



**Ted Strickland, Governor**  
**Barbara E. Riley, Director**

## NOTICE

ODA will conduct a public hearing to obtain comments concerning ODA's proposed rescission of rules and adoption of new rules and amended rules regarding the **Assisted Living Program**, as required by section 119.03 of the Revised Code. ODA will conduct the hearing on **Thursday, July 30, 2009** in Conference Room A of the Department's offices at 50 W. Broad Street, 9th floor; 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.

### TRANSPARENCY and EASE of COMPREHENSION

Currently, the rules that regulate the Assisted Living Program appear in various chapters of the Administrative Code under the authority of multiple agencies. It would be difficult for a person looking at ODA's rules in the online version of the Administrative Code to know that the rule that regulate the assisted living service is rule 173-39-02.16 of the Administrative Code, which is a rule that is in a different chapter than the rule on the enrollment process, which is rule 173-38-01, and which is in a different chapter than the rules on the eligibility criteria. Therefore, in order to draft rules in such a way that the general public readily has access to the rules that affect the Assisted Living Program, ODA is proposing to replace rule 173-38-01 of the Administrative Code with a small chapter of rules that reveals the location of these topics.

The proposed new rules of Chapter 173-38 of the Administrative Code are:

- 173-38-01, which introduces the program and defines terms used in the chapter.
- 173-38-02, which cross-references rule 5101:3-33-03 of the Administrative Code, the rule on the eligibility criteria for the Assisted Living Program that ODJFS is simultaneously proposing to amend in a separate rule package.
- 173-38-03, which regulates the enrollment process for the Assisted Living Program, including its waiting list.
- 173-38-04, which cross-references rule 173-39-02 of the Administrative Code, the rule on conditions of participation for providers under ODA-administered Medicaid waiver programs, including the Assisted Living Program.
- 173-38-05, which cross-references rules 173-39-02.16 and 173-39-02.17 of the Administrative Code, the rules that regulate the provision of the services that are covered by the Assisted Living Program.

Additionally, because there is a long list of conditions in current rule 173-39-02 of the Administrative Code that an assisted living provider must meet in order to participate in the program, and because the requirements are not listed in an as-identical-as-possible manner to the rule's requirements for other types of providers, ODA is proposing to rescind rule 173-39-02 of the Administrative Code and to replace it with a new rule under the same number that:

- Organizes the conditions for each type of provider, including assisted living providers, into topics (e.g., "service provision," "consumer safety," "monitoring," and reimbursement.")
- Presents the requirements for an assisted living provider in language that is as identical as possible to the requirements for an agency provider or a non-agency provider.

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ODA is also proposing to replace rule 173-39-02.16 of the Administrative Code with an easier-to-read rule.

In the proposed new rules, ODA uses language that complies with the Legislative Service Commission's "Rule Drafting Manual" ([http://www.lsc.state.oh.us/rules/rdm06\\_06.pdf](http://www.lsc.state.oh.us/rules/rdm06_06.pdf)) and that follows the recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. © 2007). This results in language that uses the active, not passive (*i.e.*, "shall be") voice; uses the singular, unless the plural is necessary; is less verbose; and uses less legalese.

These actions make the proposed new assisted living rules easier to comprehend than the current rules and promotes transparency regarding regulations, in compliance with Governor Strickland's Executive Order 2008-04S: Implementing Common Sense Business Regulation.

#### PROGRAMMATIC CHANGES to PROMOTE THE HEALTH AND SAFETY of THE CONSUMER

- In paragraph (C)(1)(a) of proposed new rule 173-38-03 of the Administrative Code, ODA has inserted language indicating it is the PASSPORT administrative agency (PAA), not a county department of job and family services (CDJFS) that determines the date of eligibility to enroll in the program. (See also paragraph (E) of ODJFS' proposed rule 5101:3-33-04.)
- In paragraph (C)(3)(b) of proposed new rule 173-38-03 of the Administrative Code, ODA incorporates the "home first" language from section 5111.894 of the Revised Code that was enacted by House Bill № 420 (127th G. A.). In doing so, the rule indicates that, if a slot in the program becomes available, the PAA shall remove the applicant from the waiting list in the following order: (i) First: an applicant who resides in a nursing facility. (ii) Second: any other applicant.
- In paragraph (E)(1)(a) of proposed new rule 173-39-02 of the Administrative Code, ODA states that the provider shall not provide any services under the assisted living program to a person who is not enrolled in the program.
- In paragraph (E)(1)(c) of proposed new rule 173-39-02 of the Administrative Code and paragraph (B) of rule 173-38-05 of the Administrative Code, ODA states that the provider may provide a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for providing a service that is authorized by the consumer's service plan. (Also, see corresponding language in paragraph (B)(1)(b) of the rule for agency providers and in paragraph (C)(1)(b) of the rule for non-agency providers.)
- In paragraph (E)(1)(d) of proposed new rule 173-39-02 of the Administrative code, ODA states that the provider shall acknowledge that any statute or rule that regulates the assisted living program supersedes any clause in the facility's resident agreement.
- In paragraph (E)(1)(g) of proposed new rule 173-39-02 of the Administrative Code, ODA states that the provider shall transfer or discharge a consumer under the terms of section 3721.16 of the Revised Code. Additionally, if the provider terminates its residential care facility license or provider certification, it shall provide written notification to the consumer and ODA's designee at least ninety days before terminating services to the consumer.
- In paragraphs (E)(2)(c) and (E)(2)(d) of proposed new rule 173-39-02 of the Administrative Code, ODA states that the provider shall maintain a minimum of one million dollars in commercial liability insurance *and* maintain insurance coverage for consumer loss due to theft or property damage and provide written instructions that any consumer may use to obtain reimbursement for a loss due to employee theft or property damage. (Also, see corresponding language in paragraphs (B)(2)(c) and (B)(2)(d) of the rule for agency providers and in paragraphs (C)(2)(c) and (C)(2)(d) of the rule for non-agency providers.)
- In paragraph (E)(6)(d) of proposed new rule 173-39-02 of the Administrative Code, ODA states that the program shall not pay for any service provided to an applicant before the PAA enrolls the applicant into the program. The program does not currently pay for any service provided before enrollment; so, rather than create a prohibition against paying for the services, ODA is proposing new language to add clarity to the matter.
- In paragraph (C)(1)(b)(i)(d) of proposed new rule 173-39-02.16 of the Administrative Code, ODA states that the provider shall provide three meals per day, according to paragraph (B) of rule 3701-17-60 of the Administrative Code, *including* special diets.

- In paragraphs (C)(2)(a)(i) and (C)(2)(a)(ii) of proposed new rule 173-39-02.16 of the Administrative Code, ODA says the provider shall provide each consumer with a private, residential living unit that is designated solely for the consumer, unless the consumer requests to share his/her unit, the consumer shares his/her unit with a person with whom the consumer has an existing relationship, and the consumer's case manager verifies the aforementioned conditions are met and authorizes sharing the unit in the consumer's service plan.. This change will protect a consumer from unwittingly agreeing to share a unit with a person that he/she does not know or that he/she just met.
- In paragraph (C)(2)(a)(v) of proposed new rule 173-39-02.16 of the Administrative Code, ODA says the provider shall provide each consumer with a private, residential living unit that includes identifiable space, separate from the sleeping area, that provides seating for the resident and one or more visitors for socialization.

Any person may direct written comments or requests for information concerning the proposed actions to Tom Simmons at the Department on or before the date of the hearing by writing to [tsimmons@age.state.oh.us](mailto:tsimmons@age.state.oh.us).