



Department of
Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

NOTICE

ADDITIONAL HEARING

On May 18, 2012, ODA refiled proposed amended rules 173-4-07 and 173-4-08 of the Administrative Code. ODA will conduct a public hearing to obtain comments concerning ODA's proposed amendments to those two rules.

ODA will conduct the hearing on **May 24, 2012** at 50 W. Broad Street, 10th floor; Conference **Room 10A**; 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.

At this time, ODA has not taken any further action on proposed new rules 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, or 173-4-05.4 of the Administrative Code. Therefore, ODA does not intend for those rules to be a topic at this additional hearing. ODA will offer an additional hearing for those rules if ODA refiles them with changes before adopting them into the Ohio Administrative Code.

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. Section 119.03 of the Revised Code requires ODA to conduct a public hearing to obtain comments concerning ODA's proposed amendments. ~~ODA will conduct the hearing on **January 4, 2012** at 50 W. Broad Street, 10th floor; Conference **Room 10A**; 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.~~

~~ODA will attempt to consolidate this public hearing with three other public hearings on January 4, 2012 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 proposed actions to Tom Simmons, ODA's rules manager, on or before the date of the hearing by writing to rules@age.state.oh.us.

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173-4-07 Nutrition education service.

Below are the details about the refiling that ODA listed for item #11 on the rule summary and fiscal analysis (RSFA) for proposed amended rule 173-4-78 of the Administrative Code:

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

1. Reword the proposed word order, and delete the last clause, in paragraph (A) of the rule. The paragraph formerly read, "'Nutrition education service' means a service that promotes better health by providing accurate and culturally-sensitive information and instruction to consumers or family caregivers on nutrition, physical activity, food safety, or disease prevention, whether provided in a group or an individual setting." Now, it says, "'Nutrition education service' means a service that promotes better health by providing consumers or family caregivers with accurate and culturally-sensitive information and instruction on nutrition, physical activity, food safety, or disease prevention." The last clause was removed because it was unnecessary language.
2. Reword paragraph (B) of the rule. The paragraph formerly said, "Minimum requirements for a nutrition education service in addition to the mandatory clauses under rule 173-3-06 of the Administrative Code:" Now, the paragraph says, "In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a nutrition education service provider shall comply with the following requirements:"
3. Delete, in paragraph (B)(1)(a) of the rule, and throughout the rule, language that requires the AAA to provide the nutrition education service. Although an AAA is prohibited from directly providing a service, in some cases, an AAA may request a waiver from that requirement, through rule 173-3-05 of the Administrative Code, in order to conduct competitive bidding to find providers who will perform the service.
4. Add language to paragraph (B)(1)(b) of the rule to explain how long the provider must retain records. The AAA establishes the length of time, so long as that time is no shorter than the times required in paragraph (A)(20) of rule 173-3-06 of the Administrative Code.
5. Add language to paragraph (B)(1)(b) of the rule to make it clear that the licensed dietitian of an AAA is necessary for approving the methodology for evaluating the effectiveness of a nutrition education service.
6. Replace "offer," as it occurred in paragraphs (B)(1)(c)(i)(a) and (B)(1)(c)(i)(b) of the rule, with "conduct."
7. Reword the beginning of paragraph (B)(1)(c) of the rule. The words previously said, "The provider who is reimbursed with Older Americans Act funds shall offer to...." Now the words say, "The AAA shall require a nutrition education service provider to..." ODA removed the words "with Older Americans Act funds" because this rule also applies to Senior Community Services funds or any other funding that pays for meals through provider agreements as part of one of the programs that ODA administers.
8. Add to paragraphs (B)(1)(c)(i)(a) and (B)(1)(c)(i)(b) of the rule specific references to the Dietary Guidelines for Americans (e.g., "Appendix Three").
9. Delete "A system for providing a" at the beginning of paragraph (B)(1)(c)(ii) of the rule. The words were unnecessary.
10. Revise this RSFA.

173-4-08 Nutrition health screening.

Below are the details about the refiling that ODA listed for item #11 on the rule summary and fiscal analysis (RSFA) for proposed amended rule 173-4-08 of the Administrative Code:

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.