



Department of
Aging

Ted Strickland, Governor
Barbara E. Riley, Director

NOTICE

As required by section 119.03 of the Revised Code, ODA will conduct a public hearing to obtain comments concerning ODA's proposed amendment of rules 173-39-01, 173-39-02, 173-39-02.11, 173-39-03, and 173-39-04 of the Administrative Code, and the proposed adoption of new rule 173-42-06 of the Administrative Code. ODA will conduct the hearing on **December 21, 2010** in Conference Rooms **10A & 10B** 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 to amend rules 173-39-01, 173-39-02, 173-39-02.11, 173-39-03, and 173-39-04 of the Administrative Code and to adopt new rule 173-42-06 of the Administrative Code. In doing so, ODA has 5 basic goals:

1. To increase consumer choice by allowing consumers to hire consumer-directed individual providers for the personal care service through the PASSPORT program on a statewide basis. In doing so, the proposed new rules give PASSPORT consumers a new right to choose a method by which to receive their personal care: either from an agency-provider method or a consumer-directed method.
2. To implement a rule on the choices and responsibilities bestowed upon a consumer who directs a consumer-directed individual provider under the PASSPORT program.
3. To 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.
4. To 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. As a result, ODA's proposed new or 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.
5. To format the new language in ODA's rules in the same way, rule after rule, in a manner that corresponds with the cooperative effort of other agencies that participate that also participate in the consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S.

173-39-01 Introduction and definitions.

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Specifically, ODA is proposing to:

1. Replace "PAA" with "ODA's designee" throughout the rule and combine the definitions of the two terms under "ODA's designee."
2. Replace the verbs "provide" and "deliver" (and their inflections) with "furnish"(and its inflections) throughout the rule.
3. Define the term "activity plan."
4. Clarify that "authorized representative" is a person "who is not the paid caregiver of the consumer."
5. Place the definition "nursing facility" in alphabetical order amongst the other definitions.
6. Define "consumer-directed individual provider" as a provider who may provide a personal care service (*i.e.*, the service under rule 173-39-02.11 of the Administrative Code), that a consumer directly supervises, and who does not serve as the consumer's legal guardian, authorized representative, or power of attorney.
7. Replace "are provided" with "a provider furnishes" to place the definition of "service plan" in the active voice and to avoid writing "provider provides."

173-39-02 Conditions of participation.

Specifically, ODA is proposing to:

1. Replace "PAA" with "ODA's designee" throughout the rule.
2. Replace the verbs "provide" and "deliver" (and their inflections) with "furnish"(and its inflections) throughout the rule.
3. Replace "he/she" with "he or she" throughout the rule.
4. Add "of the Administrative Code" after "173-39-02.20" in paragraph (B)(1)(a) of the rule.
5. Move paragraph (B)(1)(c) of the rule underneath paragraph (B)(1)(d) [*i.e.*, now "(B)(1)(c)"] of the rule, paragraph (C)(1)(c) of the rule underneath paragraph (C)(1)(d) ["(C)(1)(c)"] of the rule, paragraph (D)(1)(c) of the rule underneath paragraph (D)(1)(d) ["(D)(1)(c)"] of the rule, and paragraph (E)(1)(e) of the rule underneath paragraph (E)(1)(f) ["(E)(1)(e)"] of the rule.
6. Remove the redundant use of "the following unprofessional, disrespectful, or illegal behavior" in paragraphs (B)(1)(e), (C)(1)(e), and (D)(1)(e) of the rule.
7. Add a comma after "mental" in paragraphs (B)(1)(e)(xii) and (C)(1)(e)(xii) of the rule.
8. Add two commas to paragraph (B)(1)(e)(xvi) of the rule.
9. State in paragraphs (B)(1)(e)(xiv), (C)(1)(e)(xiv), and (D)(1)(e)(ix) of a rule that a provider may not also be the consumer's authorized representative.
10. Insert "no later than one business day after the provider is aware of the incident" at the end of paragraphs (B)(2)(a), (C)(2)(a), and (D)(2)(a) of the rule.
11. State in paragraph (B)(4)(f) of the rule that a provider shall not allow a staff person to furnish a service to a consumer if the person is a the consumer's power of attorney and state in paragraphs (C)(4)(a) and (D)(4)(g) of the rule that a provider shall not provide a service to a consumer if he or she is the consumer's power of attorney. Additionally, state in paragraph (D)(4)(g) of the rule that a provider shall not provide a service to a consumer if he or she is the consumer's legal guardian or power of attorney. Also, state in paragraph (E)(4)(d) of the rule that a provider shall not allow a staff person to furnish a service if the person is the consumer's power of attorney. Also, combine paragraphs (D)(1)(e)(viii) and (D)(1)(e)(vix) of the rule.
12. Insert "retaining" before "consumer records" in paragraph (B)(4)(h)(ii) of the rule.

13. Replace the comma after "provision of services" in paragraph (C)(1)(e)(x) of the rule with the words, "without notifying."
14. Replace both uses of "place of work" with "workplace" in paragraph (C)(5)(b) of the rule.
15. Replace "rules" with "rule" in paragraph (C)(6)(a) of the rule.
16. Insert "of the Administrative Code" after "173-39-02.18" in paragraph (C)(6)(a) of the rule.
17. State in paragraph (D)(1)(b) of the rule that a consumer-directed individual provider may provide a personal care service (*i.e.*, the service under rule 173-39-02.11 of the Administrative Code).
18. Delete paragraph (D)(1)(c) of the rule.
19. Insert a requirement under paragraph (D)(1)(c) of the rule for the provider to notify ODA's designee if the consumer is admitted to a hospital or has visited an emergency room.
20. Replace "consume medicine, drugs, or other chemical substance" in paragraph (D)(1)(e)(ii) of the rule with "Consuming medicine, drugs, or other chemical substances."
21. Delete paragraph (D)(2)(c) of the rule because not all providers furnish a service that requires driving. (a home care attendant service vs., a personal care service)
22. Insert paragraph (D)(4)(b) which requires Medicaid agreements.
23. In paragraph (D)(4)(c) of the rule, replace "is" with "shall be."
24. Require, in paragraph (D)(4)(d) of the rule, each provider to have both a valid social security number and one of three photo IDs.
25. Require in paragraph (D)(4)(e) of the rule that each provider to read, write, and understand English.
26. State in paragraph (D)(4)(f) of the rule that each provider shall be able to effectively communicate with the consumer.
27. State in paragraph (D)(4)(h) of the rule that the provider shall maintain a telephone service.
28. State in paragraph (D)(4)(i) of the rule that the provider shall maintain a secure place for retaining consumer records.
29. Require the provider, in paragraph (D)(4)(j) of the rule, to comply with all applicable federal, state, and local laws.
30. Require the provider, in paragraph (D)(4)(l) of the rule to participate in mandatory training sessions.
31. Restructure paragraph (D)(6) of the rule so that it is clear that providers in the Choices Program enter into agreements with the consumer that include rates negotiated with the consumer while providers in the PASSPORT program enter into agreements with ODA's designee that include set rates.
32. Add "of any type" after "provider" in paragraph (F) of the rule to clarify that the paragraph applies to any provider type.

173-39-02.11 Personal care service.

Specifically, ODA is proposing to:

1. Replaces "ADLS" and "IADLS" in paragraph (A) of the rule with "ADLs" and "IADLs."
2. Indicate that both an agency provider and a consumer-directed individual provider may provide the service if ODA certifies the provider.

3. Correct the paragraph citations in paragraph (D)(2)(b) of the rule.
4. List the specific requirements for a consumer-directed individual provider who provides the service under paragraph (E) of the rule.

173-39-03 Provider certification.

Specifically, ODA is proposing to:

1. Organize the rule primarily by provider type so that each type of provider sees his, her, or its review requirements in one section. The requirements for agency, non-agency, and assisted living providers now appear under paragraph (A) of the rule while the requirements for consumer-directed individual providers now appear under paragraph (B) of the rule.
2. Correct the paragraph citations in paragraph (D)(2)(b) of the rule.

173-45-04 Provider structural compliance review.

Specifically, ODA is proposing to:

1. Organize the rule primarily by provider type so that each type of provider sees his, her, or its review requirements in one section. The requirements for agency, non-agency, and assisted living providers now appear under paragraph (A) of the rule while the requirements for consumer-directed individual providers now appear under paragraph (B) of the rule.
2. Replace the use of "PAA" with "ODA's designee" throughout paragraph (A) of the rule. Paragraph (B) of the rule only uses "ODA's designee."
3. Replace the use of the verbs "provide" and "deliver" (and their inflections) with "furnish" (and its inflections) throughout paragraph (A) of the rule. Paragraph (B) of the rule only uses "furnish" (and its inflections).
4. Replace a number of the occurrences of "must" and "will" with "shall" throughout paragraph (A) of the rule. Paragraph (B) of the rule only uses "shall."
5. Correct the paragraph citations in paragraph (A) of the rule.
6. Replace "173-39-02.17" in paragraph (A)(2)(g) of the rule with "173-39-02.20."
7. Replace "If unit of service errors are detected" in paragraph (A)(8) of the rule with ""If a unit of service error is detected."
8. Replace "the department" in paragraph (A)(12) of the rule with "ODA."
9. Replace "the department" in paragraphs (A)(12)(c)(i) and (A)(12)(c)(ii) of the rule as it appeared in the phrase "the department ODA."
10. Organize the requirements for the consumer-directed individual in a somewhat chronological manner with generous use of sub-headings (e.g., "Minimum frequency" and "Exit conference and report"). This makes the new language in the rule as easy to read as possible.

173-42-06 Consumer choice and responsibilities.

ODA is proposing to adopt this new rule to:

1. Repeat a right granted to consumers by the Social Security Act that allows any consumer in the PASSPORT program to choose to obtain a service under the PASSPORT program under certain conditions.

2. States that a consumer has a right to make informed choices that may impact his or her life.
3. Lists the consumer's responsibilities related to his or her service plan.
4. Lists the consumer's responsibilities related to furnishing services.
5. States that an authorized representative may represent the consumer for any purpose under the rule.
6. Defines terms used in the rule.

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.