



**Ted Strickland, Governor**  
**Barbara E. Riley, Director**

## NOTICE

*Revised August 18, 2010*

On July 19, 2010, ODA conducted a public hearing to obtain comments to obtain comments regarding the adoption of proposed amended rules 173-39-01, 173-39-02, 173-39-03, 173-39-04, 173-39-05, and 173-3-06 of the Administrative Code and proposed new rule 173-39-02.20 of the Administrative Code, as required by section 119.03 of the Revised Code. Those rule proposals regarded the proposed new **enhanced community living service** that ODA plans to offer as part of the **PASSPORT program**.

ODA anticipates adopting proposed amended rules 173-39-01, 173-39-02, 173-39-03, 173-39-04, 173-39-05, and 173-3-06 of the Administrative Code on September 1, 2010. Because ODA refiled proposed new rule 173-39-02.20 of the Administrative Code on August 18, 2010, ODA will offer the public a subsequent opportunity to testify at a hearing for rule 173-39-02.20 of the Administrative Code.

ODA will conduct the second public hearing on **September 2, 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 **11:00AM** and will continue until all parties in attendance at that time have had an opportunity to provide comment.

### INTRODUCTION

ODA is proposing one new rule and amending five other rules in Chapter 173-39 of the Administrative Code. In doing so, ODA has three basic goals:

1. To adopt a new rule that establishes the regulations for providing the enhanced community living service, which section 173.431 of the Revised Code, as enacted on October 16, 2009 by Am. Sub. H. B. No. 1 (128th G. A.) authorized. That section states that, if the Centers for Medicare and Medicaid Services (CMS) authorize an amendment to the PASSPORT program to offer an enhanced community living service to eligible consumers in approved facilities, ODA will do so.
2. To amend rules 173-39-01, 173-39-02, 173-39-03, 173-39-04, and 173-39-05 of the Administrative Code so they reference the proposed new service, and to make other changes in the rules.
3. To write proposed new rule 173-39-02.20 of the Administrative Code in a manner that complies with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation." As a result, ODA's proposed new language:
  - a. Complies with the Legislative Service Commission's "Rule Drafting Manual" as found on [http://www.lsc.state.oh.us/rules/rdm06\\_06.pdf](http://www.lsc.state.oh.us/rules/rdm06_06.pdf)
  - b. Follows the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. © 2007)

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- c. Follows the recommendations of "Plain English Writing Tips" as found on [http://business.ohio.gov/docs/RegReform\\_PlainEnglishWritingTips.pdf](http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf).

ODA may conduct a subsequent review, including the five-year rule review, of rules 173-39-01, 173-39-03, 173-39-04, and 173-39-05 in the near future.

Additionally, although rule 173-3-06 of the Administrative Code is not associated with the enhanced community living service, ODA has added it to this rule package because the changes in that rule regarding records retention mirror those changes in rule 173-39-02 of the Administrative Code.

**173-39-02.20 Enhanced community living service.  
[THE MAIN RULE IN THIS RULE PACKAGE]**

ODA is proposing this new rule to comply with section 173.431 of the Revised Code as enacted by Am. Sub. H. B. No. 1 (128th G. A.), which authorizes a new service called the "enhanced community living service" contingent upon the CMS' approval of a requested amendment to the PASSPORT program that would allow ODA to offer the service to eligible consumers in approved settings.

This proposed new rule defines "enhanced community living service," lists the minimum requirements for a provider of an enhanced community living service, and provides the unit of enhanced community living service and a link to another rule that establishes the maximum rates allowable.

On August 18, 2010, ODA refiled the proposed new rule to replace paragraph (B)(4)(b)(ii) of the rule, which said, "(ii) Direct-service staff: The provider shall only employ a person to provide face-to-face services to consumers if the provider has received evidence and retains evidence that the person: (a) Is listed as active on the Ohio state tested nurse aide registry maintained by the Ohio department of health; (b) Has successfully completed an apprenticeship program in home health, health, or a related subject approved by the United States department of labor; or, (c) Has successfully completed an ODA-approved home health aide training program." with the following language: "Direct-service staff: The provider shall only employ a person to provide face-to-face services to consumers if the provider has received evidence, and retains evidence, that the person has successfully completed an ODA-approved home health aide training program listed on <http://aging.ohio.gov/services/homehealthtraining>."

The web page to which the new language refers is currently under construction and ODA hopes to make it readily available to the public in time for the adoption of this new rule.

**173-39-01 Introduction and definitions.**

ODA is proposing to amend this rule to comply with section 173.431, as enacted by Am. Sub. H. B. No. 1 (128th G. A.).

Specifically, ODA is proposing to amend this rule to:

1. Replace "173-39-02.19" in paragraph (B)(9) of the rule with "173-39-02.20."
2. Clarify in paragraph (B)(11) of the rule that a consumer's signature includes signatures other than handwritten signatures. (This definition corresponds to the use of the term in proposed new rule 173-39-02.20 of the Administrative Code.)
3. Replace "or 173-39-02.19" in paragraph (B)(25)(a) of the rule with "173-39-02.19, or 173-39-02.20."
4. Add "5111.89" under "Statutory Authority:"
5. Add "173.402, 173.403, 173.431, 5111.89" under "Rule Amplifies:"

**173-39-02 Conditions of participation.**

ODA is proposing to amend this rule to comply with section 173.431, as enacted by Am. Sub. H. B. No. 1 (128th G. A.).

ODA is also proposing to correct incorrect references in the rule.

Specifically, ODA is proposing to amend this rule to:

1. Delete "and" as it appears before "rule 173-39-02.19" in paragraph (B)(1)(a) of the rule and add "; and rule 173-39-02.20, if providing an enhanced community living service" before the last period in paragraph (B)(1)(a) of the rule.
2. Replace "1946" in paragraphs (B)(4)(l), (C)(4)(e), and (C)(4)(h) of the rule with "1964."
3. Reword paragraphs (B)(5), (C)(5), and (E)(5), to:
  - a. Replace the "document monitoring" language with "records retention" language
  - b. Make it clear when the three-year period starts
  - c. Clarify that ODA *reviews*, while other organizations *audit*
4. Replace "document" language with "service-verification" language in paragraphs (B)(6)(a), (C)(6)(a), and (E)(6)(a).
5. Replace uses of "ODA's designee" with "the PAA."
6. Add under "Statutory Authority:" "5111.89"
7. Add under "Rule Amplifies:" "173.403, 173.431, 5111.89"

#### **173-39-03 Provider certification.**

ODA is proposing to amend this rule to comply with section 173.431, as enacted by Am. Sub. H. B. No. 1 (128th G. A.).

Specifically, ODA is proposing to amend this rule to:

1. Define "mailing date" in paragraph (D)(8)(b)(i) of the rule.
2. Replace "173-39-02.17" in paragraph (F)(3) with "173-39-02.20."
3. Add under "Statutory Authority:" "5111.89"
4. Add under "Rule Amplifies:" "173.403, 173.431, 5111.89"

#### **173-45-04 Provider structural compliance review.**

ODA is proposing to amend this rule to comply with section 173.431, as enacted by Am. Sub. H. B. No. 1 (128th G. A.).

Specifically, ODA is proposing to amend this rule to:

1. To place paragraph (A) in the active voice, not the passive voice, and in the singular, not the plural.
2. Replace "173-39-02.17" in paragraphs (B)(4), (B)(6), and (B)(7) of the rule with "173-39-02.20."
3. Replace the "document monitoring" language with "records retention" language.
4. Replace uses of "ODA's designee" with "the PAA."
5. Promote (vs., "indent") paragraph (L)(3)(d) to the highest level of numeration in the rule, which is paragraph (M), because the definitions below that paragraph apply to the entire rule.
6. Add under "Statutory Authority:" "5111.89"

7. Add under "Rule Amplifies:" "173.403, 173.431, 5111.89"

**173-45-05 Sanctions for non-compliance.**

ODA is proposing to amend this rule to comply with section 173.431, as enacted by Am. Sub. H. B. No. 1 (128th G. A.).

Specifically, ODA is proposing to amend this rule to:

1. Replace "173-39-02.17" in paragraphs (A)(1), (A)(2)(b), and (A)(3)(b) of the rule with "173-39-02.20."
2. Add under "Statutory Authority:" "5111.89"
3. Add under "Rule Amplifies:" "173.403, 173.431, 5111.89"

**173-3-06 Mandatory clauses.**

ODA is proposing to amend this rule to make changes that correspond to the language changes regarding records retention in rule 173-39-02, which is part of this rule package. Specifically, the changes are to:

1. Replace the "document monitoring" language with "records retention" language
2. Make it clear when the three-year period starts
3. Clarify that ODA *monitors*, while other organizations *audit*

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](mailto:tsimmons@age.state.oh.us).