

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

Agency Name

Division

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**173-4-07**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Nutrition education service.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **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, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11**

5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Sections 336 and 339 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:

The proposed amended rule is part of a larger rule package.

In the rule package, ODA proposes to amend its rules for Non-Medicaid Nutrition

Programs and Nutrition-Related Services in Chapter 173-4 of the Administrative Code to implement the new, federal Dietary Guidelines for Americans and to make other changes. Specifically, ODA is proposing to rescind rule 173-4-05 of the Administrative Code, and, in its stead, adopt these five proposed new rules: proposed new rules 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, and 173-4-05.4 of the Administrative Code. ODA is also proposing to amend rules 173-4-07 and 173-4-08 of the Administrative Code.

Overall, ODA has 4 primary goals:

1. To incorporate guidelines of the Dietary Guidelines for Americans of 2010 into the rules. The U.S. Dept. of Health and Human Services and the U.S. Dept. of Agriculture jointly released the new guidelines on January 31, 2011. The new federal guidelines emphasize these three major goals: (a) balancing calories with physical activity to manage weight; (b) consuming more of certain foods and nutrients, such as fruits, vegetables, whole grains, fat-free and low-fat dairy products, and seafood; and (c) consuming fewer foods with sodium, saturated fats, trans fats, cholesterol, added sugars, and refined grains.
2. To emphasize person-centered (i.e., "self-directed") care in the rules, by requiring providers to (a) provide choices to consumers within the Dietary Guidelines for Americans and (b) help consumers make informed choices regarding meals, alternative meals, and meal types.
3. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.). In doing so, ODA is (a) proposing to amend this rule after providing interested parties and the general public an opportunity to provide input on the proposed amendments to the rule before filing the rule with the Joint Committee on Agency Rule Review (from November 10, 2011 to November 27, 2011, ODA posted the proposed amended rule on <http://aging.ohio.gov/information/rules/proposed.aspx> for a public-comment period) and (b) making the rules more user-friendly by (i) transforming one large, many-topic rule into five smaller fewer-topic rules and (ii) incorporating more tables into the new rules.
4. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the review date listed at the end of the rule.

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 proposed amended rule would regulate the nutrition education service.

ODA is proposing to amend the rule to:

1. Insert "or AAA" after each occurrence of "provider" in the rule (except in paragraph (B)(2)(c) of the rule) because area agencies on aging often provide the nutrition education service instead of engaging in a competitive-bidding process to find area businesses to provide the service. [ODA added this change after considering comments from ODA's public-comment period.]
2. Insert "food safety" in between "physical activity" and "or disease prevention" in paragraph (A) of the rule.
3. Add, after "Minimum requirements for a nutrition education service" in paragraph (B) of the rule, "in addition to the mandatory clauses under rule 173-3-06 of the Administrative Code."
4. Replace paragraph (B)(1)(a) of the rule, which said, "Education materials: The provider may only provide the service if the provider maintains documentation that the AAA's LD determines that the educational materials that the provider plans to distribute:" The proposed amended language says, "Education materials: The provider may only provide the service if the provider retains a record to show that the AAA's LD determined that the educational materials that the provider plans to distribute:" In doing so, ODA is replacing the "document maintenance" language with the more conventional "records retention" language.
5. Replace "maintain records" in paragraph (B)(1)(b) of the rule with "retain records," thereby replacing the "document maintenance" language with the more conventional "records retention" language.
6. Add to the end of paragraph (B)(1)(c) of the rule: "one of the following."
7. Insert two sub-paragraphs to paragraph (B)(1)(c)(i) of the rule, as follows: (a) Every even-numbered year, the provider shall offer one of the nutrition-education sessions on the topic of food safety as referenced in the "Dietary Guidelines for Americans." (b) Every odd-numbered year, the provider shall offer one of the nutrition-education sessions on the topic of the relationship between physical activity and healthy weight as referenced in the "Dietary Guidelines for Americans."
8. Replace paragraph (B)(2)(b) of the rule, which says "Records: For each service performed, the provider shall document each consumer's name (e.g., attendance sheet); service date and duration of service, service topic; service units; instructor's name; and instructor's signature." The new language says, "Records: For each service performed, the provider shall record each consumer's name (e.g., attendance sheet); the service date and duration of service; the educational topic; the service units; the instructor's name; and the instructor's signature."
9. Replace paragraph (B)(3) of the rule, which says, "Home-delivered nutrition programs and restaurant and grocery meal services: For each service provided, the provider shall document the number of consumers who received the educational

materials, service date, topic of the materials, and the provider's signature." The proposed new language says, "Home-delivered nutrition programs and restaurant and grocery services: For each service a provider provides through a home-delivered nutrition program or restaurant and grocery meal service, the provider shall retain a record to show the number of consumers who received the educational materials, the service date, the topic of the educational materials, and the provider's signature."

10. Insert "173.01" into the statutory authority section of the rule because section 173.01 of the Revised Code also gives ODA authority to adopt the rule.

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 May 18, 2012, ODA refiled the rule to:

1. Reword the proposed word order, and delete the last clause, in paragraph (A) of the rule. The paragraph formerly read, "'Nutrition education service' means a service that promotes better health by providing accurate and culturally-sensitive information and instruction to consumers or family caregivers on nutrition, physical

activity, food safety, or disease prevention, whether provided in a group or an individual setting." Now, it says, "'Nutrition education service' means a service that promotes better health by providing consumers or family caregivers with accurate and culturally-sensitive information and instruction on nutrition, physical activity, food safety, or disease prevention." The last clause was removed because it was unnecessary language.

2. Reword paragraph (B) of the rule. The paragraph formerly said, "Minimum requirements for a nutrition education service in addition to the mandatory clauses under rule 173-3-06 of the Administrative Code:" Now, the paragraph says, "In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a nutrition education service provider shall comply with the following requirements:"

3. Delete, in paragraph (B)(1)(a) of the rule, and throughout the rule, language that requires the AAA to provide the nutrition education service. Although an AAA is prohibited from directly providing a service, in some cases, an AAA may request a waiver from that requirement, through rule 173-3-05 of the Administrative Code, in order to conduct competitive bidding to find providers who will perform the service.

4. Add language to paragraph (B)(1)(b) of the rule to explain how long the provider must retain records. The AAA establishes the length of time, so long as that time is no shorter than the times required in paragraph (A)(20) of rule 173-3-06 of the Administrative Code.

5. Add language to paragraph (B)(1)(b) of the rule to make it clear that the licensed dietitian of an AAA is necessary for approving the methodology for evaluating the effectiveness of a nutrition education service.

6. Replace "offer," as it occurred in paragraphs (B)(1)(c)(i)(a) and (B)(1)(c)(i)(b) of the rule, with "conduct."

7. Reword the beginning of paragraph (B)(1)(c) of the rule. The words previously said, "The provider who is reimbursed with Older Americans Act funds shall offer to..." Now the words say, "The AAA shall require a nutrition education service provider to..." ODA removed the words "with Older Americans Act funds" because this rule also applies to Senior Community Services funds or any other funding that pays for meals through provider agreements as part of one of the programs that ODA administers.

8. Add to paragraphs (B)(1)(c)(i)(a) and (B)(1)(c)(i)(b) of the rule specific references to the Dietary Guidelines for Americans (e.g., "Appendix Three").

9. Delete "A system for providing a" at the beginning of paragraph (B)(1)(c)(ii) of the rule. The words were unnecessary.

10. Revise this RSFA.

On May 31, 2012, ODA refiled the rule to:

1. Remove two occurrences of an unnecessary "as" before the word "referenced" in paragraphs (B)(1)(c)(i)(a) and (B)(1)(c)(i)(b) of the rule.

2. Replace "appendix...to" in paragraph (B)(1)(c)(i)(b) of the rule with "chapter...of."

3. Revise this RSFA.

12. 119.032 Rule Review Date: **11/30/2011**

(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 amendment of this rule, nor the larger rule package, would have any impact upon the biennial budget the Ohio General Assembly established for ODA, because the rule package should not create any expenses for ODA that were unforeseen when the Ohio General Assembly appropriated funds to ODA in H.B. No. 153 (129th G.A.).

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

GRF-490-411 Senior Community Services.

322-490-618 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:

CONSUMERS: No meal consumer is required to pay for nutrition education.

PROVIDERS: ODA estimates that the proposed amendments in this rule will not create a new cost of compliance for any provider. Additionally, during ODA's public-comment period, no provider commented that the amendments to the rule would lead to a greater cost of compliance.

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**