



Department of
Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

NOTICE

In 2011, H. B. No. 153 (129th General Assembly) established the maximum period of eligibility for the **State-Funded Component of the Assisted Living Program** as three months, which could be a period of time as short as 89 days (*e.g.*, February, March, and April) or as long as 92 days (*e.g.*, May, June, and July).

Recently, H. B. No. 487 (129th General Assembly) amended section 5111.89 of the Revised Code to replace “three months” with “ninety days.” Once the amendment takes effect, it will establish equitable eligibility periods for all consumers of the program.

To implement H. B. No. 487’s amendment to section 5111.89 of the Revised Code, ODA is now proposing to amend rules 173-51-02 and 173-51-03 of the Administrative Code to replace occurrences of “three months” with “ninety days.” ODA proposes to adopt the amendments on the same day that H. B. No. 487’s amendment takes effect.

Section 5111.89 of the Revised Code authorizes ODA to file the proposed amended rules according to section 111.15, not section 119.03, of the Revised Code. Filing proposed amended rules under section 111.15 of the Revised Code does not require ODA to conduct a public hearing. ODA conducted a public hearing on July 16, 2012 at which no one raised an objection to the proposed amendments to the rule. However, on July 16th 2012, and again on July 24, 2012, ODA revised/refiled the rule to make changes highlighted in item #11 on the rule summary and fiscal analysis and also below. Therefore, ODA will voluntarily conduct an additional public hearing to obtain comments concerning ODA’s additional proposed amendments to rules 173-51-02 and 173-51-03 the Administrative Code. ODA will conduct the hearing on **July 30, 2012** at 50 W. Broad Street, 10th floor; **Conference Room 10A**; Columbus, OH 43215. The hearing will begin at **3:00PM** 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 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.

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173-51-02
Eligibility criteria.

On July 16, 2012, ODA revised the rule to:

1. Add language to the eligibility criteria that says an individual is only eligible for the program if he or she was not previously enrolled in the state-funded Assisted Living Program or the state-funded PASSPORT program. This clarification makes visible two "invisible" criteria in other rules. The post-disenrollment prohibitions in paragraph (C)(1) of rule 173-51-03 of the Administrative Code already prohibit a person who is disenrolled from the program from re-enrolling back into the program. The post-disenrollment prohibitions in paragraphs (A)(3)(c), (B)(3)(b), and (C)(4)(b) of rule 173-40-03 of the Administrative Code already prohibit a person who is disenrolled from the state-funded PASSPORT program from enrolling into the state-funded Assisted Living Program.
2. Clarify that an individual who enrolls into the state-funded component of the Assisted Living Program will automatically transfer to the Medicaid-funded component of the Assisted Living Program if the individual is, in fact, eligible for the Medicaid-funded component of the program. (See paragraphs (A)(3)(a) and (A)(3)(b) of the rule.)
3. Add language to say that an individual is only eligible for the state-funded component of the Assisted Living Program if he or she actively assists the CDJFS in determining whether or not he or she is eligible for the Medicaid-funded component of the program.
4. Replace occurrences of "ODA's designee" with "ODA (or ODA's designee)."
5. Add in paragraph (B) of the rule that a consumer is no longer eligible for the program if he or she no longer meets all the criteria listed in paragraph (A) of the rule, unless the only criterion that the consumer no longer meets is the patient-liability criterion. Before the revision, the consumer was no longer eligible even if the only criterion that he or she no longer met was the patient-liability criterion.
6. Make minor structural and grammatical changes (e.g., adding sub-headings, changing the order or paragraphs, changing the tense of sentences, replacing "under" with "which are listed in.")
7. Revise the RSFA.

On July 16, 2012, after receiving feedback from Ohio District 5 Area Agency on Aging, Inc., ODA revised the rule for a second time to:

1. Replace "assisted-living" in paragraph (A)(3)(c) of the rule with "assisted living."
2. Replace "thee" in paragraph (A)(3)(d) of the rule with "the."
3. Insert ", and ODA (or ODA's designee) has no reason to doubt that determination." This gives the rule language similar to its parallel paragraph for the state-funded component of the PASSPORT Program, which is in rule 173-40-02 of the Administrative Code.
4. Revise the RSFA.

On July 25, 2012, ODA refiled the rule to:

1. Upload a new public hearing notice.
2. Revise the RSFA.

In its July 25, 2012 refiling, ODA made no changes to the rule itself.

173-51-03

Disenrollment and other adverse actions regarding the state-funded assisted living program.

On July 16, 2012, ODA revised the rule to:

1. State, in paragraph (A)(1) of the rule, that ODA will not disenroll a consumer who no longer meets all the criteria for the program if the only criterion the consumer no longer meets is the patient-liability criterion.
2. Clarify that ODA is not required to provide notice and an opportunity for a hearing in accordance with Chapter 119 of the Revised Code if a consumer voluntarily separates himself or herself from the program. (See subsequent refiling on July 25, 2012.)
3. Replace the occurrences of "ODA's designee" with "ODA (or ODA's designee)."
4. Make other minor, clarifying changes.
5. Revise the RSFA.

On July 25, 2012, ODA refiled the rule to:

1. Replace the previous proposal to replace "three months" in paragraph (A)(4) of the rule with "ninety days." Now, ODA proposes to replace "three months" with "the maximum enrollment period of ninety days."
2. Insert a new paragraph (A)(5) of the rule that requires ODA (or ODA's designee) to disenroll a consumer who voluntarily disenrolls from the state-funded component of the Assisted Living Program.
3. Insert a new paragraph (B) (with sub-paragraphs) that explains that ODA (or ODA's designee) shall not provide a consumer for an opportunity for a hearing if ODA (or ODA's designee) disenrolls the consumer because the consumer reached his or her maximum enrollment period of ninety days or the consumer voluntarily disenrolled from the program.
4. Replace the (old) paragraph (B) with a new paragraph (D) and its sub-paragraphs. The paragraphs explain when ODA (or ODA's designee) shall send a notice of proposed adverse action to an individual, how the individual may request a hearing against the proposed adverse action, and what ODA (or ODA's designee) may do if the individual does not request a hearing before the 30-day deadline.
5. Replace "cosnumer" in paragraph (C)(2) of the rule with "consumer."
6. Change the title of the rule from "Disenrollment from the state-funded assisted living program" to "Disenrollment and other adverse actions regarding the state-funded assisted living program."
7. Upload a copy of form ODA1117 into the electronic rule filing system (ERF) so the public can view the document in the Register of Ohio.
8. Upload a public hearing notice for an additional public hearing.
9. Revise the RSFA, especially item #15 on direct costs.