

173-39-08

**Appeal hearings and adjudication orders.**

(A) Hearing proceedings: ODA ~~will~~ shall conduct all appeal hearings resulting from a proposal to deny certification as a community-based long-term care provider or to sanction a provider in accordance with Chapter 119. of the Revised Code.

(1) ODA ~~will~~ shall employ a hearing examiner to conduct all hearings initiated under rule 173-39-07 of the Administrative Code.

(2) ~~The ODA schedules the date, time, and place of any hearing is set by ODA.~~ ODA ~~will~~ shall provide written or electronic notice ~~prior to~~ of the hearing's date, time, and place before the date of the hearing to all participants in the hearing and file a copy of the written notice in the record of the hearing.

(3) Subject to the prior approval of the hearing examiner, any appellant may choose to present the case entirely in writing provided that the appellant makes a written request ~~is made by the appellant~~ no later than fourteen business days ~~prior to~~ before the date ODA scheduled for the hearing. ~~Any~~ The appellant shall file any request to present the case entirely in writing ~~must be filed~~ with the hearing examiner. Any appellant who elects to present the case entirely in writing ~~must~~ shall do so in accordance with any procedures the hearing examiner ordered ~~by the hearing examiner~~. The hearing examiner's order ~~must~~ shall be in writing and filed in the record of the hearing. ~~In the event that~~ If the appellant elects to present its case in writing, ~~the department~~ ODA may elect to present its case entirely in writing. Nothing in this rule is to be construed as preventing ~~the department~~ ODA from compelling the attendance of the appellant or other witnesses at the hearing and questioning the appellant or other witnesses as if on cross-examination. Nothing in this rule is to be construed as preventing any appellant from examining any witnesses or evidence ~~presented by the department~~ that ODA presents at the hearing.

(4) During the course of any hearing, the participants to the proceeding may enter into oral stipulations of fact, procedure, or the authenticity of documents which ~~will be incorporated~~ the hearing examiner shall incorporate into the record and ~~will~~ shall bind the conduct of the participants. The hearing examiner conducting the case may require any participant to reduce his or her oral stipulations to be reduced to writing and submitted a written document that the participant shall submit to the hearing examiner. The hearing examiner ~~assigned to conduct a hearing~~ has the power to rule on the admissibility of evidence or testimony, but a participant may make objections to the rulings thereon. If the hearing examiner refuses to admit evidence or testimony, the participant seeking admission of same ~~must~~ shall make a proffer thereof and the hearing examiner shall make such proffer ~~will be made~~ a part of the record of the hearing. The hearing examiner may refer to the guidelines contained in the "Ohio Rules of Evidence" in making decisions

on admissibility.

(B) Hearing examiner's report:

- (1) Upon the conclusion of any hearing, the hearing examiner ~~will~~ shall prepare a written report of findings of fact, conclusions of law, and recommendations of ~~departmental action to be taken~~ actions for ODA to take in disposition of the hearing. ~~Within five days of its completion,~~ ODA ~~will~~ shall send a copy of the hearing examiner's report and recommendations by certified mail, return receipt requested, to the appellant or the appellant's attorney, ~~a copy of the hearing examiner's report within five days of receiving the report and recommendations.~~ The report ~~will~~ shall be considered to have been mailed as of the date appearing on United States postal service form 3800.
- (2) An appellant may file written objections to the hearing examiner's report. Any such objections ~~must~~ shall be received by ODA no later than ten days after the appellant receives the report. ODA may grant an extension of time to file objections if ODA receives the appellant's written request for an extension ~~is received by ODA~~ no later than ten days after the appellant's receipt of the report. The date the appellant receives the hearing examiner's report is the date indicated on the United States postal service form 3800. ~~The director of ODA will~~ ODA's director shall consider timely written objections before approving, modifying, or disapproving the hearing officer's recommendations ~~of the hearing examiner.~~

(C) ODA's director's action:

- (1) ~~Recommendations~~ ODA's director may approve, modify, or disapprove of the hearing examiner's recommendations ~~may be approved, modified, or disapproved by the director of ODA. The director of ODA~~ ODA's director may order the hearing examiner to take additional testimony ~~to be taken~~ and permit the introduction of further documentary evidence. ~~In those instances where the director of ODA~~ If ODA's director modifies or disapproves the hearing examiner's recommendations ~~of the hearing examiner, the director of ODA will~~ ODA's director shall include the reasons therefore and incorporate said reasons into the final order of adjudication.
- (2) After ODA's director has entered an order approving, modifying, or disapproving the hearing examiner's recommendation on ~~the department's~~ ODA's journal of proceedings, ODA's director ~~will~~ shall mail to the appellant and any attorney of record by certified mail, return receipt requested, a copy of the order, and a statement of the time and method by which an appeal may be perfected.

(D) Court of common pleas:

- (1) Any appellant other than a licensee against whom a final order of adjudication is entered, pursuant to this rule, may appeal that order to the Franklin County court of common pleas. Any licensee against whom a final order of adjudication is entered, pursuant to the this rule, may appeal that order to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.
- (2) Any party desiring an appeal pursuant to this rule ~~must~~ shall file an original notice of appeal with ~~the department~~ ODA setting forth the order appealed from and the grounds of the party's appeal. In order to be determined filed with ODA, the notice of appeal must be received by ODA, as evidenced by an ODA ~~date-and-time~~ date-and-time stamp, no later than fifteen days after the mailing to the affected party, as evidenced by United States postal service form 3800, of the order to be appealed from. ~~Appellant~~ The appellant shall also file a copy of the notice of appeal with the court of common pleas no later that fifteen days after the mailing to the affected party, as evidenced by United States postal service form 3800, of the order to be appealed from.

Effective:

R.C. 119.032 review dates: 07/13/2011

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.391, 5111.89  
Rule Amplifies: Chapter 119., 173.391, 173.403, 173.431, 5111.89  
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