



Department of
Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

NOTICE

ADDITIONAL HEARING

On June 11, 2012, ODA refiled proposed new rules 173-4-05, 173-4-05.1, and 173-4-05.2 of the Administrative Code. ODA will conduct a public hearing to obtain comments concerning ODA's proposed amendments to those three rules.

ODA will conduct the hearing on **June 21, 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 consolidate this public hearing with another public hearing on June 21, 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.

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.

173-4-05 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 new rule 173-4-05 of the Administrative Code:

On June 11, 2012, ODA refiled the rule to:

1. Create noun-verb agreement in paragraph (A) and to rid paragraph of redundant language. In doing so, "'Meal service' means a service through which a congregate nutrition program, a home-delivered nutrition program, or a restaurant and grocery meal service provides a safe and nutritious meal to consumers to help sustain health through a congregate nutrition program, home-delivered nutrition program, or restaurant and grocery meal service" became "'Meal service' means a service through which a congregate nutrition program, a home-delivered nutrition program, or a restaurant and grocery meal service provides safe and nutritious meals to consumers to help sustain health."
2. Replace paragraph (B) of the rule. The paragraph formerly said, "Minimum requirements for a meal service in addition to the mandatory clauses under rule 173-3-06 of the Administrative Code:" The paragraph now says, "In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a meal service provider shall comply with the following requirements:"
3. Move the summary of the Dietary Guidelines for Americans that were listed under paragraph (B)(1)(a) of the rule to an appendix to the rule.
4. Insert "a minimum" before "one-third" in paragraph (B)(1)(b) of the rule. This brings the paragraph into compliance with the wording in section 339 of the Older Americans Act.
5. Replace "(DRIs), which are a comprehensive set..." in paragraph (B)(1)(b) of the rule with "(DRIs). DRI's are a comprehensive set...." ODA made this change for the sake of clarity.
6. Replace "determine nutritional adequacy" at the end of paragraph (B)(1)(c) of the rule with "determine the nutritional adequacy of the meals for which it seeks reimbursement from the AAA."
7. Switch paragraph (B)(2) of the rule with paragraph (B)(3) of the rule so that the topic of ingredients appears before menu planning.
8. Replace paragraph (B)(3) [now (B)(2)]. Previously, paragraph (B)(3) said, "Ingredient information: The provider shall offer information on the ingredient content of meals served through a system that is approved by the AAA." Now paragraph (B)(2) says, "Ingredient information: The provider shall offer information on the ingredient content of meals that it serves. The provider shall obtain the AAA's approval of their method for offering the ingredient information before the provider implements the method."
9. Replace paragraph (B)(2)(b) [now (B)(3)(b)] of the rule. The former paragraph said, "The provider shall assure that consumers have opportunities for input about the food items it offers as part of self-directed care." The paragraph now says, "To promote self-directed care, the provider shall assure that consumers have opportunities for feedback on menus that have been served and input on upcoming menus." ODA made this change for the sake of clarity. Firstly, ODA wanted to clarify that seeking feedback and input was not just for food offered as part of self-directed care. Instead, ODA wants providers to solicit feedback and input to promote self-directed care for all consumers that they serve. Secondly, ODA wanted to clarify that the feedback and input was for the purpose of menu planning to differentiate it from the consumer's choices about meals under paragraph (B)(4) of the rule.

10. Replace paragraph (B)(4)(a) of the rule. The former paragraph said, "At a minimum, allow each consumer to choose from two of the following:" The new paragraph says, "Allow consumers to choose between two or more food items within at least two of the following categories:" ODA made this change for the sake of clarity. The former paragraph did not clearly indicate what the choice was: between two food categories or choices within two food categories.
11. Insert "at the congregate meal site" after "two meals per day" in paragraph (B)(4)(d)(v) of the rule.
12. Delete paragraph (B)(4)(e) of the rule. The former paragraph said, "Allow consumers of congregate meal sites to make an informed choice regarding the menu, food alternates, and portion sizes, based on the availability of food items. The provider of congregate meals who chooses this option shall retain records to show that it informs consumers of the benefits and risks of dietary choices, so long as the AAA approves of the method for recording this information." ODA removed this item because much of it was redundant of other consumer choice options. Regarding portion sizes, the Older Americans Act requires meals to be nutritious, but does not require the consumer to consume the entirety of the nutritious meal. Additionally, ODA does not expect a deliverer of a meal or a server in a congregate meal site to provide health advice to a consumer who may refuse to eat the entirety of each portion of a meal.
13. Replace "The AAA shall not allow dietary supplements" in paragraph (D)(8) of the rule with "The AAA shall not allow a provider to serve multi-vitamin or mineral supplements."
14. Delete the second sentence of paragraph (D)(8) of the rule. The former sentence said, "Under the 'Dietary Supplement Health and Education Act of 1994,' 21 U.S.C. 321, dietary supplements are intended for ingestion in pill, capsule, tablet, or liquid form."
15. Replace "under" in paragraph (C)(1), (C)(2), and (C)(3) of the rule with "in compliance with."
16. Upload a public hearing notice into the Electronic Rule Filing (ERF) system to announce an additional public hearing on the proposed new rule.
17. Revise this RSFA.

173-4-05.1 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 new rule 173-4-05.1 of the Administrative Code:

On June 11, 2012, ODA refiled the rule to:

1. Replace the language regarding meal accompaniments under paragraph (B)(8) of the rule for providers who use the menu-pattern method for determining nutritional adequacy. The new language that continues to indicate that a provider who uses the menu-pattern method shall not supply salt shakers to consumers. The new language also prohibits the provider from restricting consumers from using their own salt to season food. This makes it possible for the provider to serve a nutritious meal that complies with the federal dietary reference intakes for sodium, which the Older Americans Act requires the provider to follow if the provider is serving meals using Older Americans Act funds. It also makes it possible for a consumer to use his or her own salt even if doing so increases the sodium content of the meal in excess of the federal dietary reference intakes for sodium. (The Older Americans Act requires providers to serve only meals that comply with federal dietary reference intakes, but does not require a consumer to eat only a meal that complies with reference intakes. Thus, the consumer has the freedom to alter his or her meal after the provider has served it.)
2. Upload a public hearing notice into the Electronic Rule Filing (ERF) system to announce an additional public hearing on the proposed new rule.

3. Revise this RSFA.

173-4-05.2 Therapeutic and modified meals.

Below are the details about the refiling that ODA listed for item #11 on the rule summary and fiscal analysis (RSFA) for proposed new rule 173-4-05.2 of the Administrative Code:

On June 11, 2012, ODA refiled the rule to:

1. Replace “a order” in paragraph (B)(2) of the rule with “an order.”
2. Replace “pureed” in paragraph (B)(3)(b) of the rule with “puréed.”
3. Upload a public hearing notice into the Electronic Rule Filing (ERF) system to announce an additional public hearing on the proposed new rule.
4. Revise this RSFA.