

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

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**173-39-02.2**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Alternative meal service.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.02, 173.391**

5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.403, 173.431**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The proposed adoption of this new rule to replace a rule of the same number is part of larger package of rules. Through that larger rule package, ODA is proposing to rescind several rules of the Administrative Code and replace them with rules of the same number. In doing so, ODA has five basic goals:

1. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.

2. To comply with Governor Strickland's Executive Order 2008-04S:

"Implementing Common Sense Business Regulation," which requires each state agency to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. (Because the process of adopting this proposed new rule spans two gubernatorial administrations, it is also ODA's goal to comply with Governor Kasich's new Executive Order 2011-01K "Establishing the Common Sense Initiative.") As a result, ODA's proposed new or amended language:

a. Complies with the Legislative Service Commission's "Rule Drafting Manual" as found on [http://www.lsc.state.oh.us/rules/rdm06\\_06.pdf](http://www.lsc.state.oh.us/rules/rdm06_06.pdf)

b. Incorporates the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007)

c. Incorporates the recommendations of "Plain English Writing Tips" as found on [http://business.ohio.gov/docs/RegReform\\_PlainEnglishWritingTips.pdf](http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf).

3. To reformat certain sections of the rule. As ODA continues to work with other agencies that participate in the consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S, we see the benefit of formatting our rules in the same way, rule after rule, and also presenting some topics clearly. These changes should not present any new requirements to a provider. This includes more standardized language regarding service verification.

4. To reformat certain sections of the rule, in the same spirit as #3, to match companion rules for ODA's non-Medicaid-funded programs under Chapter 173-3 of the Administrative Code, whenever there is a companion rule in Chapter 173-3 of the Administrative Code.

5. To replace "document-maintenance" language in the rules with "records-retention" language.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule regulates the alternative meal service for any provider who provides the service as a certified provider in a Medicaid-funded program under Chapter 173-39 of the Administrative Code. (Rule 173-3-06.1 of the Administrative Code regulates the similar restaurant and grocery meal service for any provider who provides the service as a provider who has entered a provider agreement for a non-Medicaid-funded program under Chapters 173-3 and 173-4 of the Administrative Code.)

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

On November 18, 2010, ODA revise-filed this rule to:

1. Upload a revised public hearing notice into the Electronic Rule Filing system.
2. Revise this RSFA.

On January 3, 2011, ODA refiled this rule to:

1. Replace "The provider shall prepare each meal in compliance with all applicable federal, state, county, and local laws and regulations governing the preparation, handling, and delivery of food" in paragraph (B)(1) of the rule with "Each meal that the provider furnishes shall comply with all the requirements for the home-delivered meal service under rule 173-39-02.14 of the Administrative Code, except for the requirements in that rule that pertain to the delivery of the meal." Rule 173-39-02.14 of the Administrative Code specifically addresses meal requirements and ODA previously proposed to make use similar language in proposed new rule 173-39-02.1 of the Administrative Code. (ODA recently adopted a new version of rule 173-39-02.14 of the Administrative Code on January 1,

2011.)

2. Replace "consumer-directed individual provider" in paragraph (B)(2)(a) of the rule with "non-agency provider," which is the provider type specified on the Medicaid waiver language approved by the Centers for Medicare and Medicaid Services (CMS) for the Choices Program.

3. Revise this RSFA.

On February 8, 2011, ODA refiled this rule to:

1. Replace "Minimum requirements" in paragraph (B) of the rule with "Requirements."

2. Revise this RSFA.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the proposed adoption of this new rule to replace a rule of the same number will have no impact upon the biennial budget that the General Assembly established for ODA.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-423 Long-Term Care Budget - State.

3C40-490-623 Long-Term Care Budget.

4J40-490-610 PASSPORT/Residential State Supplement.

4U90-490-602 PASSPORT Fund.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

ODA estimates that the proposed adoption of this new rule to replace a rule of the same number will have no cost of compliance to any directly-affected person.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**