

Department of  
Aging

John Kasich, Governor  
Bonnie Kantor-Burman, Director

## NOTICE

H.B. No. 153's amendments to sections 173.404 and 5111.894 of the Revised Code take effect on September 29, 2011. The amendments will change the Unified Waiting List and the **Home First component of the Medicaid-Funded Component of the Assisted Living Program**, by preventing ODA's designee (*i.e.*, the PASSPORT administrative agency) from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow ODA's designee to immediately enroll an eligible individual into the program any time a slot is available in the program without the formality of adding and removing the individual from the waiting list. H.B. No. 153's amendments also change the nomenclature for the program and now name the program the "Medicaid-Funded Component of the Assisted Living Program." ODA must now incorporate the changes into Chapter 173-38 of the Administrative Code. ODA proposes to adopt amendments to the chapter on September 29, 2011, the same day that H.B. No. 153's amendments take effect.

ODA will conduct a public hearing to obtain comments concerning ODA's proposed amendments to Chapter 173-38 the Administrative Code. ODA will conduct the hearing on **August 15, 2011** in Conference Rooms **10A & 10B** of the ODA's offices at 50 W. Broad Street, **10th floor**; Columbus, OH 43215. The hearing will begin at **1:30PM** and will continue until all parties in attendance at that time have had an opportunity to provide comment.

ODA will consolidate this public hearing with at least seven other public hearings on August 15, 2011 to reduce the state's administrative expenses and to reduce the general public's costs associated with traveling to Columbus to participate in public hearings.

Any person may direct written comments or requests for information concerning the rule proposals to Tom Simmons, ODA's rules manager, on or before the date of the hearing by writing to [rules@age.state.oh.us](mailto:rules@age.state.oh.us).

(Please also notice ODA's related rule package on rule 173-44-04 of the Administrative Code.)

### INTRODUCTION

ODA is proposing to amend Chapter 173-38 of the Administrative Code. In doing so, ODA has 4 basic goals:

1. To incorporate H.B. No. 153's amendments to the Assisted Living Program into Chapter 173-38 of the Administrative Code. H.B. No. 153's amendments to sections 173.404 and 5111.894 of the Revised Code take

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effect on September 29, 2011. The amendments will change the Unified Waiting List and the Home First component of the Medicaid-Funded Component of the Assisted Living Program, by preventing ODA's designee (*i.e.*, the PASSPORT administrative agency) from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow ODA's designee to immediately enroll an eligible individual into the program any time a slot is available in the program without the formality of adding and removing the individual from the waiting list. H.B. No. 153's amendments also change the nomenclature for the program and now name the program the "Medicaid-Funded Component of the Assisted Living Program." ODA must now incorporate the changes into Chapter 173-38 of the Administrative Code. ODA proposes to adopt amendments to the chapter on September 29, 2011, the same day that H.B. No. 153's amendments take effect.

2. To correct an incorrect citation in rule 173-38-04 of the Administrative Code.
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 Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129<sup>th</sup> G.A.) which require each state agency to eliminate unnecessary regulations and to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. In 2009, ODA adopted the most-recent versions of chapter 173-38 of the Administrative Code after undergoing a similar process. After reviewing this chapter again, ODA has determined that:
  - a. The rule and the proposed amendment to the rule do not burden any Ohio business. The only business subject to the rule are ODA's designees and the rule proposals eliminate an unnecessary process that current rules require of ODA's designees.
  - b. ODA wrote the rule and the proposed amendment to the rule in a manner that is as easy to understand as the subject matter permits, including adding a helpful cross-reference, and aligning topics under standard rule titles for uniformity between chapters of the Administrative Code and between programs.

ODA is also proposing to amend this chapter after considering input from interested parties. From June 30, 2011 to July 11, 2011, ODA posted this rule on <http://aging.ohio.gov/information/rules/proposed.aspx> for a public-comment period on the proposed rule. After the public-comment period, ODA revised the proposed amended rule to correct two mistakes that one interested party identified.

#### **173-38-01 Introduction and definitions.**

Specifically, ODA is proposing to amend the rule to:

1. Indicate in paragraph (A) of the rule that Chapter 173-38 of the Administrative Code regulates the Medicaid-funded component of the Assisted Living Program.
2. Provide a helpful cross-reference to Chapter 173-51 of the Administrative Code for the state-funded component of the Assisted Living Program.
3. Revise the definition for "service plan" by removing the passive-voice language. ODA replaced "are provided" with "provider furnishes." Additionally, ODA inserted "the" before "services" to make it clear that the provider furnishes services to a consumer, not the written outline of services.
4. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.

#### **173-38-02 Eligibility criteria.**

Specifically, ODA is proposing to amend the rule to:

1. Use the new nomenclature for the program (*i.e.*, "Medicaid-funded component of the Assisted Living program").

2. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.

**173-38-03 Enrollment process for the medicaid-funded assisted living program.**

Specifically, ODA is proposing to amend the rule to:

1. Add similarity to the enrollment rule for the Medicaid-funded component of the PASSPORT Program by using "individual" instead of "applicant" throughout the rule to refer to the person who applies for the program.
2. Incorporate the language from rule 173-44-04 of the Administrative Code concerning the Home First component of the Assisted Living Program into this rule.
3. Describe the Unified Waiting List as one of two options ODA's designee shall take when enrolling an eligible individual into the Assisted Living Program when no slot is available. The other option is now the home-first component of the Assisted Living Program.
4. Use the new nomenclature for the program throughout the rule (*i.e.*, "Medicaid-funded component of the Assisted Living program").
5. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.

**173-38-04 Provider certification.**

Specifically, ODA is proposing to amend the rule to:

1. Replace "173-39-02" in paragraph (A) of the rule with "173-39-03," because rule 173-39-03 of the Administrative Code regards provider certification.
2. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.

**173-38-05 Covered services.**

Specifically, ODA is proposing to amend the rule to:

1. Use the new nomenclature for the program (*i.e.*, "Medicaid-funded component of the Assisted Living program").
2. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.