

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

Agency Name

Division

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**173-4-09**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Older Americans Act nutrition program: nutrition health screening.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **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: **173.01, 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; Sections 331, 336, and 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:

This rule is part of a larger nutrition rule project. ODA proposes to adopt this new rule to replace the language in OAC173-4-08. For more information, please review the business impact analysis (BIA).

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 would establish requirements for nutrition health screening. It would replace of OAC173-4-08.

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 proposed new rule would reference a checklist which ODA publishes free of charge on ODA's website.

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 checklist with the rule because the checklist is readily available to the general public free of charge on [age.ohio.gov](http://age.ohio.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:

On May 2 and 3, 2016, ODA made revised filings of the rule to (1) update references to the Act in the "authorized by" and "amplifies" sections after the rule text and (2) upload a revised public hearing notice for a public hearing on the same

date and time and in the same location.

On July 20, 2016, ODA refiled the rule. In doing so, ODA made the following amendments to the rule in response to testimony offered to ODA at ODA's May 25, 2016 public hearing on the topic of referring consumers to providers:

\* ODA proposed inserting the following conditional clause to the end of the definition under paragraph (A) for "nutrition health screening: "...if the screening determines the consumer to be at high nutritional risk, referring consumer to providers of home and community-based goods and services with potential for reducing the risk." In doing so, ODA would only require referring consumers to providers if the screening determines the consumer to be at a high level of nutritional risk.

\* ODA proposed inserting a new paragraph to indicate that Providers may screen consumers as a stand-alone service or as part of a nutrition project or nutrition counseling. ODA also proposed a corresponding new paragraph that says "When provider provides nutrition health screening as part of another good or service paid, in whole or in part, with Older Americans Act funds, the screening is part of the cost of providing a unit of a meal through the other good or service."

\* ODA proposed deleting paragraphs (B)(4)(a) and (B)(4)(b) which said the following: "In the AAA-provider agreement, the AAA shall indicate whether the AAA or the provider is responsible for establishing a system for referring consumers with high nutritional risk to community-based providers of goods and services." and "In the AAA-provider agreement, the AAA shall indicate whether the AAA or the provider is responsible for documenting referrals to community-based providers of goods and services in the social assistance management system (SAMS)." Because §307(a)(8)(A) of the Act prohibits AAAs from directly providing nutrition services unless ODA grants the AAA a waiver, ODA's rules shall not say that AAAs make such determinations.

\* In place of paragraphs (B)(4)(a) and (B)(4)(b), ODA proposed 1 paragraph --(B)(4)--on referring consumers who are at high nutritional risk. The new paragraph included a prohibition against AAAs inserting into AAA-provider agreements any requirements for providers to identify other providers to whom they made referrals.

\* In paragraph (B)(5) of the rule, ODA proposed to no longer include the conditional phrase "if the provider is responsible for referrals" in the service-verification requirements. ODA also proposed eliminating requirements to verify when providers make referrals.

Additionally, regarding testimony offered to ODA at ODA's May 25, public hearing on the topic of how often screenings are required, ODA proposed deleting paragraph (B)(3) of the rule, which was subtitled "Frequency." ODA proposed transferring the language to rule OAC173-4-05. ODA also proposed, in

OAC173-4-05, to only require annual screenings. (See RSFA for OAC173-4-05.)

ODA proposed replacing all mentions of the Determine Your Own Nutritional Health checklist with "Form ODA0010" except for the definition of "Form ODA0010."

ODA also proposed changing the date of the reference to 45 C.F.R. 1321.11 in the statutory authority section from "October, 2015 edition" to "July 1, 2016" to reflect the latest version of the federal rule. (Cf. Administration for Community Living. Final Rules. Federal Register. Vol. 81. No. 107. Friday, June 3, 2016. Pp. 35644-35648.) This would have no effect on the rule's content.

**12. Five Year Review (FYR) 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

Adopting the proposed new rule to replace OAC173-4-08 (which ODA is simultaneously proposing to rescind) 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 adopting this new rule to replace the OAC173-4-08. For information on the cost of complying with the new rule, please review the BIA and its appendices.

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? **Yes**

The proposed new rule would regulate AAA-provider agreements which are necessary to provide this

service.

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 proposed new rule would require documentation, service verification, and records retention.