

Rule Summary and Fiscal Analysis (Part A)**Department of Aging**

Agency Name

Division

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173-4-08

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Nutrition health screening.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.01; 173.02; 173.392; Section 305 (a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11**

5. Statute(s) the rule, as filed, amplifies or implements: **173.392; Sections 336 and 339 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The proposed amended rule is part of a larger rule package.

In the rule package, ODA proposes to amend its rules for Non-Medicaid Nutrition

Programs and Nutrition-Related Services in Chapter 173-4 of the Administrative Code to implement the new, federal Dietary Guidelines for Americans and to make other changes. Specifically, ODA is proposing to rescind rule 173-4-05 of the Administrative Code, and, in its stead, adopt these five proposed new rules: proposed new rules 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, and 173-4-05.4 of the Administrative Code. ODA is also proposing to amend rules 173-4-07 and 173-4-08 of the Administrative Code.

Overall, ODA has 4 primary goals:

1. To incorporate guidelines of the Dietary Guidelines for Americans of 2010 into the rules. The U.S. Dept. of Health and Human Services and the U.S. Dept. of Agriculture jointly released the new guidelines on January 31, 2011. The new federal guidelines emphasize these three major goals: (a) balancing calories with physical activity to manage weight; (b) consuming more of certain foods and nutrients, such as fruits, vegetables, whole grains, fat-free and low-fat dairy products, and seafood; and (c) consuming fewer foods with sodium, saturated fats, trans fats, cholesterol, added sugars, and refined grains.
2. To emphasize person-centered (i.e., "self-directed") care in the rules, by requiring providers to (a) provide choices to consumers within the Dietary Guidelines for Americans and (b) help consumers make informed choices regarding meals, alternative meals, and meal types.
3. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.). In doing so, ODA is (a) proposing to amend this rule after providing interested parties and the general public an opportunity to provide input on the proposed amendments to the rule before filing the rule with the Joint Committee on Agency Rule Review (from November 10, 2011 to November 27, 2011, ODA posted the proposed amended rule on <http://aging.ohio.gov/information/rules/proposed.aspx> for a public-comment period) and (b) making the rules more user-friendly by (i) transforming one large, many-topic rule into five smaller fewer-topic rules and (ii) incorporating more tables into the new rules.
4. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the review date listed at the end of the rule.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The amended rule would regulate nutrition health screening.

ODA is proposing to amend the rule to:

1. Add, after "Definitions" in paragraph (A) of the rule, "for this rule."
 2. Add, after "Minimum requirements for a nutrition health screening" in paragraph (B) of the rule, "in addition to the mandatory clauses under rule 173-3-06 of the Administrative Code."
 3. Add, after "Referrals" in paragraph (B)(2) of the rule "for high nutritional risk."
 4. Insert a new paragraph (B)(3) of the rule on excessive alcohol consumption. [After considering comments received during ODA's public-comment period, ODA revised the language from a requirement to make referrals to a requirement to provide information.]
 5. Move the records-retention language in paragraph (B)(2)(c) of the rule to paragraph (B)(4) of the rule. In doing so, ODA proposes to eliminate the requirement to report on a monthly basis because ODA thought it was unnecessarily prescriptive. A provider could bill more or less frequently.
 6. Insert "173.01" into the statutory authority section of the rule because section 173.01 of the Revised Code also gives ODA authority to adopt the rule.
8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:
- This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*
9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:
- This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*
10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

On May 18, 2012, ODA refiled the rule to:

1. Place the definition of "nutrition health screening" first in the list of definitions.
2. Revise the definition of "nutrition health screening" so that it includes "('screening')" and also includes the referrals that are part of the service.
3. Revise the proposed paragraph (B) of the rule. The proposed language formerly said, "Minimum requirements for a nutrition health screening in addition to the mandatory clauses under rule 173-3-06 of the Administrative Code:" Now the language says, "In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a nutrition health screening provider shall comply with the following requirements:"
4. Revise paragraphs (B)(1)(a) and (B)(1)(b) of the rule, which are the paragraphs on the required frequency. For both paragraphs, ODA inserted a sub-heading, referenced rule 173-4-02 of the Administrative Code, and stated that the provider should screen the enrolled consumer no later than one month (vs. two months) after he or she enrolls in a nutrition program. Section 339 of the Older Americans Act requires the program to screen consumers as appropriate. ODA believes that any consumer who is receiving ongoing meals should be screened. However, it seems inappropriate to require the provider to screen a consumer who may show up to a special event that involves meals that a congregate meal site hosts, unless that consumer enrolls in a nutrition program. Thus, while it seems that requiring the provider to screen the consumer no later than one month after enrollment is an increased burden, emphasizing that it is only the enrolled consumer that ODA requires the provider to screen makes it clear that there is no burden to screen consumers who do not enroll.
5. Replace "for" in paragraph (B)(3)(a) of the rule with "to" as it occurs before "consumers."
6. Insert "to" in paragraph (B)(3)(a) of the rule as it occurs before "any consumer."
7. Add to paragraph (B)(4) of the rule a requirement to enter each consumer's nutritional risk score into SAMS, better word the paragraph, and divide it into two sub-paragraphs: on record retention and another on entering records into SAMS.
8. Revise this RSFA.

On May 24, 2012, ODA refiled the rule to:

1. Replace paragraph (B)(4)(b) of the proposed amended rule. The paragraph formerly said, "The provider shall enter each consumer's nutrition risk score in the

social assistance management system (SAMS) consumer record." Now, the paragraph says, "The provider shall indicate whether the consumer is at high nutritional risk in SAMS (social assistance management system)."

2. Revise this RSFA.

12. 119.032 Rule Review Date: **11/30/2011**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA does not anticipate that the proposed amendment of this rule, nor the larger rule package, would have any impact upon the biennial budget the Ohio General Assembly established for ODA, because the rule package should not create any expenses for ODA that were unforeseen when the Ohio General Assembly appropriated funds to ODA in H.B. No. 153 (129th G.A.).

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-411 Senior Community Services.

322-490-618 Federal Aging Grants.

3M40-490-612 Federal Independence Services.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your

information/estimated costs, e.g. industry, CFR, internal/agency:

CONSUMERS: No meal consumer is required to pay for a nutrition consultation service.

PROVIDERS: ODA estimates that the proposed amendments in this rule will not create a new cost of compliance for any provider except for the requirement to offer information to consumers on excessive alcohol consumption to any consumer who, in the process of completing the checklist required by the rule, says he or she excessively consumes alcohol. ODA anticipates that this will create a minimal cost of compliance. During ODA's public-comment period, although a number of providers commented on issues surrounding excessive alcohol consumption, no provider commented that the requirement to offer information on excessive alcohol consumption would create a new cost of compliance. Furthermore, no provider commented that any amendment to this rule would create a new cost of compliance.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**