



Department of
Aging

Ted Strickland, Governor
Barbara E. Riley, Director

NOTICE

ODA will conduct a public hearing to obtain comments concerning ODA's proposed rescission of rules and adoption of new and amended rules regarding the **Long-Term Care Consumer Guide**, as required by section 119.03 of the Revised Code. ODA will conduct the hearing on **July 19, 2010** in Conference Room A of the Department's offices at 50 W. Broad Street, **10th floor**; Columbus, OH 43215. The hearing will begin at **10:00AM** and will continue until all parties in attendance at that time have had an opportunity to provide comment.

INTRODUCTION

ODA is proposing to replace current rules with new rules and to amend other rules in Chapter 173-45 of the Administrative Code. In doing so, ODA has four basic goals:

1. To adopt language concerning the incorporation of detailed information about home care providers in the Long-Term Care Consumer Guide. Section 173.46 of the Revised Code requires ODA to include certain long-term care *facilities* in the guide, but does not prohibit ODA from including long-term care *providers* in the guide in addition to the long-term care facilities. Additionally, division (B)(4) of section 173.46 of the Revised Code authorizes ODA to adopt rules on "any other information" and the current version of rule 173-45-02 of the Administrative Code, which was adopted in September of 2006, states that it is the duty of the Consumer Guide Advisory Council to consider the feasibility of including long-term care providers in the guide. At this time in 2010, ODA believes including long-term care providers in the guide is feasible and, thus, is proposing to do so. (Note: Section 173.47 of the Revised Code only subjects nursing facilities and residential care facilities to the Consumer Satisfaction Surveys and the fees associated with the surveys.)
2. To adopt language indicating that ODA may update the guide with information that it obtains from publicly-available sources.
3. To comply with the five-year review required under section 119.032 of the Revised Code.
4. To comply with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation." As a result, ODA's proposed new/amended language:
 - a. Complies with Chapter 5 of the Legislative Service Commission's "Rule Drafting Manual," as found on http://www.lsc.state.oh.us/rules/rdm06_06.pdf
 - b. Incorporates recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. © 2007)
 - c. Incorporates recommendations from "Plain English Writing Tips," as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.
 - d. Results in language that generously uses descriptive sub-headings (e.g., "Introduction," "Definitions," "Council duties," "Disclaimers," etc.); uses the active voice in the present tense, not the passive voice (e.g., "shall be") and not the future tense (e.g., "will"); uses the singular, unless the plural is necessary; replaces much legalese (e.g., "in the event of") with plain-English words (e.g., "If"); replaces long terms use repetitively (e.g., "Ohio long-term care consumer guide" and "Ohio long-term care consumer guide

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advisory council") with shorter terms that bear the same meaning (e.g., "guide" and "advisory council"). The intent is to produce easier-to-read and easier-to-comprehend rules to promote transparency regarding state regulations.

173-45-01 Introduction and definitions.

ODA is proposing to rescind the current rule and replace it with a new rule.

In the new rule, ODA is proposing to add language to paragraph (A) that is not present in the current rule. The proposed new rules state that ODA has permissive authority to include detailed information about other types of long-term care providers in the Long-Term Care Consumer Guide. Section 173.46 of the Revised Code *requires* ODA to include certain long-term care facilities in the guide, but *does not prohibit* ODA from including long-term care providers in the guide in addition to the long-term care facilities. Additionally, the current version of rule 173-45-02 of the Administrative Code states that it is the duty of the Consumer Guide Advisory Council to consider the feasibility of including long-term care providers in the guide.

ODA is proposing the following non-programmatic changes (*i.e.*, changes that do not change the Long-Term Care Consumer Guide program):

1. Adding the sub-heading "Introduction" to paragraph (A) of the rule.
2. Combining paragraphs (A) and (B) of the rule and no longer speaking of the guide as something that ODA will create, because ODA already created the guide. (e.g., ODA replaced "The guide will include..." with "The guide includes...".)
3. Replacing the legalese phrase, "As used in this chapter" with the sub-heading "Definitions for this chapter."
4. Moving the term "affiliation" to rule 173-45-06.1 of the Administrative Code, because the term "affiliation" is only used in rule 173-45-06.1 of the Administrative Code.
5. Defining "Centers for Medicare and Medicaid Services" as "CMS."
6. Replacing the term "department" with "ODA."
7. Correcting the definition of "facility," a term in the singular, so that it means "a nursing facility" or "a residential care facility," both of which are definitions in the singular, and not "nursing facilities and residential care facilities," which is a definition in the plural. This correction also reflects the definitions of the terms in section 173.44 and 173.45 of the Revised Code.
8. Removing the unnecessary words "of the following" as they appeared after "either" in the definition of "nursing facility."
9. Adding the word "or" between the two parts of the definition of "nursing facility" because either part defines a nursing facility.
10. Moving the definition of "quality measure" that was formerly defined in rule 173-45-07 of the Administrative Code to this rule. It is best to define a term at the end of a rule if the term is used only in that rule; or, at the end of a paragraph if the term is used only in that paragraph. Because the term "quality measure" is used in rules 173-45-01, 173-45-03, and 173-45-05 of the Administrative Code in addition to its use in rule 173-45-07 of the Administrative Code, it is best to define the term in this rule.

173-45-02 Consumer guide advisory council.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide), which result in a rule with fewer words that is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to organize the rule:

Council duties:

Council meetings:

Facilitation:

Open meetings:

Meeting notices:

Meeting minutes:

2. Replacing most occurrences of "Ohio long-term care consumer guide advisory council" and "advisory council" throughout the rule with "council."
3. Replacing "the department," as it occurred throughout the rule, with "ODA."
4. Moving the topic of ODA convening the council to paragraph (B)(1) of the rule as, "Facilitation: ODA shall convene the council." It was previously the first sentence of paragraph (A) of the rule, which said "The Ohio department of aging shall convene the Ohio long-term care consumer guide advisory council." The proposed version is also less verbose.
5. Discontinuing to mention, in paragraph (A)(1) of the rule, the *development* of rules, because the rules already exist. Instead, the paragraph says a council duty is to review rule proposals.
6. Replacing the reference to section 173.49 of the Revised Code and the phrase, "consumer guide" in paragraphs (A)(1) to (A)(4) of the rule with "guide."
7. Moving the main requirement (*i.e.*, the requirement for open meetings) to the beginning of the sentence in paragraph (B)(2) of the proposed new rule [paragraph (B) of the rule proposed for rescission], thereby leaving the exception for the end of the sentence.
8. Making other non-programmatic changes to increase the readability of the rule, such as replacing legalese (*e.g.*, except as otherwise authorized," "may ascertain," "four calendar days prior to," and "in the event of") with simpler words (*e.g.*, "unless an exception is authorized," "four days before," and "if.") and replacing verbose phrases (*e.g.*, "the chairperson of the advisory council") with simpler phrases (*e.g.*, "the council's chairperson").

173-45-03 Consumer guide content.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). The result is a rule that is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings.
2. Replacing "the department," as it occurred throughout the rule, with "ODA."
3. Incorporating the language in the unnumbered paragraph of the rule proposed for rescission into paragraphs (A) and (B) of the rule.
4. Grouping the content of the rule under two paragraphs: Paragraph (A) of the rule for general information, paragraph (B) of the rule for specific information.
5. Removing the references to other rules and the Ohio Revised Code concerning facility-specific information. By using the same language to describe the surveys and quality measures as found in the rule titles of other rules of this chapter, the references are not necessary.
6. Making other non-programmatic changes to increase the readability of the rule.

173-45-04 Search queries.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). ODA is proposing the following non-programmatic changes:

1. Adding sub-headings.
2. Referring to the guide only in the present tense because it already exists.
3. Placing the checklist items in alphabetical order, which is the order they appear in the actual guide, and wording the checklist items in the same manner as they appear in the actual guide, except for "Alzheimer's disease." This also makes the presentation of the items similar to the lists in proposed new rule 173-45-06.1 of the Administrative Code.
4. Making other non-programmatic changes to increase the readability of the rule, such as basic grammatical corrections and corrections for uniformity within the rule.

173-45-05 Display of comparative information following the execution of a search query.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide), except to use language that allows the guide to present information on long-term care providers. The result is a rule that is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Replacing "the department," as it occurred throughout the rule, with "ODA."
2. Replacing "the department of health," as it occurred throughout the rule, with "ODH."
3. Eliminating the duplication of language in paragraphs (A)(1) and (A)(2) [formerly paragraphs (A) and (B)] of the rule.
4. Eliminating language that is summed up by saying, "the guide shall include...the survey data provided pursuant to rule 173-45-08 of the Administrative Code." Previously, the rule also addressed information about findings by ODH that are also spelled-out in rule 173-45-08 of the Administrative Code.
5. Replacing the reference to a computer screen with a reference to the guide, which is an online guide.
6. Making other non-programmatic changes to increase the rule's readability.

173-45-06 Facility page.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is adding information in paragraph (B)(3) of the rule that says, "ODA may update a facility page with publicly-available information about the facility (*e.g.*, bed count, web site address, payment sources, *etc.*)"

Otherwise, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). The result is a rule that is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to the rule.
2. Replacing "the department," as it occurred throughout the rule, with "ODA."
3. Replacing "the department of health" with "ODH."
4. Eliminating redundancy by removing "if one is provided by the facility," "if any," and "if one exists," that occur in the rule in the sub-paragraphs of paragraph (A) of the rule; because, paragraph (A) of the rule, says the guide includes "specific comparative information, *if available.*" The subsequent uses are unnecessary.
5. Moving the main point of paragraph (B)(1) of the rule to the beginning of the paragraph, and the exception

moved to the end.

6. Making other non-programmatic changes to increase the rule's readability.

173-45-06.1 Information on the services provided by facilities.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA has added language to paragraph (C) of the rule to say that it may update a facility page with publicly-available information about the facility.

Otherwise, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). The result is a rule is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to the rule.
2. Replacing "the department," as it occurred throughout the rule, with "ODA."
3. Placing the checklist items in alphabetical order, which is the order they appear in the actual guide, and wording them in the same manner as they appear in the actual guide, except for "Alzheimer's disease." This also makes the presentation of the items similar to that in proposed new rule 173-45-04 of the Administrative Code.
4. Replacing the occurrences of "Alzheimer" with "Alzheimer's disease" because the disease is named after Alois Alzheimer. Mr. Alzheimer is not the disease himself.
5. Updating the references to rule 173-45-06 of the Administrative Code found in paragraph (C) of this rule to reflect the changes ODA is simultaneously proposing to that rule.
6. Converting the last sentence of paragraph (C) of the rule from the passive voice to the active voice.
7. Making other non-programmatic changes to increase the rule's readability.

173-45-06.2 Facility staffing information.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA has added language to paragraph (C)(1) of the rule to say that it may update a facility page with publicly-available information about the facility.

Otherwise, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). The result is a rule is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to the rule.
2. Replacing "the department," as it occurred throughout the rule, with "ODA."
3. Removing the first sentence of paragraph (A) of the rule proposed for rescission because it is duplicate information from rule 173-45-06 of the Administrative Code.
4. Removing the "designed to" language in paragraph (A)(1) of the rule because the guide's web site is already in operation.
5. Converting the passive-voice language in paragraphs (A)(1), (A)(4), and (B)(1) of the rule to active-voice language.
6. Incorporating the unnumbered paragraph that occurred after paragraph (A)(6) of the rule that ODA is proposing for rescission with paragraph (C)(2) of the proposed new rule, and also converting the passive-voice language in the paragraph to active-voice language.
7. Splitting paragraphs (A)(1)(e) and (B)(1)(e) of the rule into paragraphs (A)(1)(e) and (A)(1)(f), and (B)(1)(e) and (B)(1)(f) of the rule, because each of the new paragraphs asks for a different figure.

8. Making other non-programmatic changes to increase the rule's readability.

173-45-07 Quality measures for nursing facilities.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). The result is a rule is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to the rule.
2. Replacing the unnumbered paragraph at the beginning of the rule ODA is proposing for rescission with language in paragraph (B) of the proposed new rule that indicates that the quality measures are calculated by CMS and that says, "This allows the public to compare scores between facilities and to statewide averages."
3. Replacing "the department" with "ODA."
4. Moving the definition for "quality measure" to proposed new rule 173-45-01 of the Administrative Code, because the term is used in more than one rule in Chapter 173-45 of the Administrative Code.
5. Making other non-programmatic changes to increase the rule's readability.

173-45-08 Regulatory survey data.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide), except to remove language that stated ODA updates the statewide average in paragraphs (A)(4) and (A)(6) of the rule. The result is a rule is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to the rule.
2. Combining the unnumbered paragraph at the beginning of the rule ODA is proposing for rescission with paragraph (A) of the proposed new rule.
3. Replacing "for the purpose of" with "to" in paragraph (A) of the rule.
4. Replacing "the department of aging" and "the department" with "ODA."
5. Replacing "that were cited by the department of health" with "that ODH cited" in paragraphs (A)(1) and (A)(2) of the proposed new rule.
6. Remove "the department shall use" from paragraph (A)(2) of the proposed new rule because paragraph (A) of the rule already indicates that all sub-paragraphs are responsibilities for ODA to incorporate data.
7. Regrouping the language on providing a link in paragraph (A)(10) of the rule ODA is proposing for rescission and paragraphs (B), (F), and (G) of the rule ODA is proposing for rescission into paragraphs (B), (B)(1), (B)(2), (B)(3), and, (B)(4) because they all pertain to links in the guide.
8. Moving the paragraph on data retention to the paragraph immediately following the paragraph on updating the guide with new information instead of after the paragraph on disclaimers, for a smoother flow of topics throughout the proposed new rule.
9. Converting all language in the passive voice to the active voice.
10. Making other non-programmatic changes to increase the rule's readability.

173-45-09 Facility fees.

ODA is proposing to rescind the current rule and replace it with a new rule. In the new rule, ODA is not proposing any programmatic changes (*i.e.*, changes that change the operation of the Long-Term Care Consumer Guide). The result is

a rule is easier for the public to read. ODA is proposing the following non-programmatic changes:

1. Adding sub-headings to the rule.
2. Grouping paragraphs (A), (C), and (D) in the rule ODA is proposing for rescission with paragraphs (A), (A)(1), (A)(2), and (A)(3) of the proposed new rule.
3. Converting all passive-voice language to active-voice language.
4. Replacing, for clarity, "timely manner" in paragraph (B)(5) [formerly, paragraph (B)(6)] of the rule with "fewer than forty-five days after the date on which ODA mailed the billing statement to the facility," which is the same language used in paragraph (A)(3) [formerly, paragraph (D)] of the rule.
5. Deleting paragraph (B)(2) of the rule proposed for rescission because it mentions a payment deadline, in general, but the following paragraph mentions a payment deadline, in specific. Only one paragraph is necessary, so ODA will simply keep the specific one.
6. Making other non-programmatic changes to increase the rule's readability.

173-45-10 Customer satisfaction surveys.

ODA is proposing to amend the current rule. In doing so, ODA is proposing the following changes:

1. Replacing "long-term care consumer guide" with "guide," as ODA did all throughout the proposed new rules for this chapter.
2. Specifying the calculation for determining a facility response rate for a satisfaction survey of a whole population of a facility's consumers.
3. Listing the number of resident surveys necessary to not exceed a 10% margin of error and creating Table 1 to the rule, which quantifies the 10% margin of error.
4. Requiring any survey administrator conducting a consumer satisfaction survey on behalf of ODA to take quality-assurance measures such as inter-rater reliability testing.
5. Making other non-programmatic changes to increase the rule's readability.

Any person may direct written comments or requests for information concerning the proposed actions to Tom Simmons at the Department on or before the date of the hearing by writing to tsimmons@age.state.oh.us.