



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 regarding ODA's proposed rescission of rules 173-39-02.1, 173-39-02.2, 173-39-02.3, and 173-39-02.5 of the Administrative Code and ODA's simultaneous proposal to adopt rules of the same number in their stead.

ODA will conduct the public hearing on **December 21, 2010** in **Conference Rooms 10A and 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 rescind rules 173-39-02.1, 173-39-02.2, 173-39-02.3, 173-39-02.5 of the Administrative Code and replace them with rules of the same number. In doing so, ODA has five basic goals:

1. 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.
2. 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 the Legislative Service Commission's "Rule Drafting Manual" as found on http://www.lsc.state.oh.us/rules/rdm06_06.pdf
 - b. Incorporates the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. © 2007)
 - c. Incorporates the recommendations of "Plain English Writing Tips" as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.
3. To reformat certain sections of the rule. As ODA continues to work with other agencies that participate in the consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S, we see the benefit of formatting our rules in the same way, rule after rule, and also presenting some topics clearly. These changes should not present any new requirements to a provider. This includes more standardized language regarding service verification.
4. To reformat certain sections of the rule, in the same spirit as #3, to match companion rules for ODA's non-Medicaid-funded programs under Chapter 173-3 of the Administrative Code, whenever there is a companion rule in Chapter 173-3 of the Administrative Code.
5. To replace "document-maintenance" language in the rules with "records-retention" language.

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173-39-02.1 Adult day service.

In addition to the goals mentioned in the introduction to this notice, ODA is proposing:

1. To present the components of the service in the same order as they appear in rule 173-3-06.1 of the Administrative Code to ease the burden on a provider who provides ADS under ODA's PASSPORT program and also the programs regulated by rule 173-3-06.1 of the Administrative Code. Additionally, ODA is proposing to present the components of the service in a table, much like in rule 173-3-06.1 of the Administrative Code.
2. To correct typographical errors, including to replace "IADLS" with "IADLs" and "173-39-03-13" with "173-39-02.13."
3. To replace the sub-heading "consumer service management" with "provider's initial assessment," because that is similar to the term used in the language under that sub-heading and because that's the language used in rule 173-3-06.1 of the Administrative Code.
4. To call the plan in paragraph (B)(1)(f) of the rule an "activity plan" although, in rule 173-3-06.1 of the Administrative Code, we call the plan an "individualized care plan." "Activity plan" is the term ODA is using in other rules in Chapter 173-39 of the Administrative Code. (*cf.*, proposed new rule 173-39-02.20 of the Administrative Code)
5. To state that a provider is only required to furnish a lunchtime meal or snacks to a consumer *if the consumer is present during lunchtime or snacktime*. (The current rule requires the provider to procure and prepare a noon meal and snacks, but doesn't say for whom and implies that it is for every consumer, even if the consumer is not present for the mealtime.)
6. To replace the language regarding the provision of meals (including meals with a therapeutic diet) with a requirement to comply with the meal requirements (minus the delivery requirements) under proposed new rule 173-39-02.14 of the Administrative Code, which is ODA's soon-to-be-adopted rule for PASSPORT's home-delivered meal service. This also services to reduce the size of this rule. Some of the nutritional-adequacy provisions of rule 173-39-02.14 of the Administrative Code include requiring each meal to meet $\frac{1}{2}$ of the DRIs, not $\frac{1}{3}$ of the Dietary Guidelines for Americans because ODA wants *each meal* to meet $\frac{1}{3}$ of the DRIs. ODA's rationale for this is that one provider may not be able to ensure, by averaging, that the meals-in-the-aggregate, so ODA wants each meal to be nutritionally adequate. A given consumer may not receive home-delivered meals seven days a week and may receive some meals from an adult day service provider and other meals from another source. ODA strongly believes that each meal needs to be nutritionally adequate. Additionally, it is much easier to monitor whether providers delivery nutritionally-adequate meals to consumers if each meal they deliver is required to contain $\frac{1}{3}$ of the DRIs. Yet, the proposed new rule allows the provider to use flexibility in how it determines nutritional adequacy. It could use nutritional analysis software or another method, so long as each meal meets $\frac{1}{3}$ of the DRIs.
7. To replace the "physician-authorization" language with "physician-order" language in regards to a physician's order for a therapeutic diet *etc.* to match the language in proposed new rule 173-39-02.14 of the Administrative Code, which is ODA's soon-to-be-adopted rule for PASSPORT's home-delivered meal service. A meal with a therapeutic diet is a meal that a physician orders for a consumer for with to treat the consumer's disease or clinical condition, or to eliminate, decrease, or increase certain substances in the consumer's diet. The proposed new rule continues to allow a provider to serve a meal with a therapeutic diet to a consumer so long as the physician's authorization is no older than 90 days old.
8. To replace "American With Disabilities Act accessibility guidelines (28 CFR Part 36) issued by the department of justice" with "'ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R., Part 36."
9. To require the provider to develop and annually review a "fire inspection and emergency safety plan," which is also a requirement in rule 173-3-06.1 of the Administrative Code. The current version of rule 173-39-02.1 of the Administrative Code only requires the provider to develop and annually review an emergency safety plan.'
10. To require the provider to conduct, at least quarterly, an evacuation drill from the center "while consumers are present." The current version of rule 173-3-06.1 of the Administrative Code requires consumers to be present, but the current version of rule 173-39-02.1 of the Administrative Code does not.
11. To state that "expectations of employees" comes from this rule, not rule 173-39-03 of the Administrative Code.

12. To rename "code of conduct" "ethical standards," because that is the term ODA uses in rule 173-39-02 of the Administrative Code.
13. To require the provider to conduct performance reviews of each staff member. (The current version of rule 173-39-02.1 of the Administrative Code only requires a provider to document performance appraisals, but never required the appraisals themselves.)

173-39-02.2 Alternative meal service.

ODA is not proposing any changes at this time beyond what is mentioned in the introduction to this notice.

173-39-02.3 Pest control service.

ODA is not proposing any changes at this time beyond what is mentioned in the introduction to this notice.

173-39-02.5 Chore service.

ODA is not proposing any changes at this time beyond what is mentioned in the introduction to this notice.

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.