The client normally brings them in a pill container or in their book bag, etc and let us know. We document they self-administer and have them sign off on.
4	O'Neill Senior Center, Inc.	They retrieve them from the nursing staff.
5	Vebcom, LLC	Personal locked cabinet at the center or nurses (*sic*) station with their name and date of birth on.
6	Daybreak Adult Day Care	They ask staff for their medications.
7	Licking County Aging Program	The client requests medication from the RN. The RN unlocks the medication box and ands medication to the client for self-administration within the privacy of the RN's office.
8	Oxford Senior's Community Adult Day Service	Clients bring in self-administered medication, it is stored in a locked medication cabinet, clients then ask staff for medication as needed.
9	Clermont Senior Services, Inc.	Our RN Manager tracks medication times and brings meds to the customer at the appropriate time.
10	Gallia County Senior Resource Center	a staff member will keep it locked up until they ask for it.

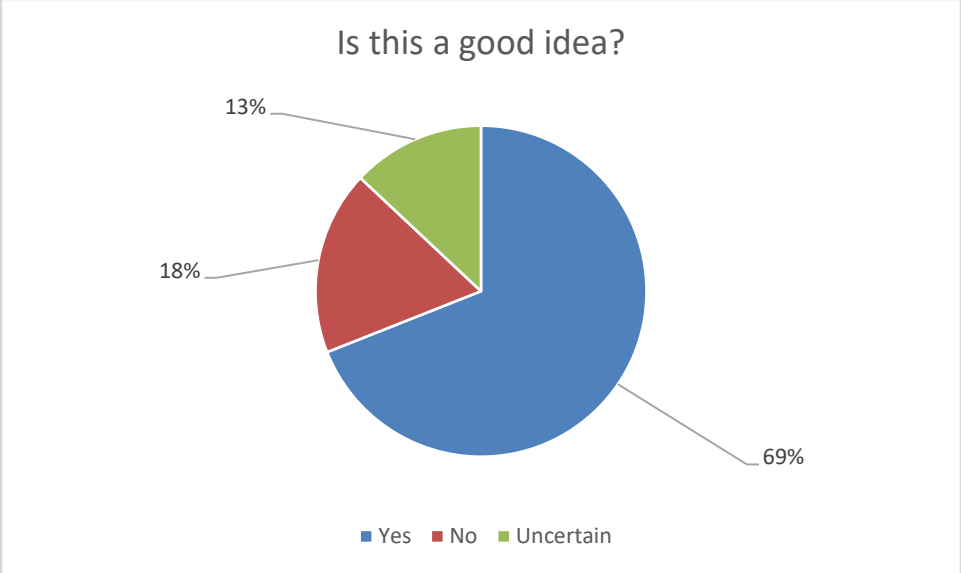
	Provider	How Do Clients Access Their Self-Administered Medications While in The Center?
11	**Family First Adult Day Services, Inc.**	In the morning we get the medication and if it needs refrigerated, we put it in the Med Refrigerator. Then give it to them to use when it is time. If nonrefrigerated then our Director holds on to it until it's time.
12	**Adult Day of Cincinnati, Inc.**	Request them from the nurse
13	**Adams-Brown Economic Opportunities, Inc.**	They typically retrieve from their purse or pocket.
14	**Second Home Seniors**	Asking the employee to get her/his medication in locker room
15	**Easterseals of Northeast Ohio**	Clients who self-administer medication currently rely on our nurse to remove the medication from the locked cabinet.
17	**Open Arms Adult Care West 1**	Staff will assist
18	**Tri-State LifeCare Center**	We believe its (*sic*) important for medications to be secure to protect access. If we had a client that would self administer the nurse would work with the client for access and storage.
19	**SARAH Adult Day Services**	Every situation is different. Most clients are given meds by nurses.
20	**Day Share Senior Services**	They keep it on their person: in their pocket or purse.

The survey also allowed providers to comment on medication storage. The following table shows 7 providers' comments and AGE's reply to them.

	Provider	Comment	AGE's Reply
1	**Kin David Post-Acute Nursing & Rehab, LLC**	Items such as insulin has to be refrigerated per the manufacturer.	Yes. AGE's rules require storing each medication at the appropriate temperature.
2	**Our Home Adult Health Center**	Our participants generally do not bring or self-administer medications while attending the center. Mediations are typically taken at home before or after attendance at the Adult Day Care center.	Thank you for sharing your experience.
3	**Oxford Senior's Community Adult Day Service**	Having staff store self-administered medication ensures that clients don't over- or under-dose. And also ensures that clients do not share medication.	Thank you for sharing your insight.
4	**Active Day of Cincinnati, Inc.**	I would like for those who self-administer to be able to keep their meds with them but that may pose a safety risk for some others. Maybe a locked space where more than just the nurse has access.	AGE proposes to amend the rules to require each provider to adopt its own policy on the storage of self-administered medications. This will give each provider flexibility to determine how to ensure both the least-restrictive environment and the health and safety of clients in its center.
5	**Easterseals of Northeast Ohio**	Clarity on self-administration of medication within the rules would be very helpful.	Please see AGE's reply to comment #4.
6	**Buckeye Adult Daycare—Northland Plaza**	Unsecured medications create risks of theft, diversion, accidental ingestion, or misuse by other clients.	Thank you for sharing your insight.
7	**Buckeye Adult Daycare—Harrisburg Pike**	Unsecured medications can create the risk of diversion or misuse by other clients.	Thank you for sharing your insight.

Question 5: In 2025, the HHS Office of the Inspector General (OIG) inspected 19 of Ohio's adult day care centers and cited some of them for noncompliant storage of toxic substances. Specifically, the OIG cited noncompliance AGE's rules, which require storing toxic substances in an area that is "inaccessible" to clients. AGE is considering whether to change this to a requirement to store toxic substances in "secured storage." It a good idea to replace the requirement to store toxic substances in "secured storage" rather than an "inaccessible area"?

The table below shows 33 providers' responses:



The survey also allowed providers to comment on secured storage. The following table shows 4 providers' comments and AGE's replies to them.

	Provider	Comment	AGE's Reply
1	**Gentle Hands Adult Day Center**	We currently have a secured storage area at our site and ONLY staff is allowed in and it is kept locked at all times. Only The Supervisor has the key.	Thank you for sharing your standards.
2	**King David Post-Acute Nursing & Rehab, LLC**	inaccessible area is pertinent especially if the clients are wanders or exit seeking	Thank you for sharing your insight.
3	**Gallia Count Senior Resource Center**	We keep chemicals in a secured storage already. I don't know that changing the wording would make a difference.	Thank you for sharing your standards and insight.
4	**Tri-State LifeCare Center**	I would like more information. Currently we store potential toxic substances like cleaning supplies in a locked area.	The OIG's audit report on Ohio adult day care centers cited centers for storing toxic substances in unlocked area and provided photos of cleaning supplies in unlocked areas as evidence.

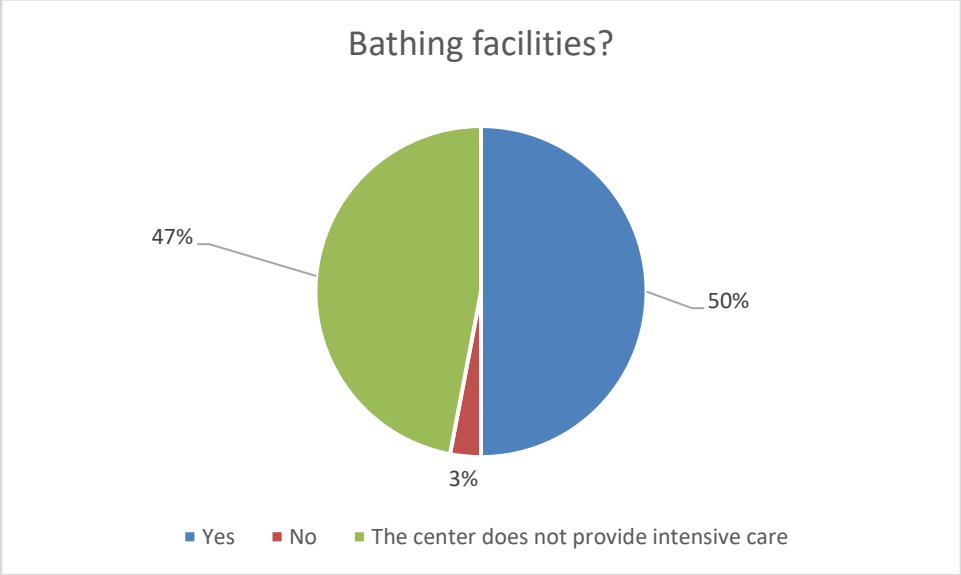
Question 6A: How many clients does your adult day care center serve on an average weekday?

Question 6B: AGE's rules require each center to have 1 toilet for every 10 clients present. How many toilets does your center have?

Responses from 33 providers indicate that, on average, providers have more than double the number of toilets than AGE's rules require. On an average weekday, providers have 17.88 clients and 4.00 toilets, or 1 toilet for every 4.47 clients present:

Question 7: AGE's rules require each center to have bathing facilities if the center provides intensive adult day care. If you are a provider of intensive adult day service, does your center have bathing facilities?

The table below shows 33 providers' responses:



The survey also allowed providers to comment on AGE's adult day rules or the survey itself. The following table shows 6 providers' comments and AGE's replies to those comments.

	Provider	Comment	AGE's Reply
1	**O'Neill Senior Center, Inc.**	Thank you for including us in the rule update process!	You're welcome!
2	**King David Post-Acute Nursing & Rehab, LLC**	May I suggest a policy where when family fail to pick up there family members there be something in place such as a late type of ramification especially if its repetitive (3 or more times) or (1 or more hours late).	AGE's rules on adult day care regulate the provider, not the client or the client's family. The provider can notify the case manager if the provider no longer wants to provide the adult day service to a particular client who poses problems for the provider. If an Older Americans Act program is paying for the adult day care, rule 173-3-06 of the Administrative Code requires the provider to notify the case manager at least 30 days before the last day of service with exceptions. For the PASSPORT Program, rule 173-39-02 of the Administrative Code also requires the provider to notify the case manager at least 30 days before the last day of service with exceptions. AGE has no authority to establish penalties for family members.

	Provider	Comment	AGE's Reply
3	**Our Home Adult Health Center**	Thank you for the opportunity to provide feedback regarding Ohio's Adult Day Care rules and provider operations. Adult Day Care centers play an important role in supporting older adults and individuals with disabilities by providing socialization, supervision, nutrition, activities, health monitoring, and community-based support services that help individuals remain safely in their homes and communities. Providers continue to face increasing operational challenges, including staffing shortages, transportation costs, insurance expenses, regulatory compliance responsibilities, building maintenance requirements, and administrative documentation burdens. Future rule updates should continue to prioritize participant safety and quality of care while also considering the operational realities and financial sustainability of Adult Day Care providers throughout Ohio. Clear guidance, consistent interpretation between agencies and auditors, and practical compliance expectations would greatly benefit providers. Simplifying duplicative requirements and improving communication between state agencies, managed care organizations, and providers would help centers focus more time and resources on direct participant care. We appreciate AGE's efforts to review and modernize the rules and thank you for allowing providers the opportunity to share feedback.	Thank you for sharing your experience and for participating in the survey.
4	**Buckeye Adult Daycare—Northland Plaza**	Thank you for giving us the chance to share our input	You are welcome!
5	**Buckeye Adult Daycare—Harrisburg Pike**	Thank you for letting us the chance to share our input	You are welcome!

	Provider	Comment	AGE's Reply
6	**360 Total Care—Community Integration Center**	We believe one area that should be reviewed is the amount of liability coverage required for providers to maintain, especially during periods when no clients are being served. New day centers are required to carry high-cost liability insurance and other operational coverages even while receiving no referrals or actively serving participants. The financial overhead associated with maintaining compliance before enrollment is extremely high and creates significant barriers for new providers trying to establish services within the community. Additionally, there currently is no centralized portal or referral system available to help connect individuals in need of day services with providers that have open availability. As a result, many new day centers are forced to absorb substantial ongoing expenses while waiting for referrals and enrollment opportunities, making it difficult for smaller providers to remain financially stable during startup phases.	Rule 173-39-02 of the Administrative Code—not these rules—establishes requirements for every provider—not just an adult day care provider—to become, and remain, certified. Currently, the only AGE-administered program that requires certification is the PASSPORT Program. One of the requirements in rule 173-39-02 of the Administrative Code is for a provider to maintain a commercial liability insurance policy with at least $1 million in coverage. Insurance companies set the premiums and terms for these policies. Therefore, AGE cannot establish variable premiums that correspond to client counts or authorize pauses in premiums for times when the provider has no clients. AGE's rules do not require providers to maintain a commercial liability insurance policy to be paid by Older Americans Act funds.

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?

AGE is not proposing to amend this rule due to scientific data aside from the data received through its survey.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

173-3-06.1: RC§173.392 requires AGE to adopt rules to establish requirements for AAA-provider agreements. Additionally, the federal law and regulation AGE listed in its response to #3 require AGE to develop policies for all aspects of the Older Americans Act programs.

173-39-02.1: RC§173.391 requires AGE to adopt rules to establish requirements for certified providers. Additionally, federal rules require AGE to establish adequate requirements for providers to assure the health and safety of individuals enrolled in AGE-administered programs.

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

173-3-06.1: RC§173.392 authorizes only AGE to adopt rules to establish requirements for AAA-provider agreements.

173-39-02.1: RC§173.391 authorizes only AGE to develop standards for certified providers of services to individuals enrolled in AGE-administered programs.

14. 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.

Both Rules: Before the proposed amendments take effect, AGE will email subscribers of our rule-notification service to feature these rules.

173-3-06.5:

- AGE regularly monitors AAAs for compliance pursuant to data collection requirements under 42 USC 3027(a)(2)(A), evaluation requirements under 42 USC 3025(a)(1)(C) and 42 USC 3027(a)(4), and audit requirements under 2 CFR Part 200, Subpart F.
- AAAs regularly monitor providers for compliance pursuant to program integrity requirements under 42 USC 3026(a)(13)(A), audit requirements under 2 CFR Part 200, Subpart F (specifically §200.303), and monitoring requirements under rules 173-2-05 and 173-3-06 of the Administrative Code.

173-39-02.1: AGE and its designees regularly monitor certified providers through data collection requirements under 42 USC 1396n(d), audit requirements under 2 CFR Part 200, Subpart F, evaluation requirements under 42 CFR 441.365 and RC §173.391, and review requirements under rule 173-39-04 of the Administrative Code.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

173-3-06.1: Every provider with an AAA-provider agreement to be paid with Older Americans Act funds to provide and adult day service.

173-39-02.1: Every certified provider of an adult day service.

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

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.

173-3-06.1: This rule refers to the requirements to include in every AAA-provider agreement for a service paid, in whole or in part, with Older Americans Act funds in rule 173-3-06 of the Administrative Code. The reference in this rule does not create an adverse impact, because rule 173-3-06 of the Administrative Code already regulates every agreement. AGE includes the reference to rule 173-3-06 of the Administrative Code in this rule due to the tendency of the public to find rules by googling. If a person searches for "adult day service," AGE wants the person to find this rule and know to also read rule 173-3-06 of the Administrative Code.

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., 2 CFR 200.319, plus rules 173-3-04 and 173-3-05 of the Administrative Code).

173-39-02.1: This rule refers to the requirements to become, and to remain, certified in rule 173-39-02 of the Administrative Code. The reference in this rule does not create an adverse impact, because rule 173-39-02 of the Administrative Code already applies to every certified provider. AGE includes the reference to rule 173-39-02 of the Administrative Code in this rule due to the tendency of the public to find rules by googling. If a person searches for "adult day service," AGE wants the person to find this rule and know to also read rule 173-39-02 of the Administrative Code.

The amount the PASSPORT Programs pays providers for a service is an all-inclusive rate. It's intended to cover the daily costs incurred in the service plus employee-related costs. The costs incurred are 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 are paid the maximum that the Ohio Dept. of Medicaid (ODM) allows per unit. ODM establishes the units of service for the PASSPORT Program and the maximum-allowable payment for each unit in the appendix to rule 5160-1-06.1 of the Administrative Code.

Both Rules: Both establish requirements that are inherent to an adult day service, including the following:

- Transportation.
- Client assessments.
  .
- Requirements for the adult day care center (i.e., the structure), which is the focus of this BIA.
- Staffing levels.
- Provider qualifications.
- Staff qualifications, including training.
- Service verification.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

AGE proposes to reference existing state fire, building, and plumbing codes in these rules, which may increase awareness and compliance with those codes without establishing any new requirements for providers. Additionally, AGE proposes to delete the duplicative ADA requirements from this rule since complying with the Ohio Building Code means complying with the ADA requirements.

The rules currently require each provider to lock up every client's medication in the center even if the client self-administers the medication. As noted in providers responses to survey questions listed in AGE's response to question #10, providers have varying experiences and concerns about storage of self-administered medication. AGE proposes to amend the rules to require each provider to adopt its own policy on the storage of self-administered medications. This will give each provider flexibility to determine how to ensure both the least-restrictive environment and the health and safety of clients in its center.

Standards for the storage of self-administered medication vary among other states. Florida,[4] Virginia,[5] and West Virginia[6] give providers flexibility that is similar to AGE's proposal. Kentucky[7] and Pennsylvania[8] require providers to lock up every client's medication, including self-administered medication.

AGE proposes to replace the requirement to store toxic substances in an area that is inaccessible to clients with a more-flexible requirement to store toxic substances in a secure location or secure storage container.

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

173-3-06.1: RC§173.392 requires AGE to develop rules establishing standards for AAA-provider agreements (*i.e.*, contracts and grants) and RC§173.01 requires AGE to represent the interests older Ohioans. Establishing standards for AAA-provider agreements in this rule ensures the health and safety of the older Ohioans who are consumers of services through Older Americans Act programs, which fulfills both statutes.

There is no requirement for a provider to enter into an AAA-provider agreement to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business may enter into an AAA-provider agreement for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs.

Additionally, providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on providing the service to be paid with Older Americans Act funds, and (2) the provider's bid is a winning bid. Providers may provide the same service without entering into an AAA-provider agreement when paid by private pay, third-party insurers, or other government programs that do not use Older Americans Act funds.

173-39-02.1: RC§173.391 requires AGE to develop rules establishing standards for certified providers and RC§173.01 requires AGE to represent the interests older Ohioans. Establishing standards for certified providers in this rule ensures the health and safety of the older Ohioans who receive services through AGE-administered programs that require certification. Currently, the only AGE-administered program that pays for adult day care and requires certification is the PASSPORT Program.

There is no requirement for a provider to obtain AGE's certification to provide adult day care in this state. AGE's certification is not a gateway to doing business in Ohio. Instead, a provider who wants to add the PASSPORT Program to its lines of business may become certified to be paid for providing adult day care through the PASSPORT Program.

Additionally, providers voluntarily apply for certification. A provider is required to comply with this rule only if it becomes certified.

Both Rules: AGE's amendments to these rules will not increase requirements on providers.

Regulatory Flexibility

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

These rules treat all providers the same, regardless of their size, because the primary purpose of these rules is to ensure the health and safety of clients receiving services.

[4] FAC 59A-16.109.
[5] 22 VAC 40-61-300.
[6] 64 CSR 2.8.4.h.
[7] 902 KAR 20:066.
[8] 6 PA Code §11.141.

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?

AGE is concerned primarily about protecting the health and safety of clients receiving services through compliance with these rules. Whenever possible, AGE treats administrative violations that do not involve health, safety, or fraud 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?

AGE is available to help providers of all sizes with their questions. Any person may contact AGE's rules and policy administrator with questions about AGE's proposals for these rules.

*** DRAFT - NOT YET FILED ***

173-3-06.1 **Older Americans Act: adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an adult day center (center) in a non-institutional, community-based setting. ADS includes recreational and educational programming to support a consumer'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 center. Table 1 to this rule defines the three levels of ADS.

Table 1: Levels and Activities of ADS

	BASIC ADS	ENHANCED ADS	INTENSIVE ADS
Structured activity programming	Yes	Yes	Yes
Health assess-ments	Yes	Yes	Yes
Supervision of ADLs	One or more ADL	One or more ADL	All ADLs
Hands-on assis-tance with ADLs	No	Yes, one or more ADL (bathing ex-cluded)	Yes, minimum of two ADLs (bathing included)
Hands-on assis-tance with med-ication administra-tion	No	Yes	Yes
Comprehensive therapeutic activi-ties	No	Yes	Yes
Monitoring of health status	No	Intermittent	Regular
Hands-on assis-tance with person-al hygiene activi-ties	No	Yes (bathing ex-cluded)	Yes (bathing in-cluded, as need-ed)

*** DRAFT - NOT YET FILED ***

Social work services	No	No	Yes
Skilled nursing services	No	No	Yes
Rehabilitative services	No	No	Yes

(B) Requirements for every AAA-provider agreement for ADS that is paid, in whole or in part, with Older Americans Act funds:

(1) The AAA-provider agreement is subject to rule 173-3-06 of the Administrative Code.

(2) Service requirements:

(a) Transportation: The provider shall transport each consumer to and from the center by performing transportation that complies with rule 173-3-06.6 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-3-06.6 of the Administrative Code, or unless the caregiver transports or designates another person or non-provider, other than the center provider, to transport the consumer to and from the center.

(b) Case manager's assessment: If the consumer receives a case management service as part of care coordination:

(i) The case manager shall assess each consumer's needs and preferences then specify which service level will be approved for each consumer; and,

(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 consumer before the end of the consumer's second day of attendance at the center. If the consumer is enrolled in care coordination, the provider may substitute a copy of the case manager's assessment of the consumer if the case manager assessed the consumer

*** DRAFT - NOT YET FILED ***

no more than thirty days before the consumer'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 attention or assistance of the provider's staff members.

(b) 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 consumer's initial attendance at the center or before the consumer receives the first ten units of service at the center, whichever comes first, the provider shall either obtain a health assessment of each consumer from a licensed healthcare professional whose scope of practice includes health assessments or require a staff member who is such a licensed healthcare professional to perform a health assessment of each consumer. The health assessment shall include the consumer's psychosocial profile and identify the consumer'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 consumer's initial attendance at the center or before the consumer receives the first ten units of service at the 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 consumer or require a staff member who is such a licensed healthcare professional to draft an activity plan for each consumer. The plan shall do all of the following:

(i) Identify the consumer's strengths, needs, problems or difficulties, and objectives.

(ii) Describe the consumer's interests, preferences, and social rehabilitative needs.

*** DRAFT - NOT YET FILED ***

(iii) Describe the consumer's health needs.

(iv) Describe the consumer's specific goals, objectives, and planned interventions of ADS that meet the goals.

(v) Describe the consumer's level of involvement in the drafting of the plan, and if the consumer has a caregiver, the caregiver's level of involvement in the drafting of the plan.

(vi) Describe the consumer's ability to provide a unique identifier to verify receipt of service delivery.

(f) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition counseling, 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 consumer that receives medication, a nursing service, nutrition counseling, 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 is subject to the diet-order requirements under rule 173-4-06 of the Administrative Code.

(g) Interdisciplinary care conference (conference):

(i) Frequency: The provider shall conduct a conference for each consumer 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. At least seven days before the conference begins, the provider shall invite the following persons to participate in the conference and provide those persons with the date and time of the conference:

(a) The consumer.

(b) The consumer's case manager, if the consumer receives case management as part of care coordination.

(c) Any licensed healthcare profession who does not work for the provider, but who provided the provider with a health

*** DRAFT - NOT YET FILED ***

assessment of the consumer or an activity plan for the consumer.

(d) The consumer's caregiver, if the consumer has a caregiver.

(iii) Revise activity plan: If the conference participants identify changes in the consumer'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 require a staff member who is such a licensed healthcare professional to revise the activity plan accordingly.

(h) Activities: The provider shall announce daily and monthly planned activities 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) A direct communication sent to consumers (and others), such as email, text, mail, or another medium.

(i) Lunch and snacks:

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

(ii) The provision of lunch shall comply with paragraphs (A)(7) to (A)(12) of rule 173-4-05 of the Administrative Code and paragraph (E) of rule 173-4-05.1 of the Administrative Code.

(3) Center requirements: A provider may qualify for an AAA-provider agreement to provide ADS only if the provider's center meets the following specifications:

(a) If the center is housed in a building with services or programs other than ADS, the center has ~~a~~ separate, identifiable space and staff

*** DRAFT - NOT YET FILED ***

~~are available~~ for ADS ~~activities~~ during ~~all~~ operational hours ~~in which the provider provides ADS in the center~~.

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

(b) The center complies with the requirements for an adult day care center in Chapter 1301:7-7 of the Administrative Code ("Ohio Fire Code"), which are enforced by the local fire department or code enforcement bureau of the state fire marshal. The center obtains a local fire department or state code enforcement bureau inspection annually and after receiving a report of noncompliance.

(c) The center complies with the requirements for an adult day care center in Agency 4101:1 of the Administrative Code ("Ohio Building Code") and Agency 4101:3 of the Administrative Code ("Ohio Plumbing Code"), which are enforced by the building department having jurisdiction to issue a certificate of occupancy. The center allows a building department having jurisdiction to inspect the center after receiving a report of noncompliance at the building department's discretion.

~~(c)~~(d) The center has at least sixty square feet per ~~individual~~ consumer that it serves (not just consumers who are enrolled in AGE-administered programs), excluding hallways, offices, rest rooms, and storage areas.

~~(d)~~(e) The ~~provider~~ center stores consumers' medications in a locked area ~~that the provider maintains~~ at ~~a~~ the appropriate temperature ~~that meets the storage requirements of the medications~~ for each medication and establishes a policy on self-administering medications that ensures the least restrictive environment for consumers and promotes their health and safety.

~~(e)~~(f) The ~~provider~~ center stores toxic substances in ~~an area that is inaccessible to consumers~~ a secured location or secured storage container.

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

*** DRAFT - NOT YET FILED ***

~~(g)~~(h) If the center provides intensive ADS, the center has bathing facilities suitable to the needs of consumers who require intensive ADS.

(4) Staffing levels:

(a) The provider shall have at least two staff members present whenever more than one consumer is present, including one who is a paid PCA and one who is certified in CPR.

(b) The provider shall maintain a staff-to-consumer ratio of at least one staff member to every six consumers at all times.

(c) The provider shall have one RN, or LPN under the direction of an RN, available whenever a consumer who receives enhanced ADS or intensive ADS requires components of enhanced ADS or intensive ADS that fall within a nurse's scope of practice.

(d) The provider shall employ an activity director to direct consumer activities.

(5) Provider qualification:

(a) Type of provider: Only agency providers qualify to provide ADS.

(b) Staff qualifications:

(i) Every person who is an RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, dietitian, occupational therapist, occupational therapy assistant, or other licensed professional qualifies to practice in the adult day center only if the person has a current and valid license to practice in their profession.

(ii) A person qualifies to be an activity director only if the person has 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 assistant or a related position.

*** DRAFT - NOT YET FILED ***

(c) Compliance with the qualifications under rule 3701-17-07 of the Administrative Code for directing resident activities in a nursing home.

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

(iii) A person qualifies to be an activity assistant only if the person has at least one of the following:

(a) A high school diploma.

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

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

(iv) A person qualifies to be a PCA only if the person has at least one of the following:

(a) A high school diploma.

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

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

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

(v) Each staff member who provides transportation to consumers shall comply with all requirements under rule 173-3-06.6 of the Administrative Code.

(c) Staff training:

(i) Orientation: The provider shall comply with the requirements for the orientation of PCAs in rule 173-3-06.5 of the Administrative Code.

*** DRAFT - NOT YET FILED ***

(ii) Task-based training: Before each new PCA provides an ADS, the provider shall provide task-based training.

(iii) Continuing education: Each staff member shall successfully complete at least eight hours of in-service or continuing education on appropriate topics every twelve months. A staff member's successful completion of one to eight hours of continuing education or in-service training to maintain 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) Verification of compliance: The provider shall comply with paragraph (B)(3)(f) of rule 173-3-06.5 of the Administrative Code regarding records of each PCA's successful completion of any training and competency evaluation program, orientation, and in-service training.

(d) Performance reviews: The provider shall complete a performance review of each staff member in relation to the staff member's job description.

(6) Service verification:

(a) The following are the mandatory reporting items for each episode of service that a provider retains to comply with the requirements under paragraph (B)(9) of rule 173-3-06 of the Administrative Code:

(i) Consumer's name.

(ii) Service date.

(iii) Consumer's arrival and departure times.

(iv) Consumer's mode of transportation.

(v) Unique identifier of the consumer or the consumer's caregiver to attest to receiving the service.

(b) During a state of emergency declared by the governor or a federal public health emergency, the provider may verify each episode of service provided without collecting the unique identifier of the consumer or the consumer's caregiver.

*** DRAFT - NOT YET FILED ***

(C) Units of service:

(1) Attendance: Units of ADS are calculated as follows:

(a) One-half unit is less than four hours of ADS per day.

(b) One unit is four to eight hours of ADS per day.

(c) 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.

(2) Transportation: A unit of ADS does not include transportation, as defined by rule 173-3-06.6 of the Administrative Code, even if the transportation is provided to transport the consumer to or from the center.

*** DRAFT - NOT YET FILED ***

173-39-02.1 ~~ODA provider~~ Provider **certification: adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service provided at an adult day center (center) in a non-institutional, community-based setting and consisting of the activities authorized in an individual's person-centered services plan. ADS includes recreational and educational programming to support an individual's health and independence goals; at least one, but no more than two, meals per day; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the 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

*** DRAFT - NOT YET FILED ***

Rehabilitative and restorative services	No	Yes

(B) Requirements to become, and to remain, ~~an ODA-certified~~ a certified provider of ADS:

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

(2) Service requirements:

(a) Transportation: The provider shall transport each individual to and from the center by performing transportation that complies with rule 173-39-02.18 of the Administrative Code, unless the provider subcontracts with another provider that complies with rule 173-39-02.18 of the Administrative Code, or unless the caregiver transports or designates another person, other than the center's provider, to transport the individual to and from the center.

(b) 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) The individual's functional, cognitive, and social needs.

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

(c) Health assessment: No later than thirty days after the individual's initial attendance at the center or before the individual receives the first ten units of service at the center, whichever comes first, the provider shall obtain a health assessment of each individual from a licensed healthcare professional whose scope of practice includes health assessments or an employee who is such a licensed

*** DRAFT - NOT YET FILED ***

healthcare professional to perform a health assessment of each individual. The health assessment shall include the individual's psychosocial profile and identify the individual's risk factors, diet, and medications. If the licensed healthcare professional who performs the health assessment is not an employee of the provider, the provider shall retain a record of the professional's name and phone number.

(d) Activity plan: No later than thirty days after the individual's initial attendance at the center or before the individual receives the first ten units of service at the center, whichever comes first, the provider shall 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 an employee who is such a licensed healthcare professional to draft an activity plan for each individual. The plan shall do all of the following:

(i) Identify the individual's strengths, needs, problems or difficulties, and objectives.

(ii) Describe the individual's interest, preferences, and social rehabilitative needs.

(iii) Describe the individual's health needs.

(iv) Describe the individual's specific goals, objectives, and planned interventions of ADS that meet the goals.

(v) Describe the individual's 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.

(vi) Describe the individual's ability to provide a unique identifier as an attestation that the provider, or the provider's staff, completed an activity or unit of service.

(e) 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

*** DRAFT - NOT YET FILED ***

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 is subject to the diet-order requirements for therapeutic diets under rule 5160-44-11 of the Administrative Code.

(f) Interdisciplinary care conference (conference):

(i) Frequency: The provider shall conduct a conference for each individual at least once every six months.

(ii) Participants: The provider shall conduct the conference between the provider's staff and invitees who choose to participate. At least seven days before the conference begins, the provider shall invite the following persons to participate in the conference and provide those persons with the date and time of the conference:

(a) The individual's case manager.

(b) Any licensed healthcare profession 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.

(c) The individual's caregiver, if the individual has a caregiver.

(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 an employee who is such a licensed healthcare professional to revise the activity plan accordingly.

(g) Activities: The provider shall announce daily and monthly planned activities 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.

*** DRAFT - NOT YET FILED ***

(iii) The center's website.

(iv) Email sent to individuals (and others) who agree to receive the email.

(v) Monthly newsletters distributed to individuals by mail, email, or at the center.

(h) 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 may ~~qualifies~~ qualify to be ~~an~~ a ~~ODA-certified~~ certified ADS provider only if the provider's center ~~has~~ meets the following specifications:

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

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

(b) The center complies with the requirements for an adult day care center in Chapter 1301:7-7 of the Administrative Code ("Ohio Fire Code"), which are enforced by the local fire department or code enforcement bureau of the state fire marshal. The center obtains a local fire department or state code enforcement bureau inspection annually and after receiving a report of noncompliance.

(c) The center complies with the requirements for an adult day care center in Agency 4101:1 of the Administrative Code ("Ohio Building Code") and Agency 4101:3 of the Administrative Code ("Ohio Plumbing Code"), which are enforced by the building department having jurisdiction to issue a certificate of occupancy. The center allows a building department having jurisdiction to inspect the

*** DRAFT - NOT YET FILED ***

center after receiving a report of noncompliance at the building department's discretion.

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

~~(d)~~(e) The ~~provider~~ center stores individuals' medications in a locked area ~~the provider maintains~~ at ~~a~~ the appropriate temperature ~~complying with the storage requirements of the medications~~ for each medication and establishes a policy on self-administering medications that ensures the least restrictive environment for individuals and promotes their health and safety.

~~(e)~~(f) The ~~provider~~ center stores toxic substances in ~~an area which is inaccessible to individuals~~ a secured location or secured storage container.

~~(f)~~(g) 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~~ AGE-administered program) and at least one wheelchair-accessible toilet.

~~(g)~~(h) If the center ~~seeks certification~~ is certified to provide intensive ADS, the center has bathing facilities suitable to the needs of individuals who need intensive ADS.

(4) Staffing levels:

(a) The provider shall have at least two staff members present, with at least one of those staff members having a certification in CPR, when more than one individual is present in the center.

(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 an RN, or LPN under the direction of an RN, available to provide nursing services that need the skills of an RN, or LPN under the direction of 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.

*** DRAFT - NOT YET FILED ***

(5) Provider qualifications:

(a) Type of provider:

(i) Only an agency provider qualifies for ~~ODA's~~ certification to provide ADS.

(ii) For each provider that ~~ODA~~ AGE certifies, ~~ODA~~ AGE shall certify the provider as an enhanced or intensive provider. If ~~ODA~~ AGE 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 person who is an RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, licensed dietitian, occupational therapist, occupational therapy assistant, or other licensed professional qualifies to practice in the center only if the person has a current, valid license to practice in their profession.

(ii) A person qualifies to be an activity director only if the person has 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 home.

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

(iii) A person qualifies to be an activity assistant only if the person has at least one of the following:

(a) A high school diploma.

*** DRAFT - NOT YET FILED ***

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

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

(iv) A person qualifies to be a PCA only if the person has at least one of the following:

(a) A high school diploma.

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

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

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

(v) A person qualifies to transport individuals for the provider only if the person meets the qualifications for drivers under rule 173-39-02.18 of the Administrative Code.

(c) Staff training:

(i) Orientation: The provider shall comply with the requirements for the orientation of PCAs in rule 173-39-02.11 of the Administrative Code.

(ii) Task-based training: Before each new PCA provides ADS, the provider shall provide task-based training.

(iii) Continuing education and in-service training: Each PCA, activity director, and activity assistant shall successfully complete at least eight hours of continuing education or in-service training each calendar year. Any hour of continuing education or in-service training successfully completed during a calendar year to comply with the requirements for certification as an activity director or activity assistant counts towards the eight-hour requirement in this paragraph.

*** DRAFT - NOT YET FILED ***

(iv) Verification of compliance: The provider shall comply with paragraph (C)(3)(f) of rule 173-39-02.11 of the Administrative Code regarding records of each PCA's successful completion of any training and competency evaluation program, orientation, and in-service training.

(6) Service verification: The following are the mandatory reporting items that a provider retains for each ADS session to comply with the requirements under paragraph (B)(10)(a)(i) of rule 173-39-02 of the Administrative Code:

(a) Individual's name.

(b) Service date.

(c) Individual's arrival time.

(d) Individual's departure time.

(e) Individual's mode of transportation.

(f) Unique identifier of the individual to attest to receiving the service.

(C) Units and rates:

(1) For the PASSPORT program, the appendix to rule 5160-1-06.1 of the Administrative Code lists the following:

(a) The units of ADS attendance.

(b) The units of ADS transportation.

(c) The maximum rates allowable per unit of ADS attendance or ADS transportation.

(2) For the PASSPORT program, the rate-setting methodology is established in rule 5160-31-07 of the Administrative Code and in the following paragraphs:

(a) Attendance:

(i) Units of ADS attendance are calculated as follows:

(a) One-half day unit is less than four hours of ADS per day.

*** DRAFT - NOT YET FILED ***

(b) One day unit is four to eight hours of ADS per day.

(c) 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.

(ii) A unit of ADS attendance does not include transportation time.

(b) Transportation: If the service is provided to an individual enrolled in the PASSPORT program, 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 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.