

**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 allowing 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 Unified 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** at 50 W. Broad Street, 10th floor; Conference Rooms A&B; 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 nine other public hearings on the same day 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 see 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 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 allowing 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 Unified 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

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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.):
  - a. ODA is proposing to adopt the new rules after interested parties and the general public have had opportunities to provide input:
    - i. Interested parties and the general public had the opportunity to testify to the finance committees of the Ohio House of Representatives and the Ohio Senate as those legislative bodies considered public testimony on the amendments that H.B. No. 153 proposed to make to section 5111.89 of the Revised Code.
    - ii. From June 30, 2011 to July 11, 2011, ODA posted the proposed amended rules on <http://aging.ohio.gov/information.rules/proposed.aspx> for a public-comment period.
  - b. 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:
    - i. The rule and the proposed amendment to the rule do not burden any Ohio business. The only businesses subject to the rule are ODA's designees and the rule proposals eliminate an unnecessary process that current rules require of ODA's designees.
    - ii. 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.

#### **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. Add a new, standard definition for "authorized representative."
4. 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. In a revised-filing of the rule, ODA clarified that the service plan is a list of services that ODA's designee *expects* a provider to perform.
5. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.

**173-38-02 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. Delete the definition of "authorized representative." The definition now appears in rule 173-38-01 of the Administrative Code.
6. 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. Replace "under" in paragraph (B) of the rule with "according to."
3. 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.