

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

Agency Name

Division

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**173-4-06**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Older Americans Act nutrition program: diet orders.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
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: **173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 70 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (July 1, 2016).**
5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Section 339 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA proposes to amend the rule to make corrections to the rule ODA adopted on September 1, 2016.

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:

The rule regulates AAA-provider agreements for meals with a therapeutic diet, medical food, or food for a special dietary purpose, when they are paid, in full or in part, with Older Americans Act funds.

In (A)(4), ODA proposes to replace "regime" with "regimen."

In (B)(2)(a), ODA proposes to clarify that providers shall only honor diet orders for a dysphagia nutritive regimen if the diet order indicates whether the consumer requires thickening agents in individual components of the meal such as drinks, soups, etc. This would replace current language saying, "if the diet order requires the meals to have thickening agents." The current language leaves room for a possible misconception that the only diet orders to be honored are those requiring every item in a meal to have a thickening agent.

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:

The rule references the Code of Federal Regulations (C.F.R.) and the United States Code (U.S.C.) which are readily available to the general public free of charge on government websites.

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:

ODA did not electronically file the C.F.R. or the U.S.C. because those laws are readily available to the general public free of charge on [www.ecfr.gov](http://www.ecfr.gov) and [uscode.house.gov](http://uscode.house.gov).

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. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date: **11/30/2016**

(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's proposal to amend the rule would not impact the biennial budget the Ohio General Assembly established for ODA.

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

GRF-490-411 Senior Community Services.

3220-490-618 Federal Aging Grants.

3M40-490-612 Federal Independence 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:

There would be no cost of compliance directly associated with amending the rule.

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**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

The rule requires documenting diet orders and retaining records.