

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

Agency Name

Division

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173-4-04

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Congregate nutrition program.**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; 173.392; Section 305 (a)(1)(C) of the Older Americans act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 42 C.F.R. 1321.11**

5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Section 213.20 of Am. Sub. H. B. No. 119 (127th G.A.); Section 305 (a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006**

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

ODA is proposing this new rule as part of a larger effort to codify ODA's standards for agreements between AAAs and providers who are not providing services under a Medicaid-funded program (i.e., providers who are non-certified providers under

section 173.392 of the Revised Code). This effort will bring ODA into compliance with section 173.392 of the Revised Code, Section 305 (a)(1)(C) of the Older Americans Act, and 45 C.F.R. 1321.11.

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 proposed new rule regulates a congregate nutrition program for non-certified providers paid through means of a provider agreement entered into with an AAA. Specifically, the rule:

1. Defines the term "congregate nutrition program"; and,
2. Itemizes the minimum requirements for a congregate nutrition program on the topics of eligibility and enrollment; frequency of meals; voluntary contributions; records; food safety and sanitation; food temperatures; food-borne illness; emergencies; staff training; and quality assurance.

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 25, 2008, ODA revised the proposed new rule to:

1. Revise the public hearing notice.
2. Revise this RSFA.

On January 5, 2009, ODA refiled the proposed new rule to:

1. Replace "The provider agreement shall determine whether it is the responsibility of the provider or the AAA to provide to each consumer enrolled in the home-delivered nutrition program a nutrition consultation service under rule 173-4-06 of the Administrative Code, a nutrition education service under rule 173-4-07 of the Administrative Code, or both services" in paragraph (B)(5) of the rule with "The provider agreement shall determine whether it is the responsibility of the provider or the AAA to provide to each consumer enrolled in the congregate nutrition program a nutrition consultation service under rule 173-4-06 of the Administrative Code, a nutrition education service under rule 173-4-07 of the Administrative Code, or both services."
2. Remove, "and," from paragraph (B)(11)(b)(iii) and add "and," to paragraph (B)(11)(b)(iv) of the rule.
3. Add, under paragraph (B)(11)(b) of the rule, paragraph (B)(11)(b)(v) of the rule, which says, "Results of program monitoring."
4. Upload a hearing notice into the Register of Ohio to announce ODA's option to provide a second public hearing.
5. Revise this RSFA.

On January 9, 2009, ODA refiled this proposed new rule to:

1. Revise the public hearing notice.
2. Revise this RSFA.

On November 24, 2008, ODA revised this proposed new rule to:

1. Replace the words "the AAA may provide meals from the restaurant or grocery" in paragraph (B)(1) of the rule with, "the AAA may provide a meal service from the restaurant or grocery."
2. Revise this RSFA.

On November 25, 2008, ODA revised this proposed new rule to:

1. Revise the public hearing notice.
2. Revise this RSFA.

On January 5, 2009, ODA refiled this proposed new rule to:

1. Replace "The restaurant or grocery shall maintain documentation that all meals prepared by the restaurant or grocery comply with sections 918.01 to 918.03 of the Revised Code" to "The restaurant or grocery shall maintain documentation that all meals prepared by the restaurant or grocery comply with sections 918.01 to 918.31 of the Revised Code."

2. Add new paragraphs (B)(7) and (B)(8) of the rule and renumber paragraphs (B)(7), (B)(8), and (B)(9) of the rule, "(B)(9)," "(B)(10)," and "(B)(11)" of the rule. New paragraph (B)(7) says, "Emergencies: The provider or the AAA shall distribute information to consumers on how to stock an emergency food shelf." New paragraph (B)(8) says, "Staff training: Using a protocol established by the AAA, the restaurant or grocery shall maintain documentation of training provided to each staff member."

3. Upload a hearing notice into the Register of Ohio to announce ODA's option to provide a second public hearing.

4. Revise this RSFA.

On January 9, 2009, ODA refiled this proposed new rule to:

1. Delete, in paragraph (B)(10)(b) of the rule, one occurrence of "the meal vouchers" from "the meal vouchers the meal vouchers."

2. Revise the public hearing notice.

3. Revise this RSFA.

On January 21, 2009, ODA refiled the proposed new rules of Chapter 173-4 of the Administrative Code to:

1. Ensure due process of the law, as follows: When ODA original-filed the proposed new rules on November 21, 2008, the original public hearing notice referred to rules other than the proposed new rules of Chapter 173-4 of the Administrative Code. On November 25, 2008, ODA revise-filed the proposed new rules to revise the information on the public hearing notice, but kept the same public hearing date, which, unintentionally reduced the time required to notify the public of the December 22, 2008 public hearing on the proposed new rules of Chapter 173-4 of the Administrative Code (not those listed on the original-filed notice) to less than 31 days. Therefore, to make it possible for the public to have a 31-day period between the issuance of the public hearing notice and the hearing, on January 9, 2009, ODA refiled the rules with a revised public notice that announced

a second public hearing for February 9, 2009. To ensure that JCARR did not place the proposed new rules on the consent agenda for its January 28th meeting (before the second public hearing), but, instead, placed the proposed rules on the consent agenda for its February 17, 2009 meeting (after the second public hearing), ODA refiled the rules again on January 21, 2009. In its January 21, 2009 filing, ODA did not change the language of the proposed new rules.

2. Revise this RSFA.

On January 23, 2009, ODA refiled this proposed new rule to:

1. Replace "potentially hazardous" in paragraph (B)(6)(e) of the rule with "a time/temperature controlled for safety food."

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 does not anticipate that the proposed adoption of this new rule would have any impact on the biennial budget established for ODA by the General Assembly because this proposed new rule should not create any expenses unforeseen when the General Assembly appropriate funds to ODA in Am. Sub. H. B. No. 119 (127th G. A.).

14. Identify the appropriation (by line item etc.) that authorizes each expenditure

necessitated by the proposed rule:

322-490-618 Federal Aging Grants.

3M3-490-611 Federal Aging Nutrition.

3M4-490-612 Federal Independence Services.

GRF-490-411 Senior Community Services.

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 there will be no cost of compliance to any directly-affected person as a result of the adoption of this proposed new rule. A provider who enters into a provider agreement under Chapters 173-3 or 173-4 of the Administrative Code is reimbursed for his/her fully-allocated costs, meaning any costs incurred by complying with this rule are compensated by funds administered under this Chapter. Additionally, the provider sets the rate of reimbursement since he/she bids on the opportunity to win a provider agreement through a competitive-bidding process under rule 173-3-05 of the Administrative Code.

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**