



Department of
Aging

Ted Strickland, Governor
Barbara E. Riley, Director

NOTICE

ODA will conduct a public hearing to obtain comments concerning ODA's rule proposals governing the **Residential State Supplement (RSS) program**, as required by section 119.03 of the Revised Code. ODA is proposing to rescind rules 173-35-04 and 173-35-05 of the Administrative Code, and to replace of rules 173-35-01, 173-35-02, 173-35-03, 173-35-05.1, and 173-35-07, 173-35-08 of the Administrative Code with new rules. ODA will conduct the public hearing on **December 16, 2010** ODA will conduct the hearing in **Conference Room 10A** of ODA's offices at 50 W. Broad Street, **10th Floor**; Columbus, OH 43215. The hearing will begin at **1:00PM** and will continue until all parties in attendance at that time have had an opportunity to provide comment.

ODA is proposing to rescind rules 173-35-04 and 173-35-05 of the Administrative Code, and to replace the remaining rules of Chapter 173-35 of the Administrative Code with new rules. In doing so, ODA's goals are to:

1. Comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.
2. Comply with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires each state agency to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations.

a. ODA's proposed new or amended language:

- i. 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
- ii. Incorporates recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. © 2007)
- iii. Incorporates recommendations from "Plain English Writing Tips," as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.

b. The result is easier-to-read, easier-to-comprehend rules achieved through the following new or amended language:

- i. Each living arrangement has three key responsibilities, which are to provide accommodations, supervision, and personal care. Currently, ODA requires those key responsibilities in the rule on responsibilities of the living arrangement (rule 173-35-08 of the Administrative Code), but the critical definitions of those key responsibilities are defined in another rule, although no rule other than the rule on responsibilities of the living arrangement uses the terms. Therefore, ODA has moved the definitions of "accommodations," "supervision," and "personal care" to the rule on the responsibilities of the living arrangement so a living arrangement that reads the rule on responsibilities of the living arrangement can easily comprehend its responsibilities without a need to hunt for buried details in another rule on definitions.

- ii. The dollar amount of income that determines if an individual is financially eligible for the RSS

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program is identical to the allowable payment plus \$50 for a resident's personal needs allowance. Currently, ODA presents these dollar figures in one rule, which is confusing because the figures are used to determine eligibility in one case and used to determine the RSS payments in another case. Therefore, ODA now presents only the allowable fee in rule 173-35-07 of the Administrative Code and has entitled the rule, "Allowable fee." Also, because the public often accesses the rule through the website <http://codes.ohio.gov>, which is maintained by Lawriter, Inc., and because Lawriter, Inc. does not print the table, a table of more than two columns with indented sub-topics is illegible on their website. Therefore, ODA has simplified the table to two columns, which does not change the rates in any way, just the presentation of the rates. For each applicant who has enrolled in the program as a family unit of two, three, or four, the CDJFS needs to simply double, triple, or quadruple the allowable fee to arrive at the family unit's aggregate allowable fee. Also, ODA now presents the living arrangements in alphabetical order in both rules 173-35-02 and 173-35-07 of the Administrative Code.

- iii. Part of the enrollment process is determining if the living arrangement the applicant chooses is appropriate to meet the applicant's needs. Yet, in the current rules, this aspect of the enrollment process appears in a rule separate from the primary enrollment-process rule. In the proposed new rules, ODA has combined all the language on the enrollment process into rule 173-35-03 of the Administrative Code.
 - iv. Uses terms consistently throughout each rule, from one rule to the next in Chapter 173-35 of the Administrative Code, and from Chapter 173-35 of the Administrative Code to other rules that ODA has adopted. These changes include the following:
 1. ODA consistently identifies the living arrangements listed under division (C)(1) of section 173.35 of the Revised Code as "living arrangements" and not "facilities." Normally, in ODA's rules, "facility" is only used in the term "nursing facility" which has a specific meaning tied to the Ohio Revised Code. Therefore, for consistency, ODA now only uses "facility" in Chapter 173-35 of the Administrative Code when referring to a nursing facility or a specific living arrangement that includes the word "facility" in its official title (*e.g.*, a residential care facility).
 2. ODA consistently uses "ODA's designee," when referring to ODA's designees, not "PAA."
 3. As ODA does in rules of other chapters of the Administrative Code, ODA spells out certain acronyms to increase the readability of the rules. (*e.g.*, "nursing facility" instead of "NF" and "residential care plan" instead of "RCP")
 4. ODA consistently identifies the individual who applies as the "applicant" and the enrolled individual as the "resident." Use of the term "individual" makes for confusing language. (*e.g.*, "'Legal representative' means an individual or entity that is designated to decide for an individual by the individual or a probate court." vs., "'Legal representative' means an individual or entity that is designated to decide for an applicant by the applicant or a probate court.")
 - v. Defines terms that require definitions, but only appear in one paragraph, in that one paragraph. Likewise, the language defines terms used in more than one paragraph, but only in one rule, within that rule. These changes increase the ease of reading the rules.
 - vi. No longer defines terms not used in the rules, or that have an obvious meaning without a definition. (*e.g.*, "AAA," "PSA," "community setting," "long-term care consultation program administrator," "waiting list.")
3. Present a more complete list of eligibility criteria in rule 173-35-02 of the Administrative Code, as follows:
- a. Because an individual must also comply with federal eligibility criteria, ODA has added the federal requirements that the individual be a resident of Ohio.
 - b. ODA added the requirement in division (G) of section 173.35 of the Revised Code that the individual be an adult.

- c. ODA included the eligibility criteria from division (G) of section 173.35 of the Revised Code (which was first enacted by Am. Sub. H. B. № 253 (118th G.A.)). The division says a resident currently receiving the RSS payments may not lose his or her eligibility solely because of his or her living arrangement so long as the resident has continuously resided in the living arrangement since November 15, 1990.
 - d. In addition to providing a more complete list of eligibility criteria, ODA is also changing the title of rule from "Eligibility" to "Eligibility criteria," for consistency with other ODA rules on eligibility criteria.
4. Comply with Am. Sub. H. B. № 1 (128th G. A.), which now:
 - a. Sets the current rates for the RSS program. (ODA no longer cites previous budgetary authority.)
 - b. Uses money-follows-the-person language. (ODA removed outdated language about allocations.)
5. Eliminate the rule that regulates case management.

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.