



Ohio Administrative Code

Rule 173-39-02.16 ODA provider certification: assisted living service.

Effective: July 1, 2024

(A) Definitions for this rule:

(1) "Assisted living service" means either a basic service or memory care that promotes aging in an RCF by supporting the individual's independence, choice, and privacy.

(2) "Basic service" means all of the following:

(a) A service that includes the following:

(i) Personal care under rule 3701-16-09 of the Administrative Code, which includes hands-on assistance, supervision, and/or cuing of ADLs, and IADLs.

(ii) Nursing, including the following:

(A) The initial and subsequent health assessments under rule 3701-16-08 of the Administrative Code.

(B) Other activities included in rules 3701-16-09 and 3701-16-09.1 of the Administrative Code.

(iii) Coordinating three meals per day and snacks according to rule 3701-16-10 of the Administrative Code with access to food according to rule 5160-44-01 of the Administrative Code.

(iv) Coordinating the social, recreational, and leisure activities under rule 3701-16-11 of the Administrative Code to promote community participation and integration, including non-medical transportation to services and resources in the community.

(b) A service that does not include the following:



(i) Housing.

(ii) Meals.

(iii) Twenty-four-hour skilled nursing care.

(iv) One-on-one supervision of an individual.

(3) "Census" means the total number of residents in an RCF on a given day and includes any resident who is temporarily absent from the RCF without being discharged.

(4) "Memory care" means a service that a provider provides in compliance with paragraph (D) of this rule to an individual that a practitioner assessed, then issued a documented diagnosis of any form of dementia.

(5) "Practitioner" means a health care provider engaging in activities authorized by the provider's license, certification, or registration.

(6) "Resident call system" has the same meaning as in rule 3701-16-01 of the Administrative Code.

(7) "Staff member" and "staff" have the same meanings as in rule 3701-16-01 of the Administrative Code.

(B) Certification types: ODA certifies each provider for either of the following:

(1) The basic service.

(2) The basic service and memory care.

(C) Requirements for an ODA-certified provider of the basic service:

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



(2) RCF qualifications:

(a) Licensure: Only a provider who maintains a current, valid RCF license from ODH and maintains compliance with Chapter 3721. of the Revised Code and Chapters 3701-13 and 3701-16 of the Administrative Code qualifies to provide this service.

(b) Public information: The provider shall display the following on its website:

(i) Whether the provider is currently certified by ODA to provide the basic service or both the basic service and memory care.

(ii) Whether the provider is currently accepting individuals who are enrolling in the assisted living program or mycare Ohio.

(c) Resident units: A resident unit qualifies for this service only if the unit meets all the following standards:

(i) Occupancy:

(A) The resident unit is a single-occupancy resident unit designated solely for the individual, except as permitted under paragraph (C)(2)(c)(i)(b) of this rule.

(B) The provider may allow an individual to share a single-occupancy resident unit only if all of the following conditions exist:

(i) The individual requests to share the individual's unit.

(ii) The individual shares the individual's unit with a person with whom the individual has an existing relationship.

(iii) ODA's designee verifies that the conditions of paragraphs (C)(2)(c)(i)(b)(i) and (C)(2)(c)(i)(b)(ii) of this rule are met and authorizes sharing the unit in the individual's person-centered services plan.



(ii) Lock: The resident unit has a lock that allows the individual to control access to the resident unit at all times, unless the individual's person-centered services plan indicates otherwise.

(iii) Bathroom: The resident unit includes a bathroom with a toilet, a sink, and a shower or bathtub, all of which are in working order.

(iv) Social space: The resident unit includes identifiable space, separate from the sleeping area, that provides seating for the individual and one or more visitors for socialization.

(d) Common areas: The provider shall provide common areas accessible to the individual, including a dining area (or areas) and an activity center (or centers). A multi-purpose common area may serve as both a dining area and an activity center.

(3) Staff availability: The provider shall maintain adequate staffing levels to comply with rule 3701-16-05 of the Administrative Code in a timely manner in response to individual's unpredictable care needs, supervisory needs, emotional needs, and reasonable requests for services through the resident call system twenty-four hours per day.

(4) Minors: No staff member under eighteen years of age qualifies to do any of the following:

(a) Assist with medication administration.

(b) Provide transportation.

(c) Provide personal care without on-site supervision, in accordance with rule 3701-16-06 of the Administrative Code.

(5) Initial staff qualifications: Only a staff member who successfully completes training in the following subject areas qualifies to provide this service:

(a) Principles and philosophy of assisted living.



- (b) The aging process.
- (c) Cuing, prompting, and other means of effective communication.
- (d) Common behaviors for cognitively-impaired individuals, behaviorally-impaired individuals, or other individuals and strategies to redirect or de-escalate those behaviors.
- (e) Confidentiality.
- (f) The person-centered planning process in rule 5160-44-02 of the Administrative Code, which includes supporting individuals' full access to the greater community.
- (g) The individual's right to assume responsibility for decisions related to the individual's care.
- (6) In-service training: The provider shall ensure that each staff member providing this service successfully completes any training requirements in rule 3701-16-06 of the Administrative Code and makes verification of successful completion of those requirements available to ODA or its designee upon request.
- (7) Quarterly assessments: The provider's RN or LPN shall contact the individual at least quarterly to assess, and retain a record of, all of the following:
 - (a) The individual's satisfaction with the individual's activity plan and whether the activity plan continues to meet the individual's needs.
 - (b) Whether the individual's records demonstrate that the individual is receiving activities as ODA or its designee authorized them in the individual's person-centered service plan.
 - (c) Whether staff are providing personal care services to the individual in a manner that complies with rule 3701-16-09 of the Administrative Code.
- (8) Subcontracting: The provider may subcontract to provide one or more, but not all, of the activities listed under paragraph (A)(2)(a) of this rule that ODA or its designee authorizes for the



individual. The provider is responsible to assure that any activity provided by a sub-contractor complies with this chapter.

(D) Requirements for an ODA-certified provider of the basic service and memory care:

(1) The provider is subject to the standards in paragraph (C) of this rule.

(2) The provider qualifies for certification to provide memory care only if the provider meets all of the following standards:

(a) The provider displays a purpose statement on its website that explains the difference between the provider's basic service and its memory care, or only a memory care purpose statement if that is the exclusive service the provider offers.

(b) The provider designates each single-occupancy resident unit in paragraph (C)(2)(c) of this rule in which it plans to provide memory care as one of the following:

(i) A resident unit in a memory care section of the RCF. The provider may add a single-occupancy resident unit to an existing memory care section even if the resident unit is not next door to the existing section.

(ii) A resident unit in an RCF that provides only memory care.

(c) A staff member who successfully completed the training requirement in paragraph (D)(3) of rule 3701-16-06 of the Administrative Code provides or arranges for at least three therapeutic, social, or recreational activities listed in rule 3701-16-11 of the Administrative Code per day with consideration given to individuals' preferences and designed to meet individuals' needs.

(d) The provider ensures safe access to outdoor space for individuals.

(e) The provider assists each individual who makes a call through the resident call system in person in fewer than ten minutes after the individual initiates the call.



(3) Staff availability: The provider qualifies for certification to provide memory care only if the provider meets all of the following standards in addition to the requirements in paragraph (C)(3) of this rule:

(a) The provider has a sufficient number of RNs or LPNs on call or on site at all times for individuals receiving memory care.

(b) The provider maintains the appropriate direct-care staff-to-resident ratio below for its memory care:

(i) If providing memory care and the basic service at the same time, a ratio for the provider's memory care that is at least twenty per cent higher than the provider's ratio for its basic service.

(ii) If providing only memory care and the average ratio for the basic service provided by a representative sample of providers participating in the medicaid-funded component of the assisted living program is readily available to the provider, then a ratio that is at least twenty per cent higher than that average ratio.

(iii) If providing only memory care and the average ratio for the basic service provided by a representative sample of providers participating in the medicaid-funded component of the assisted living program is not readily available to the provider, then a ratio of at least one direct-care staff member for every ten individuals receiving memory care with at least one direct-care staff member on each floor of the RCF if the RCF provides memory care on multiple floors.

(4) Initial staff qualifications: A staff member qualifies to provide memory care without in-person supervision only if the staff member successfully completes training all of the following topics in addition to the topics listed under paragraph (C)(5) of this rule:

(a) Overview of dementia: symptoms, treatment approaches, and progression.

(b) Foundations of effective communication in dementia care.

(c) Common behavior challenges specific to dementia and recommended behavior management



techniques.

(d) Current best practices in dementia care.

(e) Missing resident prevention and response.

(5) In-service training: A staff member continues to qualify to provide memory care only if the staff member successfully completes dementia care training when complying with paragraph (C)(6) of this rule.

(E) Units and rates:

(1) For the assisted living program, the appendix to rule 5160-1-06.5 of the Administrative Code lists the following:

(a) The unit of service as one day.

(b) The maximum-allowable rates for a unit of a unit of the basic service and a unit of memory care.

(c) Critical access rates.

(2) For the assisted living program, rule 5160-33-07 of the Administrative Code establishes the rate-setting methodology for a unit of service.

(3) Requirements to obtain the critical access rate for certified assisted living providers:

(a) A certified provider of the service, whether the basic service or memory care, that provided the service for one or more state fiscal years qualifies for the critical access rate by meeting all of the following:

(i) At least an average of fifty percent of the residents in the RCF were enrolled in medicaid during the preceding state fiscal year, whether through the assisted living program, mycare Ohio, or PACE.



(ii) The provider responds to ODA's annual June survey by providing, and attesting to the veracity of, all of the following information based on the current state fiscal year:

(A) The average daily census of the RCF.

(B) The average daily number of residents in paragraph (E)(3)(a)(ii)(a) of this rule who are enrolled in medicaid.

(C) The average daily percentage of residents in paragraph (E)(3)(a)(ii)(a) of this rule who are enrolled in medicaid.

(D) The medicaid identification numbers of all residents in paragraph (E)(3)(a)(ii)(a) of this rule who are enrolled in medicaid.

(E) For each resident in paragraph (E)(3)(a)(ii)(a) of this rule who is enrolled in mycare Ohio, the name of the mycare Ohio plan into which the resident enrolled.

(F) Any other information required in the survey.

(b) A certified provider of the assisted living service, whether the basic service or memory care, that has not provided the service for one or more state fiscal years and intends to provide the service for the duration of the state fiscal year in which the provider was initially certified, qualifies for the critical access rate by meeting all of the following:

(i) The provider projects and attests that at least an average of fifty percent of the residents in the RCF will be enrolled in medicaid during the state fiscal year, whether through the assisted living program, mycare Ohio, or PACE.

(ii) The provider responds to ODA's annual June survey by providing, and attesting to the veracity of, all of the following information for the period beginning with the provider's attestation date in paragraph (E)(3)(b)(i) of this rule through the remainder of the current state fiscal year:

(A) The average daily census of the RCF.



- (B) The average daily number of residents in paragraph (E)(3)(a)(ii)(a) of this rule who are enrolled in medicaid.
- (C) The average daily percentage of residents in paragraph (E)(3)(a)(ii)(a) of this rule who are enrolled in medicaid.
- (D) The medicaid identification numbers of all residents in paragraph (E)(3)(a)(ii)(a) of this rule who are enrolled in medicaid.
- (E) For each resident in paragraph (E)(3)(a)(ii)(a) of this rule who is enrolled in mycare Ohio, the name of the mycare Ohio plan into which the resident enrolled.
- (F) Any other information required in the survey.
- (c) A certified provider who fails to meet all requirements under (E)(3)(a) or (E)(3)(b) of this rule at the end of the fiscal year may requalify for the critical access rate by meeting the requirement in paragraph (E)(3)(a)(i) of this rule and satisfying the requirements in paragraph (E)(3)(a) of this rule.
- (d) The critical access rate is payable for a qualifying provider for a resident receiving the basic service for the duration of the state fiscal year without adjustment. This rate is not payable for a resident also receiving memory care.