



Department of  
Aging

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

## NOTICE

*Revised August 27, 2010*

On July 19, 2010, ODA conducted a public hearing to obtain comments concerning ODA's proposed rescission of a rule and adoption of new rule regarding the **home-delivered meal service** of the **PASSPORT** program, as required by section 119.03 of the Revised Code.

On August 27, 2010, ODA refiled the rule with revisions. As a result, ODA plans to offer the public a subsequent opportunity to testify on the rule.

ODA will conduct a 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.

### **RULE 173-39-02.14 Home-delivered meal service.**

ODA is proposing to replace rules 173-39-02.14 and 173-39-02.19 of the Administrative Code with a new rule 173-39-02.14 of the Administrative Code. In doing so, ODA has three goals:

1. To comply with the five-year review required under section 119.032 of the Revised Code.
2. To adopt rule on the home-delivered meal service that is substantially similar to the requirements for providing a home-delivered meal service under the rules of Department of Job and Family Services (JFS) and the Department of Developmental Disabilities (DoDD), which are also under development or may soon be under development.
  - a. This should provide consistent requirements for providers among the three agencies' Medicaid waiver programs. The rule content was developed by a consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S. ODA, JFS, and DoDD were part of that team.
  - b. Certainly, there are differences in the rules each agency will propose, but the content is substantially similar. An exception is that ODA allows providers to deliver milk, bread, and butter at once to a consumer to whom it delivers meals throughout the week if the consumer's service plan authorizes the milk, bread, or butter. This will enable case managers to help consumers with arthritis by authorizing the delivery of a pint or half-gallon of milk that the arthritic consumer can open, but not the single-serving milk carton that they cannot or a stick of butter that the arthritic consumer can use, but not the single-serving butter packet that they cannot open.
  - c. One noticeable, but insubstantial, difference is that ODA's regulations on the service appear in a rule that regulates just one service and follows the format of other rules that ODA has proposed since Executive Order 2008-04S (see goal #3 below), while JFS' regulations on the service appear in a rule that regulates several services and follows the format of other JFS rules. (JFS has proposed their new language in paragraph (D) of rule 5101:3-46-04 of the Administrative Code.)

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3. To comply with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires all state agencies to write easier-to-read and easier-to-comprehend rules to promote transparency in state regulations.

a. ODA complies with the executive order by:

- i. Complying 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](http://www.lsc.state.oh.us/rules/rdm06_06.pdf)
- ii. Incorporating recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. © 2007)
- iii. Incorporating recommendations from "Plain English Writing Tips," as found on [http://business.ohio.gov/docs/RegReform\\_PlainEnglishWritingTips.pdf](http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf).

b. The result is language that:

- i. Generously uses descriptive sub-headings (e.g., "Planning," "Preparation and safety," "Delivery," "Units and rates," etc.) and divides topics in rules to fit under those sub-headings in order to enable readers to thumb through the rule
- ii. Begins with general material in a, somewhat, chronological order (e.g., planning; preparation and safety; and delivery) and ends with specific material that appeals to fewer readers (e.g., provider qualifications, units of service)
- iii. Uses the active voice in the present tense, not the passive voice (e.g., "shall be") and not the future tense (e.g., "will")
- iv. Uses the singular, unless the plural is necessary
- v. Replaces legalese with plain-English words

On August 27, 2010, ODA refiled this proposed new rule to:

1. Replace paragraph (B)(1)(a) of the rule, which said, "Dietitian: The provider shall only utilize a menu that has received the written approval of a licensed dietitian who is currently registered with the commission on dietetic registration," with "Dietitian: The provider shall only utilize a menu that has received the written approval of a dietitian who is currently registered with the commission on dietetic registration and who is also a licensed dietitian, if the state in which the provider is located licenses dietitians."
2. Insert ", as much as possible, " in between "options that" and "considers each consumer's medical restrictions..." in paragraph (B)(1)(d) of the rule.
3. Replace the word "marked" in paragraph (B)(2)(a)(i) of the rule with "identified."
4. Replace the last sentence of paragraph (B)(2)(a)(ii) of the rule, which said, "The provider shall label any other meal with the month, day, and year on which the consumer shall consume or discard the meal and shall list the date immediately following the term 'use before.'" with "The provider shall identify any other meal (e.g., a vacuum-packed meal); by labeling the perishable items (e.g., meats) in that meal with the month, day, and year, and shall list the date immediately following the term 'use before.'"
5. Insert "range of" in between "routine delivery date and" and "time" in paragraph (B)(3)(d) of the rule.
6. Replace the citation "(B)(4)(c)(i)" in paragraph (B)(4)(d)(ii) of the rule with "(B)(4)(d)(i)."

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).