

OHCA Comments on Rule 173-39-02.16 (05-13-2024 Draft)
May 16, 2024

Thank you for the opportunity to review and comment on the latest draft of the Assisted Living Waiver certification rule, incorporating the critical access rate. We are largely supportive of the new draft, but have a few comments, as listed below.

1. We very much appreciate that there is no mention of take-backs in the draft as it relates to critical access.
2. Paragraph (D)(2)(b). The language in the draft does not explicitly recognize a memory care unit (individual apartment) unless the facility has a memory care “section,” which is not a defined term. We support recognition of memory care units dispersed throughout the building, whether or not it has a separate “section” for memory care. We suggest adding a subparagraph (iii):

“(iii) A resident unit in an RCF that provides memory care in individual units dispersed throughout the building.”

3. Paragraph (E)(3). We suggest some clarifications to the critical access language.
 - a. Paragraph (E)(3)(a). Revise sentence to read: “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 for a state fiscal year by meeting all of the following:”
 - b. Paragraphs (E)(3)(a)(i), (a)(ii)(a), (a)(ii)(b), (a)(ii)(d), (b)(ii)(a), (b)(ii)(b), and (b)(ii)(d). Replace “in the RCF” with “in the RCF’s census.” This change would include residents who still live in the RCF but are temporarily absent because of hospitalizations, vacations, visits with family, short-term SNF stays, or other reasons that did not result in discharge.

To ensure clarity in what is meant by “census,” we suggest adding the following definition to paragraph (A) of the rule:

“(5) “RCF Census” means all resident beds that are occupied in an RCF by an assisted living resident, regardless of hospitalization, temporary leave of absence, or billable status of a Medicaid day.”

The remaining subparagraphs in paragraph (A) then would be renumbered accordingly.

- c. Paragraph (E)(3)(a)(ii). Revise sentence to read: “The provider responds to ODA’s annual June survey for the preceding state fiscal year by providing, and attesting to the veracity of all of the following information based on the state fiscal year ending with the month of the survey:”
- d. Paragraph (E)(3)(b). Revise sentence to read: “A certified provider of the assisted living service that ~~provided~~ begins to provide the service ~~for less than one~~ during a state fiscal year qualifies for the critical access rate for the state fiscal year in which the provider begins to provide the service and the subsequent fiscal year by meeting all of the following:”
- e. Paragraph (E)(3)(b)(ii). Revise sentence to read: “The provider ~~responds~~ qualifies to continue receiving the critical access rate after the state fiscal year in which the provider begins to provide the service and the subsequent fiscal year by responding to ODA’s annual June survey ~~or~~ for the first full state fiscal year after the provider begins to provide the service by providing, and attesting to the veracity of, all of the following information based on the state fiscal ~~quarter~~ year ending with the month of the survey:”
- f. Paragraph (E)(3)(c). Revise sentence to read: “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~~ for a fiscal year may ~~requalify~~ qualify 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) for the subsequent fiscal year.”