# CSI - Ohio
The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Ohio Department of Aging

**Package Title:** NUTRITION RULES

**Rule Number(s):** 173-3-06.1, Chapter 173-4, 173-39-02.1, 173-39-02.2, 173-39-02.10, and 173-39-02.14.[1]

**Date:** July 2, 2014, *Revised on December 31, 2015*

**Rule Types:**

| | |
|---|---|
| ☑ **5-Year Review:** | All above rules |
| ☑ **New:** | Chapter 173-4<br>173-39-02.2, 173-39-02.10,173-39-02.14 |
| ☑ **Amended:** | 173-3-06.1, 173-3-02.1 |
| ☑ **Rescinded:** | Chapter 173-4<br>173-39-02.2, 173-39-02.10,173-39-02.14 |
| ☐ **No change:** | None |

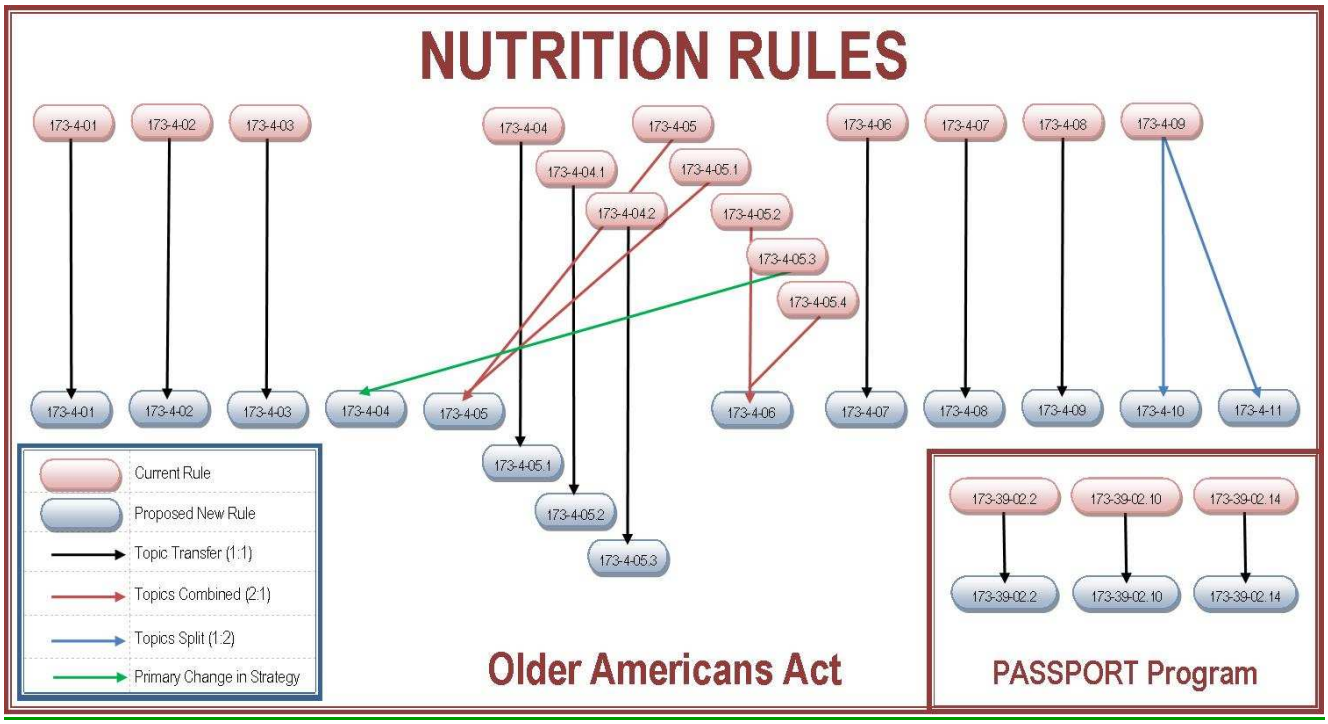
**The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.**

[1] OAC 173-3-01 and 173-3-06 were originally part of this rule package. ODA filed its proposed amendments to those rules in another rule package on open and free competition for Older Americans Act funds.

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## Regulatory Intent

1. **Please briefly describe the draft regulations in plain language.**
   ***Please include the key provisions of the regulation as well as any proposed amendments.***




The Ohio Department of Aging (ODA) proposes to replace all (and renumber most) rules directly regulating the Older Americans Act Nutrition Program in Ohio (OAC Chapter 173-4) and all rules directly regulating ODA-certified providers when they provide meals to consumers[2] enrolled in the PASSPORT Program (OAC 173-39-02.2, 173-39-02.10, and 173-39-02.14). This is indicated in the graphic above.

ODA also proposes to amend related language in the rules that regulate adult day services for the Older Americans Act and PASSPORT Programs (OAC 173-3-06.1 and 173-39-02.1).

The rule package originally contained OAC 173-3-01 and 173-3-06, but ODA has since added those rules to a rule project on open and free competition for contracts.

In all, the project involves 37 original rule filings (18 filings for rules to rescind, 17 filings for new rules, and 2 filings for adult day service rules to amend).[3]

[2] As used in this BIA, "consumer" means an Ohio resident who is at least 60 years old and participating in the Older Americans Act Nutrition Program or an individual who is enrolled in the PASSPORT Program.

[3] The Legislative Service Commission requires state agencies to rescind rules and replace them with new rules if the agency would have otherwise proposed amending 50% or more of the rule's words. Thus, to replace 1 rule, the agency must make 2 original rule filings with the Joint Committee on Agency Rule Review: 1 for the rescission and 1 for the new.

As indicated by the table below, ODA proposes to rename each rule.

| | | | | |
|---|---|---|---|---|
| 173-4-01 | Introduction and definitions | → | 173-4-01 | Older Americans Act: nutrition program: introduction and definitions. |
| 173-4-02 | Eligibility criteria | → | 173-4-02 | Older Americans Act: nutrition program: eligibility requirements to pay for meals with Older Americans Act funds. |
| 173-4-03 | Enrollment process. | → | 173-4-03 | Older Americans Act: nutrition program: eligibility verification and enrollment. |
| 173-4-04 | Congregate dining program | → | 173-4-05.1 | Older Americans Act: nutrition program: congregate dining projects. |
| 173-4-04.1 | Home-delivered nutrition program | → | 173-4-05.2 | Older Americans Act: nutrition program: home-delivered meals projects. |
| 173-4-04.2 | Restaurant and grocery meal service. | → | 173-4-05.3 | Older Americans Act: nutrition program: congregate dining projects based in restaurants or supermarkets. |
| 173-4-05<br>173-4-05.1 | Meal service.<br>Methods for determining nutritional adequacy. | → | 173-4-05 | Older Americans Act: nutrition program: nutrition projects. |
| 173-4-05.2<br>173-4-05.4 | Therapeutic and modified meals.<br>Medical food and food for special dietary use. | → | 173-4-06 | Older Americans Act: nutrition program: diet orders. |
| 173-4-05.3 | Alternative meals and meal types. | → | 173-4-04 | Older Americans Act: nutrition program: person direction. |
| 173-4-06 | Nutrition consultation service. | → | 173-4-07 | Older Americans Act: nutrition program: nutrition counseling. |
| 173-4-07 | Nutrition education service. | → | 173-4-08 | Older Americans Act: nutrition program: nutrition education. |
| 173-4-08 | Nutrition health screening service. | → | 173-4-09 | Older Americans Act: nutrition program: nutrition health screening. |
| 173-4-09 | Grocery shopping assistance service. | → | 173-4-10<br>173-4-11 | Older Americans Act: grocery shopping assistance.<br>Older Americans Act: nutrition program: home-delivered groceries. |
| 173-3-06.1 | Adult day service. | → | 173-3-06.1 | Older Americans Act: adult day service. |
| 173-39-02.1 | Adult day service. | → | 173-39-02.1 | ODA provider certification: adult day service. |
| 173-39-02.2 | Alternative meals service. | → | 173-39-02.2 | ODA provider certification: alternative meals. |
| 173-39-02.10 | Nutritional consultation service. | → | 173-39-02.10 | ODA provider certification: nutritional consultations. |
| 173-39-02.14 | Home-delivered meal service. | → | 173-39-02.14 | ODA provider certification: home-delivered meals. |

ODA lists its primary goals for the rule project in its response to question #5 in this business impact analysis (BIA).

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   ORC§§ 173.01, 173.02, 173.391, and 173.392.

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   ***If yes, please briefly explain the source and substance of the federal requirement.***

   §305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006 (the Act) and 45 C.F.R. 1321.11 (Oct, 2015).

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   ODA is not exceeding its federally-authorized regulatory scope of authority.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   Below, ODA lists its 6 primary goals for this project:

   - **INCREASE PERSON DIRECTION**: For more information, please review Appendix B and proposed new OAC173-4-04.

   - **ELIMINATE 210 UNNECESSARY REGULATIONS and REDUCE THE IMPACT OF 36 OTHER REGULATIONS**: The resulting flexibility could help facilitate person direction. The resulting savings could be reinvested into person-direction initiatives. For more information, please review Appendix M for elimination of regulations and Appendices K, L, and M for reduced impact.

   - **INCREASE VERIFICATION OF MEALS DELIVERED AND SERVED** for the Older Americans Act Nutrition Program only: ODA proposes to require per-delivery verification on home-delivered meals and per-meal verification on congregate meals. Under federal law, all costs incurred under the Older Americans Act Nutrition Program must be reasonable (45 CFR 75.403(a)), and must be documented (45 CFR 75.403(g)). It is unreasonable to pay for meals that are never delivered. Providers should find compliance to be practical because ODA's rules already require per-delivery verification in the PASSPORT Program and 86.7% of providers operate in both the Older Americans Act Nutrition Program and the PASSPORT Program. Additionally, federal law requires ODA to verify every good or service provided with Older Americans Act funds[4] and the opportunity for fraudulent verification would be great if ODA continued to allow providers to ask consumers with Alzheimer's disease or related dementias to verify the receipt of specific deliveries over the course of a month. For more information, please review Appendix J and ODA's responses to public comments on this topic in Appendix Q.

   - **CLARIFY ELIGIBILITY REQUIREMENTS** for meals to be paid by Older Americans Act funds. For more information, please review Appendix O.

   - **MAKE NEW REQUIREMENT TO PUBLISH MENUS AND INGREDIENT INFORMATION ON WEBSITE OR OFFER THE SAME IN WRITING TO CONSUMERS** for ODA-certified providers serving individuals enrolled in the PASSPORT Program. Making the information available makes person direction possible. Without knowledge about options, consumers have no ability to use person direction. By comparison, the Older Americans Act Nutrition Program

[4] 45 C.F.R. 75.403 and 75.404.

already requires making ingredient information available, but neither program presently requires making menus available.

- **COMPLY WITH STATE LAWS** in ORC§§ 173.391 and 173.392 that require ODA to adopt rules for certifying providers for the PASSPORT Program and for the Older Americans Act Nutrition Program, which operates on the basis of contracts (not certifying providers).

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

ODA monitors each AAA and PASSPORT Administrative Agency (PAA) for compliance.

ODA (and ODA's designees) monitor providers for compliance.

For the PASSPORT Program, the PASSPORT Administrative Agencies, monitor providers for compliance according to OAC173-39-04.

## Development of the Regulation

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
***If applicable, please include the date and medium by which the stakeholders were initially contacted.***

Overall, ODA conducted extensive outreach to Ohio businesses (providers) that are affected by ODA's nutrition rules for the Older Americans Act Nutrition Program and the PASSPORT Program. This included the following:

- **3 Online Public-Comment Periods:**
    - ODA conducted an online public-comment period from July 3, 2014 to July 20, 2014 and in the fall of 2015. Before the first comment period, and between the comment periods, ODA surveyed providers and AAA and interviewed providers and AAAs in Ohio and other states to amass much information on the apprehension of some towards person direction and other initiatives and the success stories of others towards the same.
    - On June 25, 2015, ODA reached out to providers and provider associations to announce that ODA was reviewing OAC173-39-02.2 and 173-39-02.10 and to ask if they had comments to offer. The provider, association, and board were as follows: Senior Resource Connection (provider), Senior Enrichment Services (provider), Simply-EZ Home-Delivered Meals (provider), Clossman Catering (provider), LifeCare Alliance (provider), and SourcePoint (provider)—the contact is also the president of the Ohio chapter of the Meals on Wheels Association of America. The online public-comment period for the 2 rules began on July 6, 2015 and ended on July 19, 2015.
    - ODA conducted an online public-comment period from October 19, 2015 to November 1, 2015 for OAC 173-3-06.1, 173-39-02.1, and 173-39-02.14, plus an appendix to the BIA on therapeutic diets and diet orders.
- **Primary research:**
    - **Surveys:**
        - On March 31, 2014, ODA polled three AAAs 5, 7, 9 and also Catholic Social Services of the Miami Valley about person direction in delivering home-delivered meals.
        - ODA also surveyed technology manufacturers on the cost-reducing optimization and verification services they offer to providers. ODA also surveyed providers on their use of this technology.

        - Throughout the development of the rules, ODA had many other points of contact with AAAs to gather information.

    - **Interviews:** Throughout 2013, 2014, and 2015, ODA contacted several providers—in some cases, many times—to develop case studies on provider practices employing person direction that are sustainable.

- **Public Presentations:**

    - ODA raised the nutrition rules as a topic of discussion at meetings of the Ohio Association of Senior Centers on April 11, 2013 and May 8 and July 10, 2014.

    - On November 4, 2015, ODA hosted a webinar to present the latest drafts of the proposed new rules for the Older Americans Act Nutrition Program and the PASSPORT Program that were available at the time. ODA invited every provider and AAA who had previously commented on the rules to participate and invited others as well.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The lists of comments from online public-comment periods, and ODA's responses to those comments, can be found in Appendix Q to this BIA.

The case studies ODA developed from provider interviews and research can be found in Appendices C through J. The case studies demonstrate the ways that providers today are already offering person-directed initiatives.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The following two reports offer a nationwide analysis of the Older Americans Act Nutrition Program:

Jessica Ziegler *et al*. "Older Americans at Nutrition Programs Evaluation: Meal Cost Analysis: Final Report." (Mathematica Policy Research. September 25, 2015.)

James Mabli *et al*. "Process Evaluation of Older Americans Act Title III-C Nutrition Services Program: Final Report." (Mathematica Policy Research. September 30, 2015.)

The following 3 reports highlight the food insecurity problem with consumers and indicate that strict compliance to federal nutrition standards in long-term care settings for consumers leads to uneaten food and hunger. This is an incentive for ODA to adopt new rules that encourage the maximum amount of person direction possible under federal dietary standards.

"New Dining Practice Standards." (Pioneer Network: Food and Dining Clinical Standards Task Force. August, 2011.)

United States Senate: Special Committee on Aging. *Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services*. Report to the Chairman. (February, 2011.) GAO-11-237.

James P. Ziliak, Craig Gundersen, and Magaret Haist. "The Causes, Consequences, and Future of Senior Hunger in America." (University of Kentucky: Center for Poverty Research. Undated, but probably 2008.)

James P. Ziliak and Craig Gunderson. "Senior Hunger in America 2010: An Annual Report." (Meals on Wheels Research Foundation, Inc. May 2, 2012.)

Other reports show a robust use of Older Americans Act funds to purchase home-delivered meals prevents consumers with low-care needs from entering nursing homes or offsets Medicaid spending. The logic could also be applied to home-delivered meals provided through the PASSPORT Program. Although it is a Medicaid waiver program, spending on meals prevents or delays Medicaid spending on more expensive long-term care such as personal care or nursing facilities. This is also an incentive for ODA to adopt new rules that encourage the maximum amount of person direction possible.

Kali S. Thomas and Vincent Mor. "Providing More Home-Delivered Meals Is One Way to Keep Older Adults With Low Care Needs Out of Nursing Homes." *Health Affairs*. Vol. 32. No. 10 (October, 2013.) 1796-1802. DOI: 10.1377/hlthaff.2013.0390.

Kali S. Thomas and David Dosa. "More Than A Meal: Results From A Pilot Randomized Control Trial of Home-Delivered Meal Programs." (Brown University School of Public Health. Mar 2, 2015.)

Kali S. Thomas, Ucheoma Akabundu, and David Dosa. "More Than A Meal? A Randomized Control Trial Comparing the Effects of Home-Delivered Meals Programs on Participants' Feelings of Loneliness." *J Gerontol B Psychol Sci Sco Sci,* 2015, Vol. 00, No. 00, 1010. (Nov 4, 2015) DOI: 10.1093/geronb/gbv111.

"Hunger Fact Sheet on Ohio." (Meals on Wheels Association of America. March, 2014.)

This report shows how consumers' food preferences are changing as the Baby Boom generation becomes consumers:

Hee-Jung Song, Judy Simon, and Dhruti Patel. "Food Preferences of Older Adults in Senior Nutrition Programs." *Journal of Nutrition in Gerontology and Geriatrics*. Mar 5, 2014. DOI: 10.1080/21551197.2013.875502

Other reports show the practicality of implementing person direction.

Alexis Abramson. “Changing the Face of Home and Community Based Meal Services” White paper. (Undated.)

Fralic, Jennifer; Russell, Carlene; and Tamiazzo, John. “Components of a Quality Nutrition Program—Part 2.” Webinar presentation that features LifeCare Alliance. (The National Resource Center on Nutrition & Aging. Mar 27, 2013.)

New Jersey Department of Health and Senior Services. *Senior Nutrition Programs; Promising Practices for Diverse Populations.* Undated, but between 2008 and 2009.

Peppones, Martha *et al*. “Creative Solutions: Restaurant-Based Congregate Nutrition Sites and Restaurant Voucher Programs.” (National Resource Center on Nutrition, Physical Activity & Aging. August 2, 2001.)

Rita Strombeck. “Innovative Nutrition Programs for Older Adults: Common Problems and Innovative Solutions.” (Riverside County Foundation on Aging. 2005.)

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?**

The current rules for the Older Americans Act Nutrition Program require providers to offer a minimum level of person direction. ODA originally proposed to build on this model. ODA found many providers that offered far more options than ODA required and other providers who said it was impossible to offer options. As a result, ODA now proposes to require AAAs to determine the level of person direction that is practical in their PSA and require bidders for contracts to indicate in their bid how they will fulfill the person-direction needs of local consumers.

Due to the complaints about menu-pattern regulations, ODA contemplated requiring all providers to use nutrient analysis to determine the nutritional adequacy of meals. ODA’s proposed new rules for both programs would allow providers to choose either method for determining nutritional adequacy. For information on ow nutrient analysis may benefit person direction, please review Appendix J.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**
***Performance-based regulations define the required outcome, but don’t dictate the process the regulated stakeholders must use to achieve compliance.***

Older Americans Act Nutrition Program rules are performance-based on 2 levels: (1) 45 C.F.R. 75.328 and 75.329 requires would-be providers to compete for contracts to provide meals or nutrition services. Thus, a high-performing program that offers many desirable meal options at the lowest prices is more likely to win a contract that requires those options. (2) ODA’s proposed new rules requires all contracts for nutrition programs to incorporate person direction to the extent that AAAs assess that it’s possible in their PSA or by using the competing-proposal method of procurement under 45 C.F.R. 75.329.

PASSPORT Program rules are not inherently performance-based regulations. However, the program has a *de facto* performance-based component. 42 C.F.R. 431.51 authorizes any individual enrolled in the PASSPORT Program the freedom to choose to any willing and qualified provider to provide his or her meals or nutrition services. Thus, a high-performing program that offers many desirable meal options will see greater numbers of individuals requesting its meals and nutrition services.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

To comply with section ORC§106.03, ODA proposes to eliminate food safety requirements in its rules that are the jurisdiction of the Ohio Departments of Agriculture and Health. ODA also proposes to eliminate requirements in its rules that duplicate other ODA rules.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

ODA publishes all proposed and currently-effective rules in the Online Rules Library on ODA's website. Before a rule takes effect, ODA publishes the soon-to-be-effective rule in the Rules Library. Then, to any subscriber of our rule-notification service, ODA emails a notice that the soon-to-be-effective rule is published.

Any person may subscribe to receive email notifications of soon-to-be-effective ODA rules.

As part of the review of bids for contracts in open and free competition under rule OAC173-3-05, each AAA must make certain that the AAA and the bidder would comply with OAC 173-3-04, 173-3-05, 173-3-05.1,[5] 173-3-06, and OAC Chapter 173-4 if the AAA would award a contract to the bidder.

As previously stated in the BIA, ODA monitors its designees (AAAs and PASSPORT Administrative Agencies) for compliance. Additionally, ODA (and ODA's designees) monitor providers for compliance.

[5] A new rule proposed in another rule package. If adopted, it would regulate multi-year and renewable provisions for contracts.

## Adverse Impact to Business

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

OAC Chapter 173-4 directly impacts the providers who provide meals to consumers that are paid, in whole or in part, with Older Americans Act funds. Rules in OAC Chapter 173-39 directly impact providers who provide meals or nutritional consultations that are paid with Medicaid funds through the PASSPORT Program.

| CALENDAR YEAR 2014 | | | | |
|---|---|---|---|---|
| **Program** | **Service** | **Providers** | **Units** | **Consumers Receiving Units** |
| **Older Americans Act Nutrition Program** | Congregate Dining Projects[6] | 119 | 1,884,815 meals | 47,697 |
| | Home-Delivered Meals Projects | 114 | 6,753,523 meals | 39,595 |
| | Nutrition Counseling | 1 | 488 hours | 124 |
| | Nutrition Education[7] | 44 | 10,884 presentations or literature drops | 18,532 |
| | Nutrition Health Screening[8] | 5 | 1,269 screenings | 1,269 |
| | Grocery Shopping Assistance[9] | 0 | 0 | 0 |
| | | | | |
| **PASSPORT Program** | Alternative Meals | 0 | 0 | 0 |
| | Home-Delivered Meals | 102 | 5,495,742 meals | 19,344 |
| | Nutritional Consultations | 7 | 2,335 15-minute units | 48 |

The exact number of unduplicated nutrition providers is not immediately available. ODA can avoid separately counting providers of congregate and home-delivered meals because most providers offer both.[10] ODA can avoid separately counting providers of nutrition services, like nutrition education, because 77% of providers of meals also offer nutrition education.[11] ODA can also avoid separately counting providers based on program funding, because 86.7% of providers who provide meals that are paid by Older Americans Act funds also provide meals that are paid by Medicaid funds through the PASSPORT Program.[12] It is safe to assume that

[6] Including congregate dining project based in restaurants and supermarkets.
[7] The figures for nutrition education are for calendar year 2013 instead of just January, 2014. A yearly figure is a better representation of this service because it is only required twice each year.
[8] Providers of congregate and home-delivered meals for the Older Americans Act Nutrition Program are required to screen consumers during the intake process. Therefore, the numbers in this table represent consumers that received a screening that was unrelated to the intake process. (*E.g.* Screening at a health fair)
[9] Some providers of homemaker services provide grocery shopping assistance as a component of the homemaker service. See OAC173-3-06.4.
[10] James Mabli *et al*. "Process Evaluation of Older Americans Act Title III-C Nutrition Services Program: Final Report." (Mathematica Policy Research. Sep 30, 2015.) *Pg.,* x.
[11] James Mabli *et al*. *Pg.*, x.
[12] ODA's June, 2014 provider survey.

the rules in this project regulate at least, but probably not significantly more than, 102 providers.

The exact number of employees working for nutrition providers is also not immediately available. Nationally, the median number of people who work for a nutrition provider paid with Older Americans Act funds is four full-time-equivalent employees (FTEs),[13] which may include combinations of part-time employees and would not include volunteers. This figure combines both congregate and home-delivered projects. Because 86.7% of nutrition providers provide meals or nutrition services that are paid by both Older Americans Act funds and the PASSPORT Program,[14] the number of employees may be similar regardless of funding.

ODA estimates that it has more than 113 congregate dining locations because it has 113 congregate meal providers. Nationally, about 2/3 of providers operate one dining location while 23% operate 2-5 dining locations, and 17% operate more than 5 dining locations.[15]

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

ODA proposes to require AAAs to enter into contracts with meal providers who offer consumers person direction. If a provider doesn't offer person direction, this may result in an inability to win a contract. If the AAA only allows a certain number of providers to win contracts, a provider may not win a contract if all other providers offer more person direction. For more information on person direction, please review Appendix B.

ODA proposes to increase 2 regulations:

1. ODA proposes to require verifying each meal delivery and each congregate meal served to consumers that is paid, in whole or in part, with Older Americans Act funds.

2. ODA proposes to require ODA-certified providers serving individuals enrolled in the PASSPORT Program to either publish menus and ingredient information on their website or to make the same available in writing to consumers.

The proposed increase 2 of regulations is overwhelmingly countered by ODA's proposal to eliminate at least 210 regulations and to reduce the impact of 36 more regulations.

[13] James Mabli *et al*. *Pg.*, 18.
[14] Ohio Dept. of Aging. June, 2014 provider survey.
[15] James Mabli *et al*. *Pg.*, 25.

The following list contains the components of meal provision in the proposed new rules:

- Bidding on a request for proposal (RFP) to obtain a contract. (Older Americans Act Nutrition Program only.)
- For congregate meals, operate the congregate dining location or to sub-contract with a restaurant or supermarket for the dining location.
- Planning menus.
- Hiring or paying for the services of one of Ohio's 3,912 licensed dietitians.[16]
- Publishing menus online or distributing them in writing. (PASSPORT Program only.)
- Publishing ingredient information online or distributing it in writing.
- Purchasing food from food suppliers or caterers.
- Processing the food, unless the provider purchases from a caterer.
- Packaging the meal, unless the provider purchases from a caterer.
- Delivering the meal.
- Determining consumer's eligibility. (Older Americans Act Nutrition Program only.)[17]
- Collecting voluntary contributions. (Older Americans Act Nutrition Program only.)
- Accounting for voluntary contributions (Older Americans Act Nutrition Program only.)
- Providing nutrition counseling, if the provider also does so.
- Providing nutrition education, if the provider's contract also requires doing so. (Older Americans Act Nutrition Program only.)
- Providing nutrition health screening, if the provider's contract also requires doing so. (Older Americans Act Nutrition Program only.)
- Providing grocery shopping assistance, if the provider's contract also requires doing so. (Older Americans Act Nutrition Program only.)
- Providing grocery ordering and delivery, if the provider's contract also requires doing so. (Older Americans Act Nutrition Program only.)
- Delivery verification or service verification by an electronic verification system or by handwritten signatures.
- Employee training: orientation and annual continuing education.

For a nutrition project paid with Older Americans Act funds, an AAA may enter into separate contracts for various components of the project. Thus, one provider may deliver meals, while one produces the meals. In this scenario, a provider's contract may only require offering a nutrition service, like nutrition counseling, but not providing any meals.

[16] The Ohio Board of Dietetics. Jan 13, 2015. See Appendix N for more information.
[17] For the PASSPORT Program, a case manager who knows that an individual is eligible will allow the individual to choose any willing and qualified provider. If the individual makes no choice, the case manager refers the individual to a provider.

**c. Quantify the expected adverse impact from the regulation.**
***The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.***

ODA's proposal to require verifying each meal delivery and each congregate meal served to consumers that is paid, in whole or in part, with Older Americans Act funds should not increase costs for most providers. Most providers have indicated that they already use electronic verification, which would actually reduce (not increase) their costs. For more information, please review Appendix J.

ODA proposes to require ODA-certified providers serving individuals enrolled in the PASSPORT Program to either publish menus and ingredient information on their website or to make the same available in writing to consumers. Virtually all providers already publish menus on their websites or give written copies to consumers. We are unaware of any provider that publishes ingredients on its website, but they can make the information available to consumers upon request. Because of this, ODA anticipates that virtually all providers would incur no cost to publish or distribute menus or ingredient information, because they already do so.

Overall, the 2 proposed new requirements for providers are overwhelmingly countered by ODA's proposal to eliminate at least 210 regulations and to reduce the impact of 36 more regulations.

The rates that providers are paid for the meals they provide, or the nutrition services they provide, include the provision of all components of the meals or nutrition services. (*E.g.*, A payment for a home-delivered meal includes the cost of delivering the meal. Delivery is not a separate cost.)

The payment rates for meals are controlled by entities other than ODA. For the Older Americans Act Nutrition Program, the rates are controlled by the provider and the AAA. Providers win free and open competitions for the contracts that comply with 45 C.F.R. 75.328 and 75.329 and OAC 173-3-04 and 173-3-05. To submit the winning bid, providers need to indicate their price per unit (*e.g.*, meal, hour of nutrition counseling). However, an AAA can set a cap on the prices that it will award per unit in a contract.

For program year 2013, the statewide average costs to the Older Americans Act Nutrition Program in Ohio were $7.52 for a congregate meal and $6.27 for a home-delivered meal.

For the PASSPORT Program, the rates are controlled by the provider and the Ohio Department of Medicaid (ODM). ODA-certified providers enter into provider agreements with PASSPORT Administrative Agencies where providers set their rates per meal. Providers' rates may not exceed the maximum-possible rates that the ODM establishes in the appendix to OAC5160-1-06.1. Presently, ODM set the

maximum-possible rates at $6.60 per regular meal, $9.33 per meal with a diet order (*i.e.*, a therapeutic diet), $31.35 per alternative meal, or $13.34 per 15-minute unit of nutritional consultation.

For national figures and a detailed analysis of national figures, please review the following research:

> Jessica Ziegler *et al*. "Older Americans at Nutrition Programs Evaluation: Meal Cost Analysis: Final Report." (Mathematica Policy Research. Sept 25, 2015.)

ODA proposes to require AAAs to enter into contracts with meal providers who offer person direction. If a provider doesn't offer person direction, the adverse impact would be an inability to win a contract. If the AAA only allows a certain number of providers to win contracts, the adverse impact would be an inability to win a contract other bidders pledged to provide more person direction.

15. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Providing congregate and home-delivered meals to consumers through the Older Americans Act Nutrition Program and the PASSPORT Program bring manifold benefits to (1) the consumers who receive these meals, (2) taxpayers (because spending government dollars on these meals offsets larger government expenses on institutionalization), and (3) consumers who do not currently receive these meals. For more information on the manifold benefits, please review Appendix A. For more information on how person direction enhances those benefits, please review Appendix B.

ODA has observed that providers are offering person direction to consumers under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules.

As previously mentioned, ODA's proposal to require verifying each meal delivery and each congregate meal served should not increase any costs for providers who already use electronic verification, which most providers use. Furthermore, using electronic verification would save providers money. Yet, regardless of the costs, ODA must require such verification to comply with federal law. For detailed information on the cost-reduction and person-direction benefits of electronic verification and optimization systems, please review Appendix J.

ODA's proposal to require ODA-certified providers serving individuals enrolled in the PASSPORT Program to either publish menus and ingredient information on their website or to make the same available in writing to consumers should not increase costs for almost every providers because almost every provider either publishes their menus on their websites or provides menus in writing to consumers. It's common sense to make menus and ingredient-information available and doing so is essential to person direction. Without any knowledge about options, consumers have no real ability to choose.

Because the cost of food has been decreasing every year since 2011,[18] providers should have more resources to invest into person direction.

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review Appendices C through J. For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

[18] Food and Agriculture Organization of the United Nations. *FAO Food Price Index.* www.fao.org/worldfoodsituation/foodpricesindex/en/

## Regulatory Flexibility

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

For both programs, ODA's rules treat all nutrition providers the same, regardless of their size.

Neither the Older Americans Act nor ORC§§ 173.391 or 173.392 authorize ODA to adopt rules that create different regulations based upon the size of a provider's workforce.

Additionally, most providers of long-term care services are small businesses.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ORC§119.14 establishes the exemption for small businesses from penalties for first-time paperwork violations.

**18. What resources are available to assist small businesses with compliance of the regulation?**

ODA and the AAAs are available to nutrition providers with their questions. A provider of any size may request technical assistance. As stated in #16, for both programs, ODA's rules treat nutrition providers the same, regardless of their size.

ODA maintains an online rules library to allow providers to find the rules that regulate them. Providers may access the online library 24 hours per day, 365 days per year.

Additionally, any person may contact Tom Simmons, ODA's policy development manager, with questions about the rules.

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# APPENDIX A
# MANIFOLD BENEFITS OF CONGREGATE AND HOME-DELIVERED MEALS

**December, 2015**

## Manifold Benefits to Consumers Who Receive Meals

Home-delivered meals offer consumers[1] the following 5 benefits:

- Home-delivered meals—whether paid for by the Older Americans Act Nutrition Program or the PASSPORT Program—reduce hunger and food insecurity.[2] There is no requirement for this need to be chronic. It could only be a short-term need (*e.g.*, following a surgery).

- Home-delivered meals empower consumers who are no longer able to adequately feed themselves to maintain their independence by reducing or delaying the need for institutionalization. Studies show that home-delivered meals lower nursing facility admission rates[3] and hospital readmission rates.[4] Institutionalization can lead to the loss of a home.

- Home-delivered meals paid by the Older Americans Act nutrition program can also reduce or delay the need to apply for Medicaid.

- Providers may promote the health of each consumer by offering nutrition counseling (or "nutritional consultations") in addition to meals.

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[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[2] §330(1) of the Older Americans Act.
[3] Kali S. Thomas and Vincent Mor. "Providing More Home-Delivered Meals Is One Way to Keep Older Adults With Low Care Needs Out of Nursing Homes." *Health Affairs*. Vol. 32. No. 10 (October, 2013.) 1796-1802. DOI: 10.1377/hlthaff.2013.0390.
[4] Mike Buzalka. "Home Meal Delivery Saves Costs for Hospital System." *Food Management*. Nov 6, 2015. food-management.com (Accessed Dec 2, 2015.)

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- For the Older Americans Act nutrition program, providers may also offer the following wellness measures in addition to meals: nutrition health screenings and nutrition education.[5]

The Older Americans Act nutrition program's congregate meals offer consumers the following 6 benefits:

- Like home-delivered meals, congregate meals reduce hunger and food insecurity[6]; however, there is no requirement for a financial or physical impairment to qualify.[7]

- Congregate meals offer socialization for consumers who may otherwise be isolated.[8] If the congregate dining location is a local restaurant, the meals may provide an opportunity to dine with younger relatives with whom eating out may be otherwise unaffordable for the consumer. This implements the Act's multi-generational option for dining locations.[9]

- Like home-delivered meals, congregate meals empower consumers who are not able to adequately feed themselves to maintain their independence by reducing or delaying the need for institutionalization. Again, studies show that home-delivered meals lower nursing facility admission rates[10] and hospital readmission rates.[11] The same should be true for congregate meals. Institutionalization can lead to the loss of a home.

- Congregate meals also reduce or delay the need for home-delivered meals.

- Providers may promote the health of each consumer by offering nutrition counseling in addition to meals.

- Like home-delivered meals, providers may also promote the health of each consumer by offering wellness measures in addition to meals: nutrition health screenings and nutrition education.[12]

[5] §§ 330(3) and 336(2) of the Older Americans Act.
[6] §330(1) of the Older Americans Act.
[77] United States. Cong. Senate. Committee on Health, Education, Labor and Pensions. Subcommittee on Primary Health and Aging. *Senior Hunger and the Older Americans Act. June 21, 2011.* (statement of Kathy Greenlee, Assistant Secretary, Administration on Aging, US Dept. of Health and Human Services).
[8] §330(2) of the Older Americans Act.
[9] §331(2) of the Older Americans Act.
[10] Thomas, Kali S. and More, Vincent.
[11] Mike Buzalka.
[12] §§ 330(3) and 331(3) of the Older Americans Act.

## Manifold Benefits to Taxpayers, Government

Spending Older Americans Act funds on home-delivered meals reduces the needs for institutionalization.

Based on the findings of Kali and More, ODA believe that similar spending of Medicaid funds through the PASSPORT Program offset spending greater sums of Medicaid funds through institutionalization.

These savings prevent or delay the onset of waiting lists for consumers who do not currently need meals through these programs, but may need them in the years to come.

## Benefits to Consumers Who Do Not Currently Receive Meals Paid by the Older Americans Act Nutrition Program or the PASSPORT Program

The National Resource Center of Nutrition, Physical Activity & Aging says, "Many older adults are at nutrition risk because of low calorie intakes, poor food choices, economic reasons, chronic diseases (*e.g.*, osteoporosis), and/or special needs (*e.g.*, dysphasia)."[13]

Spending Older Americans Act funds and Medicaid funds through the PASSPORT Program on home-delivered meals reduces the needs for institutionalization.

Based on the findings of Kali and Mor, ODA believe that similar spending of Medicaid funds through the PASSPORT Program offset spending greater sums of Medicaid funds through institutionalization.

These savings prevent or delay the onset of waiting lists for consumers who do not currently need meals through these programs, but may need them in the years to come.

[13] National Resource Center on Nutrition, Physical Activity & Aging. *Older Americans Act Nutrition Programs Toolkit*. (Miami, FL; Florida International University, 2005) Chap. 4.

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# APPENDIX B
# RATIONALE FOR PERSON DIRECTION

**December, 2015**

## Introduction

Person direction is a type of person centeredness. Person centeredness is tailoring services to consumers[1] and generally involves the input of the consumer. As a type of person centeredness, person direction also tailors services to consumers. Person direction is allowing consumers to direct the provision of the goods and services provided to them. Person-directed initiatives for congregate and home-delivered meals involve offering consumers self-timed dining options, complete meal options for each mealtime, DIY options, and options to use local restaurants where consumers can dine with other consumers or with younger loved ones. Allowing consumers to direct the provision of their congregate or home-delivered meals gives consumers a better quality of life and "frequently lowers costs of care by reducing unnecessary services."[2]

## Purpose and Strategy

The primary goal for this rule project is to advance person direction regarding meals paid by the Older Americans Act Nutrition Program and the PASSPORT Program. Allowing a consumer to dine in the home or a congregate dining location is a basic line of defense against the need for personal care, institutionalization, and enrollment into Medicaid.

In OAC173-4-04, ODA proposes to require AAAs to award contracts to providers who offer the *highest level of options*. This would benefit the consumers participating in the Older Americans Act Nutrition Program. This rule contains the following definition for "person direction":

> As used in this rule, "person direction" means a subset of person-centered methodology. While person-centered methodology requires providers to work with consumers to determine what is best for the consumers, person direction allows consumers to decide what is best for them from a range of viable options. Person direction over congregate and home-delivered meals allows consumers to control the direction of their meals. For congregate meals, person direction may involve giving consumers flexible

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[2] "Person-Centered Care." The SCAN Foundation. http://www.thescanfoundation.org/person-centered-care (Accessed Feb 5, 2015.)

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> dining formats, locations, and times; allowing consumers to enjoy multi-generational dining; and giving consumers options between complete meals at each mealtime. For home-delivered meals, person direction may involve giving consumers flexible delivery formats (e.g., warm, frozen, chilled), delivery times (e.g., morning, afternoon), and delivery frequency (e.g., per-meal delivery, periodic delivery); and giving consumers options between complete meals at each mealtime.

In OAC173-39-02.14, ODA proposes to maintain the current requirement for providers to offer "a menu of meal options that, as much as possible, consider the individual's medical restrictions; religious, cultural, and ethnic background; and dietary preferences." This benefits the individuals enrolled in the PASSPORT Program.

If ODA maintained rules that required stricter-than-federal nutritional-adequacy standards, if ODA adopted new rules that did the same, or if ODA allowed AAAs and PAAs to adopt standards that did the same, the standards could exceed the tolerance level of many consumers which could lead to a refusal to consume congregate or home-delivered meals. In turn, this could lead to malnutrition and increase the risk for emergency department visits, hospitalizations, and nursing facilities.

Take, for example, a scenario in a California school district. The district implemented stricter-than-federal nutrition standards for the students. As a result, students stopped eating the meals—especially the low-income students. Of the students who were eligible for free meals, only 50% participated in the meal program after the school district implemented the new standards. The district had exceeded the tolerance level of half of many students.[3]

Unless ODA requires person direction, it is unlikely that all of consumers in the Older Americans Act Nutrition Program in Ohio and the PASSPORT Program will have the opportunity.

Although the nation faces an obesity epidemic, consumers in long-term care settings often face hunger. 16.32% of Ohio's consumers, and 15.5% of the nation's consumers, are in facing hunger,[4] which poses a "threat to the health of millions of elders."[5] Incorporating person direction into long-term care settings addresses this problem. Specifically focusing on nursing facilities, Jim Collins says the following:[6]

> Some of the most interesting and effective changes in person-centered dining taking place in the long-term care include food preferences and choices, presentation of food, how food is served and innovative dining styles, flexible meal times, and the liberalized diet. Person-centered care is about resident choices and preference concerning everything, including food. Many residents run the risk of unintended weight loss and malnutrition; therefore, it is important that they eat what they want, when they want, and how much they want. Under-nutrition can lead to further health problems including vulnerability to infection,

[3] Mike Buzalka. "Good Intentions Gone Bad." *Food Management*. May 4, 2015. food-management.com (Accessed May 6, 2015.)

[4] National Foundation to End Senior Hunger. http://www.nfesh.org/wp-content/uploads/2015/04/2012-to-2013-comp-Alpha.pdf (Accessed May 22, 2015.)

[5] James P. Ziliak and Craig Gunderson. "The State of Senior Hunger in America 2013: An Annual Report. April, 2015. " http://www.nfesh.org/wp-content/uploads/2015/04/State-of-Senior-Hunger-in-America-2013.pdf (Accessed, May 22, 2015.)

[6] Jim H. Collins, PhD. "Person-Centered Dining: Innovations in Dietary Services." *Dietary Manager*. July-August, 2008. *Pp.*, 14-18.

delays in wound healing, impaired physical and cognitive function, and reduced rates of drug metabolism. The point is, food choice is important.

Also focusing on nursing facilities, Bonnie K. Burman, ODA's director, has elaborated on the purpose, origin, and outcomes of person direction. She says, [7]

What would you do if you could no longer choose what time you went to bed? What if you had to eat at a certain time, whether you were hungry or not, and you had to eat whatever was put in front of you, allowing you no choice? What if you did not know, from day to day, who would be taking care of your basic needs? Residents of nursing homes face these situations every day.

Person-centered care honors and respects elders and those working closest with them. It involves a continuing process of listening, trying new things, seeing how they work and changing things in an effort to individualize care and de-institutionalize the nursing home environment. Nursing home regulations have supported person-centered care since the federal Omnibus Budget Reconciliation Act (OBRA) of 1987, which contained the Federal Nursing Home Reform Act.

In a nursing home that institutes person-centered care, residents make decisions about their schedules. Delivery of medications, meal times and activities are scheduled according to residents' needs and desires, rather than strict adherence to programmed timetables. Residents are given meal options and are served buffet or family style. Residents have individual plans, receive information about their condition, prognosis and treatment plan and are included on the planning team. Residents are given information about benefits and risks so they can make informed choices.

In many situations, person-centered care involves changing the culture of a nursing home. Historically, nursing homes have followed a medical model, with strict schedules and procedures to ensure resident care. Movements, such as the Pioneer Network, gather professionals in long-term care to advocate for change from an institutional, provider-driven model to person-directed care. Along with the Advancing Excellence Campaign, person-centered care supports the goals of enhancing choice, strengthening the workforce and improving clinical outcomes for the more than 1.5 million American nursing home residents.

Nursing homes that have implemented person-centered care practices report that after the initial start-up and culture change, the new practices decrease staff turnover and save money while improving communication and satisfaction for both residents and staff. For example, nursing homes that have developed flexible dining for residents, allowing them to eat on their own schedules and make their own food choices, report that residents lose less weight, less food is wasted and residents are happier with their dining experience.

Staff are empowered to know their residents intimately and care for them like family. Consistent staffing, with teams of caregivers assigned to groups of residents, allows staff members to really get to know their residents, to take ownership of the residents' care plans and to work as a team.

For more information on the Pioneer Network's research in this area, please review the following:

"New Dining Practice Standards." Pioneer Network: Food and Dining Clinical Standards Task Force. August, 2011.

Because person direction has been achieved in nursing facilities' nutrition programs, ODA believes it is possible to achieve in the Older Americans Act Nutrition Program and the PASSPORT Program.

[7] Ohio Dept. of Aging. *Person-Centered Care: De-Institutionalizing the Nursing Home*. (Aging Connections. Nov, 2010.)

## The Times, They Are Changing

In 2005, NCSL reported on the coming issues for nutrition programs. They said, "Program administrators report that many congregate and home-delivered meals program operations have not changed since they began more than 30 years ago. As the baby-boomer generation retires, the program will need to adapt to address physical fitness while providing nutrition counseling to help senior citizens manage chronic diseases such as diabetes and high blood pressure. Not only must elderly individuals learn about the type of diet required to manage chronic disease, but family members they live with also must receive nutrition counseling."[8]

After describing the Baby Boom generation as more vocal, wealthy, and demanding than previous generations,[9] Alexis Abramson suggests that best future for programs that offer meals to consumers is to (1) offer "higher-end" menus of "palatable food choices" and to (2) supplement the funding for (1) by operating a for-pay operation.[10]

For more information on the changing preferences of consumers as the Baby Boom generation become consumers, please review the following research:

> Hee-Jung Song, Judy Simon, and Dhruti Patel. "Food Preferences of Older Adults in Senior Nutrition Programs." *Journal of Nutrition in Gerontology and Geriatrics*. Mar 5, 2014. DOI: 10.1080/21551197.2013.875502

[8] "Addressing Hunger and Nutrition: A Too Kit for Positive Results." Washington, DC. (National Conference of State Legislatures. 2005.) *Pg.*, 2.
[9] Alexis Abramson. "Changing the Face of Home and Community Based Meal Services" White paper. (Undated.)
[10] *Ibid.*

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APPENDIX C

# SUSTAINABLE PERSON-DIRECTION INITIATIVES
# SELF-TIMED OPTIONS

**December, 2015**

## Introduction

ODA has observed that providers are offering person direction to consumers[1] under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules. This appendix shows the ability that some providers, under the current rules, offer consumers to self-time their meals.

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review Appendices C through J (including this appendix). For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

## Congregate Dining Locations

The OAA provides flexibility to allow variable meal times,
and there are OAA nutrition programs doing this successfully.[2]

Nationally, 83% of congregate meal providers provide lunch at least 5 days a week. 14% of these providers also provide lunch on weekends. Only 11% provider breakfasts and 11% provide dinners.[3]

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[2] Administration on Community Living. "The Older Americans Act Nutrition Program: Did you Know.....?" May, 2015. *Pp.* 2-3.

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In Ohio, most congregate meals are served as lunches and the traditional mealtime for lunch is Noon. Thus, dining at a traditional congregate dining location would require being able and willing to eat at Noon.

If the provider offered a wider range of dining times other than Noon, consumers would have options on when to eat. This would foster person direction. Fortunately, ODA's current and proposed new rules do not require serving lunches (*vs.*, breakfasts or dinners) and does not require lunches to begin at Noon. By contrast, the Connecticut Department of Social Services requires all congregate sites to be open for business at least 3 hours per meal unless the provider receives a waiver from the Department.[4]

Offering a range of hours would also allow providers to serve more consumers in a smaller location.

Self-serve options could be a cost-effective way to facilitate a greater range of hours. Please refer to Appendix E for more information.

Restaurant-based sites could allow for dining anytime, but our current sites use traditional mealtimes. Restaurants offer a way to facilitate a greater range of hours. Please refer to Appendix F for more information.

## Success Stories

**SourcePoint** in Delaware, Ohio operates 6 congregate dining locations. SourcePoint's premier dining location. Studio 60, serves lunch from 11:00AM to 1:30PM, which gives consumers more flexibility. This flexibility lasts until a consumer decides to eat because Studio 60 does not require reservations.

SourcePoint's 5 other congregate dining locations require reservations, but also offer extended dining hours. The dining hall at the Georgetowne Village Square Retirement Apartments even offers lunch any time from 10:30AM to 2:30PM.[5]

**LifeCare Alliance** in Columbus, Ohio offers an extended lunch at its Carrie's Café location that allows consumers to decide to eat any time between 10:00AM and 2:00PM. For more information on Carrie's Café, please see Appendix G.

**Wood County Committee on Aging**: 1 of WCCOAs' 7 dining locations offers lunch and evening meals.[6]

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[3] James Mabli *et al*. "Process Evaluation of Older Americans Act Title III-C Nutrition Services Program: Final Report." Mathematica Policy Research. September 30, 2015. *Pg.* 25.
[4] Connecticut Department of Social Services. Sec. 17b-423-5(d)(C)(vii)
[5] SourcePoint. http://www.mysourcepoint.org/dining-centers/ (Accessed May 4, 2015).
[6] Denise Niese. Wood County Council on Aging. Telephone conversation with Tom Simmons. Aug 24, 2015.

## Home-Delivered Meals

### Periodic Delivery Method

Delivering multiple meals in one delivery requires the meals to be frozen, chilled, or shelf-stable. This allows the provider to deliver the meals at times other than mealtimes. The delivery of multiple meals at once allows the consumer to determine when he or she wants to eat. The timing of meals is not according to a delivery schedule.

It also facilitates delivering meals to consumers who require more than one meal delivery per day. Although it is permissible to use Older Americans Act funds or PASSPORT Program funds to pay for breakfasts or dinners, nationally, only 4% of providers deliver breakfasts and only 15% deliver dinners. [7] Meanwhile, almost every provider (96%) delivers lunches.[8]

Consumers who have the option of periodic deliveries in their area may choose to have periodic deliveries because they have difficulty answering the door when a delivery arrives or they would prefer to have a stranger knock on their door once a week rather than every day.

The primary incentive of the periodic-delivery method is that it generally comes with many meal options. See Appendix D for more information.

### Per-Meal Delivery Method

The per-meal delivery method involves driving to each consumer's home to deliver every meal. Meals delivered on a per-meal basis are generally referred to as "hot meals" and are generally lunches. It is the traditional "meals on wheels" approach to home-delivered meals. Nationally, 80% of providers deliver only 1 meal at a time.[9] The cost of gasoline alone would indicate that this is a more costly method than the periodic delivery method.

As noted in Appendix B, providers who use the per-delivery method have fewer complete meal options for each mealtime than do providers who use a periodic-delivery method.

Although it would seem that fewer meal options and higher costs would deter providers from using this method, some consumers may find it to be a lifesaver.

The current and proposed new versions of OAC173-4-02 require an consumer to be unable to prepare his or her own meals, unable to consumer meals in a congregate dining location with other consumers, and to have no meal support service in the home or community before Older Americans Act funds can pay for his or her home-delivered

[7] James Mabli *et al*. "Process Evaluation of Older Americans Act Title III-C Nutrition Services Program: Final Report." (Mathematica Policy Research. Sept 30, 2015.) *Pg.* 29.
[8] *Ibid.*
[9] *Ibid.*

meals. The current and proposed new versions of OAC173-39-02.14 require a case manager to assess that an consumer has a deficit in an ADL or IADL before the PASSPORT Program will pay for home-delivered meals. Some consumers who qualify for the payment of home-delivered meals may have more serious limitations than other consumers. Those with more severe limitations who live alone may be "homebound" and subject to ongoing loneliness.

A 6-year longitudinal study of consumers measured loneliness in 1604 consumers over a 6-year period.[10] The researchers recorded the adverse health outcomes of the consumers and classified their loneliness according to self-disclosed reports from consumers.[11] The researchers concluded that consumers that it classified as "severely lonely" were 76% more likely to die during the study as consumers that it classified as "not lonely."[12]

Research shows that consumers who self-declare that they're lonely experience a lessening of loneliness from the per-meal delivery method.[13] Consumers in this situation may prefer per-meal deliveries for the opportunity to interact on a per-meal basis with the delivery person rather than have more meal options with less human interaction. For these consumers, their choice of the per-meal delivery method is the outcome of their person direction.

**Success Stories:** In Ohio, it is presently very common for providers to use the periodic delivery method. The providers listed as home-delivered meal success stories in Appendix D are examples of success stories for this appendix.

[10] Carla M. Perissinotto *et al*. *Arch Intern Med.* 2012;172(14): 1078-1084. Doi:10.1001/archinternmed.2012.1993.
[11] *Ibid.*
[12] *Ibid.* Table 3: Adjusted Association Between Loneliness and adverse health Outcomes in Analyses Considering Alternative Definitions of Loneliness."
[13] Kali S. Thomas *et al*. "More Than A Meal? A Randomized Control Trial Comparing the Effects of Home-Delivered Meals Programs on Participants' Feelings of Loneliness." *J Gerontol B Psychol Sci Soc Sci*, 2015, Vol. 00, No. 00, 1–10. doi:10.1093/geronb/gbv111

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APPENDIX D

# SUSTAINABLE PERSON-DIRECTION INITIATIVES
# COMPLETE MEAL OPTIONS

**December, 2015**

## Introduction

Choice is key and offering choice does not mean that expenses must increase.
If your programs cannot offer a choice of items at the participant level for the same price,
perhaps you need to find out why.[1]

Person direction involves more than soliciting consumers'[2] advice through surveys and comment drop-boxes. It involves offering consumers the ability to decide between complete meal options.[3]

ODA has observed that providers are offering person direction to consumers under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules. This appendix shows that some providers, under the current rules, offer consumers complete meal options.

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review Appendices C through J (including this appendix). For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

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[1] Administration for Community Living: "The Older Americans Act Nutrition Program: Did You Know.....?" May, 2015. *Pg.* 8.
[2] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[3] As the term implies, "complete meal options" are options between complete meals, not modifications of a meal.

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## Uniqueness of Ohio's Mandate

Nationally, only 14% of providers offer consumers options between at least 2 complete meal options.[4] In states where providers offer meal options, we could find no state regulations requiring those meal options. It appears that providers, not the states, birthed the meal option initiative.

By contrast, ODA's current and proposed rules for the Older Americans Act and PASSPORT Programs require providers to offer options and one of the options is to offer complete meal options.

## Mixed Outcomes

For the PASSPORT Program's home-delivered meals, the current version of OAC173-39-02.14 requires providers to "provide each consumer with a menu of meal options that, as much as possible, consider the consumer's medical restrictions; religious, cultural, and ethnic background; and dietary preferences."

As a result, a significant number of meals purchased through the program are provided by providers who offer consumers complete meal options. One provider that, because of competition from providers who offer complete meal options, they had "no choice but to include choice" in their menus.[5]

Providers generally facilitate offering complete meal options by providing consumers with a menu, then delivering a week's worth of meals selected from the menu in one delivery. Upon the delivery, the driver takes the consumer's order for the next delivery and gives the consumer a new menu to turn in upon the next delivery.

For an example of how this works, please review a video of that shows how Raco Industries and ServTracker offer Wesley Community Services in Cincinnati an electronic verification system that also takes menus. Here's the video's URL:

https://www.youtube.com/watch?v=_fVbW9SH_t0

Because 42 C.F.R. 431.51 gives any consumer enrolled in the program to freely choose between any willing and qualified provider, consumers have been drawn to the providers that offer many meal options.[6] "Focus groups and surveys revealed CHOICE was the motivating factor in provider selection."[7]

For the Older Americans Act Nutrition Program, the current rules allow AAAs to only require providers to use 1 of 4 methods for offering person direction. 1 of those methods is to offer

[4] James Mabli *et al*. "Process Evaluation of Older Americans Act Title III-C Nutrition Services Program: Final Report." Mathematica Policy Research. September 30, 2015. *Pg.* 27.
[5] Jennifer Fralic, Carlene Russell, and John Tamiazzo. John. The National Resource Center on Nutrition & Aging. "Components of a Quality Nutrition Program—Part 2." Webinar. Mar 27, 2013.
[6] *Ibid.*
[7] *Ibid.*

menu options. Providers that choose the menu-option method can choose between offering complete meal options or offering choices between 2 or more components of the meal. Under

Unfortunately , some providers offer consumers no more than a choice between skim milk and 2% milk and whole or white bread, which is the ***lowest level of options*** allowed under the current rules. Unless ODA amends its rules, AAAs will continue to enter into contracts that allow the lowest level of options.

## Solution

Because ODA is proposing to adopt new rules that contain many fewer requirements that the present rules, it seems likely that the reduced adverse impact of the new rules should encourage more person direction in both programs.

For the Older Americans Act Nutrition Program, proposed new OAC173-4-04 would require AAAs to procure for contracts by offering the highest scores to bidders who offer the ***highest levels of options***, which will facilitate person direction. If the AAA cannot determine the level of person direction needed and the level of person direction possible, the AAA shall rely upon the competitive-proposal method in 45 C.F.R. 75.329. The competitive-proposal method would allow providers to propose offering more person direction than the AAA envisioned. The competitive-proposal method also relieves the AAA from establishing minimum levels of person direction.

## Legality

The Older Americans Act requires providers to offer meals that are appealing to consumers and according to their needs. The act doesn't limit "needs" to medical issues. It could correspond to ethic, religious, lifestyle, or preferential needs.

The Administration for Community Living says this of the Act:

> You know how the saying "location, location, location" sums up the real estate industry? "Choice, choice, choice" could be our mantra for the OAA Nutrition Program.[8]
>
> Take a look at Section 339(2)(B) of the OAA. Meals should be appealing to participants.[9]

The primary way that providers offer complete home-delivered meal options is by utilizing periodic deliveries instead of per-meal deliveries. Some have questioned whether the Older Americans Act allows for periodic deliveries. They say that Congress required making deliveries at least 5 days per week to each consumer who receives meals.

[8] Administration for Community Living: "The Older Americans Act Nutrition Program: Did You Know.....?" May, 2015. *Pg.*, 8.
[9] *Ibid. Pg.*, 5.

Section 336 of the Older Americans Act reads as follows:

> The Assistant Secretary shall establish and carry out a program to make grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects for older individuals that provide—
>
> (1) on 5 or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by rule) and a lesser frequency is approved by the State agency) at least 1 home delivered meal per day, which may consist of hot, cold, frozen, dried, canned, fresh, or supplemental foods and any additional meals that the recipient of a grant or contract under this subpart elects to provide; and
>
> (2) nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal recipients.

Fortunately, the Congressional Research Services interprets the section to say, "providers are required to *offer* at least one meal per day, five or more days per week."[10] A requirement to *offer* would require 5 days of availability, not 5 days of deliveries.

Additionally, Congress had periodic deliveries of meals in mind because the section allows for "at least 1 home-delivered meal" and allows those meals to be "cold" and "frozen," which are the primary ways that Ohio providers make periodic meal deliveries to consumers.

Plus, even if the section was interpreted to require five or more days per week of deliveries, the section would require that for *individuals*, not for *each individual*. Thus, a provider could make a weekly delivery of meals to consumers if the provider made such weekly deliveries 5 or more days per week.

Finally, the section makes two exceptions when delivering in certain rural areas if ODA authorizes a lower frequency. ODA believes that this would allow ODA to authorize less than 5 per-meal deliveries per week. For the aforementioned reasons, the section allows 5 or more days per week of meals to be delivered in 1 delivery.

## Success Stories

During ODA's online public-comment period, some providers said that offering complete meal options saying that it would not be too costly.

ODA discovered that some providers who objected to offering complete meal options during ODA's online public-comment period actually already offer complete meal options. (Please review Appendix Q.) Perhaps, when commenting, the providers thought the requirements would only apply to "plated" congregate meals and per-meal deliveries. Providers who offer salad bars as meals in congregate settings are already offering complete meal options between the plated meal of the day and the DIY meal of the day. Providers who offer weekly deliveries of frozen meals in lieu of daily deliveries hot meals are already offering complete

[10] Kirsten J. Colello. "Older Americans Act: Title III Nutrition Services Program." Congressional Research Service. June 17, 2011. *Pg.*, 7. Italics added.

meal options between "hot" and frozen meals. Likewise, providers who offer a standard "substitute" meal in lieu of the meal of the day are already offering complete meal options.

ODA also searched for providers who currently offer menu options to determine if offering such options is a sustainable initiative. Fortunately, ODA found many providers offering complete meal options in both congregate dining locations and in home-delivered meals and in both the Older Americans Act Nutrition Program and the PASSPORT Program.

## Congregate Dining Success Stories

Some of the common, effective strategies for offering sustainable person direction in congregate dining comes through DIY options (*e.g.*, salad bars) and using local restaurants as dining locations. For more information, please review Appendices E and F. Presently, only the Older Americans Act Nutrition Program pays for congregate dining.

Listed below are providers who offer complete meal options in traditional congregate dining locations:

**Partners in Prime** serves congregate meals, called "lunches on location," to southwest Ohio consumers at its Prime Club locations. The provider cooks its food on site. At the Hamilton Prime Club, in Hamilton, Ohio, consumers order what they want to eat and make voluntary contributions when they arrive at the club's front desk. After ordering, consumers enter the club's dining hall to wait to be served at tables. Consumers have a variety of complete meal options including the regular meal of the day, pizza, baked potato meals, salad meals, and other options.[11]

**Sycamore Senior Center** in Blue Ash, Ohio operates the Sycamore Café. For each mealtime, the café offers consumers the following options:

- The meal of the day from the cafeteria window.
- Any of the 32 frozen entrées normally served as home-delivered meals may be heated and served.
- Deli meal from the deli window.
- Salad bar.

Although Older Americans Act funds can pay for cold deli meals and salad bars[12] the senior center is not presently seeking to be paid by Older Americans Act funds for the deli window and salad bar options because it is located in an area of affluence where consumers can afford to pay in full. A robust average range of 1000-1050 consumers per month choose to pay full price at the deli window while an average range of 500-530 consumers per month choose the cafeteria window.[13]

[11] Partners in Prime. Telephone conversation with Tom Simmons. Aug 24, 2015.
[12] For more information, please review Appendix E.
[13] Joshua Howard. Sycamore Senior Center. Telephone conversation with Tom Simmons. Apr 21, 2015.

**Mayerson Jewish Community Center of Cincinnati** operates the J Café. The café offers consumers the "Super Senior Meal Deal," which is a choice from the following 6 standing complete meal options:[14]

- Deli cold cut sandwich meals.
- ½ sandwich + soup meals.
- Bagel and lox meals.
- Veggie burger meals.
- Flatbread pizza meals.
- J Café Melt meal.

**SourcePoint** in Delaware, Ohio, operates Studio 60, which offers consumers to choose from 5 complete meal options per mealtime, 2 of which are "hot," and 3 of which are "deli" or "cold."[15]

SourcePoint also offers person direction in other forms. For more information, please review Appendices C and E.

**LifeCare Alliance** prepares its own meals and offers consumers a choice between 2 complete meal options for each mealtime on Mondays through Thursdays and between 3 complete meal options on Fridays.[16] Of its 24 congregate dining locations, only 4 serve "plated" meals.

LifeCare Alliance also offers person direction in other forms. For more information, please review Appendices C and E through G.

**Wood County Committee on Aging** in Wood County, Ohio prepares its own meals and offers consumers a choice between 2 complete meal options for each mealtime.[17]

## Home-Delivered Success Stories

**Clossman Catering** of Cincinnati delivers meals to homes in southwestern and central Ohio. This provider is presently only working in the PASSPORT Program. Clossman offers 114 complete meals options for each mealtime:[18]

- 23 complete breakfast meal options.
- 47 complete lunch meal options.
- 44 complete dinner meal options.

After a consumer chooses the Clossman Catering as its provider,[19] or after a case manager refers the consumer to the provider, Clossman determines if any diagnosis

[14] Mayerson JCC. http://www.mayersonjcc.org/senior-center/meals/ (Accessed Feb 17, 2015.)
[15] Toni Dodge. SourcePoint. Emails to Tom Simmons. Sep 16, 2014 and Feb 19-20, 2015.
[16] Molly Haroz. LifeCare Alliance. Telephone conversation with Tom Simmons.
[17] Denise Niese. Wood County Council on Aging. Telephone conversation with Tom Simmons. Aug 24, 2015.
[18] Besty Forman. Clossman Catering. Email to Tom Simmons. Aug 25, 2015.
[19] *Cf.*, 42 C.F.R. 431.51.

requires a special diet. Then, it providers the consumer with a starter packet that contains all the breakfast, lunch, or dinner meal options from which the consumer may choose. Clossman delivers flash frozen meals once per week according to what the consumer ordered for the week for each meal. Receiving a flash-frozen meal allows the consumer to decide when to eat rather than to force the consumer to eat the meal while it's warm according to the delivery time.

Only 20% of Clossman's customers that they served did not care to choose what meal Clossman Catering would deliver to their homes.

**Sycamore Senior Center:** A homebound consumer who chooses to receive home-delivered meals from the senior center has an option between receiving the meal of the day delivered at lunchtime or a weekly delivery of 7 days of meals that the consumer may eat when he or she wants. The consumers who choose the latter have an option between any of 32 entrées.[20]

**Wesley Community Services** offers consumers a choice between 2 ready-to-eat complete meal options or 31 frozen complete meal options. The provider specializes in therapeutic diets. If a consumer has a diet order for a therapeutic diet, the provider can still offer the consumer 31 different meal options that would comply with the diet order. The provider offers 2 tiers of choices for consumers: per-meal deliveries, which deliver meals the consumer must immediately eat; or periodic deliveries, which the consumers may eat whenever the consumers is ready to eat.[21]

Consumers who choose per-meal deliveries do not have 31 complete meal options, but they may choose to substitute menu items (*e.g.*, milk options, bread options, juice options, fruit options, *etc.*), and special meals can be prepared based upon consumer's preferences (*e.g.*, no pork).[22]

**SourcePoint:** During a 2014 volunteer experience with the SourcePoint, the Director noted that every consumer on the route received the home-delivered meal of their choosing, which means that the delivery staff delivered a different meal to each home. Also, the delivery staff knew which consumers wanted which levels of personal interaction upon delivery. This was a further example of a provider that had embraced person direction.

**Senior Resource Connection** offers consumers who are enrolled in the PASSPORT Program, but not the Older Americans Act Nutrition Program, their choice of over 26 complete meal options per mealtime that are prepared and delivered by the provider. 2 of the options are breakfast-style options.[23] The provider said that they do not offer to consumers whose meals would be paid with Older Americans Act funds because the AAA says that §339 of the Act doesn't allow for periodic deliveries. For more information, see "Legality" above.

[20] Joshua Howard, director. Sycamore Senior Center. Telephone conversation with Tom Simmons. Apr 21, 2015.
[21] Steve Smookler. Wesley Community Services. Email to Tom Simmons. Jan 6, 2015.
[22] *Ibid.*
[23] http://www.seniorresourceconnection.com/seniors-nutrition-program.asp (Accessed Dec, 2015.)

**Partners in Prime**, a southwest Ohio provider that serves consumers through the Older Americans Act and PASSPORT Programs. Partners in Prime's Meals on Wheels service prepares its own food and offers approximately 500 homebound consumers[24] a choice between 2 complete meals.[25]

**Wood County Committee on Aging**: WCCOA prepares its own meals and offers consumers a choice between 2 complete meals per mealtime. The meal options that WCCOA delivers are the same options they provide in their congregate dining locations. WCCOA is in the process of developing a system for freezing meals that they prepare to offer consumers periodic deliveries with more menu options.[26]

### Planning and Service Area 1

The efforts of providers and the AAA in Ohio's planning and service area 1 (PSA1) have given the PSA's consumers many meal options not found statewide. This can be attributed to 2 things.

First the area's providers of home-delivered meals are independently producing menus that offer many complete meal options per mealtime. Many of those providers offer the same options for the Older Americans Act Nutrition Program, PASSPORT Program, and local programs.[27]

The providers that delivered the most meals in 2013 are providers that use the periodic-delivery method.[28] The table below[29] shows that for a locally-funded program, every provider offers periodic ("chilled" or "frozen") delivery, but only ½ offer per-meal ("hot") deliveries.

[24] http://partnersinprime.org/dining/meals-on-wheels (Accessed Dec, 2015.)
[25] Telephone conversation between Partners in Prime and Tom Simmons. Aug 24, 2015.
[26] Telephone conversation between WCCOA and Tom Simmons. Aug 24, 2015,
[27] Council on Aging of Southwestern Ohio. "Catered Meal Program: Congregate and Home-Delivered Meals: Request for Proposal. RFP: 001-14. 2014. Table 3. *Pp.*, 9-10.
[28] *Ibid.* Also, Council on Aging of Southwestern Ohio. http://www.help4seniors.org/pdf/providers/ESPHDMClientChoiceTableJune2015.pdf (Accessed Dec 4, 2015.)
[29] *Ibid.*

COA
Council on Aging of Southwestern Ohio | Answers on Aging

**Please choose a Provider for your Home Delivered Meals (HDM).**

| Name of Hamilton County Provider *(alphabetical order)* | Star Rating *(1-5 Stars)* | Geographic Zones Served | | | | | | Preparation *(Hot, Chilled, and/or Frozen)* | Meal Types *(Standard, Kosher, and/or Therapeutic)* |
|---|---|---|---|---|---|---|---|---|---|
| | | *West* | *Downtown* | *Central* | *North* | *Northeast* | *Southeast* | | |
| **Cincinnati Area Senior Services, Inc.** *(513)721-4330* *www.cassdelivers.org* | ★★★½ *Rating applies only to Standard Meals.* | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | Chilled, Frozen | Standard, Therapeutic |
| **Deupree Community Meals on Wheels** *(513)561-8150* *www.episcopalretirementhomes.com* | ★★★★ *Rating applies only to Standard Meals.* | | ✓ | ✓ | | | ✓ | Chilled, Frozen, Hot | Standard, Therapeutic |
| **Mayerson Jewish Community Center** *(513)761-7500* *www.mayersonjcc.org* | *This is the only provider contracted for Kosher Meals. They are unrated due to sample size.* | | | ✓ | ✓ | ✓ | ✓ | Chilled, Frozen | Kosher |
| **North College Hill Senior Center** *(513)521-3462* *www.nchseniors.org* | ★★★★★ *Rating applies only to Standard Meals.* | | | ✓ | | | | Chilled, Frozen, Hot | Standard, Therapeutic |
| **Sycamore Senior Center** *(513)984-1234* *www.sycamoreseniorcenter.org* | ★★★½ *Rating applies only to Standard Meals.* | | | | ✓ | ✓ | | Chilled, Frozen, Hot | Standard, Therapeutic |
| **Wesley Community Services** *(513)661-2777* *www.wesleycs.org* | ★★★½ *Rating applies only to Standard Meals.* | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | Chilled, Frozen | Standard, Therapeutic |

Second, for the Older Americans Act Nutrition Program, the AAA published an RFP in 2014 for a home-delivered meal caterer that required bidders to supply 31 complete meal options to the area providers that would use the bidder's catering service instead of their own kitchens.[30] The provider that delivers the most meals in the area is Cincinnati Area Senior Services (CASS) and CASS uses Derringer's catering and offers consumers all 31 complete meal options.[31]

**Optage** in Minnesota, is a provider that offers 80 complete meals options. The provider allows consumers to "create [their] own nutritious dining experience.... Choose each day what you wish to eat and enjoy from amount the meals already stored in your refrigerator or freezer."[32] In Ohio, only Clossman Catering, with its 114 complete meal options, offers more than Optage.

## Food Truck Potential

Although ODA is only aware of an Ohio provider and a New York City provider that have experimented with food trucks, providers are not barred by any rule language from using food

[30] Council on Aging of Southwestern Ohio. "Catered Meal Program: Congregate and Home-Delivered Meals: Request for Proposal. RFP: 001-14. 2014.
[31] Council on Aging of Southwestern Ohio. "Catered Meal Program: Congregate and Home-Delivered Meals: Request for Proposal. RFP: 001-14. 2014. Table 3. *Pp.*, 9-10. Also, Cincinnati Area Senior Services. http://www.cassdelivers.org/menu.pdf Accessed Dec 4, 2015.
[32] Optage. http://www.optage.org/senior-dining-services/mn/dining-what-to-expect/ (Accessed on May 4, 2015.)

trucks to deliver meals to consumers that the consumers could order at the time the truck arrives. This model may make more sense in retirement communities or senior apartment buildings. It also would offer a greater degree of person direction.

Ohio | Department of Aging

**John Kasich**, Governor
**Bonnie K. Burman**, Sc.D., Director

APPENDIX E

# SUSTAINABLE PERSON-DIRECTION INITIATIVES

# DIY DINING OPTIONS

**December, 2015**

## Introduction

> Nutrition service providers have successfully used multiple methods to help older adults select ingredients in healthy portion sizes from a salad bar to meet the nutritional requirements of the OAA. The OAA provides flexibility to allow salad bars. And some of your colleagues are already providing them successfully.[1]

ODA has observed that providers are offering person direction to consumers[2] under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules. This appendix shows that some providers, under the current rules, offer consumers person direction by giving them DIY dining options where they build their own meals. DIY dining options fall into 2 camps:

- Salad bars and soup-and-salad bars. Providers can offer these as DIY side dishes to an entrée or as completely DIY meals.

- Family-style dining.

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review Appendices C through J (including this appendix). For more

[1] Administration for Community Living. *The Older Americans Act Nutrition Program: Did You Know.....?* May, 2015. *Pg.* 3.
[2] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.

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information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

## Legality

> The OAA allows salad bars to be counted as a full meal, as long as they meet the nutritional and other requirements in the OAA. Salad bars are not just "nice-to-have" additions to a meal; they can *be* that meal. Nutrition service providers have successfully used multiple methods to help older adults select ingredients in healthy portion sizes from a salad bar to meet the nutritional requirements of the OAA. The OAA provides flexibility to allow salad bars. And some of your colleagues are already providing them successfully.[3]

The Older Americans Act requires ODA to ensure that nutrition programs *offer* meals that comply with the Act's nutritional requirements (*i.e.*, at least 1/3 DRIs + Dietary Guidelines for Americans). Thus, a provider offering a DIY option using Title III-C1 funds must (1) provide food options at the buffet or salad bar that enable the consumer comply with the requirements and (2) inform consumers how to combine various food items to comply with the requirements. The provider could accomplish the latter by posting a sign on the buffet or salad bar.

However, it is not ODA's responsibility to ensure that nutrition programs force consumers to eat meals that comply with the Act's nutritional requirements. The Act requires offering nutritionally-adequate meals. It doesn't require eating those meals. In the same way that consumers may substitute menu items in a congregate dining location, the consumer may choose from various food items on a buffet or salad bar.

Furthermore, although the Act requires complying with its nutritional requirements, it also allows for flexibility that would adjust those requirements. §339(2)(A)(iii) of the Older Americans Act requires ODA to "ensure that the nutrition [program] provides meals that, *to the maximum extent practicable, are adjusted* to meet any special dietary needs of program participants. There is no requirement for "special dietary needs" to me a medical problem. One consumer may "need" a vegetarian diet. Another consumer may "need" a gluten-free diet. Another consumer may "need" a kosher diet. §339(2)(B) of the Older Americans Act requires ODA to "ensure that the nutrition [program] *provides flexibility* to local nutrition providers in designing meals that are appealing to program participants."

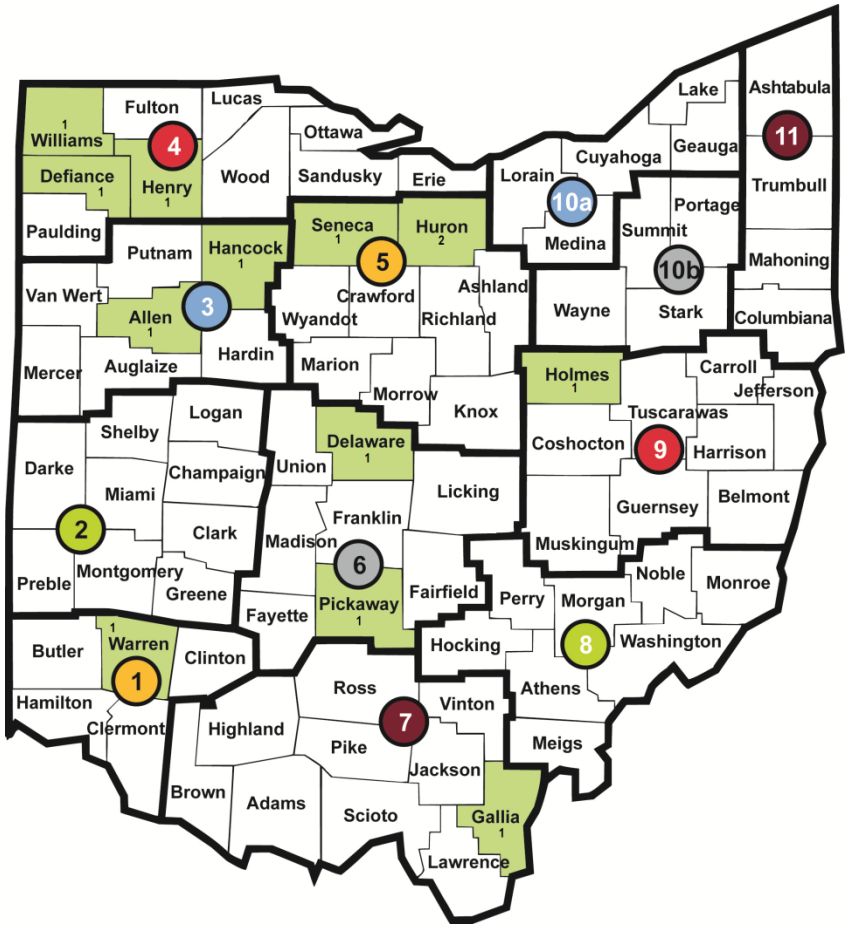
## Cost Control

One method for controlling the costs of DIY options is to allow consumers to order one part of the salad and build the rest. For example, consumers may build salads of their own design, then explain to the server their choice of meat to top their salad. This would offer person direction, but would allow for portion control of the most-expensive salad components.

[3] Administration for Community Living. *The Older Americans Act Nutrition Program: Did You Know.....?* May, 2015. *Pg.* 3.

## Success Stories

As indicated on the adjacent map, DIY options are not available statewide, especially not in urban areas.




**50 North**[4] in Findlay, Ohio operates the Senior Café. The café is a successful congregate dining project located in a traditional dining location. Before January, 2007, the provider offered food that was "prepared off-site and trucked over an hour to be served in our dining room by employees for the food contractor."[5] At that time, only 10-20 consumers participated in mealtimes. Beginning January, 2007, 50 North began to produce its own food and offer the DIY option of soup-and-salad bars. The regular attendance climbed to 80-100 consumers per mealtime.[6] It may be Ohio's most highly attended traditional congregate dining location.[7]

ODA learned much from its 2012 and 2015 visits to 50 North and its communications with AAA3 about 50 North. AAA3 offers vouchers to consumers who meals qualify to be paid, in whole or in part, with Older Americans Act funds. The consumers must sign the vouchers and then take them to the café. Upon arriving, the café uses SAMScan to

[4] *Fka,* "Hancock County Agency on Aging."
[5] http://www.hancockseniors.org/about.htm (now on web.archive.org) (Accessed Jan, 4 2015.)
[6] *Ibid.*
[7] Two other congregate dining locations see 100 consumers per mealtime. They are restaurant-based locations.

verify that the voucher is valid and to verify that a meal is provided. The consumer may then enter the café.

**SourcePoint**[8] in Delaware, Ohio, operates a one-trip soup-and-salad bars congregate dining locations. Consumers build a salad of their own design with the assistance of guidelines posted at the salad bar. Studio 60 offers the salad bar every day. The other 5 dining locations offer a soup-and-salad bar 1-2 times per month. The guidelines help the meals comply with the nutritional-adequacy requirements of the Older Americans Act.[9]

Additionally, 3 of the locations offer consumers a choice between cafeteria-style dining and family-style dining.[10, 11, 12, 13]

**Sycamore Senior Center** in Blue Ash, Ohio, allows consumers who dine at the center's Sycamore Café to choose to choose to prepare a meal at the salad bar instead of receiving the plated congregate meal. However, the café doesn't seek Older Americans Act funds for the salad bar and asks consumers to pay in full. The senior center is located in an area with affluence, so many can afford to pay in full.[14] The senior center does not use salad bars or other self-serve options. However, they do make use of restaurants with menus.[15]

**Senior Enrichment Services** says that, on a typical day, 25 consumers dine at its soup-and-salad bar, potato bar, and taco bar. The provider reaches younger, active consumers from the Baby Boom generation—currently 60-70 years old—because they are more drawn to DIY options than older generations. The younger generation likes the lighter meal options and the freedom to decide what they want to eat.[16]

Unfortunately, none of the meals the provider offers through its salad, potato, and taco bars are presently being paid by Older Americans Act funds. The provider indicated that it doesn't bill the AAA because the DIY meals "would not fit into our [AAA's] criteria of an acceptable lunch."[17] Perhaps, the flexibility in §339 of the Older Americans Act and the proposed elimination of menu-planning restrictions in ODA's rules will make it clear that the Older Americans Act does not prohibit DIY options.

[8] *Fka*, "Council for Older Adults of Delaware County."
[9] Toni Dodge, nutrition program manager, SourcePoint. Emails to Tom Simmons. Feb 19-20, 2015.
[10] *Ibid.*
[11] "SourcePoint Opens Dining Center in Sunbury." *The Delaware Gazette*. Sept 11, 2015.
[12] Lenny C. Lepola. "SNJ Opens SourcePoint Lunch Program." *Sunbury News*. Oct 1, 2015.
[13] "SourcePoint Opens Dining Center in Delaware's Second Ward." *The Delaware Gazette.* Sept 30, 2015.
[14] Josh Howard, director, Sycamore Senior Center. Telephone conversation with Tom Simmons. Apr 21, 2015.
[15] Chuck Sousa, vice president, Senior Resource Connection. Telephone conversation with Tom Simmons. Mar, 2015.
[16] Lucinda Smith, executive director, Senior Enrichment Services. Email to Tom Simmons. Feb 18, 2015.
[17] *Id*. Email to Tom Simmons. Feb 19, 2015.

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**John Kasich**, Governor
**Bonnie K. Burman**, Sc.D., Director

APPENDIX F

# SUSTAINABLE PERSON-DIRECTION INITIATIVES
# LOCAL RESTAURANT OPTIONS

**December, 2015**

## Introduction

ODA has observed that providers are offering person direction to consumers[1] under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules. This appendix shows that some providers, under the current rules, offer consumers person direction by giving serving congregate meals in local restaurants.

Restaurants are able of offer person direction because they can be open all day long, which allows for self-timed dining options; they offer menus of complete meals, which allows a consumer to choose; and they sometimes offer food made-to-order (*i.e.*, Chipotle style), which would be a DIY option. Restaurants are able to offer person direction because their services to the general public already require having staff on hand all day. If a restaurant already serves 400 customers a day, the restaurant may be willing to serve an additional 40 customers whose meals would be paid, in whole or in part, by Older Americans Act funds.

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person-direction initiatives like working through local restaurants.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review Appendices C through J (including this appendix). For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.

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## Legality

> The [Older Americans Act] allows congregate meals to be served in non-traditional sites. The OAA lists some examples, such as senior centers, but those examples are not requirements. Congregate meal locations could include senior housing, community centers, locations in shopping centers, restaurants, grocery stores, etc.[2]

The Older Americans Act does not prohibit using local restaurants as congregate dining locations. There is also no requirement in the Act that an AAA exhaust all opportunities to use traditional locations are exhausted before using a restaurant-based location. The Act is also clear that AAAs may contract with for-profit companies like local restaurants.[3]

## Success Stories

Presently, Older Americans Act funds are paying for congregate meals being served at 52 local restaurants. The only other state that ODA found to have adopted restaurant regulations was Florida. At this time, however, Florida has no restaurant-based congregate dining locations.[4] ODA has not found any other state to have as many restaurants working with the Older Americans Act Nutrition Program as Ohio.

Not all Ohio consumers have access to restaurant-based congregate dining locations, but Ohio is a state of at least 5,000 restaurants,[5] so there is great potential for expanding restaurant-based opportunities.

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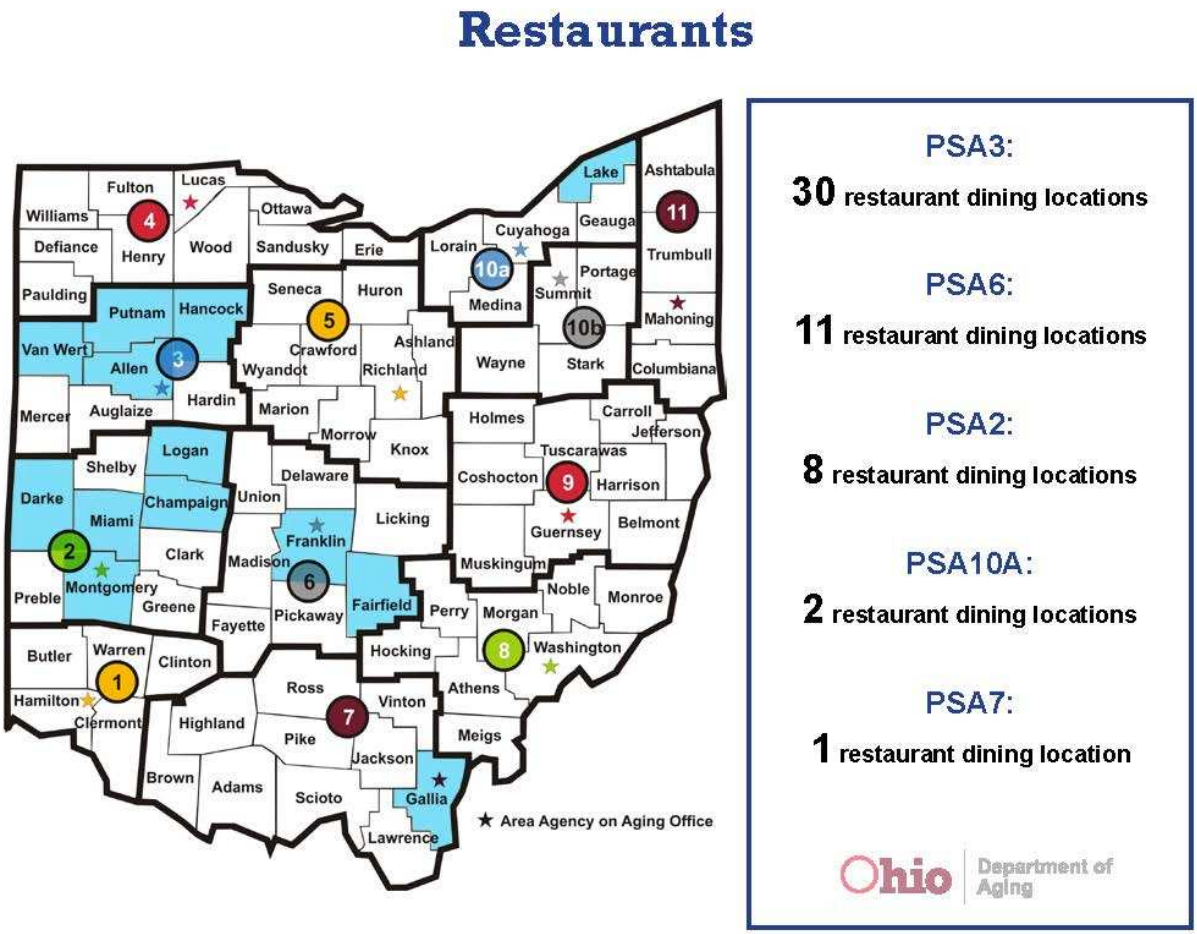
[2] Administration for Community Living. "The Older Americans Act Nutrition Program: Did You Know.....?" May, 2015. *Pp.*, 3-4.

[3] §212 of the Older Americans Act.

[4] Craig McCormick, Nutrition Program Manager. Department of Elderly Affairs. Email to Tom Simmons. Mar 13, 2015.

[5] Ohio Restaurant Association. http://www.ohiorestaurant.org/aws/ORA/pt/sp/home_page ORA says that it represents restaurant companies that have over 5,000 locations in Ohio. If ORA represents over 5,000 restaurants in Ohio, then Ohio is a state of at least 5,000 restaurants.

The map bellow shows the locations of Ohio's current restaurant-based locations.




**Senior Resource Connection** is a provider of many goods and services to thousands of consumers, including congregate meals provided at restaurant-based congregate dining locations.

The provider's licensed dietitian works with local restaurants to choose up to 10 meals from each restaurant's menu that appeal comply with the Older Americans Act because they appeal to consumers and they offer at least 1/3 of the DRIs. Consumers may choose from any of the 10 items.[6]

Senior Resource Connection has assigned one of its staffers to be the "site operator" for each restaurant location. During mealtimes, the operators verify consumers' eligibility, enroll first-time consumers, which involves collecting demographic information; conduct nutrition health screenings[7] on any consumer who has not had one in a year's time; and collect voluntary contributions. Although Senior Resource Connection uses ServTracker

[6] Chuck Sousa. Senior Resource Connection. Telephone conversation with Tom Simmons. Mar, 2015.
[7] OAC173-4-08 or proposed new rule OAC173-4-09.

to verify other services, the provider does not presently use electronic verification to verify meals served at its restaurant locations.[8]

The provider's premier restaurant-based congregate dining location is the Legacy Pancake House. The restaurant is located in McCook Field, which is a low-income, industrial, urban neighborhood in Dayton, Ohio.[9] The meals are covered by Older Americans Act funds are 5 breakfast mealtimes per week[10] that begin at 7:00AM and end at 11:00AM.[11] This 4-hour range gives consumers an ability to self-time when they eat.

Legacy Pancake House has become one of the most popular congregate dining locations in Ohio. At each of the 5 weekday breakfasts, Older Americans Act funds pay, in whole or in party, 80-90 consumers' meals.[12] The restaurant was popular with consumers before it worked with Senior Resource Connection. A regular gathering of retirees called "Retired Old Men Eating Out" ("ROMEOS") began congregating at the restaurant over a decade earlier.[13]

The gratitude for the desirable meals shows in the consumer's voluntary contributions, too. The provider's suggested contribution is $2.00 meal, but the average contribution is $2.14 per meal. The provider collects more voluntary contributions from this location than any other. In one month, the provider collected approximately $2,500 for 22 days of service.[14]

Senior Resource Connection's other restaurant-based congregate dining locations serve an average of 15 to 20 consumers per day that are paid, in whole or in part, with Older Americans Act funds.[15]

**University of Rio Grande** in Rio Grande, Ohio, is a provider with one congregate dining location, its student cafeteria, The Marketplace. The university contracted with the French food-services giant, Sodexo, to operate the cafeteria. Sodexo serves around 2,000 meals per week covering 19 mealtimes. Approximately 400 of those meals are for consumers participating in the 4 mealtimes during which Older Americans Act funds cover the meals.[16] Thus, on a weekly basis, consumers comprise approximately 20% of the people dining in The Marketplace.

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[8] Chuck Sousa. Mar, 2015. Plus, Veronica Harwell. Senior Resource Connection. Email to Tom Simmons. Feb 20, 2015.
[9] http://www.city-data.com/neighborhood/McCook-Field-Dayton-OH.html
[10] Chuck Sousa. Email to Tom Simmons. Jun 19, 2014.
[11] Veronica Harwell.
[12] Chuck Sousa. Jun 19, 2014.
[13] Dayton Daily News. By Virginia Burroughs. Jul 23, 2014. As viewed on www.daytondailynews.com (Accessed Aug, 21 2015.)
[14] Chuck Sousa. Email to Tom Simmons. Oct 14, 2015.
[15] Chuck Sousa. Jun 19, 2014.
[16] David Lynch, General Manager. Sodexo Food Service: University of Rio Grande. Email to Tom Simmons. Feb 12, 2015.

The AAA first contracted with the university to operate the congregate dining project as a 1999 pilot project. This followed the unwillingness of a traditional provider to bid on a new contract.[17] It is Ohio's only university-based congregate dining location.

ORC§3345.27 requires the state-owned university to be a Lifelong Learning Institute[18] that offers free tuition for consumers. This enables consumers who participate in lifelong learning to also participate in congregate dining while on a fixed, retirement income. In earlier years, the dining location attracted younger consumers. However, as the age of the area's consumers rises, the level of participation in auditing classes has declined.[19]

Rather than congregate with other retirees, the consumers at The Marketplace dine with students and have the same DIY options as students. This fulfills the requirement for multi-generational dining locations in §331(3) of the Older Americans Act.[20]

The Marketplace doesn't require consumers to make reservations. It also doesn't use electronic verification systems. Instead, volunteers verify that consumers are at least 60 years old at a registration table, then the provider submits an invoice to the AAA.[21] The provider collects voluntary contributions through a locked box at the registration table, but receives lower contributions through this dining location than all other locations in the AAA's planning and service area.[22]

[17] Rita Pauley. Area Agency on Aging District 7, Inc. Emails to Tom Simmons. Feb 12, 2015.
[18] Ohio Department of Aging. http://aging.ohio.gov/information/learning/ The program is often called "Program Sixty."
[19] Rita Pauley.
[20] David Lynch.
[21] *Ibid*.
[22] Nina Keller. Area Agency on Aging District 7, Inc. Oct 14, 2015.

For 2014, the AAA collected the following demographics on the consumers receiving meals from The Marketplace that are paid with Older Americans Act funds.[23] It shows that, in 2014, more consumers dined at The Marketplace in the cold winter months than in the hot summer months.

| | Congregate Meals | | | | |
|---|---|---|---|---|---|
| | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | **Total** |
| Age 75+ | 95 | 36 | 18 | 13 | 162 |
| (Undefined Race) | 1 | 0 | 0 | 0 | 1 |
| American Indian/Native Alaskan | 2 | 3 | 0 | 1 | 6 |
| Asian | 1 | 1 | 0 | 0 | 2 |
| Black/African American | 3 | 5 | 0 | 1 | 9 |
| In Poverty Minority | 6 | 5 | 1 | 2 | 14 |
| Native Hawaiian/Other Pacific Islander | 0 | 1 | 0 | 0 | 1 |
| Non-Minority (White, non-Hispanic) | 269 | 102 | 51 | 38 | 460 |
| White-Hispanic | 0 | 0 | 1 | 0 | 1 |
| Females | 132 | 72 | 26 | 24 | 254 |
| Disabled | 69 | 30 | 13 | 6 | 118 |
| Frail | 20 | 7 | 2 | 2 | 31 |
| In Poverty | 176 | 61 | 29 | 22 | 288 |
| Lives Alone | 59 | 44 | 12 | 14 | 129 |
| Rural | 272 | 102 | 48 | 37 | 459 |
| Understands English | 276 | 112 | 52 | 40 | 480 |
| **Total** | 276 | 112 | 52 | 40 | 480 |

**LifeCare Alliance** operates congregate dining locations in three planning and service areas of Ohio. In the Columbus, Ohio area, the provider is responsible for 10 of the 11 restaurant-based congregate dining locations. The provider targeted 2 of the Columbus area's significant populations of consumers with limited English proficiency. The result is that 4 Asian restaurants and 5 Somali restaurants work with the provider.[24]

For these 9 restaurants, LifeCare Alliance issues vouchers by which the restaurants can verify eligibility.[25]

[23] Area Agency on Aging District 7, Inc. Feb 12, 2015.
[24] Molly Haroz, Nutrition Programs Director. LifeCare Alliance. Email to Tom Simmons. Jan 16, 2015.
[25] *Ibid.*

The Asian restaurants serve consumers in an area of the restaurant that is separate from the general population. The Somali restaurants allow consumers to dine among the general population.[26]

Massachusetts is an example of another state with providers who target consumers with limited English proficiency. Massachusetts providers who do so tend to use restaurants to cater food that is served in the senior center, which would limit person direction, and tend to offer the ethnic meals 1, 2, or 3 days per week.[27] By contrast, LifeCare Alliance allows consumers to dine in the restaurants and the restaurants accept Older Americans Act funds throughout the week. Each Asian restaurant working with LifeCare Alliance serves consumers every day of the week except Wednesdays and Sundays. Each Somali restaurant working with LifeCare Alliance serves consumers 7 days a week.[28]

New Jersey's "Senior Nutrition Programs: Promising Practices for Diverse Populations" lists LifeCare Alliance's work with Asian restaurants in Ohio as the first promising practice to feature in their report.[29]

ODA features LifeCare Alliance's 10th Columbus-area restaurant, Carrie's Café, in Appendix G.

Outside of the Columbus area, the provider is now entering into a relationship with a restaurant in Champaign County and another in Logan County to offer more restaurant-based options for West-Central Ohio. LifeCare Alliance plans to staff these restaurants with "dining center coordinators."[30]

**Area Agency on Aging 3** in Lima, Ohio has organized a network of 30 local restaurants who will offer their restaurants to consumers as congregate dining locations. 55% of Ohio's restaurant-based congregate dining locations are in the AAA's planning and service area.

On menu options, the AAA says, "All the restaurants have a menu with meals to choose from or a set meal served daily that has been approved."[31]

The AAA distributes vouchers to eligible consumers by mail. In the envelopes are suggestions to donate. The consumers who receive the AAA's vouchers contribute an average of $0.31 per meal, but the consumers who dine at traditional congregate dining locations contribute an average of $1.11 per meal.[32] When a consumer takes a voucher

[26] Molly Haroz. Email to Tom Simmons. Oct 28, 2015.
[27] Massachusetts Elderly Nutrition Program. "Evaluating the Diversity of Senior Meal Sites in the Commonwealth of Massachusetts." January, 2013.
[28] Molly Haroz. Email to Tom Simmons. Oct 28, 2015.
[29] New Jersey Dept. of Health and Senior Services. *Senior Nutrition Programs: Promising Practices for Diverse Populations*. (Undated, but probably 2008.) *Pp.*, 1-2.
[30] *Ibid.*
[31] Rhonda Davisson, Nutrition Care Specialist. Area Agency on Aging 3. Email to Tom Simmons. Feb 23, 2015.
[32] Rhonda Davisson. Email to Tom Simmons. Oct 15, 2015.

to a participating restaurant, the restaurant electronically verifies the validity of the voucher by using a SAMS Scan system,[33] which is a bar-code scanning system.

The AAA maintains a waiting list for vouchers and requires all voucher recipients to annually reapply with the AAA for vouchers.[34]

[33] Rhonda Davisson. Email to Tom Simmons. May 2, 2014.
[34] Area Agency on Aging 3.
http://www.aaa3.org/sites/psa0100/Documents/2015%20Senior%20Dining%20Application.pdf

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APPENDIX G

# SUSTAINABLE PERSON-DIRECTION INITIATIVES
# GOING PUBLIC BRINGS OPTIONS

**December, 2015**

## Introduction

ODA has observed that providers are offering person direction to consumers[1] under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules. This appendix highlights 2 providers who offer person direction under the current rules that is partly sustained by the for-pay meal services that they offer to the general public.

In her white paper entitled, "The Changing Face of Home and Community Based Meal Services," Alexis Abrahamson suggests the following strategy to meet the insistence of the Baby Boom generation, which she calls "the most vocal and most demanding generation in American history":[2]

> To meet the future needs of the various types of consumers, providers of home and community-based meal services should run two parallel, yet synergistic, business models: a non-profit program for low-income or means tested customers, which would continue to be funded by state and federal dollars and private donations, and a for-profit operation that would be paid for by the consumers themselves. The latter cold perhaps supplement funding for the non-profit program for those seniors who are unable to pay or are paying on a sliding scale according to their income level.

As covered in Appendix F, restaurants are well-suited for offering person direction. One way for traditional providers to offer consumers person direction is to open their own restaurant to serve consumers and the general public. If the restaurant is for long hours, it offers consumers self-timing options. If the restaurant offers a menu of options, it gives consumers a choice.

Additionally, a home-delivered meal provider can sustain its operations by selling its home-delivered meals to the general public.

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[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[2] Both quotes: Alexis Abramson. "Changing the Face of Home and Community Based Meal Services" White paper. http://alexisabramson.com/changing-face-home-community-based-meal-services/

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review Appendices C through J (including this appendix). For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

## Legality

> Non-profits can still earn a surplus above their full costs when they enter into third party payment contracts. We provide a social service that will always be needed, but we all need to be aware of our competition and how we can open up alternative revenue streams. We encourage states, AAAs and providers to think about the services they may be able to provide under contract to an integrated health care entity or other payer willing to pay a fair price for those services. The aging services network knows their communities and what they need. Who better to provide needed services, including healthy meals, than our aging network? Our National Resource Center on Nutrition and Aging has a series of webinars that talk about transformation needed to compete in this current environment. http://nutritionandaging.org/professional-developement/momentum-51064
>
> Of course, all states, AAAs and providers are not the same. There may be restrictions at the state, councils of government, and/or local level that affect AAAs and direct service providers differently. But the OAA should not be viewed as an obstacle to contracting with private organizations to bring in alternate sources of funding that can help address your mission to help the older adults in the community. As they say, no margin, no mission.[3]

Providers are not prohibited from providing congregate or home-delivered meals to people who are not consumers in the Older Americans Act Nutrition Program or individuals enrolled in the PASSPORT Program.

For the Older Americans Act Nutrition Program, the current version of OAC173-4-02 appears to tell providers who they may serve. To eliminate any possibility that the rule would discourage providers from pursuing revenue opportunities by serving or delivering meals to others, the proposed new version of OAC173-4-02 clarifies that it regulate which meals may be paid with Older Americans Act funds instead of saying which people a provider may serve.

[3] Administration for Community Living. "The Older Americans Act Nutrition Program: Did You Know.....?" May, 2015. *Pg.*, 7

## Success Stories

### Wesley Community Services

In July, 2013, Wesley Community Services started to sell the same therapeutic meals that the delivery to consumers to the general public.[4] The provider calls its service "Meals 4 You." Consumes in the Greater Cincinnati, Dayton, and Northern Kentucky region may order meals to be delivered from the Meals4You website.[5] The cost of each of the provider's meals is $5.00.[6]

### LifeCare Alliance

In March, 2009, LifeCare Alliance opened Carrie's Café,[7] a lunchtime-only restaurant for the general public. It is open from 10:30AM-2:00PM in an industrial area south of the Franklinton neighborhood in Columbus, Ohio.[8]

Because the café draws in area residents and workers for lunch, the provider can maintain a larger staff for longer hours and a more robust menu. As a result, Carrie's Café offers consumers choices from a menu of complete meals.

The person direction involved attracts Baby Boomers.

> Using the model, LifeCare Alliance focused on attracting those age 69 and younger, inviting them to a presentation followed by a special catered event. Carrie's Café is attached to the LifeCare Alliance Catering event center, and has used the space for talent competitions, fashion shows, dinner/dances, and casino nights. The result: 42% of diners in 2013 were 69 and younger, compared to 32% at LifeCare Alliance's traditional congregate dining sites.[9]

Since its opening, the café has served over 102,000 meals to 6,126 unduplicated consumers. LifeCare Alliance is also a winner of the Mather LifeWays Promising Practices Award for Carrie's Café.[10]

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[4] Steve Smookler. Wesley Community Services. Telephone conversation with Tom Simmons. 2013.
[5] Wesley Community Services. http://meals4you.org/
[6] *Ibid.*
[7] Molly Haroz, Director of Nutrition Programs. LifeCare Alliance. Email to Tom Simmons. Feb 17, 2015.
[8] LifeCare Alliance. http://www.lifecarealliance.org/meal-services/carrie-s-cafe.html
[9] MatherLifeWays Institute on Aging. "Ways to Age Well: Year in Review Issue 2013." *Pg.*, 6.
[10] Molly Haroz. Feb 17, 2017.

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APPENDIX H

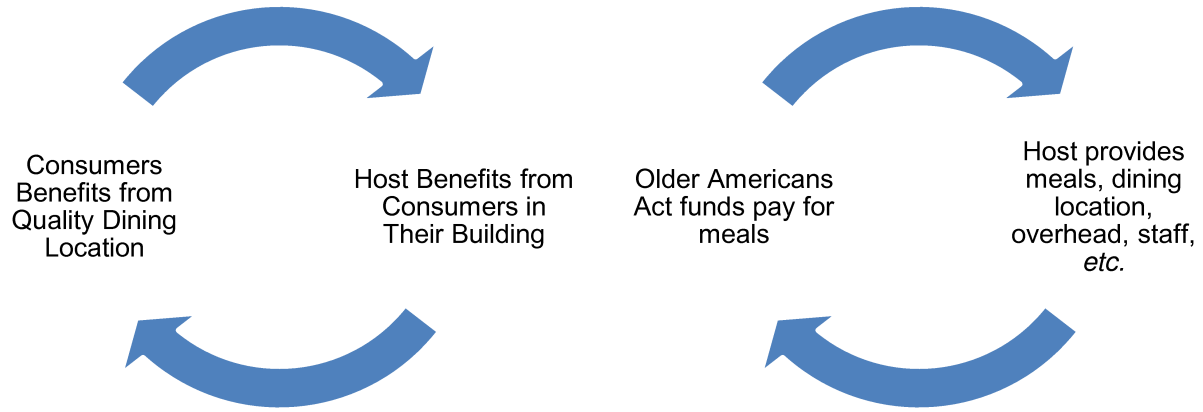
# SUSTAINABLE PERSON-DIRECTION INITIATIVES

# SYMBIOSIS BRINGS OPTIONS

**December, 2015**

Some claim that person direction is unaffordable. This appendix offers the account of a successful congregate dining project in Texas that is based upon a symbiotic relationship with physicians' outpatient facility.

In symbiosis, two seemingly unrelated organisms depend upon one another for their health. Together, each organism propels the growth of the other organism. A symbiotic relationship between an AAA and a host entity may look like this:




If the symbiotic relationship is effective, the AAA has the opportunity to procure a wider variety of entrée options for consumers because the host wants consumers[1] in its building because it profits from them in other ways.

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.

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To work, a host would need to offer a high-quality dining operation and a business unrelated to the dining that interests consumers.

To date, Ohio does not have any examples of this model at work using Older Americans Act funds or Medicaid funds through the PASSPORT Program.

## Texas Example

WellMed Clinic and the City of San Antonio jointly host the Alicia Trevino Lopez Center in San Antonio, TX. The 30,000 square feet center serves 250-275 meals per day to any of the 5,300 seniors that use the center. The dining room offers choices between entrées. It's San Antonio's largest congregate dining location using Older Americans Act funds.

The City of San Antonio uses Older Americans Act funds to pay for the center's meals and transportation.

WellMed benefits from elders' familiarity with the center and their willingness to visit the physicians outpatient practices in the center. In turn, They WellMed also offers health education, health screenings, benefits counseling, fitness equipment, fitness classes, comfortable furniture, pool tables, ping pong tables, a cyber café, a nutrition demonstration kitchen, and an arts-and-writing program at a cost of $750,000 per year.[2]

## Ohio Potentials

Some Ohio hospitals may be suitable for the following reasons:

- Locations are suitable as focal points.[3]
- Some urban hospitals are in walkable communities.
- Some rural hospitals have easily accessible parking.
- Hospital dining areas generally have menu options and, unlike in years past, are viewed favorably.
- Hospital-based locations may also help for offering congregate meals to caregivers using National Family Caregiver Program funds[4] while the caregivers are staying at the hospital caring for loved ones who are hospitalized.
- Baby Boomers as a whole aren't as likely to view healthcare as a negative than previous generations. They make more visits to their doctors and receive more health services than previous generations.[5]

[2] Dan Goodman. "Johnson County Area on Aging Nutrition Programs." Slideshow. (Johnson County Area Agency on Aging. Johnson County, Kansas. Undated.) www.iowaaging.gov.
[3] §306(a)(3) of the Older Americans Act.
[4] Title III-E funds.
[5] Linda Netterville. "The New Congregate Meal Program: They are Growing, Partnering and Focusing on Health." Slideshow. (National Resource Center on Nutrition and Aging. Undated.) www.iowaaging.gov.

- Hospitals also often have gyms which may also be part of Silver Sneakers. Seniors who are between ages 65-74 are more likely than those over age 75 to be physically active and functionally fit—77% compared to 64%.[6]

- Hospitals have the capacity to offer wellness checks, nutrition education, and nutrition counseling.

- Hospitals may have a philanthropic enterprise with a mission to participate. For example, the Cleveland Clinic's Wellness Institute has been on a philanthropic effort with Berea City Schools to create the Eat Right at School Program.[7] Perhaps, the Older Americans Act Nutrition Program is a good candidate for such a philanthropic enterprise's upcoming projects.

Of course, there is no requirement for the host to be a hospital or even a healthcare organization.

Elders in some parts of Ohio may be better reached through the great outdoors. Cabela's is a popular retailer that builds destination-location stores. In Ohio, Cabela's has built 2 stores with 2 more coming soon.[8] A notable feature of Cabela's stores are their in-store restaurants.[9] A notable pastime for many elders is fishing. Fishing and Cabela's go hand in hand. Perhaps, congregate dining could also go hand in hand with a retailer like Cabela's.

[6] Linda Netterville.
[7] "Forging A Healthcare/Schools Partnership." *Food Management*. Nov 1, 2011. food-management.com.
[8] Cabela's. www.cabelas.com (Accessed Dec 31, 2015.)
[9] *Ibid.*

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APPENDIX I

# SUSTAINABLE PERSON-DIRECTION INITIATIVES
# TECHNOLOGY BRINGS OPTIONS
## NUTRIENT ANALYSIS SOFTWARE

**December, 2015**

## Introduction

ODA has observed that providers are offering person direction to consumers[1] under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules.[2]

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding.[3] The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

ODA's proposed new rules would require all meals to meet federal nutritional-adequacy standards,[4] but would not dictate which of the 2 methods for determining nutritional adequacy the provider must use. For the PASSPORT Program, ODA's proposed new OAC173-39-02.14 would include a new authorization for ODA-certified providers to use either nutrient analysis or menu patterns. The rules for the Older Americans Act Nutrition Program regulate contracts between AAAs and providers, instead of directly regulating providers. Thus, for the Older Americans Act Nutrition Program, ODA's proposed new OAC173-4-05 would include a new prohibition on AAAs from prohibiting providers from using nutrient analysis or menu patterns.

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[2] For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review this appendix and Appendices C through I and this appendix.
[3] For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.
[4] §339 of the Older Americans Act.

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Although ODA doesn't propose to *require* providers to use nutrient analysis, ODA *encourages* providers to use it. Oregon uses the same practice of allowing providers to use both methods, but encouraging them to use nutrient analysis.[5]

The incentives are reduced administrative burdens and cost savings for the provider and more menu options for consumers—and menu options facilitate person direction.

## Primarily-Affected Rules

173-4-05 Older Americans Act: nutrition program: nutrition projects.[6]
173-39-02.14 ODA provider certification: home-delivered meals.[7]

## How can nutrient analysis facilitate person direction?

There are two basic methods for determining nutritional adequacy: menu patterns and nutrient analysis.

While nutrient analysis may be known for its ability to help providers comply with federal dietary reference intakes (DRIs), it also helps providers incorporate meal options (*i.e.*, variety) into their menus.

> A meal pattern is best used as a menu-planning too (ensuring food plate coverage, and as a component of a catering contract) rather than as a standard for nutritional adequacy or as a compliance tool. Use of computerized nutrient analysis rather than a meal pattern helps ensure nutritional adequacy of meals and *increases menu planning flexibility*."[8]

> For a meal pattern to function properly, meals must follow a narrow meal pattern with no deviation. This does not allow flexibility for seasonality, product availability or price fluctuation. Meal patterns can be used efficiently as a checklist. However, they do not ensure that RDAs/AIs requirements are met for protein, fat, fiber, vitamins A, B6, B12, C, calcium, magnesium, sodium, and zinc. To best ensure nutrient requirements are met and increase menu planning flexibility, computer-assisted nutrient analyses should be run.[9]

Nutrient analysis also allows for nutrient averaging, which is accounting for nutrient content of target nutrients over the course of a week. Averaging allows nutrient analysis to offer even more flexibility for incorporating meal options into menus. Through the current language in OAC173-4-05.1, which only regulates the Older Americans Act nutrition program, ODA allows providers using nutrient analysis to average on a daily or weekly basis for 10 of 14 leader nutrients identified in the rule, so long as 1 of the 10 leader nutrients is Vitamin B12. ODA's

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[5] Oregon Dept. of Human Services: Office of Aging and People with Disabilities. "Oregon Congregate and Home-Delivered Nutrition Program Standards: Older Americans Act and Oregon Project Independence." May, 2012. *Pg.*, 14.
[6] The current rule is OAC173-4-05.1, which ODA is proposing to rescind. The topic of nutritional adequacy would appear in proposed new rule OAC173-4-05.
[7] This rule regulates nutrition providers when they deliver meals to individuals enrolled in the PASSPORT Program.
[8] National Resource Center on Nutrition, Physical Activity & Aging. *Older Americans Act Nutrition Programs Toolkit*. (Miami, FL; Florida International University, 2005) Chap. 4. Italics added.
[9] Barbara Kamp, *et al*. National Resource Center on Nutrition, Physical Activity & Aging. "Meal Patterns: Only a First Step in Menu Planning." (Miami, FL: Florida International University, Dec, 2005) http://nutritionandaging.fiu.edu/creative_solutions/meal_patterns.asp (Accessed Nov 24, 2015).

current rule for the PASSPORT Program's home-delivered meals (OAC173-39-02.14) is silent on the matter. ODA's proposed new rules for both programs will not prohibit providers from using nutrient averaging.

## Prevalence

This current rule is very focused on the methods for determining nutritional adequacy. The proposed new rule is silent on the methods for determining nutritional adequacy. Therefore, ODA proposes to no longer require providers to use either nutrient analysis or menu patterns to determine the nutritional adequacy of menus. Although ODA's survey of providers in June, 2014, revealed that 70% of providers continue to use the menu-pattern method,[10] the menu-pattern language has received more complaints from providers than any other language in this chapter. Additionally, ODA proposes to delete the prescriptive menu-pattern language found in the current rule. The language is in the form of mandatory preferences that are based upon the language in the 2010 Dietary Guidelines for Americans. The complaints that providers have given to ODA over the years reveal that providers often interpret the preferences as mandates.

## What do ODA's rules require?

In comparison, the Texas Dept. of Aging and Disability Services and the Washington State Dept. of Social and Health Services Aging and Disability Services Administration using nutrient analysis if the provider doesn't use the state-issued menu pattern which is no different than allowing providers to use either method.[11,12] Under the heading "menu choice," Texas DADS emphasizes that nutrient analysis provides the flexibility needed to compute the combinations of nutrients involved in menus that offer choices between entrée items, between complete meals, *etc.*[13] Washington says, "providers are strongly encouraged to use computerized nutrient analysis,"[14] which is similar to ODA's encouragement in the current version of OAC173-4-05.1.

In contrast, the Pennsylvania Dept. of Aging says that using a combination of menu patterns and nutrient analysis is "acceptable" for all meals and "required" for DASH menu patterns and lacto-ovo vegetarian patterns.[15]

Although §339 of the Older Americans Act requires compliance with both dietary reference intakes (DRIs) and the Dietary Guidelines for Americans (DGA), only 66% of state units on

[10] Of course, this also reveals that that 30% of providers are now using nutrient analysis. Of those providers who employ nutrient analysis, 66.7% believed that it reduced their administrative expenses. A large, Ohio-based provider of 4000 meals on a typical day said that the real savings that they realized from using nutrient analysis was "reduced man hours."
[11] Texas Department of Aging and Disability Services. *Program Instruction AAA-PI314.* (April 1, 2011.)
[12] Washington State Department of Social and Health Services: Aging and Disability Services Administration. *Senior Nutrition Program Standards §VII.E.3*. (2004).
[13] Texas Dept. of Aging and Disability Services. *Technical Assistance Memorandum AAA-TA305.* (Apr 7, 2011.)
[14] Washington State Dept. of Social and Health Services: Aging and Disability Services Administration. *Senior Nutrition Program Standards §VII.E.3.* (2004).
[15] Pennsylvania Dept. of Aging. *Aging Program Directive 15-03-02, Chapter 2, §II.3.* (Jan 1, 2015.)

aging require implementing both DRIs and the DGA in their formal regulations.[16] Ohio is a state whose rules require both.

Due to the complaints about menu-pattern regulations, ODA contemplated requiring all senior dining providers to use nutrient analysis software. ODA's provider survey in June 2014 showed that only 30% of providers currently use the software. 2/3 of the providers who use the software say doing so reduced their administrative expenses.

In summary, ODA's proposed new rules would continue to allow, but not require, nutrition projects to use nutrient analysis to determine nutritional adequacy. ODA *encourages* providers to use nutrient analysis. ODA also proposes to *prohibit* ODA's designees from prohibiting the use of nutrient analysis.

## Costs

Two-thirds of providers who responded to ODA's 2014 survey indicating that they use nutrient analysis also said that they saw a reduction in their administrative expenses.

The table below shows 3 produces whose manufacturers readily posted costs online:

| MANUFACTURER | PRODUCT | COST |
|---|---|---|
| The Nutrition Company | FoodWorks | $199.95[17] |
| ESHA Research, Inc. | The Food Processor | $699.00[18] |
| Cybersoft, Inc. | NutriBase Professional Edition | $750.00[19] |

[16] James Mabli *et al*. "Process Evaluation of Older Americans Act Title III-C Nutrition Services Program: Final Report." (Mathematica Policy Research. Sept 30, 2015.) *Pg.,* 47.
[17] The Nutrition Company. http://www.nutritionco.com/FWpricing.htm (Accessed Dec 30, 2015.)
[18] ESHA Research, Inc. http://www.esha.com/purchase/ (Accessed Dec 30, 2015.)
[19] The Nutrition Company. https://secure107.inmotionhosting.com/~nutrib5/oformpro.htm (Accessed Dec 30, 2015.)

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APPENDIX J

# SUSTAINABLE PERSON-DIRECTION INITIATIVES
# TECHNOLOGY BRINGS OPTIONS
## ELECTRONIC VERIFICATION + OPTIMIZATION

**December, 2015**

## Introduction

ODA has observed that providers are offering person direction to consumers[1] under ODA's current rules and funding—and ODA's current rules contain many more requirements than ODA's proposed new rules.

Because ODA's proposed new rules would eliminate at least 210 requirements and reduce the impact of at least 36 other requirements, ODA believes that more providers would find the means to offer person direction under current funding. The increased flexibility under the proposed new rules should make it easier for providers to offer person direction. The savings generated should allow providers to invest into person direction.

For examples of providers that have sustainable person-direction initiatives under ODA's current rules, please review this appendix and Appendices C through I. For more information on reduced impact review Appendices K through M. For more information on the elimination of requirements, please review Appendix M.

ODA's proposed new rules would require per-delivery verification for home-delivered meals and per-meal verification for congregate meals. At first glance, this would appear to increase adverse impact. However, ODA believes that using electronic verification would not only neutralize the impact, it would lower it. In the proposed new rules, ODA does not *require* using electronic verification. Instead, ODA *encourages* using it.

The incentives for providers to use electronic systems are the reduced administrative burden and cost savings. The incentives for the Older Americans Act Nutrition Program are assurance that no funds are being wasted and compliance with federal law. The positive outcomes for

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.

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consumers are that the electronic systems that offer verification can also offer person-direction.

## Clarification

ODA's provider survey revealed that many providers believed that, if they used electronic verification, they were also required to collect handwritten signatures. Neither ODA's current or proposed new rules require this. The requirement is to verify a delivery (or congregate meal served) electronically or by handwritten signature—not both. The confusion may have arisen because one of the most-popular brands of electronic verification uses a touch screen to collect handwritten signatures electronically. That is not necessary.

## Why is Per-Delivery and Per-Meal Verification Necessary?

45 C.F.R. 75.403(a) requires all costs incurred under the Older Americans Act Nutrition Program to be reasonable. 45 C.F.R. 75.403(g) requires all costs under the program to be documented. Therefore, it's unreasonable for the program to pay for meals that are never delivered or served. Therefore, ODA is requiring per-delivery verification for home-delivered meals and per-meal verification for congregate meals.

Additionally, if ODA continued to allow monthly verification, it would perpetuate a window of opportunity for fraud. Under current rules, a provider can ask a consumer with Alzheimer's disease, or related dementia, to verify the delivery of 45 meals delivered over a 30-day period. The consumer may not remember his or her children's names. How could the consumer then remember if only 43 meals were delivered?

## Most Providers Already Verify On a Per-Delivery Basis

Providers being paid with Older Americans Act funds should find compliance to be practical because ODA's rules already require per-delivery verification in the PASSPORT Program and 86.7% of providers operate in both the Older Americans Act Nutrition Program and the PASSPORT Program.

| HOME-DELIVERED MEALS<br>January 2014 | | | |
|---|---|---|---|
| **Program** | **Providers** | **Meals** | **Seniors Receiving Units** |
| **Older Americans Act** | 110 | 410,879 | 21,472 |
| **PASSPORT** | 99 | 632,639 | 19,344 |

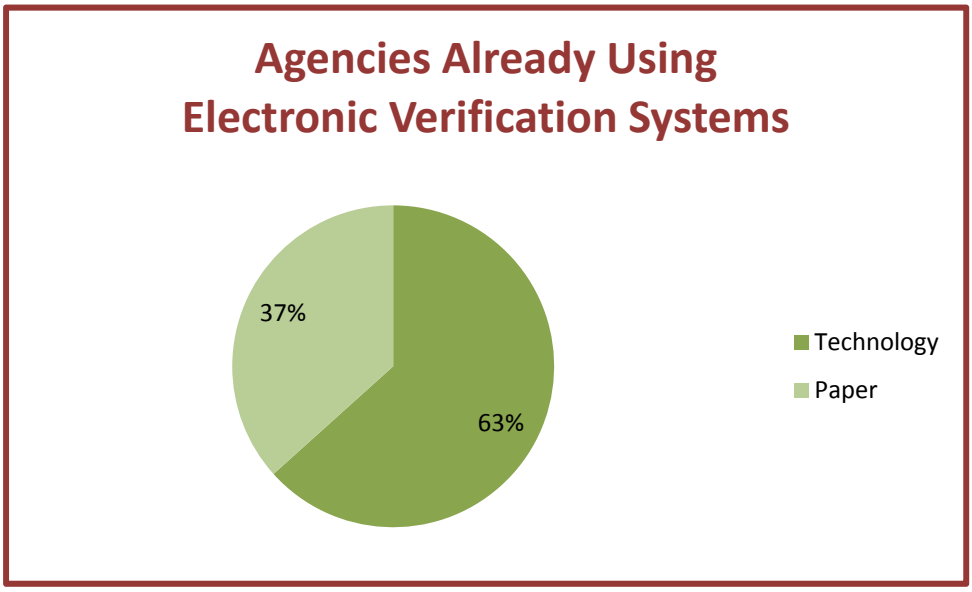
Also, many nutrition projects, especially multi-purpose senior centers, also provide personal care. Since 2003, ORC§121.36 has required such providers to use electronic verification on persona care aides. The requirement to verify meal deliveries and meals served is often done by the same brand (*e.g.*, ServTracker) of electronic verification system.

## Incentives to Verify Meals Electronically

Below, ODA lists 10 reasons why electronic verification is good for providers:

1. **No More Complaints:** One of the most-complained-about requirements in ODA's rules is the requirement to verify meal deliveries with handwritten signatures. Electronic verification provides a way to end that practice.

2. **The Competition:** The competition is using electronic verification. ODA's provider survey revealed that 63% of providers of meals (congregate or home-delivered) use electronic verification systems.




Here's a breakdown of the brand use revealed in the survey:

a. **ServTracker** is one of the two most-cited brands in the survey. Examples of providers using this brand are SourcePoint (*fka*, Council for Older Adults of Delaware County), LifeCare Alliance, Mayerson Jewish Community center, Mobile Meals, Inc., Senior Resource Connection, Sycamore Senior Center, and Wesley Community Services. The brand originated from Sycamore Senior Center in Blue Ash, Ohio.

b. **Social Services Aid (SSAID)** is the other most-cited brand. Examples of providers using this brand are Middletown Senior Center, Oxford Senor Center, Partners in Prime, Senior Enrichment Services, Simple-EZ Home Delivered Meals, and Warren County Community Services. SSAID is headquartered in Middletown, Ohio.

c. **MySeniorCenter** was used by providers such as Muskingum County Senior Center, Prime Time Office on Aging, United Senior Citizens, and Wood County Commission on Aging.

d. Other brands are presently used less. Valley Services uses **Care eVantage**. Guernsey County Senior Citizens Center uses **Co-Pilot**. Mom's Meals uses **Microsoft Dynamics CRM**. Clermont County Senior Services and Pike County Senior Center use **SAMS Scan**. Henry County Senior Center uses **MJM Innovations**.

e. 7% of surveyed providers that indicated that they did not use electronic verification were actively shopping for it.

3. **Get Paid Faster:** If a provider attempts to verify meal provision on a weekly or monthly basis, the provider cannot seek payment for the meals from the AAA any faster than on a weekly or monthly basis. Verifying each delivery upon the delivery allows the provider to seek payment from the AAA on a daily or more-than-once-daily basis. This would provide a steady cash flow to the provider.

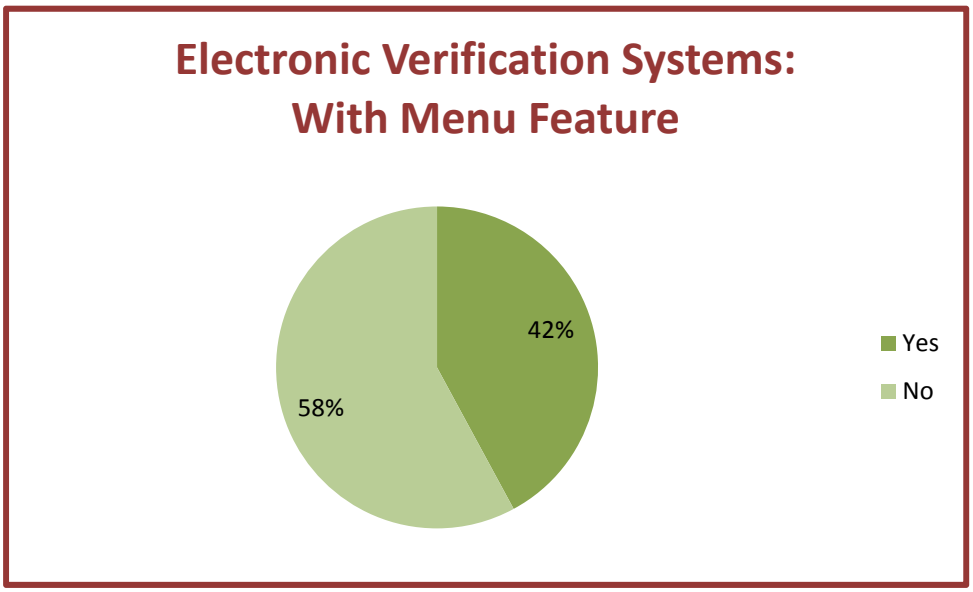
4. **Administrative Savings:** Electronic verification greatly reduces paperwork and related administrative burdens. Watch MySeniorCenter at work in these videos. Here are the URLs: http://myseniorcenter.com/#livedemo and https://www.youtube.com/watch?v=f-ObX2CI1Nk.

   The makers of ServTracker, Accessible Solutions, Inc., claimed that a provider in California experienced a net annual savings of $10,824 after it began to use ServTracker to cover the administrative duties associated with its provision of 450 meals per day.

5. **Extra Savings from Person Direction Capacity:** Some electronic verification systems also facilitate person direction by allowing consumers to order the meals they want for their next meal delivery. For an example of how this works, please review a video of that shows how Raco Industries and ServTracker offer Wesley Community Services in Cincinnati an electronic verification system that also takes menus. Here's the video's URL:

   https://www.youtube.com/watch?v=_fVbW9SH_t0

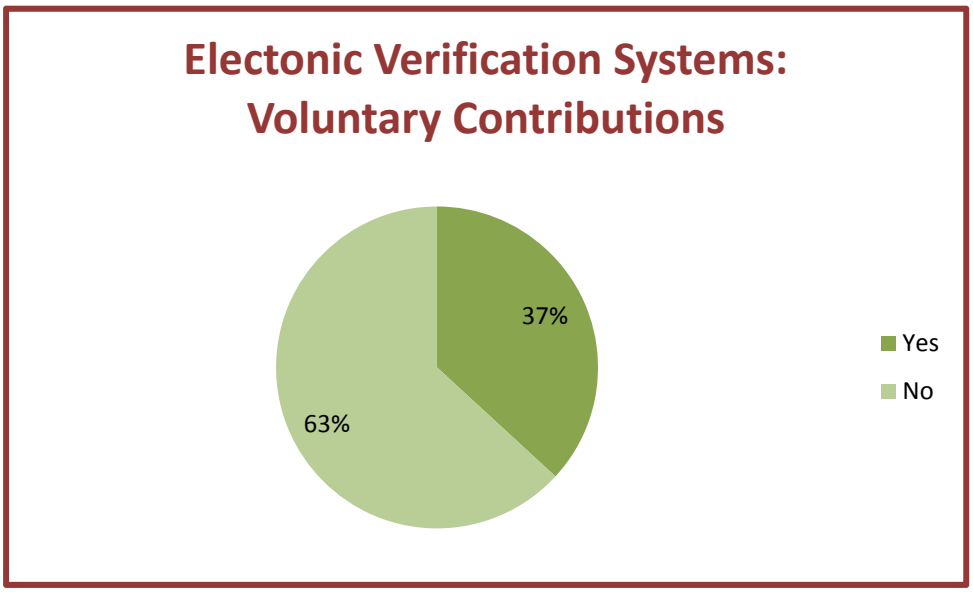
   As indicated by the graph below, ODA's June, 2014 provider survey revealed that the majority of providers who use electronic verification do not taking advantage of its person-direction capacity or use a brand that does not offer that capacity.



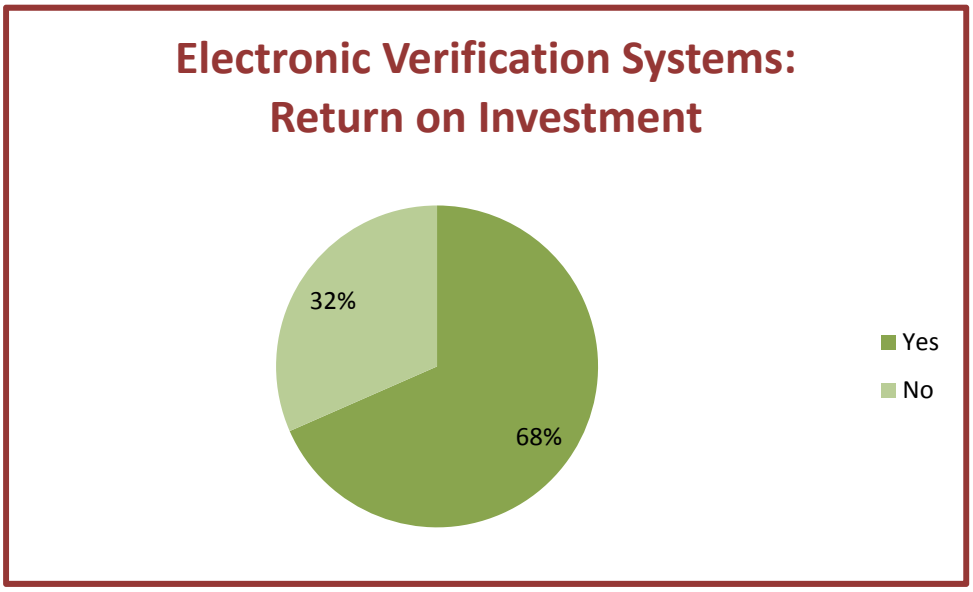

For a congregate dining location that takes reservations and is open to a limited number of consumers, using an electronic verification system that will take the next meal's order would reduce the waste that would come from elders who didn't want what was served or wanted to substitute individual items, thereby not eating other items.

6. **Extra Savings from Voluntary Contribution Accounting Capacity:** Some brands of electronic verification can also facilitate collecting voluntary contributions. Watch the Senior Dine Card at work in this video. Here's the URL: https://www.youtube.com/watch?v=VII_ac5HNnM.

   As indicated by the graph below, ODA's provider survey revealed that the majority of providers who use electronic verification do not taking advantage of its voluntary-contribution accounting capacity or use a brand that does not offer that capacity.

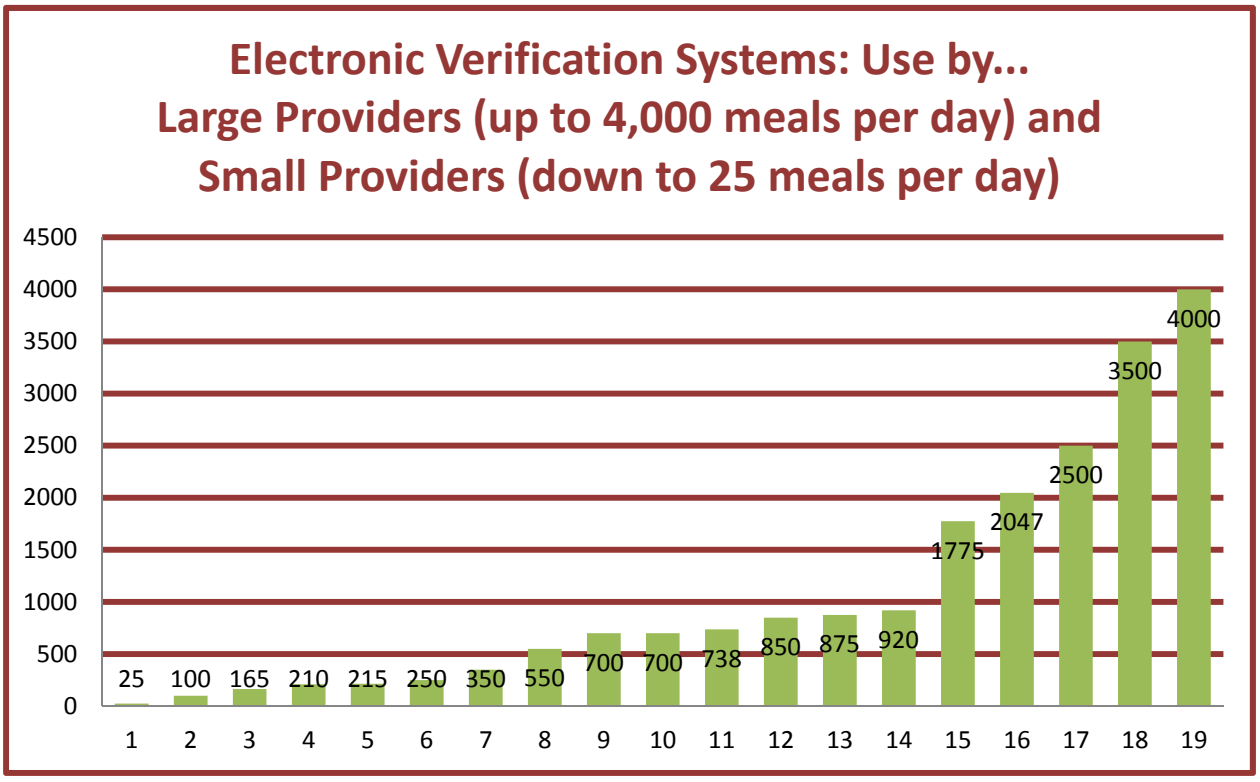



7. **Return on Investment:** 68% of surveyed providers who indicated that they use electronic verification, also indicated that they had already received a return on their investment into the system.




8. **Faster Deliveries:** Providers who do not use electronic verification must collect handwritten signatures, which can slow down a delivery route. §339(2)(C) encourages providers to "limit the amount of time meals must spend in transit before they are consumed." Electronic verifications speed up a delivery route because the system can verify a delivery in an instant, while asking the consumer to offer a handwritten signature would take much longer. Additionally, some electronic-verification systems also feature route optimization. Together, electronic verification and route optimization speed up, not slow down, meal deliveries.

9. **For Large and Small Providers:** ODA's survey revealed that both large and small providers found electronic verification beneficial.




10. **Some AAAs Loan Equipment to Providers:** The administrative dollars that ODA awards to AAAs can be used to purchase electronic verification systems to loan to providers.[2] At least 3 Ohio AAAs reported to ODA that they have purchased electronic verification equipment for providers on a limited basis. AAAs in Indiana and Minnesota have done the same.[3]

## Costs

In June, 2014, 4 manufacturers responded to a survey of ODA's on the price of their electronic verification systems.

- **MealService Software:** MealService software provides "client-management technology." only for congregate and home-delivered meals.[4] Fees ranged from $500 for a small organization to $5,000 for a large organization.[5]

- **Social Services AID:** ODA's June, 2014 provider survey revealed that every provider who indicated that they used Social Services AID's SSAID system experienced reduced

[2] Alice Kelsey, financial operations specialist. Admin. on Community Living. Email to Tom Simmons. May 8, 2014.
[3] *Ibid.*
[4] Philip Frank, software architect. MealService Software. Email to Tom Simmons. April 15, 2015.
[5] Philip Frank. Email to Tom Simmons. May 7, 2014.

administrative expenses. An additional provider in the survey was in the process of switching from SAMS Scan to SSAID.

SSAID does not charge an up-front purchase fee, an annual fee, a maintenance fee, an upgrade fee, or a fee for new service modules.[6] Of its product, Social Services Aid said the cost is based on the number of consumers. The scale:

- 1 to 1000 client is only $100 per month
- 1000 to 3000 clients cost is $160 per month
- 3000 to 6000 clients cost $210 per month
- 6000 and over is $260 per month

Features include menu options, daily or weekly meal schedules, kitchen menus, route sheets, and forecasts for ordering food from suppliers to match the menu options that consumers choose.

- **Harmony Information Systems:** Harmony Information Systems, Inc. manufactures SAMS Scan. ODA's provider survey revealed that 83% providers that used SAMScan also used a second brand of electronic verification. As mentioned earlier, 1 provider was in the process of switching from SAM Scan to SSAID. The provider that reported using only SAMS Scan reported that it had not experienced a reduction in administrative burdens. 60% of providers that reported using SAMS Scan and another brand said that they had experienced a reduction in administrative burden. All 3 Ohio AAAs who have purchased electronic verification systems to loan to providers have purchased SAMS Scan.

  According to Harmony, SAMS Scan costs were are as follows:

| | |
|---|---|
| Single-site License | $395.00 |
| Wedge Scanner | $145.00 per unit |
| Mobile Scanner | $175.00 per unit |
| One Time Implementation Services | $1,700.00 |
| Recurring Fee | $395.00 |

  A provider in ODA's survey indicated that they were shopping for electronic verification systems. Later, the provider followed up with ODA to share a result of their shopping. The provider was asking Harmony about its MJM Innovations product. The provider said that MJM's preliminary priced would total $24,800 for the first year, then $9,600 each year thereafter.[7]

- **CattMatt Software Solutions:** CattMatt Software Solutions produces an electronic verification system, called SeniorDine, through which restaurants can verify consumers' eligibility through credit cards and common POS terminals (*i.e.*, credit card machines). According to the SeniorDine website,[8] there are two pricing structures for providers:

[6] https://www.ssaid.com/public/index.html (Accessed Jul 16, 2014.)
[7] Email to Tom Simmons. May 5, 2015.
[8] www.seniordine.com (Accessed Jan 16, 2015)

- **Renting the System:** The per-month, per-restaurant fee is $19.99, which includes a POS terminal, the first 100 credit cards, and ongoing technical support. Credit cards cost $0.52 after the first 100.

- **Buying the System:** The per-month, per-restaurant fee is $12.50, the cost of the POS terminal is $139.00, and the credit cards cost $0.52 each. Ongoing technical support is free.

New Opportunities, Inc. in Connecticut is an example of a provider that uses SeniorDine to verify its meals. It even named its restaurant-based nutrition project "Senior Dine."[9]

- **Accessible Solutions:** ODA's June, 2014 provider survey revealed that every provider who indicated that they used Accessible Solutions' SERVtracker system experienced reduced administrative expenses.

  ASI's SERVtracker "software was originally developed by a former Sycamore Senior Center meals on wheels driver many years ago who recognized a need for our center to easily track [the senior center's] services."[10]

  As previously mentioned, ASI claims that a provider in California that served only 450 meals per day experienced a net annual savings of $10,824.[11]

  ASI prepared a cost report for ODA that occupies the remainder of this document.

[9] "Senior Dine." New Opportunities, Inc. www.newoppinc.org/senior-dine
[10] Joshua Howard. "Touchscreens Have Arrived." *Sycamore Connections*. (Cincinnati, OH: Sycamore Senior Center. May/June 2014.) *Pg.*, 3.
[11] "Request for Information from The Ohio Department of Aging." (Accessible Solutions. May 29, 2014.) *Pg.*, 35.




***Response to Request for Information***

***From***

***Ohio Department on Aging***

***May 29, 2014***

***Accessible Solutions, Inc.***

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*Software for people serving people*

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## INFORMATION ABOUT ACCESSIBLE SOLUTIONS

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Company History

**Accessible Solutions, Inc. (ASI)** specializes in the development of robust software applications that enable users to gain efficiencies in their organization through process streamlining and automation. Our primary clients are those in the aging and community based service industry. **SERV*tracker*®**, our core supported software application, is a COTS product used by aging service providers since 1993 with a proven track record in the industry.

ASI provides turnkey solutions which include consulting services, system analysis, custom development, data integration, system training, and product integration, web based hosting, ongoing technical support, account management, and product enhancements.

The types or organizations that ASI works with vary between Meals on Wheels, Homecare, Senior Centers and Adult Daycare providers throughout the United States and Canada. Our focus is to service this industry with our acute knowledge of the aging environment and how that data is managed in serving aging clients.

*Mission*

Our MISSION at ASI is to support senior and community based service agencies in achieving the highest level of quality services to their clients, by offering the most robust, cost effective software on the market.

*Vision*

The VISION at ASI is to lead the industry in the development and distribution of software to all agencies of senior and community based services.

*Core Values*

1) Product Excellence – ASI's primary value is to provide the most robust and user-friendly software product on the market.

2) Customer Intimacy – Providing world-class customer support with personable, well-trained, and professional staff.

3) Operational Excellence – ASI must operate in a cost effective and efficient manner to maintain price competitive products for the senior and community based service industries.

## REQUEST FOR INFORMATION

The Ohio Department of Aging (ODA) is requesting information from multiple software vendors who provide COTS or custom developed solutions which assist in the management of services provided to the aging community. ODA is primarily focusing on the use of technology for Congregate and Home-Delivered Meal Programs and is aware that many providers in Ohio are using SERV*tracker*® and other technologies for nutrition management of both home delivered meals and congregate dining.

Once information is collected from all software providers, ODA will prepare a Cost Benefit Analysis of the various product offerings. ASI understands that ODA is not, at this time, proposing to require nutrition providers to use SERV*tracker*® or any other single brand of technology. Specific information that has been requested is as follows:

- What is the cost for a provider (*e.g.*, a senior center, Meals on Wheels) to purchase SERV*tracker*®?
- What is the projected savings for a provider who purchases SERV*tracker*®?
- Does SERV*tracker*® interface with SAMS (by Harmony)?
- Can SERV*tracker*® be used to allow seniors to select menu items for their next meal?

ASI is pleased to have this opportunity to provide information regarding our flagship product, SERV*tracker*® and has taken the liberty of expanding on the capabilities of the product throughout this document.

**The SERV*tracker*® System**

While robust in the area of congregate dining and home delivered meals programs, it is important to relay that SERV*tracker*® provides agencies with the functionality required to monitor, track and report on aging services provided across the enterprise. The following functionality is standard with the SERV*tracker*® base product:

| | |
|---|---|
| Client Intake | Supportive Services |
| Home Care | Volunteer Tracking |
| Home Delivered Meals | Companion Services |
| Transportation | Congregate Meals |
| Case Management | Escort Services |
| Caregiver Services | Memberships |
| Adult Daycare | Nutritional Education |
| Other Services | Outreach Services |
| Recreation Services | Wait List |
| Chore Services | |
| Information and Referral | |

SERV*tracker*® is helping service providers throughout the United States and Canada, focusing on servicing this industry with acute knowledge of the environment and the management of client data and services. ASI has implemented SERV*tracker*® at more than 200 organizations throughout the country. These organizations have varied in size, from 5-10 person operations to 150 person operations. Our approach is always the same:

1) Understand the client's needs

   Spend the necessary time to make sure we understand all tasks required to implement a client successfully. This may include custom development work to fill a gap in SERV*tracker*®. It most certainly includes review of all agency program areas within the organization and how these programs interact.

2) Set the expectations appropriately up front

   Based upon the client needs, ASI will create a realistic timeframe for implementation. This may require proposing a timeline extended beyond the clients initial wishes, however ASI uses past experience and judgment to give our justification for the best chance to meet an overall implementation timeframe.

3) Allocate appropriate resources and define costs accordingly

As we understand the client's needs for a particular project, ASI will determine the financial expenses required. Once Project Scope is defined and commitment is made, ASI will not encumber any agency with increased project costs. If there is a change in scope and/or requirements, it is understood on behalf of the client that there may be a cost for changes which extend scope. Per our timeline and project cost developed, we will allocate resources needed to complete the project on time and within budget.

## FUNCTIONAL OVERVIEW

SERV*tracker*® is designed with a centralized client master record in mind, similar to that of a hub-and-spoke configuration. The concept is that there is one intake record where all non-program specific data for that account is entered and maintained universally (the hub). This would include, but is not limited to: address information, phone contacts, gender, race, ethnicity, marital status, financial information, medical information, emergency contacts and other things of this nature.

Attached to the client master record is unique, service specific records (each one a spoke) which will be managed by agency staff through program service intake tools. The tracking of service specific data elements may differ depending on which service is being managed. Through this configuration, agencies will be able to track, report, and bill all service delivery, including the daily management of client assessments, home delivered meals including managing orders, food preparation and kitchen production, congregate meals sites, congregate meals for adult daycare services, transportation of bulk and home delivered meals, dining center automation in the collection of service units, and volunteer scheduling and tracking of services provided such as drivers, packers, riders, and many more.

There may be requirements from Ohio agencies that may mandate custom modifications to SERV*tracker*®. ASI is comfortable with modifying the SERV*tracker*® application as needed, and where possible, to accommodate the needs of those agencies. System modifications are analyzed and priced separately. In some cases there may be no charge for modifications that benefit the overall functionality of the software.

## CLIENT INTAKE AND ASSESSMENT

SERV*tracker*® provides comprehensive data storage in a central file ready to be used for any number of needs by an employee or department within your organization. You may view the client data from every way that your organization interacts with that client. When entering a new client into the system, SERV*tracker*® will perform a series of checks to eliminate the entry of duplicate clients. A name check is performed and if a match is found, further comparison is done on date of birth and social security number. The user is alerted to possible duplicate clients and is offered the option to continue or cancel the new client entry.

The client intake form is tabulated to capture information such as Contact Information, Demographics, Household, Emergency and Miscellaneous. Pre-populated drop down menus allow for quick and accurate updating of client information. Hundreds of data fields collect every aspect of your client's information. All important assessment data can be maintained for state mandated assessments as well as important NAPIS forms such as ADL, IADL and NRA. SERV*tracker*® has the capability of tracking when assessments have been completed as well as last assessment and next assessment dates.

In summary, SERV*tracker*®'s client intake functionality has been modified and refined over the years to exceed the requirements of agencies in the aging industry that provide services across the enterprise. The SERV*tracker*® database is accessible to an unlimited number of users in a real time environment. All data, demographic and service-related, is immediately updated when requested by the user.

## SERVICE TRACKING

Service tracking and reporting is robust and flexible. In addition to reports, you may view a snapshot of each client's unit history for a specific time period from the Service Info, Unit History area of the client intake master record. The history of service changes can be seen in the individual client's service plan.

SERV*tracker*® provides the capability for all services to be suspended for an individual date, a date range or an indefinite period of time referred to as a Long Hold. When creating the suspension, the user can select from a list of reasons that are customized by individual agencies in the SERV*tracker*® Setup module.

With SERV*tracker*® agencies have the ability to track termination dates for every service provided. When service discharge is completed, a discharge reason is captured as well. There are reports that can be generated showing the number of discharges over a designated period in time and broken down by reason.

Activities by client can be viewed in many ways with SERV*tracker*®. First, the Client Master Record within SERV*tracker*® is designed so that users may see a quick summary of a client's activities. For example, the service offering buttons are color coded on the client's record. If the button is blue, the client has never had these services from your organization. If the buttons are green, the client is currently receiving this service and if the button is red, the client has received this service is the past and it was terminated for some reason. For more activity details you may view a summary of the units served for each service received by the utilizing the Service Info, Unit History area of the Client Master Record.

Finally, SERV*tracker*® reporting provides many reports outlining details of client activity which may be viewed in a variety of ways. Reports are generated quickly with just a few clicks of the mouse. Using the selection criteria provided, you may produce statistical reports such as the ones displayed below.

## HOME DELIVERED MEALS & KITCHEN

SERV*tracker*® offers a comprehensive Home Delivered Meals software component for Nutrition providers. The system flows naturally from new client intake all the way through the delivery of a meal to the client home. All of the processes in between, such as capturing all of the specifics regarding the client meal, creating daily meal schedules, providing the kitchen summary for food preparation and packaging, printing route sheets and managing the delivery staff, whether volunteers or employees, are all tasks that SERV*tracker*® handles well. The functionality for meal delivery has been refined over many years of providing SERV*tracker*® to the industry.

**Home Delivered Meals Intake**

The home delivered meals intake would afford your meals on wheels client intake staff the ability to manage all of the clients' service specific information, such as maintaining meal schedules, quantities, diets and beverages as well as delivery days and alternate delivery days for each meal schedule.

SERV*tracker*® supports an unlimited number of client meal schedules, offering different meal types, diet types, funding and delivery schedules. A list of these meal schedules are maintained in the client meal record. You may add, change or end meal schedules at any time.

SERV*tracker*® provides two different options for menu choice programs. Option 1 supports a menu choice for clients on a daily basis. Clients may select from a list of predefined meal options (outside of Hot Lunch for example). So you can have a Hot lunch B, Hot lunch C, etc…and use a calendar to help you pick which dates of a month the clients choose to receive alternate meal choices. Client choices can be captured on the individual meal plan once the client designates choices for the month.

Menu choice Option 2 is more sophisticated. This functionality supports an unlimited number of menu selections of entree's and sides, based upon the clients service authorization. Client choices can be captured in the database based upon their custom selections. Reports can be generated for inventory preparation and meal delivery purposes.

To simplify the driver's task you may add Driver Instructions and Special Meal Instructions to the client record, giving the driver additional information regarding the client. For example, some clients request that meals driver use a certain door or perhaps leave the meal in a certain place. You may also note any special landmarks that may be helpful for the driver during delivery. This information can be easily added via freeform text and will be automatically transferred to the route sheet.

**Meal Deliveries**

SERV*tracker*® provides the Kitchen and Delivery windows as a type of scratch pad/work area for creating your meal delivery schedule. You may add, delete or edit meals in either of these two windows. These edits are only applicable to the meals created in the window and will in no way affect the Master Client Record. In addition, SERV*tracker*® provides the capability to

modify meals that are in the kitchen or delivery window based on filters that are chosen by the user.

Various reports can be generated from the roster of meal deliveries created for a specific date or range of dates. They include route sheets, kitchen summaries, production reports, meal labels, mileage reports, driver directions and several others.

Samples of our standard route sheet and kitchen report can be provided upon request. If you require a custom route sheet, kitchen summary or any other production reports we can easily develop that for you. Meal labels are created directly from the kitchen or delivery window when working on the meal deliveries.

### Routing

The route optimization integration that SERV*tracker*® offers gives your agency the ability to save time and effort from manually looking up directions and reorganizing routes based upon manual intervention. With a few simple clicks, you can re-optimize your routes for the most efficient delivery sequence and get detailed street by street directions.

Finally, ASI has integrated an optimization feature that gives agencies the ability to create a territory for each route in our setup module. To create the territory you will enter various longitude and latitude points of the route. The more points that you enter the more accurate and defined your route territory will be. Once you have created your territories and have enabled this feature in our product, your new clients you will be automatically routed for you. There will be no need to look at a map to complete this task. In all of the above cases, stop buy stop directions will be printed on the route sheet along with directions to a final destination.

After all edits have been made and meal deliveries have been confirmed you will "Post" your service units so you can then generate billing documents and general reports on services provided.

All posted data is retained in the system for an indefinite amount of time. SERV*tracker*® provides a utility that will allow you to offload some of your historical services data. This allows you to maintain this data offline with an option to pull the data back into the system at any time.

## CONGREGATE MEAL

The congregate meal module gives you the ability to define meal types, beverages and meal sites for your organization. When creating a service plan, you can enter service start date, end date, end reason, funding, meal type, diet type, beverages and meal categories. These are all elements that can be captured and reported on in the client Congregate Meal record. This module will support client meals at the special Dining Centers as well as Senior Clubs.

The entry of served or reservation units for congregate meals has never been easier once you define which clients are actively receiving congregate meals. You may enter congregate units by a variety of methods: Single Entry mode, selecting one client at a time from a dropdown list,

the Rapid Entry mode, using a bar coded sign in sheet to scan clients who have signed and dined or in a Multiple Entry Mode, selecting multiple clients at one time from a provided list of eligible diners. Regardless of which way the user chooses, these options significantly reduce the data entry required to capture either reservation or served units for Congregate Dining.

The Rapid Entry mode is also used when an agency has issued barcoded identification cards for the client to scan at the congregate meal site. Using the Rapid Entry mode with the scanner completely eliminates all data entry by the SERV*tracker*® user for unit capture.

Client barcoded identification cards and/or congregate dining sign in sheets may be used to capture dining units. You may station a bar code scanner at the entrance to the dining site for clients to scan their identification card, or you may station the scanner at the main facility where a SERV*tracker*® administrator may scan the barcoded sign in sheets. A sample of the barcoded identification badges and the barcoded sign-in sheet are included below.




Reporting congregate information by date, site, funding and client can be easily achieved through one of SERV*tracker*®*'s* standard congregate reports.

## VOLUNTEER TRACKING

SERV*tracker*® provides a fully integrated Client Management AND Volunteer Management system in one. All of the data that can be tracked on a client record may also be tracked on a volunteer. However, in addition to the basic demographic data, you can also track data specific to your volunteers AND schedule your volunteers as drivers, packers, kitchen helpers, etc. for certain days of the week and certain frequencies of that day. You may use the volunteer module for other programs as well such as Dining Centers, Adult Day Centers, Food Bank, Office Assistance, etc., where volunteers provide services for your agency.

Volunteer activities and skill sets may also be captured. The Activities and Skills lists for volunteers are customizable for each agency.

Within volunteer management you may schedule volunteers associated with meal preparation and delivery. For delivery, driver statistics such as driver type (unlimited list of options), Day, Week, Site and Route that the person is volunteering may also be captured. In addition, an unlimited amount of jobs may be defined for each volunteer. From this information you can produce driver schedules in a daily and weekly format. You can also produce a report to show what routes are missing drivers for a specific date. There are several other reports such as Substitutes, Master Driver Lists and others to tell you how many hours the volunteer has worked and how many miles they have driven. Multiple levels of verifications on the volunteer record may be captured as well.

Volunteer hours and miles driven are easily captured with an automated import feature based on default hours and miles defined for each route. These default elements will be auto populated when importing the data each day into our service unit entry window for volunteers. Many agencies prefer to use defaults rather than manually inputting every volunteer record due to the amount of time and effort required. In most cases the hours and miles are used for recognition purposes, so an exact number is not necessarily required. You can however update or enter the exact data if required.

Service records may be added to the volunteer service unit window using the single entry mode. The bar code scanning feature for volunteer tracking is managed through the SERV*tracker*® Touch system. Once final edits are completed you may Post your service units. Posting service units moves them to a secure area, giving you the ability to generate reports from our reports module.

Meal driver schedules are created on the individual volunteer intake forms are comprehensive and very flexible. For example, a volunteer may serve as a primary meals driver for Route 1 on Thursday of the third week and the primary meals driver for Route 2 on Monday of every week. The same volunteer may also serve as a substitute every Wednesday for the Route 3 and floater driver on Tuesday for any Route 4. In addition, volunteers may also be designated as Riders. A weekly Driver Route List is available by date selected, route group, route and driver type.

## ACCOUNTING

The SERV*tracker*® accounting module gives you the flexibility to invoice for the services you have provided. This includes Private Pay invoicing, CoPay invoicing and EDI for Medicaid, Managed Care and Passport billing. The invoicing component of the Accounting module gives you the ability to customize your invoice account types. There are no limitations to setting up new accounts.

When you create the invoices, you will select the Account, enter a date range and create the invoice batch. This creates a batch of the invoices that meet the criteria of the Account and Batch and gives you the flexibility to print a number of different reports for that batch, including the client invoices. Below is a sample of the standard (non-detailed) private pay invoice format.

Accessible Solutions, Inc. May 26, 2014

**Senior Services**
**3585 N. Courtenay Pkwy**
**Merritt Island, FL 32953**
**800-555-1212**

## Invoice

| | |
|---|---|
| INVOICE DATE: | 7/31/2013 |
| DUE DATE: | 7/31/2013 |
| Invoice #: | 21 |
| CLIENT #: | 1 |

| BILL TO | CLIENT |
|---|---|
| Greg Prosser<br>852 Hall Rd.<br>Merritt Island, FL 32953 | Jim D Brown<br>1305 S Atlantic Ave<br>Cocoa Beach, FL 32931 |

| | |
|---|---|
| Previous Balance: | $0.00 |
| Payments Applied: | $0.00 |
| **Past Due:** | **$0.00** |
| Current Charges: | $17.57 |
| Delivery Fee: | $0.00 |
| Adjustments: | $0.00 |
| **NEW BALANCE:** | **$17.57** |

| PERIOD | SERVICE | UNITS | COST | AMOUNT |
|---|---|---|---|---|
| 7/1/2013 - 7/31/2013 | Home Delivered Meals - F | 2 | $5.50 | $11.00 |
| | Home Delivered Meals - H | 1 | $6.57 | $6.57 |

**Please return this portion with your payment.**
Jim D Brown
1305 S Atlantic Ave
Cocoa Beach, FL 32931

**Mail Payment To:**
Senior Services

Client No: 1
**Private Pay -** Invoice No: 21
Invoice Date: 7/31/2013
**Due Date: 7/31/2013**
**New Balance: $17.57**
Donation amt: $_____

Regardless of the invoicing options that are required for your agency, SERV*tracker*® should have the flexibility to accommodate those needs.

If your desire is to submit EDI Claims for all of your Medicaid service deliveries then you're covered. With our EDI claims module, you are able to create custom billing accounts that can meet the criteria supplied by the Department of Jobs and Family Services, Department on Aging Passport funding and any Managed Care Organization. It will also allow you to bill through any Managed Care Provider that will be referring clients to you in the near future.

## REPORTING

SERV*tracker*® comes standard with 400+ reports, providing options that report on clients served by program, service and funding in addition to various levels of demographic information and general client related reports. All SERV*tracker*® reports can be converted to a PDF format or exported to MS Excel. You can also use the XPS document imaging that is included in the print utility.

In addition, SERV*tracker*® has a built-in custom query builder. When clients have a need to extract data outside of the standard 400+ reports, ASI will either create a custom report to add to their report listing, or the client will build a custom query. This is typically dependent on how complex the query is, how often it may need to be run and whether or not the client needs to generate a final output that is specific to a report required for local or government reporting.

The query builder gives the client the opportunity to extract data from multiple sources in the database and return this data into a spreadsheet that can be modified or manipulated (sorting, filtering, and grouping). Hundreds of fields are available within the query builder. The query builder is structured with two levels. First, the client must identify the fields containing the required data (level one) and second, the client must define the argument or selection criteria for retuning the data (level two).

For example, you may want to know how many clients you provided services to last month that are 50 years or older, are male and that live in postal code 12345. That would be the criteria you build. However, the data you want to return for those folks may be their First Name, Last Name, Address, Phone Number and Age. This is a simplified example of how some agencies may use the query builder. However, numerous, complex queries can be created from this tool.

If there is a need for a report that is more complicated or too rigid in format, ASI can create a custom report for your agency. This customization is priced based on the hours of effort to complete the development, testing and implementation. ASI will require that the agency provide a current copy of the report which we will use to analyze the level of effort. From there, our development organization will provide a quotation and approval document for customizing the report and adding into the agency's SERV*tracker*® system. Once ASI receives approval to proceed, development will be scheduled and an estimated completion date will be communicated to the client.

## SOFTWARE ARCHITECTURE, SUPPORT AND SECURITY

### SOFTWARE ARCHITECTURE

SERV*tracker*® is a web-based software system capable of supporting an unlimited number of concurrent users. Our client base consists of configurations as small as three (3) users and as large as one hundred and fifty (150) users. When you web host your SERV*tracker*® system, both the database and the application will reside on one of the servers at our facility and will be accessed through your internet connection. Your organization has no hardware responsibility for the needs of the application and database and all new software versions and software maintenance are installed on your behalf by our expert staff. You may access your SERV*tracker*® system from anywhere that you have an internet connection. All software and database backups are automatically performed by our staff on a daily basis. One copy of the system backups are maintained onsite and a second copy is cycled to a secure, offsite facility. Assisting your staff with questions and training is easy when the data is housed with us. Web Hosting allows you to focus on what you need to do for your seniors and allows us to keep you system up to date and operational.

Outlined below is general information about our hosted environment.

- Accessible Solutions, Inc. will provide hosting and maintain servers at various locations.
- 20Mbs Fractional T3 Internet Connection connected through Fiber Optic Backbone.
- Dedicated Server IP
- Battery Backup
- Daily Off-site Backup
- Unlimited Transfer Bandwidth
- Secured Location
- Dedicated Server High End Services & RAID 5 Fault Tolerance
- Web based access to SERV*tracker*® through a web browser login
- When we host your data, you will receive the following support services for no additional charge:
    - Automatic upgrades to new releases of SERV*tracker*® will be completed for you, including bug fixes and functional upgrades.

- Release notes will be sent to key staff when doing functional upgrades.
- Annual maintenance fee for updates and technical support is built into the monthly hosting fee.

- Customer Support
  - All phone support and software maintenance updates are covered under a SERV*tracker*® licensing contract. On occasion, a problem with the standard functionality of SERV*tracker*® may be uncovered. If a problem is uncovered, ASI is responsible for resolving the problem and re-issuing an updated version of the product, free of charge, to the client. This updated version will be automatically installed on your behalf by our expert staff for all hosted systems.
  - Other functionality issues and phone support will be covered under the maintenance conditions outlined below. You will be entitled to periodic upgrades, which include additional functionality, at no additional charge
  - ASI agrees to maintain the modules in good operating condition. Corrective maintenance will be provided on an unscheduled basis when a client notifies ASI that the system is not functioning normally.
  - Technical Support is provided Monday through Friday, 8 a.m. - 5 p.m. (EST), with an initial response within four (4) business hours.
  - Methods of reporting problems or requests to ASI are the following:
    - Email request to service@accessiblesolutions.com. Your problem will be logged into our CRM and you will receive a response outlining your issue with an assigned ticket number for future reference.
    - For critical problems, please contact us at our toll free phone number.
    - If additional supporting documentation is required, it can be emailed to the above email address.
- Data streaming back and forth between your workstation and our server is 128 bit encrypted through Microsoft's RDP technology.
- Each agency using SERV*tracker*® has a dedicated system on our server that cannot be accessed or seen by any other client. ASI maintains a security system, assigning unique usernames and passwords to your users, allowing them to gain access to the server where the system resides. A second level of security is administered by each agency which allows direct access into the actual SERV*tracker*® system. This two level security system ensures that no party, outside of those authorized by your agency, can view or change any data in your system parameters or client intake/services database.
- ASI maintains a log of ALL servers and any downtown that they may incur.
- All agencies will retain ownership of their data and shall maintain all right, title and interest. Any agency may request a copy of said data from ASI at any time. ASI will make agency data available in the format as it exists while in the care of ASI.

- Each Client's database is backed up daily and stored both on and off-site for the quick and accurate restoration of data in the event of an emergency. Clearly, if the emergency has not affected the environment at our onsite facility, the agency data can be retrieved very quickly.
- All server hard drives are fault tolerant. Server images are completed every four (4) hours. This image is stored on the disaster recovery server and can be virtualized through that server within 1-2 hours. A new replacement server can be installed within 24-48 hours depending upon the timing of the server failure.
- All servers have dual power supplies and fans to facilitate fault tolerance. ASI also maintains an inventory of power supplies and other replacement parts to minimize hardware down time. Each server is connected through an uninterruptible power supply and with system wide backup generators.
- For major power outages, or an emergency that compromises our main facility, data would be forwarded to ASI's Backup Site located in Cincinnati, OH. Your organization would be connected to a backup server until all issues are resolved.

## EXCERPT FROM SUPPORT AND MAINTENANCE AGREEMENT

**ELIGIBILITY FOR SERVICE**

Only modules licensed from or provided by Accessible Solutions, Inc. are eligible for inclusion under this contract.

Modules licensed by the Licensee after the start of any maintenance period and added to the system configuration already covered under this contract shall automatically be added to this contract. Billing for the new maintenance and support shall be prorated to the end of the current coverage period. If the total number of modules under contract requires an upgrade in maintenance, the current billing rate for the upgraded maintenance will apply.

**MAINTENANCE AND SUPPORT RESPONSIBILITIES**

Accessible Solutions, Inc. agrees, during the period specified in this contract, to maintain the modules in good operating condition. Corrective maintenance will be provided on an unscheduled basis when the Licensee notifies Accessible Solutions, Inc. that the module(s) are inoperable.

Accessible Solutions, Inc. shall not be responsible for delays in performing service due to Licensee's failure to have personnel present or available to assist in defining the issue or problem.

Accessible Solutions, Inc. agrees, during the period specified in this contract, to provide Technical Support, Monday through Friday, 8 a.m. - 5 p.m. (EST), with an initial response within four (4) business hours.

Preferable methods of reporting problems or requests to Accessible Solutions, Inc. are the following:

- E-mail request to service@accessiblesolutions.com. Your problem will be logged into our CRM and you will receive a response outlining your issue with an assigned Ticket # for future reference.
- For critical problems, please contact us at our toll free phone number, 800-866-2818.
- If additional supporting documentation is required it can either be e-mailed to the above e-mail address.

Accessible Solutions, Inc. agrees to obtain permission, at Licensee's discretion, to remotely access a client's PC for additional trouble shooting.

**EXCLUSION**

- Maintenance service provided hereunder is contingent upon the proper use of Accessible Solutions, Inc. software and does not cover products, which have been modified without the prior approval of Accessible Solutions, Inc.
- In addition, the following items are also not part of the Accessible Solutions maintenance program:

  If the below support is required, we may provide the following support based upon our ability to help with these issues and/or having available staff to help with these items. In certain circumstances we may have to outsource the support for these items, resulting in a fee that is greater than our standard rate charged for the support provided by our internal resources.

  - Internal Printer issues
  - Networking problems
  - Operating system support
  - SQL Server technical support
  - Terminal Services technical support
  - Product training that exceeds 15 minutes

**CHARGES**

- The Licensee agrees to pay Accessible Solutions, Inc. standard service rate for the maintenance service provided hereunder. This service rate is bundled in the monthly license fee as specified in pricing component of this document and is subject the conditions outlined in General Terms and Conditions 1. TERM in ASI's standard contract.

- Accessible Solutions, Inc. may change the prices or other terms and conditions applicable to the maintenance services provided hereunder after the expiration of a thirty (30) day written notice being sent to the Licensee upon the completion of each annual contract term. All charges are exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future.

- If the Licensee requests that maintenance service be performed outside the maintenance period covered by this contract, any service provided by Accessible Solutions, Inc. will be billed at the current Time and Materials rates and terms then in effect and shall be subject to service personnel availability.

## SERVICE LEVEL AGREEMENTS

**SLA Uptime**

1. The Service Level is 99.9%.
2. The Monthly Uptime Percentage is calculated for a given calendar month using the following formula:

| Monthly Uptime Percentage = | | |
|---|---|---|
| Total number of minutes in a given calendar month | Minus | Total number of minutes of Downtime in a given calendar month |
| Total number of minutes in a given calendar month | | |

Service credits

1. Should the Service Level fall below 99.9% for a second month in a calendar year, Accessible Solutions, Inc. will provide a service credit as noted in the chart below:

| Monthly Uptime Percentage | Service credit* |
|---|---|
| < 99.9% | 25% |
| < 99% | 50% |
| < 95% | 100% |

*Service credit will be issued against the applicable month's Monthly Fee paid by Client for the

Service.

2. A service credit is Client's sole and exclusive remedy for any violation of this SLA.
3. A service credit awarded in any calendar month shall not, under any circumstance, exceed Client's Monthly Fee.
4. Client's monthly fee further defined:
    a. The monthly fees impacted by SLA - Uptime are the customer service and web hosting portions of the overall fees.
    b. Client's monthly fee is calculated based upon the following categories and percentages
        i. Customer service – 19.5%
        ii. Software maintenance – 8.7%
        iii. Software development – 17.5%
        iv. Web hosting – 17.5%
        v. Software License Fee – 36.8%
    c. Total fees to be impacted by penalty would be 37%

Claims

1. Eligibility to submit a claim for any incident, the Client must first have notified, in writing, Accessible Solutions, Inc. of the incident within five business days following an incident.
2. Client will provide details regarding the claim, including but not limited to, detailed description of the incident, the duration of the incident, the number of affected users and the locations of such users and any attempts made by Client to resolve the incident.
3. Accessible Solutions, Inc. will make reasonable efforts to process claims within 30-days.

Exclusions

1. Downtime does not include:
    a. The period of time when the Service is not available as a result of Scheduled Downtime; or the following performance or availability issues that may affect Service:
        i. Non-Scheduled, but necessary maintenance that occurs during Client non-traditional working hours (Outside of 7am EST – 7pm EST Monday – Friday). With non-scheduled maintenance, provide system notifications when doing this after hour maintenance on our servers. This correspondence will be sent to key contact staff via e-mail.
            1. Examples of non-schedule maintenance would include, but is not limited to:
                a. Additional users setup for an existing Client
                b. Termination of users for an existing Client
                c. New Clients setup on server
        ii. Factors outside Accessible Solutions, Inc.'s reasonable control;
        iii. That resulted from Client's or third party hardware, software or services;
        iv. That resulted from actions or inactions of Client or third parties;
        v. That resulted from actions or inactions by Client or Client's employees, agents, contractors, or vendors, or anyone gaining access to Accessible

Solutions, Inc.'s assets by means of Client's passwords or equipment.

**SLA Mean Time to Repair**

1. Client will be eligible to receive a service credit for failure by Accessible Solutions, Inc. to satisfy the "Mean Time to Repair (MTTRE)" Service Level.
2. Accessible Solutions, Inc. assigns all reported incidents to a level of severity. The levels of severity that pertain to Mean Time to Repair service credits are outlined below.
   a. Level 1 - A catastrophic outage. The customer cannot produce. The customer's system, application, or option is down and no procedural workaround exits.
   b. Level 2 - A high impact problem. The customer's operation is disrupted, but there is some capacity to produce.
   c. Level 3 - A problem which involves partial non-critical functionality loss. One which impairs some operations, but allows the customer to continue to function.

| Mean Time To Repair – Level 1 | Service credit* |
|---|---|
| >24 business hours | 25% |
| >48 business hours | 50% |
| >7 business days | 100% |

| Mean Time To Repair – Level 2 | Service credit* |
|---|---|
| >7 business days | 25% |
| >14 business days | 50% |
| >21 business days | 100% |

| Mean Time To Repair – Level 3 | Service credit* |
|---|---|
| >45 business days | 25% |
| >60 business days | 50% |
| >90 business days | 100% |

*Service credit will be issued against the applicable month's Monthly Fee paid by Client for the

Service.

A service credit is Client's sole and exclusive remedy for any violation of this SLA.

1. A service credit awarded in any calendar month shall not, under any circumstance, exceed Client's Monthly Fee.
2. Client's monthly fee further defined:
    a. The monthly fees impacted by SLA - MTTRE are the software licensing and software maintenance portions of the overall fees.
    b. Client's monthly fee is calculated based upon the following categories and percentages
        i. Customer service – 19.5%
        ii. Software maintenance – 8.7%
        iii. Software development – 17.5%
        iv. Web hosting – 17.5%
        v. Software License Fee – 36.8%
    c. Total fees to be impacted by penalty would be 45.5%

Claims

1. Eligibility to submit a claim for any incident, the Client must first have notified, in writing, Accessible Solutions, Inc. of the incident within five business days following an incident.
2. Client will provide details regarding the claim, including but not limited to, detailed description of the incident, the duration of the incident, the number of affected users and the locations of such users and any attempts made by Client to resolve the incident.
3. Accessible Solutions, Inc. will make reasonable efforts to process claims within 30-days.

Exclusions

1. Downtime does not include:
    a. The period of time when the Service is not available as a result of Scheduled Downtime; or the following performance or availability issues that may affect Service:
        i. Non-Scheduled, but necessary maintenance that occurs during Client non-traditional working hours (Outside of 7am EST – 7pm EST Monday – Friday). With non-scheduled maintenance, we will provide system notifications when doing this after hour maintenance on our servers. This correspondence will be sent to key contact staff via e-mail.
            1. Examples of non-schedule maintenance would include, but is not limited to:
                a. Additional users setup for an existing Client
                b. Termination of users for an existing Client
                c. New Clients setup on server
        ii. Factors outside Accessible Solutions, Inc.'s reasonable control; That resulted from Client's or third party hardware, software or services; That resulted from actions or inactions of Client or third parties; That resulted from actions or inactions by Client or Client's employees, agents, contractors, or vendors, or anyone gaining access to Accessible Solutions, Inc.'s assets by means of Clients passwords or equipment.

## SECURITY

**Software Security**
Access to the SERV*tracker*® system is password protected by two levels of security. The first level of security is monitored and maintained by ASI and allows our clients access to our server network. The second level of security allows our clients access to their SERV*tracker*® system. This second level of security is only available if security is enabled for the *SERVtracker*® system in the Setup module. With proper authorization, clients are able to define user groups, create or edit new users and passwords, and enable or disable access to different forms and reports for each user group.

Users may be assigned to third party providers within the security system. When this approach is taken, those users will only have access to the clients they are serving and will not be able to view clients served by any other provider in the system.

**Environmental/Physical Security**
ASI maintains a Security Plan outlining the process for the provisioning of a secure physical environment for an agency's sensitive data which is a separate document and is included with this response in the Additional Information section.

Outlined below is the SERV*tracker*® HIPAA Certification guidelines and how these guidelines comply with the new regulations defined in 45 CFR Parts 160 and 164.

**Data in Motion and At Rest Compliance**

- The data for web hosted clients will reside on our web server. Data streaming back and forth between your workstation and our server are 128 bit encrypted through Microsoft's RDP technology.

## DATA MIGRATION

Importing client data from an external (foreign) source is accomplished by Accessible Solutions on a "best effort" basis. In most cases, values in fields corresponding to ASI system fields will transfer directly. The client will be notified of the fields that WILL NOT be imported in the case where fields exist in client data that do not have corresponding fields for importing into the ASI system database. It is possible the implementation of the project may be delayed to ensure fields that are required and not currently available in the ASI system are added into the next major release of the application. In some cases, depending upon the field values, data will be transferred to fields in the ASI system not specifically designed for that purpose i.e. a comments field may be used to house data that otherwise has no matching field in SERV*tracker*®. In such cases, this information will be shared with the client during the review process.

As a general rule, the better the client understands the data being submitted and can guide ASI through the transfer process, the better the migration results will be. Below is an outline of the process followed for a standard data migration.

1. Accessible Solutions configures a secure FTP site for Client use to upload a copy of their existing data files. It is requested that the client compact/zip their data files prior to uploading to our site.
2. Accessible Solutions requests data from the client in an acceptable format
    - Excel document
    - Access Database
    - .CSV file
    - MS SQL
    - Fox Pro
    - .TXT file
    - Other formats upon special review and approval by ASI team
3. Initial Data Upload - Client uploads data to FTP site
4. ASI downloads file from FTP to customer folder on server and informs Conversion team that file is available
5. ASI reviews data and compiles questions for Client
6. Client response to unanswered questions
7. ASI completes initial conversion
8. Review meeting with ASI and Client to review conversion
    - Identify any issues with data or data placement.
    - Once preliminary transfer is agreed to, NO CHANGES in file structure are to be made by client without ASI approval i.e. field names, table names, etc. prior to final data submission.
9. Training and final conversion are scheduled.
10. Final Conversion is typically completed on the weekend after the onsite training has been completed and is in conjunction with "Go-Live" to ensure accurate and up-to date data.
11. Final Data Upload - Client uploads data to FTP site by 3:00pm EST (Friday before training begins).
    - At this time, any updates to the client's legacy system will need to be tracked and manually entered in SERV*tracker*®.

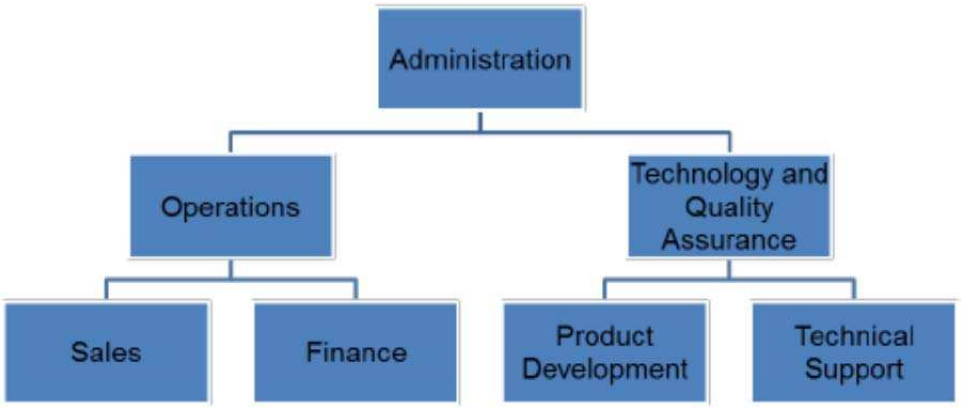
*Notes:*

- *Unit history from a legacy system is not a normal part of the data conversion process. If this is required by the client, ASI will have to determine whether or not historical data can be mapped properly to our data structure.*
- *Account billing history is not transferred during the data conversion process. Typically clients will begin billing in* SERV*tracker*® *on a specified target date and will enter open balances on existing client records through credit/debit adjustments.*

*It is expected that clients will have access to their legacy system for historical data needs, such as audits, etc., for data prior to their* SERV*tracker*® *transition.*

## QUALIFICATIONS AND EXPERIENCE

ASI is guided by a well experienced staff. With over One Hundred (100) collective years of experience in organizational management, project management and software development among our executive staff, ASI is highly qualified to work side by side with customers as both a partner and technology provider. ASI corporate headquarters are located in Merritt Island, Florida. ASI's functional organizational chart is below.




***Proposed Team Members***

***This following represents key staff that would be primarily responsible for this project. Additional staff may be assigned as needed and will report to the responsible parties below.***

Greg Prosser

President, Accessible Solutions, Inc.

**Length of employment** – 12+ years of employment with ASI

Role - Project Executive / Lead Systems Analyst

**Experience with tasks** – Has overseen implementation of 175 agencies using SERV*tracker*®

**Work history on similar projects** – Project Manager for implementation of Hillsborough County Office on Aging in Tampa, FL., a 150 user environment, County wide solution.

**Karolyn LaPage**

Project/Account Manager, Accessible Solutions, Inc.

**Length of employment** – 4.5 years of employment with ASI

**Role** – Project Manager for ASI – Account Manager for post implementation.

**Experience with tasks** – Has more than 5 years of experience managing large projects for ASI, Starwood Hotels and Charles Schwab and how has more than 4 years working with the senior service industry.

**Work history on similar projects** – Project Manager for implementation of new custom service system at multiple Starwood Hotels throughout the country and now functions as a key staff member in the implementation and training of multiple agencies using SERV*tracker*®. Project manager with implementation of several additional ASI accounts, most recently including Interfaith Ministries of Greater Houston, which is providing more than 4,500 meals delivered daily.

**Lynda Lynn**

National Sales Manager, Accessible Solutions, Inc.

**Length of employment** – 6 years of employment with ASI

**Role** – Sales Manager for ASI with ongoing relationship with agency pre and post implementation.

**Experience with tasks** – Has more than 15 years of experience as an Executive Sales Director/Manager with large information technology companies. In addition, served 10 years as an IT professional and has now worked for and with aging service providers for 8 years.

**Work history on similar projects** – Has ongoing presence with ALL ASI prospects and customers. Including sales support for 200 existing clients.

**Jason Boyd**

Lead Solutions Engineer, Accessible Solutions, Inc.

**Length of employment** – 4 years of employment with ASI

**Role** – Software architect & developer.

**Experience with tasks** – Has more than 4 years of experience as a software developer with VBA, VB.Net / C#.Net in the design, development and maintenance of applications.

**Work history on similar projects** – During time with ASI, Jason has created many customized enhancements and reports in SERV*tracker*® for the aging services industry. Has overseen, supported and maintained several elements of new development in SERV*tracker*® for the last year. Jason also spent a significant amount of time developing a new user's manual for SERV*tracker*®. Jason is also a key graphic designer for ***Catapult***, ASI's Donor Management System which seamlessly integrates with SERV*tracker*®.

**Sarah Prosser**

VP, Director of Customer Experience, Accessible Solutions, Inc.

**Length of employment** – 13 years of employment with ASI

**Role** – Lead – Testing / QA / Tech Support (Overseeing system testing process and ongoing technical support)

**Experience with tasks** – Has been supporting senior service organizations for 13 years. During this time Sarah has been responsible for software development, technical support, system implementations, and quality assurance. **Work history on similar projects** – Has supported hundreds of organizations and thousands of users with their day to day operational needs within SERV*tracker*®. Has developed, implemented and maintained a Customer Relations Manager (CRM) system within ASI that is used to document each customer contact that includes a system generated help ticket notification to the caller. This system is used to organize help calls, software bugs, development requests and sales requests.

## TIMELINE/IMPLEMENTATION PLAN

**Project Management**
Below is ASI's plan for the various phases in this project. A detailed project plan will be provided upon contract execution that will outline further details. Based upon the information that is available to us at this point, we estimate a 90 to 120 day timeline from contract execution through the implementation phase.

**Initiation and planning phase**

The first step for ASI is to establish the team during project initiation. The next step will be the transition into the planning phase, to finalize the project plan. A project manager will be

assigned to manage the process for ASI. This will include project initiation and planning, accomplished through working sessions between ASI and the agency.

**Detailed discovery and analysis of requirements & design phase**
ASI will initiate a discovery phase that will identify and document tasks within a requirements section of the project plan. A complete understanding of how we integrate the requirement into the COTS solution will be required. At this point, all of the requirements are basic functions of the solution and will be simply verified for functionality. Any future elements that may require custom development will be documented and assigned a development ticket within our internal CRM for further costing and agency approval. This analysis and design phase can be accomplished with remote webinar sessions and conference calls.

**Development & testing phase**
If required, customized functionality will be identified, assigned a level of effort along with price, and documented for agency approval. All customization is developed by staff members that have been working within our application and industry for many years. These staff members have a unique understanding of environments like many of the Ohio agencies and can use best practices and models from previous implementations to add custom requirements. The software development is always completed in a new, unreleased version of our application and managed through a Visual SourceSafe tool. Once the desired functionality has been added to a future release, a test version of the application is created.

A report is generated from our internal CRM that outlines all development items that must be tested. When each individual component is tested, we will open up the development ticket and review the test instructions as outlined by the software developer as well as the functional requirements that were documented prior to development. The QA staff member will verify the customers' needs and the developers enhancements were done properly and are error free.

Once all development tasks and tests have been completed, a new version of the application will be built and released to our customers.

**Implementation phase**
The implementation of the product will encompass two major tasks. The first task will include the integration of existing legacy data. ASI will import the agency data where it can be verified and then reviewed with the agency. ASI will utilize a test version of agency converted data during training so that training participants gain a greater level of comfort with the new system. Once training has been completed, ASI will convert agency data one final time prior to production implementation.

End user training will be the second element of the implementation. This will be accomplished through a combination of online webinar style training sessions and onsite training. The webinar sessions will be conducted prior to the implementation and after the onsite training as follow up while the environment is switched over into a production mode.

Prior to the first training session agency staff will receive a "Quick Reference Guide" that outlines primary day to day system steps and functions. The intention of the Quick Reference

Guide is to act as a short document containing 80% of the functions that staff members will perform daily. The Quick Reference Guide is in a word document so that staff members may modify the document to add organizational specific elements that are important for agency staff to be aware of.

**Post implementation support phase**

Once the implementation has been completed, your project will move into the post implementation support phase. This will move your primary points of contact to personnel that handle specific functions within the organization. You will have a contact for Sales, Technical Support, Account Manager and Executive.

Technical support is handled in three ways; telephone contact through our toll free number, e-mail contact through our support e-mail address and through our online customer support site. All contacts to our organization are documented and categorized in a ticket within our CRM system as a Help Request, Bug, Development Request or Sales. Details of the call are then documented with that ticket. Tickets are assigned to appropriate staff within the organization that will then address the need and respond back to the customer.

If you report a Bug in the software, we will resolve that reported problem within an incremental release of our product. Typically, incremental releases are scheduled monthly unless the issue is critical, in which case fixes can be put in place as quickly as necessary.

If you are requesting a new development item, this will be documented as thoroughly as possible by ASI and will be assigned to a staff member who will review this request with our lead software architect. An estimated quotation and authorization request will be submitted to the requesting agency for approval. The timeline for the new functionality will be determined based upon the significance of the change and whether or not that new feature can be placed into an incremental version of the product or into the next major release of the application. The request for new development would be an inclusion of the Change Management processes that we have in place. Not only to identify new functional requests that are beyond the initially stated requirements, but also to help identify changes that must be adopted within the organization as a result of implementing a new software application.

**Project Assumptions and Constraints**

It is assumed that all data, information and staff required for ASI to thoroughly understand current processes and future requirements will be made available during this project. Our expectation is that the primary source of communication between ASI and an agency will be coordinated through the project leads assigned on both teams. These project leads must be responsive and thorough with their follow through and documentation of the needs.

If there is a lack of information or details that are required by ASI to complete certain tasks within the project and we are unable to get that information in a reasonable time frame, there would be possible impacts to the projects timeline.

## WHAT IS THE COST FOR A PROVIDER?

### PRICING ELEMENTS

The SERV*tracker*® software is a web hosted application with a monthly, per user fee and an initial one-time fee applied to each user license. In addition, other mandatory fees associated with licensing a SERVtracker® system consist of the following:

- Project Management for Planning and Implementation Services
- Webinar based or Onsite Training OR a combination of both

In addition, there are many optional features and services that agencies may license such as:

- Data Conversion Services
- Smart Phone Application for Mobile Meals with SERV*tracker*® Dashboard
- Smart Phone Application for Mobile Homecare with SERV*tracker*® Dashboard
- SAMS (by Harmony) XML Interface
- EDI (Electronic Data Interchange) for Med Waiver Claims Billing
- Catapult Donor Management System – integrates seamlessly with SERV*tracker*®
- SERV*tracker*® Touch Software for Senior Center and Adult Daycare Center Automation
- Touch Screen Monitor, Bar Code Scanner and Key Tags for SERV*tracker*® Touch
- Custom Development

ASI provides tiered pricing models with discounts applied based on the number of user licenses requested. The minimum number of user licenses in a SERV*tracker*® system is three (3). Staff members may share a user license as long as they are not trying to access the system concurrently. SERV*tracker*® access is protected by two levels of security. Level one security is monitored and maintained by ASI and allows our clients access to our server network. Level two security allows our clients access to their SERV*tracker*® system and is maintained by the agency as staff members come and go. When sharing user licenses, level one security access will be defined with generic usernames to facilitate sharing.

In conjunction with the tiered pricing for user licenses, ASI offers two pricing models referred to as Option 1 Pricing and Option 2 Pricing. Option 1 Pricing represents ASI's standard pricing model. Option 2 Pricing represents a lower monthly, per user fee with a higher upfront investment of cash for the initial licensing fee. Option 2 is particularly beneficial for those who have received a grant and/or have cash that they need or want to invest.

For situation such as this where multiple agencies may license the SERV*tracker*® system in a given geographic location, ASI will provide bundled pricing based on economies of scale that may be realized. This may apply to a large number of licenses due to the licensing of multiple agencies; multiple data conversions of like database architecture and regional training initiatives servicing multiple agencies.

The pricing outlined below will reflect bundled pricing, where applicable, based on economies of scale as mentioned above. ASI's standard pricing model is included an attachment for informational purposes only.

## SOFTWARE LICENSING

License pricing includes not only the software, but also web hosting, system maintenance, technical support, and software upgrades. The license pricing is defined as follows: $47.25 per month/per user, one-time initial licensing fees of $300.00 per user. Monthly licensing fees may also include the SERV*tracker*® Touch software for those agencies who may want to automate the collection of activity and congregate dining units at Senior Activity/Dining Centers. The licensing fee per center is $52.50/month.

Optional SAMS and Medicaid Electronic Interface software, each with a licensing fee of $105.00 per month, provides for the uploading of service units into the State of Ohio SAMS system and the Med Waiver Claims Billing system, eliminating manual data entry. Additional software licenses in the table below may apply to agencies licensing the mobile meals application. The complimentary dashboard application fee is $50.00/month.

| *Mobile Meals Application* | *Monthly/User Fee* | *One Time Fee* |
|---|---|---|
| Smart Phone Application (1 - 19 Concurrent Routes) | **$7.50** | **$250.00** |
| Smart Phone Application (20 - 29 Concurrent Routes) | **$7.25** | **$250.00** |
| Smart Phone Application (30 - 39 Concurrent Routes) | **$7.00** | **$250.00** |
| Smart Phone Application (40 - 49 Concurrent Routes) | **$6.75** | **$250.00** |
| Smart Phone Application (50 - 59 Concurrent Routes) | **$6.50** | **$250.00** |
| Smart Phone Application (60 - 69 Concurrent Routes) | **$6.25** | **$250.00** |
| Smart Phone Application (70 - 79 Concurrent Routes) | **$6.00** | **$250.00** |
| Smart Phone Application (80 - 89 Concurrent Routes) | **$5.75** | **$250.00** |
| Smart Phone Application (90 - 99 Concurrent Routes) | **$5.50** | **$250.00** |
| Smart Phone Application (100+ Concurrent Routes) | **$5.25** | **$250.00** |

## PROFESSIONAL SERVICES

Additional, mandatory fees include those for product training and project management. In addition to these fees, an optional data conversion initiative may apply if agency databases are too large for manual conversion efforts.

**Training** - ASI provides both onsite and telephone training. Onsite training, with supplemental webinar training is our standard offering. The amount of training required is based upon the size and scope of the implementation and typically ranges between two (2) and five (5) days. Onsite training is conducted after sufficient online telephone training is completed. With multiple agencies, bundled pricing will be offered once the scope of the training initiative is determined.

Telephone training is available via Go-To-Meeting/Webinar forum. A minimum of ten (10) hours is required for new client training which can include multiple agencies. This will typically consist of three (3) online sessions prior to Go Live and two (2) online sessions post implementation. The SERV*tracker*® training will include one (1) Administrator and two (2) End User training sessions. This again may include multiple agencies and may vary after the training initiative is determined.

Once formal training is completed, telephone support is provided at no charge for additional questions and/or training for up to thirty (30) days. Onsite and telephone training may be requisitioned from ASI at any time. In addition to formal training, ASI offers free webinars throughout the year when system enhancements and changes are scheduled for implementation. Periodically, ASI will host webinars for potential new clients. Current ASI clients are welcome to attend these as they may serve as a refresher for functionality that you may not be using but would like to consider.

**Project Management** – Planning and Implementation – Project Management is billed at $110.00/hour and the duration will vary depending on the number of agencies who may license SERV*tracker*®.

**Data Conversion** – ASI offers an optional data conversion service which is priced based on the number of databases and the database architecture. Conversion prices typically vary depending upon the existing data and supporting application. The price for a typical conversion of one database is $4,000.00. However, if there is an opportunity for economies of scale due to the conversion of multiple 'like' databases then bundled pricing may apply, reducing the per database price.

ASI will convert existing databases such as Stillwater Senior Express, CAREeVantage, My Senior Center and others. EXCEL spreadsheets will be converted on a 'best effort' basis. Some spreadsheet data may not be practical to import by ASI and should be manually entered into SERV*tracker*® or imported into SERV*tracker*® utilizing ASI's import tool.

**SERV*tracker*®'s Touch** - has no proprietary hardware requirements. It has been our experience that hardware obtained by agencies to work with other automation software such as My Senior Center, is in fact purchased, and will operate seamlessly with ASI's SERV*tracker*® software. Please refer to the ASI Standard Pricing Table for Touch Screen Monitors, Bar Code Scanners and Key Tags pricing.

## WHAT IS THE PROJECTED SAVINGS FOR A PROVIDER WHO PURCHASES SERVTRACKER?

The table below was developed and used by our customer when reporting on the Return on Investment (ROI) realized after implementing SERV*tracker*®. This agency currently uses SERV*tracker*® for home delivered meals. There may be additional savings realized for agencies that use other elements of the SERV*tracker*® software that are available with the base product.

| Staff Activity | Legacy System Hours/Daily* | Legacy System Hours/Monthly* | SERVtracker Hours/Monthly* |
|---|---|---|---|
| Daily maintenance / Kitchen reports / Route Sheets - hours per day | 4 | 88 | 11 |
| Monthly billing reports - hours per month | 0 | 16 | 0.5 |
| | | **104** | **11.5** |
| | | | |
| | | | |
| Annual Hours Legacy System | 1248 | | |
| Annual Hours SERVtracker System | 138 | | |
| | | | |
| **Net Annual Hours Reduced by SERVtracker** | **1110** | | |
| | | | |
| Annual employee cost Legacy System** | $12,480 | | |
| Annual employee cost SERVtracker** | $1,656 | | |
| | | | |
| **Net Annual Employee Cost Saved** | **$10,824** | | |
| | | | |
| | | | |
| * HDM agency is in California and delivers 450 meals daily. | | | |
| **Hourly rate used for employees = $10.00 | | | |

## DOES *SERVTRACKER*® INTERFACE WITH SAMS BY HARMONY?

Yes, ASI provides an optional SAMS XML Interface module that batches client records in an export file. Basically, agencies will identify the services and the funding for the units that will be transferred to SAMS and input that information in the Setup portion of the system specifically for the SAMS transfer. When the agency is ready to export the client and service data to an XML file for SAMS, the system will use this information to create the file.

Once the client and service unit data is exported to the XML file, the agency will use the SAMS Import/Export tool to move the data to the SAMS system. This provides for an easy way to move client data between systems and eliminates duplicate data entry with SERVtracker and SAMS. Please refer to the attachment 'SERV*tracker*® to SAMS Data Flow' for a detailed map of the process.

## CAN *SERVTRACKER*® BE USED TO ALLOW SENIORS TO SELECT MENU ITEMS FOR THEIR NEXT MEAL?

Yes, ASI provides two different options for menu choice programs. Option 1 supports a menu choice for clients on a daily basis. Clients may select from a list of predefined meal options (outside of Hot Lunch for example). So you can have a Hot lunch B, Hot lunch C, etc…and use a calendar to help you pick which dates of a month the clients choose to receive alternate meal choices. Client choices can be captured on the individual meal plan once the client designates the choices for the month.

Menu choice Option 2 is more sophisticated. This functionality supports an unlimited number of menu selections of entree's and sides, based upon the clients service authorization. Client choices can be captured in the database based upon their custom selections. Reports can be generated for inventory preparation and meal delivery purposes.

## REFERENCES

**Wesley Community Services**

2091 Radcliff Drive

Cincinnati, OH 45204

Delivering 600 meals daily

Mike Hodges – Director, Nutrition and Transportation (513) 244-5483

mhodges@wesleycs.org

SERV*tracker*® user license – 15

Provides aging services to multiple counties and their services include home delivered meals, homecare management, transportation management and volunteer tracking.

Implementation date – April 2010

**Senior Resource Connection**

222 Salem Avenue

Dayton, OH 45406

Delivering 4,000 meals daily

Chuck Sousa –Director, Nutrition - (937) 228-3663 x144

chuck_sousa@ameritech.net

SERV*tracker*® user license – 20

Home delivered meal management, congregate meal management, case management and transportation management.

Implementation date - 1995

**LifeCare Alliance**

1699 West Mound Street

Columbus, OH 43223

Delivering 1,500 meals daily

John Petraitis – Director, Purchasing - (614) 437-2844

jpetraiti@lifecarealliance.org

SERV*tracker*® user license – 12

Home delivered meals, Homecare, Congregate meal management, and recreation activities management.

Implementation date – July 2009

**Testimonials**

**Hillsborough County Office on Aging – Tampa, FL**

Katrina Blaine, Principal Systems Analyst

'We have streamlined our data tracking process, which has reduced staff hours significantly. In addition, the reduction of wasted paper from faxing and mailing of documents has paid for the system itself.'

**KIPDA Area Agency on Aging – Louisville, KY**

Jennifer Wahle, IT Director

'Accessible Solutions is a pleasure to work with. They are always responsive to any problems or questions that we have. Their staff is professional, easy to work with, and very good at translating our needs into new features in SERV*tracker*®.

We are very happy with our decision to purchase SERV*tracker*® since it continues to grow and change as we do. This is due in no small part, to the excellent staff at Accessible Solutions and their exceptional skills.'

**Senior Resource Connection – Dayton, OH**

Chuck Sousa, Nutrition Director

'The SERV*tracker*® program developed by Accessible Solutions infused our organization with unlimited growth potential. Multiple funding streams and an unlimited variety of products are efficiently managed and controlled. It is user friendly and simple to learn. We don't know how we ever did without it! SERV*tracker*® expanded our capabilities tenfold. We would be lost without it! SERV*tracker*® is the best thing out there.'

**St. Clair County Council on Aging – Port Huron, MI**

Jyme Hager, Systems Administrator

'SERV*tracker*® is allowing our agency to maintain comprehensive client demographics and service records for All services. It is a user-friendly system that is continually enhanced. The customer support that we receive is outstanding and is only a phone call away. I would highly recommend SERV*tracker*® to anyone.'

**Bloomfield Township Senior Services – Bloomfield Township, MI**

Christine Tvaroha, Director

'We have been using SERV*tracker*® to manage our Home Delivered Meals, Transportation and Volunteer Tracking services since 2001. Since that time our data and reporting has been much more accurate and reliable.

As a result, we continue to expand our use of SERV*tracker*®, purchasing additional modules for our agency, due to the success we have experienced in our service delivery. We consider Accessible Solutions, Inc. an essential partner in the successful delivery of our services.'

## ADDITIONAL INFORMATION VIA ATTACHMENTS

ASI MARKETING BROCHURE

ASI NUTRITION BROCHURE

ASI MOBILE MEALS BROCHURE

ASI SERV*TRACKER*® TOUCH SYSTEM BROCHURE

ASI STANDARD PRICING TABLE

SERV*TRACKER*® TO SAMS DATA FLOW

ASI SECURITY PLAN

Ohio | Department of Aging

**John Kasich**, Governor
**Bonnie K. Burman**, Sc.D., Director

# APPENDIX K
# ADVERSE IMPACT REDUCTION: DIET ORDERS

**December, 2015**

## Primarily-Affected Rules

173-4-06 Older Americans Act: nutrition program: diet orders.[1]
173-39-02.14 ODA provider certification: home-delivered meals.

## Defining "Therapeutic Diet"

ODA's current rules do not define "therapeutic diet." In the proposed new rules, ODA proposes to define the term. In doing so, ODA would be aligning the new definition with the Ohio Dept. of Health's (ODH's) definition for "complex therapeutic diet" for nursing facilities (NFs) and residential care facilities (RCFs). Diets that don't fit into the definition would not be billable as therapeutic diets.

| CURRENT RULES | PROPOSED NEW RULES |
|---|---|
| **Nursing Homes + Residential Care Facilities**<br>3701-17-01 + 3701-17-50 | **Older Americans Act nutrition program + PASSPORT Program**<br>173-4-05, 173-4-05.1, + 173-39-02.14 |
| "Complex therapeutic diet" means a calculated nutritive regime including, but not limited to: | "Therapeutic diet" means a calculated nutritive regime including, the following regimens: |
| (1) Diabetic and other nutritive regimens requiring a daily specific kilocalorie level; | (1) Diabetic and other nutritive regimens requiring a daily specific calorie level. |
| (2) Renal nutritive regimens; | (2) Renal nutritive regimens. |
| (3) Dysphagia nutritive regimens excluding simple textural modifications; or | (3) Dysphagia nutritive regimens excluding simple textural modifications. |
| (4) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients. | (4) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients. |

[1] This rule number would replace OAC173-3-05.2 (therapeutic diets) and OAC 173-3-05.4 (medical food and food for special dietary use).

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Columbus, OH 43215-2406 U.S.A.
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Because the Ohio Department of Health's rules regulate nursing homes, including skilled nursing homes that would provide many therapeutic diets, there is wisdom in leaning towards their rule language when considering meal requirements.

Additionally, under the proposed new rules, diets that do not have diet orders would not be billable as therapeutic diets. Therefore, if a consumer[2] requests a carbohydrate choice meal but has no diet order, the meal would not be billable as a therapeutic diet. Yet, if the consumer has a diet order for a diabetic diet or another nutritive regimen that would require a daily specific calorie level, the same carbohydrate meal could be billable as a therapeutic diet. Likewise, if a consumer requests a modified meal (*e.g.*, puréed) but has no diet order, the meal would not be billable as a therapeutic diet. Yet, if the consumer has a diet order for a dysphagia meal, the same meal could be billable as a therapeutic diet.

ODA also proposes to no longer define, nor mention, modified diets in its rules. A request to modify a meal that did not come in the form of a diet order would be considered person direction.

## How Many Diets are Therapeutic?

A March, 2015 poll of AAAs revealed that very few providers use Older Americans Act funds to pay for therapeutic diets. AAA5, for example, reported that no providers in PSA5 used Older Americans Act funds to pay for therapeutic diets.

The PASSPORT Program sees a similar phenomenon. The therapeutic diets that it buys according to its provider-certification rules represent only 2/3 of 1% of the home-delivered meals delivered to individuals enrolled in the program.

## Most-Common Therapeutic Diets

Wesley Community Services in Cincinnati is a major provider of therapeutic diets and only 1 of 9 providers to provide therapeutic diets through the PASSPORT Program. Wesley Community Services offers 5 types of therapeutic diets: (1) diabetic/carb-controlled, (2) cardiac/low-sodium, (3) renal, (4) mechanical soft, and (5) puréed. Wesley Community Services also offers therapeutic diets that are a combination of these five. The therapeutic diets do not meet 1/3 of the DRIs.[3]

Wesley Community Services provided this breakdown of their therapeutic diets:[4]

(1) Diabetic/Carb Controlled = 49.1%

(2) Cardiac/Low Sodium = 24.6%

(3) Renal = 20.9% (Currently 85% of Wesley Community Services renal meals to consumers who are on dialysis. The consumers' need for therapeutic renal diets is not going to change.[5])

[2] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[3] Jayne Haverkos. Email to Tom Simmons. Jul 8, 2015.
[4] *Ibid.*

(4) Mechanical Soft = 2.0%.

(5) Puree = 2.3%

(Combinations)
- Diabetic/Mechanical Soft = 0.29%
- Diabetic/Puree = 0.29%
- Cardiac/Puree = 0.57%

Senior Resource Connection provided this breakdown of their therapeutic diets:[6]

(1) Renal = 65%

(2) Mechanical = 23%

(3) Ground Meat 6%

(4) 4 Puréed = 6%

Mobile Meals, Inc. in Akron offers only renal, cardiac, and puréed therapeutic diets.

## From Whom Will ODA Accept a Diet Order?

ODA's current rules do not define "diet order," but do require diet orders from certain healthcare professionals. However, different ODA rules allow honoring diet orders from different types of professionals.

ODA's current rule for ODA provider certification (173-39-02.14) contains the strictest of ODA's requirements. In 2010, the Executive Medicaid Management Agency (EMMA) convened a workgroup to align the requirements for several services. For home-delivered meals, the result was a requirement—in most cases—to only allow a physician to order therapeutic diets.

ODA's April 16, 2006 rule for certified providers of home-delivered meals only honored diet orders from physicians and dietitians, but no other licensed healthcare professionals. The January 1, 2011 rule that resulted from EMMA only honored diet orders from physicians.

The growing scopes of practice have not been equally represented in Ohio's rules for long-term care programs. The table below shows the variance between 10 different Ohio administrative rules.

[5] *Ibid.*
[6] Chuck Sousa. Email to Tom Simmons. Mar 13, 2015.

| CURRENT RULES | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | EMMA PROJECT | | | |
| ODH Nursing Homes 3701-17-18 | ODH Residential Care Facilities 3701-17-60 | ODA Older Americans Act ADS 173-3-06.1 | ODA Older Americans Act Therapeutic 173-4-05.2 | ODA Older Americans Act Medical 173-4-05.4 | PASSPORT Program ADS 173-39-02.1 | PASSPORT Program HDM 173-39-02.14 | ODODD HCBS Waivers HDM 5123:2-9-53 | ODM Ohio Home Care Waiver HDM 5160-46-04 | ODM Transitions Carve-Out Waiver HDM 5160-50-04 |
| Physician | Physician | Physician | Physician | Physician | Physician | Physician | Physician | Physician | Physician |
| Dietitian | Dietitian | | | | | | | | Dietitian |
| | | Physician assistant<br><br>Clinical nurse specialist<br><br>Certified nurse practitioner<br><br>Certified nurse midwife | | | Physician assistant<br><br>Clinical nurse specialist<br><br>Certified nurse practitioner<br><br>Certified nurse midwife | | | | |
| Other licensed health professional<br><br>acting within the applicable scope of practice | Other licensed health professional<br><br>acting within their scope of practice | | Other healthcare professional<br><br>with prescriptive authority | Other healthcare professional<br><br>with prescriptive authority | | | Other healthcare professional<br><br>with prescriptive authority | | |

Meanwhile, Ohio General Assembly passed a number of bills that modify the scopes of practice of physician assistants and advance practice registered nurses, the latest of which is Sub. S.B. 110 (131st G.A.).

Again, because the Ohio Department of Health's (ODH's) rules regulate nursing homes, including skilled nursing homes that would provide many therapeutic diets, there is wisdom in leaning towards the formula they use in their language, with the exceptions of using the word "applicable." Using "applicable" in rules can subject a rule to interpretation. It would be better to use a possessive such as "acting within *their* scope of practice" or "*whose* scope of practice includes...."

ODA proposes, therefore, to replace its current language with language that follows the following formula:

> a licensed healthcare professional whose scope of practice includes ordering therapeutic diets

In the July 16, 2015 Federal Register, CMS proposed rules changes that would honor the diet orders of registered nurses in long-term care facilities if state law also allowed this. This would

not directly affect ODA-administered programs, but it does reveal the trending in law towards allowing non-physician professionals to order therapeutic diets.

If ODA uses "or other licensed healthcare professional whose scope of practice includes ordering therapeutic diets," there would be no need to amend the language in future years to include other licensed healthcare professionals if the Ohio General Assembly or a state licensing board subsequently included ordering therapeutic diets into another profession's scope of practice.

There are benefits to accepting diet orders from licensed healthcare professionals who are not physicians. The practice would (1) increase the pool of professionals who could order therapeutic diets; and (2) prevent individuals from needing to make office visits to their physicians to obtain diet orders, which would increase costs to individuals and, if covered under Medicaid, to the Medicaid program.

## Honor Diet Orders for How Long?

### ODA's Current Rules

ODA's rule for certified providers (173-39-02.14) only honors a physician's diet order for 90 days, which means that a consumer who needs a therapeutic diet for more than 90 days requires subsequent diet orders every 90 days. The rules for the Older Americans Act nutrition program require a diet order from a licensed healthcare professional with prescriptive authority and can last indefinitely, unless the order is for medical food or food for a special dietary use.

### Comparison to Rules of Other State Agencies

No rule in Chapter 3701-17 of the Administrative Code requires nursing homes or residential care facilities to obtain an order from a physician or other licensed healthcare practitioner after the initial order. However, rule 3701-17-10 of the Administrative Code and 42 C.F.R. 483.20 require a quarterly—roughly, every 90 days—assessment of each resident, which includes assessing each resident's nutritional status. Additionally, rule 3701-17-58 of the Administrative Code requires an annual assessment of each resident, which includes assessing each resident's nutritional status. The rules don't require a new diet order for therapeutic diets for each assessment. Instead, the nursing home would determine if they believe a change is needed and either continue to serve a therapeutic diet under the current diet order or obtain a revised diet order from a physician or other licensed healthcare professional.

In cooperation with EMMA, ODA and the Ohio Departments of Developmental Disabilities (ODODD) and Medicaid (ODM) adopted similar rules, which may since have been amended. As a result, rules 5123:2-9-53, 5160-46-04, 5160-50-04 of the Administrative Code all require a new authorization every 90 days.

## Comparison to Federal Rules

ODA looked towards federal regulations. ODA concluded that the PASSPORT Program's rule is stricter than the CMS' rules for Medicare coverage and stricter than other states' requirements.[7]

For Medicare coverage, 42 C.F.R. 483.35 requires the attending physician to authorize therapeutic diets in skilled nursing facilities. The rule does not require a subsequent authorization—at 90 days or at any other period of time. Meals provided through the Older Americans Act and PASSPORT Programs are intended for lower levels of care than skilled nursing, but require subsequent authorizations.

In the May 12, 2014 Federal Register, CMS reported on "Medicare regulations that CMS had identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers"[8] and that "[increased] the ability of health care professionals to devote resources to improving patient care, by eliminating or reducing requirements that impede quality patient care or that divert resources away from providing high quality patient care."[9] On rule in this package was 42 C.F.R. 482.28, which regulated Medicare coverage of therapeutic diets in outpatient hospital settings. CMS amended the rule to allow qualified dietitians and clinically-qualified nutrition professionals to order therapeutic diets instead of only allowing medical practitioners who are "responsible for the care of the patient" to order therapeutic diets.[10] After the initial authorization, 42 C.F.R. 482.28 does not require a subsequent authorization—at 90 days or at any other period of time.

## Comparison to Rules of Other States

ODA compared itself to other states. As indicated in the table below, other states honor diet orders for much longer periods of time.

| Honor for 6 Months | Honor for Year | Honor Indefinitely | Dietitian Certification Instead of Diet Order |
|---|---|---|---|
| Washington[11] | Delaware[12]<br>Pennsylvania[13]<br>Wisconsin[14] | Iowa[15]<br>Minnesota[16]<br>Texas[17] | Connecticut[18] |

[7] In the current rules, the Older Americans Act nutrition program in Ohio allows any healthcare professional with prescriptive authority to authorize therapeutic diets and only requires this authorization initially.
[8] *Pg.* 27106.
[9] *Ibid.*
[10] *Ibid. Pg.*, 27117.
[11] Washington State Dept. of Social and Health Services, aging and Disability Services Administration. Senior Nutrition Program Standards. 2004.
[12] Delaware Health and Social Services, Div. of Services for Aging and Adults with Physical Disabilities. Title III; Home-Delivered Meals. Pg. 5.
[13] Pennsylvania Dept. of Aging. Aging Program Directive 15-03-02. Nov 18, 2014. Pg. 26.
[1414] Wisconsin Dept. of Health Services, Div. of Long-Term Care, Bureau of Aging and Disability Resources. A Manual of Policies, Procedures, and Technical Assistance for The Wisconsin Aging Network. P-232203. Jun 30, 2011.
[15] Iowa Department of Aging. IAC rule 17.7.18
[16] Minnesota Board on Aging. Title III C Minimum Nutrition Standards/Definitions. Apr 16, 2010. Pg. 6.
[17] Texas Dept. of Aging and Disability Services. Program Instruction AAA-PI 314. Apr 1, 2011 and 40 T.A.C. 55.19, accessed Aug 3, 2015.

## Provider Feedback on Current 90-Day Limit

Since the EMMA project, providers have commented that the 90-day limit isn't reasonable. Chuck Sousa, Vice-President of Senior Resource Connection in Dayton, said the following after he and his staff reviewed rule 173-39-02.14 of the Administrative Code:[19]

> [T]he prescription requirement for a therapeutic meal still baffles us. I can assure you that all of our meals are Over The Counter (OTC) and there are no controlled substances included in the nutritional analysis! We realize that the therapeutic meals are being treated under the same drug protocol as a regular prescription…but why? If at all possible it would help considerably if the 90 day time period could be changed to 180 days or longer. Once on a renal diet it is very likely that the same diet would still be needed a year later. Consuming a renal diet, if not actually needed, is not usually harmful to the customer. Even the physicians have asked us on many occasions why a prescription was required. I have always assumed that it was a cost containment method as renal meals may be higher in price. In any case it would be much easier on the Case/Care Managers and providers if the requirement was either eliminated or extended beyond the present 90 days.

Elise Cowie, the director of the University of Cincinnati's Coordinated Program in Dietetics informed ODA of the following:[20]

> If the diet is ordered for a chronic condition, I feel that the order remains intact until the order is changed. If a client has an order for a carb controlled diet for treatment for diabetes, why does the diet need to be authorized every 90 days? Why won't the order remain intact until 1) the prescriber decides it is no longer required or 2) the client chooses to go off the diet? Do these clients actually visit their healthcare provider every 90 days? If so, that is a topic for another discussion, related to health care costs.
>
> Examples of diets that could be ordered for non-chronic conditions would include a mechanical soft diet following dental surgery, a soft low fiber diet following a bout of diverticulitis, a low fat diet due to pain from gallstones.

Jane Haverkos of Wesley Community Services said the following:[21]

> Given the current therapeutic diets we offer, I can think of no chronic condition that would require a prescription every 90 days. I believe the diet order should be equated to a non-controlled substance order and follow the current regulations for the non-controlled substances set by the state.
>
> Based on the current population we are serving, the trend would be for the severity of the chronic condition to increase along with the possibility of complications from additional chronic conditions. As an example, it is not uncommon for a diabetic client to develop renal failure, therefore necessitating a change from a therapeutic diabetic diet to a therapeutic renal diet. In this case a new order will be written by the physician.
>
> Where I see the greatest change in type of therapeutic diet required involves the mechanical soft and puree diets. It is common to see a change in texture requirement for the client. This request for change is usually initiated by the family or client himself. In all cases the request will be addressed with the attending physician and new orders written as needed. The Case Manager is always advised of the change in diet based on current physician orders.

[18] Connecticut Department of Social Services. Sec. 17b-423-5(e)(1)(D)
[19] Email to Tom Simmons. June 26, 2015.
[20] Email to Tom Simmons. Jul 8, 2015.
[21] Email from Jayne Haverkos to Elise Cowie. Jul 1, 2015

I have checked with my husband (a registered pharmacist) and to the best of his knowledge, a non-controlled substance can be written for 90 days with three refills (good for one year) in the state of Ohio. He did confirm this with a pharmacist from the Cincinnati VA. He will attempt to find the current Ohio code regarding the issue.

Ms. Haverkos also said:[22]

When discussing the therapeutic diet regs for the state of Ohio, please ask Tom to consider including, not only can a physician write the order, but also anyone with legal authorization in the state of Ohio to write diet orders. This is especially important for our clients who receive their medical care from clinics. Frequently orders from a clinic are written by a CNP. In many cases the initiation of meal delivery to a client has been delayed while waiting for a MD to sign a diet order.

Ms. Cowie, further commented:[23]

I believe this proposal would save many case workers, meal providers, and physicians (or CNPs if approved) countless hours of unnecessary paperwork and phone calls. Actually RDs are being granted diet order writing privileges in some facilities. If those RDs who are providing nutritional assessment through the provider agency could write the orders, that would be huge.

Chuck Sousa of Senior Resource Connection also said the following:[24]

The Renal Meals are of course designed for patients with Renal failure and the other categories for different levels of mouth and throat issues such as dysphagia and other various swallowing patterns and dental issues. We do not serve therapeutic meals in our Congregate program as demand is low and logistic costs are high in a congregate setting. All present customers are Meals on Wheels participants. I would also note that some of the few mechanical/ground & puree meals are in fact requested as a result of recent surgery to the mouth and throat and are only needed until the healing process has taken place. Under the present process however the time it takes to receive the orders and renew the orders could very well slow down the actual delivery of the 1st and/or subsequent meals. In fact the meals could be placed on hold while we wait for a medical professional to approve a specific meal that we know they need and will continue to need as long as they are our customer (Renal). In my humble opinion Renal Meals should be regulated however annually not every 90 days. No customer would be harmed if they ate the renal meal and didn't need it. However if they needed it and couldn't get it that could be a problem. The other meals (Mechanical, Ground & Puree) should be regulated by choice and a Doctors order depending on the health circumstances. When it is taken out of our hands customers may go without meals that they desperately need.

As a general rule meals are not medicine/drugs and the regulation of them should entail, at the very least, a modicum of flexibility to ensure the intent of providing a balanced meal to those who might not be able to attain one is accomplished. There has to be a compromise that benefits both the consumer and the provider and finds a balance between information required for actual service and redundancy (which runs rampant in government programs).

[22] *Ibid.*
[23] Email to Tom Simmons. Jul 1, 2015.
[24] Email to Tom Simmons. Mar 13, 2015.

## ODA's Proposed New Rules

After consulting with the Ohio State Medical Board and Ohio State Board of Nursing, ODA and the boards arrived at a consensus on new rule language that would eliminate any perceived preference in the current rules for physicians.

ODA also proposes to adopt new diet-order regulations, which would include a length of time in which ODA would honor a diet order.

ODA's proposed new definition and regulations are presented in the table below.

| PROPOSED NEW RULE LANGUAGE | |
|---|---|
| **Older Americans Act**<br>173-4-06 | **ODA Provider Certification**<br>173-39-02.14 |
| "Diet order" means a written order for a therapeutic diet from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets. | "Diet order" means a written order for a therapeutic diet from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets. |
| Diet orders: | Diet orders: |
| (a) The provider shall only provide a therapeutic diet to a consumer if the provider received a diet order for the consumer. | (a) The provider shall only provide a therapeutic diet to an individual if the provider received a diet order for the individual. |
| (b) The provider shall provide a therapeutic diet to the consumer identified in the diet order for the shorter of the following two durations:<br>(i) The length of time authorized by the diet order.<br>(ii) One year from the date the diet order indicates that the diet should begin. | (b) The provider shall provide a therapeutic diet to the individual identified in the diet order for the shorter of the following two durations:<br>(i) The length of time authorized by the diet order.<br>(ii) One year from the date the diet order indicates that the diet should begin. |
| (c) If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet according to the updated diet order. | (c) If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet according to the updated diet order. |
| (d) The provider shall assure that the therapeutic diet contains nutrients that are consistent with the diet order by either utilizing nutrient analysis or by using a meal-pattern plan that is approved by a dietitian.[25] | (d) The provider shall provide the therapeutic diet according to the diet order instead of a diet that complies with paragraphs [the nutritional-adequacy requirements] of this rule. |
| (e) The provider shall only provide a therapeutic diet if the provider (or, if the consumer is in a care-coordination program, the AAA), retains a copy of the diet order. | (e) The provider shall only provide a therapeutic diet if the provider retains a copy of the diet order. |

[25] Rule 173-4-01 would define "dietitian" as a licensed dietitian, so there is no need to insert "licensed" before any occurrence of "dietitian" in the chapter's rules.

## Secondarily-Affected Rules

173-3-06.1 Older Americans Act: Adult Day Service.
173-4-06 Older Americans Act: Nutrition Counseling.
173-39-02.1 ODA Provider Certification: Adult Day Service.
173-39-02.10 ODA Provider Certification: Nutritional Consultations.

ODA proposes to use the same formula that it is proposing to use for diet orders for diet in its rules that regulate adult day services. ODA also proposes to use the same formula that it is proposing to use for diet orders for other matters that need authorization from licensed healthcare professionals in rules that regulate adult day services and nutrition counseling/nutritional consultation.

Ohio | Department of Aging

**John Kasich**, Governor
**Bonnie K. Burman**, Sc.D., Director

# APPENDIX L
# ADVERSE IMPACT REDUCTION UNIFORMITY BETWEEN 2 PROGRAMS

**December, 2015**

While only the Older Americans Act nutrition program pays for congregate meals, nutrition education, nutrition health screening, grocery shopping assistance, and ordering and delivery of groceries, both the Older Americans Act nutrition program and the PASSPORT Program pay for home-delivered meals and nutrition counseling.[1] ODA aims to keep the rules for both programs similar to make compliance easier for providers who provide meals or counseling to consumers[2] in both programs. During the public-comment period, no provider commented that the programs need to become more similar.[3] However, because 86.7% of meal providers are paid by both Older Americans Act funds and the PASSPORT Program,[4] if ODA proposed to make the program's regulations differ, ODA would unintentionally create a new adverse impact.

The most notable new uniformities between the programs are the new diet-order requirements and the new requirements for ordering nutrition counseling/nutritional consultations. These are covered in Appendix K.

The table below shows a comparison of the proposed new rules for the two programs regarding home-delivered meals:

[1] Which, at the present time, is called "nutritional consultations" for the PASSPORT Program.
[2] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[3] Instead, some commented against a perception that ODA was trying to make the Older Americans Act nutrition program more like the PASSPORT Program.
[4] Ohio Dept. of Aging. June, 2014 provider survey.

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| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| | Definitions for this rule:<br><br>"Home-delivered meals" means the service that provides up to two meals per day to an individual who has a need for a home-delivered meal based on a deficit in an ADL or IADL that a case manager identifies during the assessment process. The service includes planning, preparing, packaging, and delivering safe and nutritious meals to the individual at his or her home.<br><br>"Diet order" means a written order for a therapeutic diet a from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets.<br><br>"Therapeutic diet" means a calculated nutritive regimen including the following regimens:<br><br>Diabetic and other nutritive regimens requiring a daily specific calorie level.<br><br>Renal nutritive regimens.<br><br>Dysphagia nutritive regimens, excluding simple textural modifications.<br><br>Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients. |
| [From 173-4-05]<br><br>In every contract for a nutrition project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements: | Every ODA-certified provider of home-delivered meals shall comply with the following requirements: |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>General requirements: In the contract, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every contract paid, in whole or in part, with Older Americans Act funds.<br><br>Project type:<br><br>…<br><br>If the contract is for a home-delivered meals project, the AAA shall include the requirements in rule 173-4-05.2 of the Administrative Code in the contract.<br><br>…<br><br>[From 173-4-05.2]<br><br>General requirements:<br><br>In the contract, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every contract paid, in whole or in part, with Older Americans Act funds.<br><br>In the contract, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every contract for a nutrition project. | General requirements: The provider shall comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code. |
| [From 173-4-05]<br><br>Separate project components: If the AAA procured for components of a nutrition project separately, the AAA shall identify in each provider's contract, which requirements in Chapters 173-3 and 173-4 of the Administrative Code each provider is required to provide. | |
| [From 173-4-05]<br><br>Nutrition services in addition to providing meals:<br><br>In the contract, the AAA shall indicate if the provider shall offer nutrition counseling, nutrition education, and nutrition health screening to consumers.<br><br>In the contract, the AAA shall indicate if the provider shall offer grocery shopping assistance or grocery ordering and delivery to consumers. | |
| [From 173-4-05]<br><br>Eligibility verification: The provider shall determine the eligibility of each consumer before paying for their meals using, in part or in full, Older Americans Act funds. | |
| [From 173-4-05]<br><br>Consumer contributions: The provider shall comply with rule 173-3-07 of the Administrative Code. | |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>Person direction:<br><br>In the contract, the AAA shall require the provider to implement the person direction the provider pledged to provide when the provider bid for the contract.<br><br>The provider shall offer consumers opportunities to give feedback on current and future menus. | |
| [From 173-4-05]<br><br>Menus:<br><br>Dietitians: The provider shall only offer menus approved by a dietitian.<br><br>Ingredients: In the contract, the AAA shall indicate the method by which the provider shall offer ingredient information on the meals provided to consumers.<br><br>Serving sizes: The provider shall list the serving size for each food item on each production menu. | Planning:<br><br>Menus:<br><br>The provider shall provide each individual with a menu of meal options that, as much as possible, consider the individual's medical restrictions; religious, cultural, and ethnic background; and dietary preferences.<br><br>The provider shall only utilize a menu that has received the written approval of a dietitian who is currently registered with the commission on dietetic registration and who is also a licensed dietitian, if the state in which the provider is located licenses dietitians.<br><br>The provider shall publish its menus on its website or offer written menus to individuals.<br><br>The provider shall either publish ingredient information on its website or offer written ingredient information to individuals.<br><br>Upon request, the provider shall provide to ODA (or ODA's designee) copies of menus and ingredient information and other evidence that it complies with the requirements under paragraph (B)(2)(a) of this rule. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>Nutritional adequacy:<br><br>For each mealtime, the provider shall offer meals that satisfies at least one-third of the dietary reference intakes (DRIs). The provider shall target nutrient levels based on the predominant population and health characteristics of the consumers in the PSA. The federal government makes the DRIs available to the general public free of charge on http://fnic.nal.usda.gov/.<br><br>For each mealtime, the provider shall offer meals that follow the "2010 Dietary Guidelines for Americans." The federal government publishes the guidelines for the general public free of charge on http://www.health.gov/dietaryguidelines.<br><br>In the contract, the AAA shall not prohibit the provider from adjusting the nutritional-adequacy requirements for meals in paragraphs (A)(9)(a) and (A)(9)(b) of this rule, to the maximum extent practicable, to meet any special dietary needs of consumers.<br><br>In the contract, the AAA shall not limit the provider's flexibility in designing meals that are appealing to consumers.<br><br>In the contract, the AAA shall not prohibit the provider from using either nutrient analysis or menu patterns to determine nutritional adequacy. | Nutritional adequacy:<br><br>The provider shall only provide a meal that meets at least one-third of the current dietary reference intakes (DRIs), unless the meal implements a therapeutic diet. The federal government makes the DRIs available to the general public free of charge on http://fnic.nal.usda.gov/.<br><br>The provider shall only provide a meal that follows the "2010 Dietary Guidelines for Americans," unless the meal implements a therapeutic diet. The federal government publishes the guidelines for the general public free of charge on http://www.health.gov/dietaryguidelines.<br><br>Upon request, the provider shall provide evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(2)(b) of this rule.<br><br>The provider may use either nutrient analysis or menu patterns to determine compliance with paragraphs (B)(2)(b)(i) and (B)(2)(b)(ii) of this rule. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>Diet orders: If the contract requires the provider to offer consumers therapeutic diets, medical food, or food for special dietary use, the provider shall comply with the additional requirements in rule 173-4-06 of the Administrative Code. | Diet orders:<br><br>The provider shall only provide a therapeutic diet to an individual if the provider received a diet order for the individual.<br><br>The provider shall provide a therapeutic diet to the individual identified in the diet order for the shorter of the following:<br><br>The length of time authorized by the diet order.<br><br>One year from the date the diet order indicates that the diet should begin If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet according to the updated diet order.<br><br>The provider shall provide the therapeutic diet according to the diet order instead of a diet that complies with paragraphs (B)(2)(b)(i) and (B)(2)(b)(ii) of this rule.<br><br>The provider shall only provide a therapeutic diet if the provider retains a copy of the diet order. |
| [From 173-4-05]<br><br>Dietary supplements: The provider shall not pay for multi-vitamins or mineral supplements, in whole or in part, with Older Americans Act funds. | |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>Food safety:<br><br>In the contract, the AAA shall indicate whether the United States department of agriculture, Ohio department of agriculture, another state's department of agriculture, or a local health district has jurisdiction to monitor the provider's compliance with food-safety laws, including sanitation, food temperatures, thermometers, food-borne illnesses, packaging, and dating meals.<br><br>In the contract, the AAA shall indicate that it is responsible for reporting any reasonable cause to believe a provider is out of compliance with food-safety laws to the government authority identified in the contract to comply with paragraph (A)(14) of this rule. | Food safety:<br><br>If a state or federal departments of agriculture or a local health district prohibits the provider from manufacturing food or feeding the public, the provider shall not deliver meals to any individual.<br><br>If a state or federal department of agriculture or a local health district sanctions a provider, the provider shall do the following:<br><br>The provider shall notify ODA (or ODA's designee) of the sanction no more than five business days after the state or federal department of agriculture or a local health district issues the sanction.<br><br>The provider shall notify ODA (or ODA's designee) of the provider's plan of correction no more than five business days after the provider submits the plan to the state or federal department of agriculture or local health district.<br><br>Upon request, the provider shall provide to ODA (or ODA's designee) a copy of the most recent food-safety inspection by a state or federal department of agriculture or a local health district. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05.2]<br><br>Delivery:<br><br>Availability:<br><br>Per-meal delivery:<br><br>To consumers who choose to receive per-meal deliveries and require meals on five or more days per week, the provider shall deliver at least one meal per day for five or more days per week.<br><br>To consumers who choose to receive per-meal deliveries, but do not require meals on five or more days per week, the provider shall deliver at least one meal per day on days that the consumer requires meals.<br><br>To consumers who choose to regularly receive per-meal deliveries, but anticipate that they will not home during an upcoming regular delivery, and who make arrangements with the provider to deliver an additional meal during a regular delivery for consumption at an upcoming time.<br><br>Periodic delivery: To consumers who choose periodic deliveries, in the contract, the AAA shall not prohibit the provider from, in one delivery, delivering meals to cover multiple mealtimes.<br><br>Successful deliveries: The provider shall only deliver meals to the consumer's home when the consumer, or the consumer's caregiver, is home.<br><br>Electronic systems: In the contract, the AAA shall not prohibit the provider from using an electronic system to schedule meal deliveries and to optimize delivery routes. | Delivery:<br><br>The provider shall deliver meals according to the individual's service plan.<br><br>Delivery dates and times: The provider shall establish a routine delivery date and range of time with each individual and record the established delivery date and time in the individual's clinical record.<br><br>Per-meal delivery: The provider shall notify the individual if it will deliver a single ready-to-eat meal more than one hour after the established delivery time.<br><br>Periodic delivery: The provider shall notify the individual if it will, in one delivery, deliver multiple meals that are not hot meals, but frozen, vacuum-packed, modified-atmosphere-packed meal, or shelf-stable more than one day after the established delivery date. The provider shall provide the consumer with clear instructions on how to safely heat or reheat a meal and, if the meal is delivered in components (e.g., a vacuum-packed meal), how to assemble the meal.<br><br>Per-meal delivery with periodic delivery of milk, bread, and butter: Because certain individuals may have difficulty opening small milk cartons or small butter packets (e.g., due to arthritis), if the individual's service plan authorizes the provider to do so, a provider may deliver a pint or half-gallon of milk; a loaf of sliced bread; and a stick of butter to an individual up to once per week if the milk, bread, and butter are components of home-delivered meals that the provider delivers throughout the week, so long as the meals comply with this rule, regardless of whether the meals are ready-to-eat, frozen, vacuum-packed, modified-atmosphere-packed, or shelf-stable. (E.g., A provider may provide a pint of milk for consumption as multiple servings of milk that are part of multiple meals, but not as an ingredient for the individual to use to prepare a meal.<br><br>Delivery instructions: The provider shall provide written or electronic delivery instructions to its delivery persons.<br><br>Records: Upon request, the provider shall provide evidence to ODA (or ODA's designee) that it complies with the requirements under paragraph (B)(4) of this rule. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05.2]<br><br>Emergency closings: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include the following:<br><br>Providing timely notification of emergency situations to consumers; and,<br><br>Either the distribution of:<br><br>Information to consumers on how to stock an emergency food shelf; or,<br><br>Shelf-stable meals to consumers for an emergency food shelf. | |
| [From 173-4-05.2]<br><br>Quality assurance:<br><br>Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.<br><br>In the contract, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule. | |
| | Provider qualifications:<br><br>Type of provider: Only an agency that ODA certifies as an agency provider shall provide meals. No individual shall provide meals unless the individual is an employee or volunteer of an agency that ODA certifies as an agency provider.<br><br>Licensure:<br><br>Food service operator's license: The provider shall possess any current, valid license or certificate that the local health department requires the provider to possess.<br><br>Driver's license: The provider shall retain records to show that each of its drivers possesses a current, valid driver's license.<br><br>Auto liability insurance: The provider shall retain records to show that the owner of each meal-delivery vehicle carries auto liability insurance on the vehicle. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>Training:<br><br>The provider shall develop a training plan that includes orientation and annual continuing education.<br><br>Orientation: The provider shall assure that each employee, including each volunteer, who participates in meal preparation, handling, or delivery receives orientation on topics relevant to the employee's job duties before the employee performs those duties.<br><br>Continuing education: The provider shall assure that each employee, including a volunteer, who participates in meal preparation, handling, or delivery completes continuing education each year on topics relevant to the employee's job duties.<br><br>The provider shall make, and retain, a written record of each employee's completion of orientation and continuing education. The record shall include the topics covered during the orientation and continuing education. | Training:<br><br>The provider shall develop a training plan that includes orientation and annual continuing education.<br><br>Orientation: The provider shall assure that each employee, including each volunteer, who participates in meal preparation, handling, or delivery receives orientation on topics relevant to the employee's job duties before the employee performs those duties.<br><br>Continuing education: The provider shall assure that each employee, including a volunteer, who participates in meal preparation, handling, or delivery completes continuing education each year on topics relevant to the employee's job duties.<br><br>The provider shall make, and retain, a written record of each employee's completion of orientation and continuing education. The record shall include the topics covered during the orientation and continuing education. |
| | Records: Upon request, the provider shall provide evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(5) of this rule. |
| | Limitations: Medicaid waiver funds through the PASSPORT program shall not be used to pay for any of the following:<br><br>Meals provided to an individual in excess of what the case manager orders for the individual.<br><br>Meals provided by a provider other than the provider the case manager identifies in the individual's service plan.<br><br>Meals provided as a supplement or replacement to the purchase of food or groceries.<br><br>Bulk ingredients, liquids, or other food provided to an individual, whether or not the individual would use the ingredients, liquids, or food to prepare a meal independently or with assistance. As used in this paragraph, "bulk ingredients, liquids, and other food" includes food that one portions, prepares, or cooks to eat, but does not include a fully-prepared meal that one heats or reheats to eat.<br><br>Meals provided to an individual who is hospitalized or is residing in an institutional setting. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05.2]<br><br>Delivery verification:<br><br>At the time of each delivery, the provider shall verify that each meal for which it bills was delivered by one of the following two methods:<br><br>The provider may use an electronic system if the system does all of the following:<br><br>Collects the consumer's name, date, time, number of meals in the delivery, whether the delivery successfully reaches the consumer, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the consumer.<br><br>Retains the information it collects.<br><br>Produces reports, upon request, that the AAA can monitor for compliance.<br><br>The provider may use a manual system if the provider documents the consumer's name, date, time, number of meals in the delivery, and whether the delivery successfully reaches the consumer, and collects the handwritten signatures of the driver and the consumer. If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.<br><br>In the contract, the AAA shall not require the provider to obtain multiple verifications for multi-meal deliveries, because the verification under paragraph (F) of this rule is conducted per-delivery and the verification includes documenting the number of meals in the delivery.<br><br>In the contract, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires. | Delivery verification:<br><br>The provider shall retain a record of the case manager's service order.<br><br>At the time of each delivery, the provider shall verify that each meal for which it bills was delivered by one of the following two methods:<br><br>The provider may use an electronic system to verify each meal delivery if the system does all of the following:<br><br>Collects the individual's name, date, time, number of meals in the delivery, , whether the delivery successfully reaches the individual, identification of delivery person, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the individual.<br><br>Retains the information it collects.<br><br>Produces reports, upon request, that ODA (or ODA's designee) can monitor for compliance.<br><br>The provider may use a manual system to verify each meal delivery if the provider documents the individual's name, delivery date, delivery time, and number of meals in the delivery; and collects the handwritten signature of the delivery person and the individual. If the individual is unable to produce a handwritten signature, the individual's handwritten initials, stamp, or mark are acceptable if the case manager recorded the alternative in the individual's service plan.<br><br>Because the verification under paragraph (B)(7) of this rule is conducted per-delivery and the verification includes documenting the number of meals in the delivery, the provider is not required to obtain multiple verifications for multi-meal deliveries.<br><br>Upon request, the provider shall provide evidence to ODA (or ODA's designee) showing compliance with the requirements under paragraph (B)(7) of this rule. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Home-Delivered Meals**<br>173-4-05 + 173-4-05.2 | **Home-Delivered Meals**<br>173-39-02.14 |
| [From 173-4-05]<br><br>Units:<br><br>…<br><br>Home-delivered meals project: A unit equals one meal provided in compliance with this rule and rule 173-4-05.2 of the Administrative Code.<br><br>… | Unit and rates:<br><br>A unit of regular home-delivered meals is one home-delivered meal that is planned, safely prepared, packaged, and delivered by qualified employees of an agency provider according to this rule. The maximum rate allowable for one regular home-delivered meal is listed in rule 5160-1-06.1 of the Administrative Code.<br><br>A unit of home-delivered meals with a therapeutic diet is one home-delivered meal with a therapeutic diet that is planned, safely prepared, packaged, and delivered by qualified employees of any agency provider according to this rule. The maximum rate allowable for a meal with a therapeutic diet is listed in rule 5160-1-06.1 of the Administrative Code.<br><br>The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code. |

The table below shows a comparison of the proposed new rules for the two programs regarding nutrition counseling:

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Nutrition Counseling**<br>173-4-07 | **Nutritional Consultations**<br>173-39-02.10 |
| Definitions for this rule:<br><br>"Nutrition counseling" ("counseling") has the same meaning as "medical nutrition therapy" in rule 4759-2-01 of the Administrative Code.<br><br>"Nutritional assessment" ("assessment") has the same meaning as in rule 4759-2-01 of the Administrative Code. | Definitions for this rule:<br><br>"Nutritional consultation" ("consultation") mean individualized guidance to an individual who has special dietary needs. Consultations take into consideration the individual's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions. Consultations are also known as medical nutrition therapy.<br><br>"Nutritional assessment" ("assessment") has the same meaning as in rule 4759-2-01 of the Administrative Code. |
| In every contract for nutrition counseling paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements: | Every ODA-certified provider of nutritional consultations shall comply with the following requirements: |
| General requirements: In the contract, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every contract paid, in whole or in part, with Older Americans Act funds. | General requirements: The provider shall comply with the requirements for every ODA-certified provider in rule 173-39-02 of the Administrative Code. |
| Dietitian: Only a licensed dietitian ("dietitian") working for an agency provider, or a licensed dietitian working as a self-employed provider shall provide counseling to consumers. | Dietitian: Only a licensed dietitian ("dietitian") working for an ODA-certified agency provider, or a licensed dietitian working as an ODA-certified non-agency provider shall provide consultations to individuals. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Nutrition Counseling**<br>173-4-07 | **Nutritional Consultations**<br>173-39-02.10 |
| Orders and limits:<br><br>Before the provider counsels a consumer, the provider obtains an order for the consumer's counseling from a licensed healthcare professional whose scope of practice includes ordering counseling.<br><br>The provider shall not provide counseling in excess of the amount the licensed healthcare professional ordered.<br><br>The provider shall not provide counseling to a consumer's caregiver unless the licensed healthcare professional also ordered counseling for the consumer's caregiver to improve the caregiver's care to the consumer.<br><br>The provider shall not provide counseling in excess of any limits the AAA establishes. | Orders and limits: The PASSPORT program shall only pay for consultations under the following circumstances:<br><br>Before the provider provides a consultation to an individual, the provider obtains an order for the individual's consultation from a licensed healthcare professional whose scope of practice includes ordering consultations.<br><br>The provider shall not provide a consultation to a consumer's authorized representative or caregiver unless the licensed healthcare professional also ordered a consultation to the individual's authorized representative or caregiver to improve the individual's well-being.<br><br>The provider shall not provide consultations to an individual in excess of what the case manager authorizes in the individual's service plan.<br><br>The provider shall only bill ODA's designee for a consultation if the case manager identifies the provider in the service order for the individual.<br><br>The provider shall not provide consultations to an individual if the individual is receiving a similar service under Chapter 173-39 of the Administrative Code. |
| Face-to-face vs. telecommunications:<br><br>The provider shall conduct the initial counseling session as a face-to-face session.<br><br>The provider shall conduct subsequent sessions on a face-to-face basis or by a telecommunication system. As used in this paragraph, "telecommunication" has the same meaning as in 2913.01 of the Revised Code. | Face-to-face vs. telecommunications:<br><br>For an initial consultation, the dietitian shall only provide a face-to-face consultation.<br><br>For subsequent consultations, the dietitian shall only provide the consultations if the consultations occur on a face-to-face basis or by a telecommunication system. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Nutrition Counseling**<br>173-4-07 | **Nutritional Consultations**<br>173-39-02.10 |
| Nutritional assessment ("assessment"):<br><br>During the initial counseling session, the provider shall conduct an assessment of the consumer's…<br><br>…nutritional intake, anthropometic measurements, biochemical values, physical and metabolic parameters, socio-economic factors, current medical diagnosis and medications, pathophysiological processes, and access to food and food-assistance programs.<br><br>No later than seven days after the initial assessment, the dietitian forwards the results of the initial assessment to the licensed healthcare professional who ordered the counseling and, if the consumer is in a care-coordination program, to the consumer's case manager.<br><br>The provider may use an electronic system to develop and retain a nutrition assessment. | Nutrition assessment ("assessment"):<br><br>The provider shall conduct an initial, individualized assessment of the individual's nutritional needs and, when necessary, subsequent assessments, using a tool that identifies whether the individual is at nutritional risk or identifies a nutritional diagnosis that the dietitian will treat. The tool shall include the following:<br><br>An assessment of height and weight history.<br><br>An assessment of the adequacy of nutrient intake.<br><br>A review of medications, medical diagnoses, and diagnostic test results.<br><br>An assessment of verbal, physical, and motor skills that may affect, or contribute to, nutrient needs.<br><br>An assessment of interactions with the caregiver during feeding.<br><br>An assessment of the need for adaptive equipment, other community resources, or other services.<br><br>The provider shall provide the case manager, the individual, and the individual's authorized representative (if the individual has authorized a representative) with a copy of the assessment no later than seven business days after the provider completes the assessment.<br><br>The provider may use an electronic system to develop and retain a nutrition assessment. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Nutrition Counseling**<br>173-4-07 | **Nutritional Consultations**<br>173-39-02.10 |
| Nutrition intervention plan: | Nutrition intervention plan: |
| The provider shall develop a nutrition intervention plan based upon the initial assessment and, if the provider conducts subsequent assessments, the subsequent assessments. The plan shall include all the following: | The provider shall develop, evaluate, and revise, as necessary, a nutrition intervention plan with the individual's and case manager's assistance and, when applicable, the assistance of the licensed healthcare professional who authorized the consultations. In the plan, the provider shall outline the purposely-planned actions for changing nutrition-related behavior, risk factors, environmental conditions, or health status, which, at a minimum, shall include the following information about the individual: |
| Clinical and behavioral goals and a care plan. | |
| Intervention planning, including nutrients required, feeding modality, and method of nutrition education and counseling, with expected measurable outcomes. | Food and diet modifications.<br>Specific nutrients to require or limit.<br>Feeding modality.<br>Nutrition education and consultations.<br>Expected measurable indicators and outcomes related to the individual's nutritional goals. |
| Consideration for input from the consumer, licensed healthcare professional who ordered the counseling, case manager (if any), consumer's caregiver (if any), and relevant service provider (if any). | |
| The scheduling of any follow-up counseling sessions. | |
| | The provider shall use the nutrition intervention plan to prioritize and address the identified nutrition problems. |
| No more than seven days after the provider sends the assessment to the licensed healthcare professional who ordered the counseling, the provider shall forward the nutrition intervention plan to the same professional and, if the consumer is in a care-coordination program, to the consumer's case manager. | The provider shall provide the case manager, the individual, and the licensed healthcare professional who ordered the consultations with a copy of the nutrition intervention plan no later than seven business days after the provider develops or revises the plan. |
| The provider shall provide reports on the intervention plan's implementation and the consumer's outcomes to the licensed healthcare professional who ordered the counseling and, if the consumer is in a care-coordination program, to the consumer's case manager. | |
| The provider may use an electronic system to develop and retain the nutrition intervention plan. | The provider may use an electronic system to develop and retain the nutrition intervention plan. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Nutrition Counseling**<br>173-4-07 | **Nutritional Consultations**<br>173-39-02.10 |
| | Clinical record:<br><br>The provider shall develop and retain a clinical record for each individual that includes the individual's:<br><br>Identifying information, including name, address, date of birth, sex, race, marital status, significant phone numbers, and health insurance identification numbers.<br><br>Medical history.<br><br>The name of the licensed healthcare professional who authorized consultations.<br><br>The authorization for consultations that is required under paragraph (B)(1) of this rule.<br><br>Service plan (initial and revised versions).Nutrition assessment (initial and revised versions).Plan of care for consultations (initial and revised versions), specifying the type, frequency, scope, and duration of the consultations to provide.<br><br>Nutrition intervention plan (initial and revised versions that were implemented).Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions.<br><br>Discharge summary, which the dietitian who provided the consultations shall sign and date at the point he or she is no longer going to provide consultations to the individual or the individual no longer needs consultations. The summary shall indicate what progress the individual made towards achieving the measurable outcomes of the individual's nutritional goals and any recommended follow-up consultations or referrals.<br><br>The provider may use an electronic system to develop and retain the clinical record. |

| OLDER AMERICANS ACT | PASSPORT |
|---|---|
| **Nutrition Counseling**<br>173-4-07 | **Nutritional Consultations**<br>173-39-02.10 |
| Service verification: By one of the following two methods, the provider shall verify that each consultation for which it bills was provided:<br><br>The provider may use an electronic system if the system does all of the following:<br><br>Collects the consumer's name, date of consultation, time of day each consultation begins and ends, name of licensed dietitian providing consultation, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the consumer.<br><br>Retains the information it collects.<br><br>Produces reports, upon request, that ODA (or ODA's designee) can monitor for compliance.<br><br>The provider may use a manual system if the provider documents the date of service, time of day that each consultation begins and ends, name of the person providing the consultation, and collects the handwritten signatures of the person providing the consultation and the individual. If the consumer is unable to produce a handwritten signature, the individual's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative. | Service verification: By one of the following two methods, the provider shall verify that each consultation for which it bills was provided:<br><br>The provider may use an electronic system if the system does all of the following:<br><br>Collects the individual's name, date of consultation, time of day each consultation begins and ends, name of licensed dietitian providing consultation, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the individual.<br><br>Retains the information it collects.<br><br>Produces reports, upon request, that ODA (or ODA's designee) can monitor for compliance.<br><br>The provider may use a manual system if the provider documents the date of service, time of day that each consultation begins and ends, name of the person providing the consultation, and collects the handwritten signatures of the person providing the consultation and the individual. If the individual is unable to produce a handwritten signature, the individual's handwritten initials, stamp, or mark are acceptable if the case manager authorizes such an alternative in the individual's service plan. |
| Unit: A unit of nutrition counseling equals fifteen minutes of counseling. | Unit and rate:<br><br>A unit of a nutritional consultation is equal to fifteen minutes.<br><br>The maximum rate allowable for a unit of nutritional consultations is listed in rule 5160-1-06.1 of the Administrative Code.<br><br>The rate is subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code. |

Ohio | Department of Aging

**John Kasich**, Governor
**Bonnie K. Burman**, Sc.D., Director

APPENDIX M

# ADVERSE IMPACT REDUCTION EVERYTHING ELSE

**December, 2015**

## Introduction

ORC§107.52 says that rules have adverse impact if they (A) require a license, permit, or any other prior authorization (*e.g.*, a contract, ODA certification) to engage in or operate a line of business; (B) impose a criminal penalty, civil penalty, or other sanction, or cause of action, for failure to comply; or (C) require specific expenditures (*e.g.*, training) or the report of information (*e.g.*, meal verification).

Although ODA has discovered many providers who provide consumers[1] with person direction under today's rules, some providers claim that they cannot afford to do so. In order to make person direction sustainable for more providers, ODA proposes to eliminate certain adverse impacts upon providers by eliminating at least 210 requirements and to reduce certain adverse impacts by reducing the requirements in reducing the impact of at least 36 other requirements.

Also, to protect providers from unintended regulations as ODA transforms the rules from directly regulating providers to regulating contracts between AAAs and providers,[2] ODA proposes to prohibit AAAs from removing the following 7 provider options that are directly or indirectly connected to person direction:

- Determining nutritional adequacy by nutrient analysis or menu patterns.
- Adjusting nutritional-adequacy requirements for meals, to the maximum extent practicable, to meet any special dietary needs of consumers.
- Flexibility in designing meals that are appealing to consumers.
- Offering meals in different congregate dining locations on different days rather than requiring every congregate dining location open for at least five days per week.
- Using an electronic system to schedule meal deliveries and to optimize delivery routes.
- Using electronic verification systems.

[1] As used in this appendix, "consumer" means an Ohio resident who is at least 60 years old.
[2] Which complies with ORC§173.392.

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- Delivering meals to cover multiple mealtimes in one delivery.

ODA also proposes to prohibit AAAs from requiring providers to obtain multiple verifications for multi-meal deliveries.

The following appendices already covered adverse impacts:

- Appendix I discussed the benefits of nutrient analysis, including its ability to reduce administrative costs. Appendix I also stated that ODA prohibits ODA's designees from prohibiting the use of nutrient analysis.

- Appendix J discussed electronic verification and optimization systems to reduce adverse impacts upon providers. Appendix J also states that ODA prohibits ODA's designees from prohibiting the use of electronic verification and optimization systems.

- Appendix K discussed the ways that its proposed new diet-order regulations reduce adverse impacts upon providers.

- Appendix L discussed uniformity between 2 programs as a way to minimize adverse impacts upon providers.

As an incentive for investing resources into incorporating person direction into congregate and home-delivered meals, ODA proposes to make even more reductions in the adverse impact upon providers than what was covered in those appendices. The remainder of this appendix discusses ODA's additional proposals (*i.e.*, "everything else").

## Food Safety (Not Aging Jurisdiction)

A significant area of adverse-impact reduction comes from ODA's voluntary departure from regulating food safety—a regulatory matter reserved for other state agencies.

### No Duplication

ODA proposes to eliminate duplicate food-safety regulations. The Ohio Department of Agriculture and local health districts have food safety and sanitation authority over Ohio-based meal providers. ODA does not retain this authority. Repeating elements of the Ohio Uniform Food Safety Code in ODA's rules may appear to authorize ODA or area agencies on aging (AAAs) or PASSPORT administrative agencies (PAAs) to conduct duplicate food safety and sanitation inspections upon providers.

ODA has attached an example of an AAA's food-safety inspection tool to this appendix.

§339(2)(F) of the Older Americans Act requires ODA to ensure that providers comply with the Ohio Uniform Food Safety Code, which is a body of food-safety laws adopted jointly by the Ohio Departments of Agriculture and Health. The Ohio Department of Agriculture and local health district authorities have the responsibility in Ohio for conducting food-safety inspections to monitor for compliance with the Ohio Uniform Food Safety Code. ODA does not repeat its own food-safety inspections, nor does it

assume any jurisdiction over food safety in Ohio. Likewise, ODA's designees, the AAAs and PAAs, have no jurisdiction over Ohio's food-safety standards.

### Suspected Non-Compliance

If ODA, an AAA, or a PAA becomes has reasonable cause to suspect that a provider is in violation of the Ohio Uniform Food Safety Code, ODA, the AAA, or the PAA should report the matter to the government authority that monitors for compliance: the Ohio Department of Agriculture or a local health district authority. Instead of requiring AAAs to monitor for compliance, ODA requires AAAs to indicate in contracts with providers that the AAAs will notify government authorities with jurisdiction over the providers' food-safety compliance of any reasonable cause to suspect non-compliance.

This doesn't represent a new requirement for providers. It's a requirement for ODA's designees.

The Missouri Dept. of Health and Senior Services adopted similar regulations on the matter. Missouri requires the AAA to "report the occurrence or suspicion of a food-borne illness to the appropriate health authorities."[3]

### Actual Non-Compliance

In its proposed new rules for the Older Americans Act Nutrition Program, ODA has removed language that currently requires providers to report "critical violations" of the Ohio Uniform Food Safety Code to ODA's designees, the AAAs and PAAs. ODA makes this proposal for the following reasons:

- The Ohio Department of Agriculture and local health district authorities have jurisdiction over food safety in Ohio. ODA does not.

- A provider who received a critical violation from a government authority with jurisdiction over food safety may still provide food to the public. For example, upon searching through examples of critical violations, ODA discovered that all "critical violations" aren't necessarily *critical*. For example, a county's department of health cited a business that left a spoon in a sink designated for hand washing. To force providers to submit information to ODA or its designees on matters that do not prohibit them from providing meals is unnecessary. To force AAAs and PAAs to take any time to review citations that do not affect the provision of meals is also unnecessary. Both of these activities can dwindle the Older Americans Act funds and Medicaid funds (through the PASSPORT Program) that could be invested into high-quality meals through person direction.

- If a government authority with jurisdiction over food safety shuts down a provider for its non-compliance, then ODA's designees, the AAAs, may terminate the contract with the provider to pay for meals with Older Americans Act funds and

[3] 19 C.S.R. 15.4.240(11). (Jan 30, 2004).

ODA may terminate the provider's certification which would, in turn, bring the provider's participation in the PASSPORT Program to an end.

- If AAAs would like to review a bidder's records with the government authority that conducts food-safety inspections on the provider before entering into a new contract that would pay for meals with Older Americans Act funds, the can readily find—free of charge—inspection reports on retail food establishments in public databases (*e.g.*, Allen[4] and Montgomery[5] Counties) and food safety recalls from food manufacturers from the Ohio Department of Agriculture's database.[6] This would not be a factor for the PASSPORT Program, because ODA must certify allow consumers to choose between any willing and qualified provider.[7] Thus, when ODA examines a provider's application for provider certification, a record of violations of the Ohio Uniform Food Safety Code that did not result in the present loss of ability to provide food would not be a factor.

## Dating Food Packages of Food that Comprise a Complete Meal

Presently, the rule for ODA certified providers in the PASSPORT Program (OAC173-39-02.14) requires all providers to do the following:

> The provider may individually package each component of a home-delivered meal that is a frozen meal, a vacuum-packed meal, a modified-atmosphere-packed meal, or a shelf-stable meal if the provider labels each individual package with the month, day, and year before which the consumer should consume the individual package, and shall list the date immediately following the term "use before." As used in this paragraph, "individual package" does not include a whole fruit (e.g., a fresh apple or banana) that is not packaged.

During a 2010 online public-comment period, Donald Granter, President/CEO of Simply-EZ Home-Delivered Meals commented as follows: "By labeling every item delivered, it would necessitate a cost exceeding $40,000 per location for a labeling machine, and upwards of $1,500 per month in labels per location. Our Department of Agriculture inspector has informed us that only perishable meats need to be labeled with an expiration date."

ODA is now proposing to rescind this requirement. If providers like Simply-EZ are going to be required to label individual items, the requirement would come from the Ohio Dept. of Agriculture or through the Ohio Uniform Food Safety Code, which is jointly authored by the Ohio Departments of Agriculture and Health.

Likewise, for the Older Americans Act Nutrition Program, OAC173-4-05.3 currently requires the provider to "label the meal with the use by date or expiration date on the meal package" if the package is frozen, vacuum-packed, cooked-chilled, or modified atmosphere packed (MAP). For the same reasons, ODA is now proposing to rescind this requirement.

[4] Allen County Public Health. http://www.healthspace.com/allen (Accessed Dec 28, 2015.)
[5] Public Health Dayton & Montgomery County. http://inspections.phdmc.org/ (Accessed Dec 28, 2015.)
[6] Ohio Dept. of Agriculture. http://www.agri.ohio.gov/foodsafety/ (Accessed Dec 28, 2015.)
[7] 42 C.F.R. 431.51 (October, 2015 edition) and OAC173-42-06.

### *En Route* Temperature Checks

In the current rules for both programs (OAC 173-4-04.1 and 173-39-02.14), providers of home-delivered meals are required to maintain certain food temperatures during the delivery of home-delivered meals.

As previously mentioned, ODA is not the state's regulatory authority on food safety. Thus, in the proposed new rules, ODA will not create any of its own food-safety requirements.

Providers can consult with the Ohio Departments of Agriculture and Health to determine if their rules require the provider's meals to undergo *en route* temperature checks. This could vary depending up on the nature of the food and its packaging.

If the aforementioned departments do not determine that their rules require the provider's meals to undergo *en route* temperature checks, then Ohio's only regulatory authorities on food safety have determined that the provider is not required to conduct such checks. ODA will not regulate where the appropriate authorities have determined to not do so.

According to Molly Haroz, the Nutrition Programs Director of LifeCare Alliance, *en route* temperature monitoring is the most-expensive aspect of delivering meals.[8] Thus, providers who would not require *en route* checks may experience a significant reduction in adverse impact.

## Flexibility in Determining Nutritional Adequacy

ODA's current requirements for determining nutritional adequacy have been considered overly prescriptive. Overly-prescriptive requirements can result in fewer complete meal options, which in turn can be counter-productive to encouraging the statewide deployment of person direction.

ODA's proposed new rules for the Older Americans Act Nutrition Program continue to require nutritional adequacy that complies with §339 of the Older Americans Act. However, ODA has added language to the requirements that prohibits AAAs from limiting providers' (A) ability to adjust the nutritional-adequacy requirements, *to the maximum extent practicable,* to meet any special dietary needs of consumers and (B) flexibility in designing meals that are appealing to consumers. Both (A) and (B) are established in §339 of the Act and ODA does not intend to reduce the flexibility afforded in the Act or allow AAAs to reduce the flexibility afforded in the Act.

ODA's current rules for the certified providers who serve individual in the PASSPORT Program continue to require nutritional adequacy where each meal meets 1/3 of the DRIs. The proposed nutrition requirements would be less stringent by requiring providers to provide meals that meet *at least* 1/3 of the DRIs.

[8] Molly Haroz. LifeCare Alliance. Telephone conversation with Tom Simmons. Nov 16, 2015.

## Menu-Patterns

A specific area of nutritional adequacy that appears in ODA's current rules for the Older Americans Act Nutrition Program, but not ODA's proposed new rules for either program, is that of menu-patterns. Although ODA's proposed new rules would not dispense the specific menu-pattern requirements as do the current rules, the new rules would not prohibit using the menu-pattern method.

In the proposed new rules, providers may develop their own menu patterns so long as one of Ohio's 3,912 licensed dietitians approves the menu as complying with the nutritional-adequacy requirements in the rules.

Below are some examples of the menu-pattern requirements that no longer appear in the rules:

> The provider may serve egg whites or low-cholesterol egg substitutes, but shall not serve more than one egg yolk per meal.
>
> Serving size for peanut butter, when served as a meat alternate is 2 tablespoons.
>
> The provider shall not serve sauerkraut more than once per month, or twice per month if one occurrence of sauerkraut is as an ingredient in another food item.
>
> The provider shall not consider rice, spaghetti, macaroni, or noodles to be a vegetable.
>
> When a biscuit is the serving of bread, the serving size is 1 2.5-inch diameter biscuit.
>
> The provider shall not consider calcium-fortified juice to be both a serving of fruit and a serving of milk in the same meal.

## Scope of Practice (not Aging Jurisdiction)

ODA's proposed new rules determine when Older Americans Act funds and Medicaid funds (through the PASSPORT Program) may pay for meals or nutrition services instead of telling providers how to operate their businesses. ODA's proposed new rules for the Older Americans Act Nutrition Program also make requirements for AAAs regarding their contracts with providers. ODA's proposed new rules for the ODA-certified providers who provide goods and services to individuals in the PASSPORT Program also make requirements for providers to become, or remain, ODA-certified providers.

ODA's proposed new rules also explain what types of diet orders *etc*. that a provider may accept rather than instruct licensed professionals what type of diet orders they may prescribe.

## Eligibility

ODA's proposed new OAC173-4-02 no longer tells providers when they can and cannot serve meals to consumers. Serving meals to consumers that are paid with Older Americans Act funds should not require a provider to limit itself to *only* providing meals that are eligible for payment by Older Americans Act funds.

Therefore, ODA's proposed new OAC173-4-02 details which meals are eligible for payment by Older Americans Act funds instead of detailing which consumers a provider may feed.

This means that the new rules would have no requirements on staff-member *participation*. Older Americans Act funds don't pay for the meals of paid employees or guests who are otherwise ineligible to have Older Americans Act funds pay for their meals. A provider can decide if it wants to use its funds, other than Americans Act funds, to pay for such meals or if the provider serves meals to paid employees and guests for a price or a suggested donation.

## Means Testing

Proposed new OAC173-4-03 no longer requires providers to assess consumers' income when there is a waiting list for a nutrition project. Actually, the Older Americans act prohibits means testing.

## "Minimum" Requirements

As ODA has been systematically doing on a project-by-project basis, ODA proposes to remove the term "minimum requirements" from this chapter. The term implies that extra regulations could be created that fly below the radars of CSIO and JCARR.

## Statewide Availability Standards for Home-Delivered Meals

The current rules allow providers to provide meals that are paid with Older Americans Act funds to consumers less than 5 days per week if the local AAA approves. This conflict with §336 of the Older Americans Act which says that the provider may only do so if the Administration on Aging determines that less availability is appropriate for rural areas *or* if ODA approves.

As a result, the standards are not the same throughout Ohio. In one PSA, the AAA has determined that providers who offer many complete meal options to consumers through the PASSPORT Program and other programs by making weekly deliveries of frozen meals may not offer the same level of person direction to those whose meals are paid with Older Americans Act funds because the Act, says the AAA, requires at least 5 deliveries per week.

ODA interprets the act to require providers to be available to deliver meals 5 days per week and does not require delivering a meal to each consumer 5 days per week. ODA believes the focus is on the availability of meals, not the availability of deliveries. Whether meals or deliveries are in focus, ODA proposes to use the authority granted to ODA in the same section of the Act to implement a statewide standard exception for periodic deliveries.

ODA's proposed exception would also assist consumers who may only need fewer than 5 meal deliveries per week because they have a caregiver on the on certain days, but not others, and consumers who do not require meals to be delivered on at least 5 days per week, because they are hospitalized or receiving a medical treatment at the same time as the deliver.

This change should foster the periodic-delivery method, which generally offers more complete meal options, which in turn, fosters person direction. It is also less costly to the provider to make one delivery per week than to deliver each meal at its mealtime.

Iowa appears to be a state that has also interpreted §336 of the Act to give the state authority to enact statewide standards. Iowa requires delivering "at least one meal per day … based upon the determination of a participant's need."[9] Minnesota doesn't enact a statewide standard, but makes no mention of deliveries. Minnesota focuses on the number of meals by requiring 1-2 meals per day, 7 days a week.[10]

ODA's proposed new language can be reviewed in proposed OAC173-4-05.2.

## Statewide Availability Standards for Congregate Dining Locations

The current rules allow providers to provide meals that are paid with Older Americans Act funds to consumers less than 5 days per week if the local AAA approves. This conflict with §331 of the Older Americans Act which says that the provider may only do so if the Administration on Aging determines that less availability is appropriate for rural areas *or* if ODA approves.

In ODA's proposed OAC173-4-05.1, ODA has removed the AAA language. This has the effect of creating a statewide standard.

ODA also added to the rule language that only requires the provider to "keep at least one congregate dining location in its nutrition project [to be] open for business to provide meals for at least one mealtime per day." The Act requires *nutrition projects*, not each *congregate dining location*, to provide meals at least 5 days a week. Therefore, it is possible for a provider's nutrition project to provide meals in only 1 congregate dining location per day, even if the provider operates multiple dining locations. It would also be possible for the provider to rotate through different dining locations on different days. The focus is on the availability of meals, not the availability of dining locations.

Wisconsin has adopted similar language by requiring providers to keep "at least one" dining location serving meals at least 5 days per week.[11]

[9] 17 I.A.C. 7.12(4) (Effective, Jan 7,2010)
[10] Minnesota Board on Aging. *Appendix C: Title III C Minimum Nutrition Standards/Definitions.* April 16, 2010. I.2.c.
[11] §8.4.1 Wisconsin Aging Network Manual of Policies, Procedures, and Technical Assistance. (June 30, 2011)

## Customer Satisfaction Surveys

The proposed new versions of OAC 173-4-05.1 and 173-4-05.2 no longer require providers to conduct satisfaction surveys. By allowing consumers to choose between complete meal options, providers will learn what foods consumers enjoy more than others.

## Alternative Meal Platforms

ODA proposes to delete the regulations for the following meal types: breakfast and brunch-style meals; salad bar meals; soup and salad bar meals, sacked lunch or boxed lunch meals; and non-perishable, emergency, or shelf-stable meals. ODA also proposes to delete the regulations for cultural meals other than to define the various types of vegetarian meals.

ODA proposes to delete the requirements that frozen *et al* meals have special nutritional adequacy requirements if two such meals are served to a senior in one day. ODA proposes delete the requirements to label each meal package, because it duplicates language in rule 173-4-04.1 of the Administrative Code.

## Nutrition Counseling

In the proposed new version of OAC173-4-07, ODA proposes to no longer require counseling sessions that every counseling session be a face-to-face session. After the initial session, the proposed new rules would allow for non-face-to-face sessions (*e.g.*, by telephone, Skype). This should reduce providers' adverse impact—especially when the consumer lives in a remote area or an urban area without adjacent parking or free parking.

Following the pattern in Appendix K for diet orders, ODA proposes in OAC 173-4-07 and 173-39-02.10 to accept orders for nutrition counseling and nutritional consultations from any licensed healthcare professional whose scope of practice includes ordering nutrition counseling or nutritional consultations. The current rules only allow accepting orders from physicians.

## Nutrition Education

In the proposed new version of OAC173-4-08, ODA proposes to delete the topics of nutrition education that the provider must cover every year. This creates flexibility for the provider.

## Nutrition Health Screening

In the proposed new version of OAC173-4-09, ODA proposes to delete the requirement for providers to provide information to consumers about excessive alcohol consumption as part of nutrition health screening.

## Duplication of ODA Requirements

ODA also proposes to eliminate duplicate regulations to other ODA rules. For example, ODA repeats voluntary contributions regulations in multiple rules in Chapter 173-4 of the Administrative Code. In the proposed new rules, ODA simply refers to rule 173-3-07 of the Administrative Code. Other examples of duplication are repetition of eligibility criteria and enrollment procedures and records retention.

## Adult Day Services

Following the pattern in Appendix K for diet orders, ODA proposes in OAC173-3-06.1 and 173-39-02.1 to accept treatment plans, activity plans, diet orders, and health assessments from any healthcare professional whose scope of practice includes those items. This is a departure from the current language which lists specific professions by name. ODA received comments that listing the professions beginning with “physician” causes some to believe that ODA really requires physician plans, orders, *etc.*

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**Bonnie K. Burman**, Sc.D., Director

APPENDIX N

# LICENSED OHIO DIETITIANS

**December, 2015**

## LICENSED DIETITIANS REQUIRED

The table below shows the federal laws and proposed new ODA rules that would require licensed dietitians:

| LAW | LICENSED DIETITIAN? | WHO HIRES? |
|---|---|---|
| §205(a)(2)(C) Older Americans Act | Yes (but just a *registered* dietitian) | AoA |
| §339(1) Older Americans Act | Yes (but not necessarily a *licensed* dietitian) | ODA |
| §339(2)(G) Older Americans Act | Yes (but not necessarily a *licensed* dietitian) | Provider |
| OAC173-3-06.1 | Yes (via 173-4-05) for menus. | Provider |
| OAC173-4-01 | No | |
| OAC173-4-02 | No | |
| OAC173-4-03 | No | |
| OAC173-4-04 | No | |
| OAC173-4-05 | Yes, for menus. | Provider |
| OAC173-4-05.1 | No | |
| OAC173-4-05.2 | No | |
| OAC173-0-05.3 | No | |
| OAC173-04-06 | No | |
| OAC173-4-07 | Yes, for nutrition counseling | Provider |
| OAC173-4-08 | Yes, for group education sessions | Provider |
| OAC173-4-09 | No | |
| OAC173-4-08 | No | |
| OAC173-4-10 | No | |
| OAC173-4-11 | No | |
| OAC173-39-02.1 | Yes (via 173-39-02.14) for menus. | Provider |
| OAC173-39-02.2 | Yes (via 173-39-02.14) for menus. | Provider |
| OAC173-39-02.10 | Yes, to provide nutritional consultations. | Provider |
| OAC173-39-02.14 | Yes, for menus. | Provider |

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## HEALTHY SUPPLY OF DIETITIANS

Many providers do not have enough work to directly employ a licensed dietitian. As a result, many nutrition programs enter into sub-contracts with licensed dietitians for menu planning and other responsibilities.

When a nutrition program sub-contracts with a licensed dietitian, ODA's rules do not require the dietitian to be a local resident. ODA's rules give nutrition programs the freedom to choose any dietitian that the Board licenses.

Fortunately, Ohio's healthy supply of 3,912 licensed dietitians[1] gives nutrition programs many options for hiring or sub-contracting. 3,637 of the 3,912 dietitians reside in Ohio and at least 1 of the 3,912 dietitians resides in every Ohio county except Adams, Noble, and Paulding—counties that are non-contiguous to one another. [2]

In a nutshell, there appears to be no shortage of licensed Ohio dietitians that should convince an AAA to ask ODA to waive the prohibitions on AAAs directly providing services or on AAAs not using open and free competition to seek dietitians who may bid to provide services.

## CONFLICT OF INTEREST

Is it a conflict of interest for a person to be both (1) the licensed dietitian who plans menus for a nutrition program and (2) the licensed dietitian who works for the government authority, or its designee, that monitors (*i.e.*, audits) the nutrition program for its compliance with laws on nutritional adequacy.

§307(a)(8)(A) of the Older Americans Act prohibits AAAs from directly providing nutrition services without ODA's permission, which ODA may only offer in limited cases. The rules require providers to hire or consult with one of Ohio's 3,912 licensed dietitians. The license qualifies each dietitian to determine nutritional adequacy.

The rules do not instruct AAAs to perform the duties of the licensed dietitians when they are required components of nutrition services. Instead, AAAs' licensed dietitians should monitor the work of provider's dietitians for compliance. It is a conflict of interest for the licensed dietitian of an AAA to be a provider's dietitian and also the dietitian at the AAA who monitor's the provider's dietitian for compliance with §339 of the Act.

If an AAA separates the dietitian-component of a nutrition service from the remaining components of the service, 45 C.F.R. 75.327 to 75.335 (December 26, 2014) would require the AAA to separately procure the dietitian duties through open and free competition. The aforementioned 3,912 licensed dietitians may be willing to bid on such a contract. If the AAA qualified for non-competitive bidding under the limited circumstances afforded by 45 C.F.R. 75.329 and OAC173-4-05, the AAA would still not be authorized to contract with itself unless it had permission from ODA according to §307(A)(8)(A) of the Older Americans Act.

[1] The Ohio Board of Dietetics. Jan 13, 2015.
[2] *Ibid.*

## DOUBLE DIPPING

Older Americans Act funds would be improperly spent if an AAA is paid to hire a dietitian to monitor providers and the AAA is also paid to have its dietitian perform the work of the providers. In effect, Older Americans Act funds would pay twice for actions that happen once, because the dietitian would be paid to monitor his or her own work.

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# APPENDIX O
# ELIGIBILITY REQUIREMENTS

**December, 2015**

## Older Americans Act nutrition program *vs.* PASSPORT Program

To be eligible for the PASSPORT Program, one must meet all the following requirements:[1]

- Age 60 or older.
- Financially eligible for Medicaid institutional care (For 2013, this means typically earning no more than $2,130 per month for one person and having no more than $1,500 in countable assets, though individuals above this limit may be eligible based on the extent of their medical and in-home needs).
- Frail enough to require a nursing home level of care.
- Able to remain safely at home with the consent of their physician.

By comparison, one's eligibility for Older Americans Act programs does not depend upon income or frailty. Instead, the requirement is to arrive at the age of 60.

## Eligibility Requirements

To have congregate or home-delivered meals paid by Older Americans Act funds, there are additional eligibility requirements. Furthermore, some who are not 60 years of age may also have their meals paid by Older Americans Act funds.

The Older Americans Act[2] determines who is eligible *for meals*, but the current version of OAC173-4-02[3] lists similar requirements as the requirements for *the nutrition program*. In the proposed new rules, ODA will list the eligibility requirements *for meals*.

---

[1] Ohio Dept. of Aging. http://aging.ohio.gov/services/passport/ (Accessed Dec 7, 2015.)
[2] §339 of the Act and 45 C.F.R. 1321.69 (Oct 1, 2015 edition).
[3] Adopted on April 22, 2010.

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## PASSPORT Program Payment for Meals

According to the current and proposed new versions of OAC173-39-02.14, in order to have the PASSPORT Program pay for home-delivered meals, the individual's case manager must assess, and if he or she documents a deficit in ADLs or IADLs in the individual the case manager may authorize the meals in the person-centered service plan.

## Older Americans Act Nutrition Program Payment for Meals

The current version of OAC173-4-02 regulates who may *participate* in the nutrition program. This has the nuance of determining which consumers a provider may serve. ODA understands that providers may serve many meals that are paid by varying means: Older Americans Act funds, Medicaid funds (the PASSPORT Program, developmental disabilities programs), county levy funds, and private funds. The proposed new version of OAC173-4-02 and the remaining rules in the package will not determine to which consumers a provider may provide a meal. Instead, the rules will determine which meals Older Americans Act funds will pay for.

## "Homebound" For The Older Americans Act Nutrition Program

45 C.F.R. 1321.69 addresses prioritizing services for *homebound* consumers and declares that spouses of consumers who receive home-delivered meals paid with Older Americans Act funds are also eligible to have Older Americans Act funds pay for their home-delivered meals. When the federal rule states the latter, it describes the consumer as a *homebound* consumer.

The current version of OAC173-4-02 limits the eligibility for home-delivered meals to consumers who are (1) unable to prepare meals, (2) unable to participate in a congregate program because of physical or emotional difficulties, or (3) lack another meal support in the home or community. The rule does not use the word "homebound," nor does it mention being homebound.

By comparison, some states use the word "homebound" as an eligibility requirement for home-delivered meals and incorporate all or part of the language for service prioritization in 45 C.F.R 1321.69 when doing so.

> Any older individual who is frail, as defined in Section 7119 of this Division, and homebound by reason of illness, disability, or isolation.[4]
>
> A person age 60 or over who is homebound by reason of illness, incapacitating disability or is otherwise isolated is eligible to receive a home-delivered meal.[5]
>
> *Eligibility.* An older individual who is homebound by reason of illness, incapacitating disability or other cause is eligible to receive home-delivered meals. Regardless of age or condition, the spouse of an older individual may receive home-delivered meals if receipt of the meal is in the best interest of the homebound older individual under criteria set by the AAA.[6]
>
> HOME DELIVERED MEAL is a hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal that meets a minimum of thirty-three and one-third percent of the daily Recommended

[4] California: 22 CA ADC §7638.7(c)(1). (Accessed Dec 7, 2015.)
[5] Illinois: 89 Ill. Admin. Code 230.250(b)(1)(A)(ii). (Accessed Dec 7, 2015.)
[6] Iowa: 17 IAC 7.21(1). (Accessed Dec 7, 2015.)

> Dietary Allowances (RDA, Food and Nutrition Board of the National Academy of Sciences), served in the home to a functionally impaired homebound older person.[7]
>
> Home Delivered Meal A meal which is furnished by a Nutrition Project to an Eligible Elder who is homebound by reason of illness, incapacitating disability, or isolation, which meal meets the requirements set by D.E.A.[8]

Other states take a different approach by defining the word "homebound" in a manner that is more limiting than the service-prioritization language in 45 C.F.R. 1321.69.

> Homebound—A person who is unable to leave his or her residence without aid or assistance or whose ability to travel from his or her residence is substantially impaired.[9]
>
> All individuals requesting home-delivered meals shall be assessed and only those individuals who have been determined to be homebound, as defined below, shall be eligible for a home-delivered meal.
>
> Homebound Status:
>
> A person shall be determined to be homebound if he/she is unable to leave home without assistance because of a disabling physical, emotional or environmental condition.
>
> Homebound status shall be documented. The Division shall approve the method of assessment to ensure standard measurable criteria.
>
> Written documentation of eligibility shall be maintained by the AAA.
>
> Homebound status shall be reviewed or re-evaluated on a regular basis, but not less frequently than annually.
>
> A waiver of the full annual assessment may be approved by the AAA director or designee. A written statement of waiver shall be placed in the client's file and shall be reviewed annually.
>
> Top priority may be given to emergency requests. Home-delivered meals for an emergency may start as soon as possible after the determination of urgent need has been made. A full assessment will be made within 14 calendar days from the date of request to determine continued eligibility.[10]

In earlier drafts of the proposed new rule, ODA proposed using the word "homebound" as an eligibility requirement for home-delivered meals and to incorporate all or part of the language for service prioritization in 45 C.F.R 1321.69 when doing so. Because service prioritization is not the same as an eligibility requirement, ODA will go a different route than above states by retaining the following elements of its current requirements for paying for home-delivered meals with Older Americans Act funds:

> A consumer who is sixty years of age or older and meets the following requirements: unable to prepare his or her own meals, unable to consume meals at a congregate dining location due to physical or emotional difficulties, and lacking another meal support service in the home or community.

[7] Florida: Dept. of Elder Affairs Rule: 58A-1.001.
[8] Massachusetts: 651 CMR 4.02 (in the definition for "home-delivered meal."( Accessed Dec 7, 2015.)
[9] Texas: 4 TAC 1.951(9). (Accessed Dec 7, 2015.)
[10] Utah: R510-104-15. (Accessed Dec 7, 2015.)

## Short-Term Eligibility for Home-Delivered Meal Payment with Older Americans Act Funds

Nothing in ODA's current or proposed new OAC173-4-02 would require certain unending life circumstances in order to be eligible for Older Americans Act funds to pay for home-delivered meals. Therefore, if consumer is recovering from an inpatient hip-replacement surgery, she may be unable to prepare her own meals for until she recovers, unable to visit a congregate dining location until she recovers, and lacks another meal support service in the home or community. Generally, she would be eligible to have Older Americans Act funds pay for her home-delivered meals until she recovers.

## Eligibility for Congregate and Home-Delivered Meal Payment with Older Americans Act Funds

Again, nothing in ODA's current or proposed new rule would require unending certain unending life circumstances in order to be eligible for Older Americans Act funds to pay for home-delivered meals. Therefore, if a consumer's son is able to visit his father once a week and take him to a congregate dining location, but the consumer is unable to prepare his own meals, unable to receive a meal at a congregate dining location (except for the day his son visits), and lacks another meal support service in the home or community (except for the day his son visits), the consumer is eligible to have Older Americans Act funds pay for his home-delivered meals on the days that his son doesn't visit.

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APPENDIX P

# BACKGROUND INFORMATION ON TERMINOLOGY

**December, 2015**

## Disclaimer

*This appendix does not define terms used in ODA's rules. Instead, it provides background on why ODA uses certain terminology in the rules. For definitions relevant to the Older Americans Act Nutrition Program, see rules OAC 173-3-01 and 173-4-01. For definitions relevant to the PASSPORT Program's nutrition rules, see OAC173-39-01.*

## Background for Terms Used in OAC Chapter 173-4 and 173-39-02.2, 173-39-02.10, and 173-39-02.14

**"Cold meals":** Home-delivered meals fall into 2 basic types:

- Hot meals are delivered on a per-meal basis at designated meal times, which don't allow the elder to eat whenever they want. Consumers must eat each meal as soon as it arrives. A typical menu for hot meals has only 1 menu option.

- Non-hot meals typically arrive as a package of meals to cover 5-7 days. Multiple non-hot meals are delivered one time that is not necessarily the meal time. These meals are frozen, vacuum-packed, modified-atmosphere-packed, blast-chilled, shelf-stable, *etc.* The ability to have food on hand before a mealtime and the packaging allows consumers to begin their mealtimes whenever they want.

The non-hot delivery option is very much the person-direction option. Calling it "non-hot" may be technically correct, but it's a poor sales pitch. ODA wouldn't want to call the person-direction option the "cold" option. Besides, the hot deliveries are actually warm, not hot.

ODA may be able to dichotomize between "hot" and "non-hot" meals in a way that doesn't make the option that generally caters to person direction sound undesirable.

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- *Per-meal delivery vs. periodic delivery*.
- *Per-meal delivery vs. person-directed delivery.*
- *Eat now vs. Eat when you want to eat.*
- *Per-meal deliveries that require instant consumption vs. periodic deliveries that allow freedom to dine when person wants to dine.*

ODA could also favorably name non-hot congregate meals. Toni Dodge is the nutrition program manager for the Delaware County Council for Older Adults and the president of the Ohio Chapter of Meals on Wheels Association of America. Toni said that she agrees that deli options served in congregate settings would be better labeled "deli" options than "cold options." "Cold" is not an appealing term.[1]

**"Congregate dining location":** For the Older Americans Act Nutrition Program rules, ODA uses the term "congregate dining location" (or, "dining location") instead of "meal site." This is similar to Wisconsin, which calls theirs "congregate dining centers,"[2] and SourcePoint in Delaware, Ohio, which calls their "dining centers."[3] The word "dining" emphasizes an enjoyable experience and wouldn't be objectionable to restaurants. The word "location" is much less an industrial term than "site" and much less an institutional term than "center."

There is a state and national trend to rebrand dining locations as cafés. In Ohio, the Sycamore Senior Center calls its traditional dining area the "Sycamore Café.[4] The Mayerson Jewish Community Center and LifeCare Alliance offer congregate meals in a restaurant atmosphere in an area separate from its traditional dining areas that are open to the general public. They are called the "J Café"[5] and "Carrie's Café."[6] Connecticut rebranded their dining locations as "Senior Community Cafés."[7] The Capital Area Agency on Aging rebranded theirs as "Friendship Cafés.[8] And Rhode Island rebranded its sites as simply "Cafés."[9]

It would not work for Ohio to require its providers to brand all dining locations as cafés, especially because many dining locations are cafeterias, so the "café" term would be misleading. Although some restaurants are cafés, most are not, so requiring a standing restaurant to be labeled a café in order to do business with the nutrition program could discourage restaurants from participating in the program. Additionally, standing restaurants already have recognizable names that do not involve the word "café." For example, two of

[1] Toni Dodge email to Tom Simmons. Feb 20, 2015.
[2] Wisconsin Aging Network. "Manual of Policies, Procedures, & Technical Assistance." Nutrition Program Operations §8.2.2 (June 30, 2011).
[3] SourcePoint. http://www.mysourcepoint.org/nutrition/ (Accessed Nov 24, 2015).
[4] http://www.sycamoreseniorcenter.org/activities.php (Accessed Nov 23, 2015).
[5] http://www.mayersonjcc.org/facilities-rentals/the-j-cafe/ (Accessed Nov 23, 2015).
[6] http://www.lifecarealliance.org/meal-services/carrie-s-cafe.html (Accessed Nov 23, 2015).
[7] Connecticut Dept. on Aging, Senior Community Cafés, http://www.ct.gov/agingservices/cwp/view.asp?a=2512&q=313040 (as modified on Dec 2, 2011).
[8] Capital Area Agency on Aging, Friendship Cafés. (Feb, 2013) http://www.seniorconnections-va.org/LinkClick.aspx?fileticket=KEqZUAQziEU%3D&tabid=96 (Accessed Jun 19, 2015)
[9] Rhode Island Dept. of Human Services, Div. of Elderly Affairs, http://www.dea.state.ri.us/Monthly%20Specials%20box/1index2.php (Accessed Mar 19, 2015).

the most popular dining locations in Ohio for congregate meals are the Legacy Pancake House in Dayton—not a café—and The Marketplace at the University of Rio Grande—also not a café.

**"Congregate meal site":** See "congregate dining location."

**"Consumer" + "Individual":** ODA's current rules use multiple terms to describe a person who is at least 60 years of age. The following examples show that ODA is not alone in using variant terminology:

- Older Americans Act: "participating older individual," "older individual," "elder," "program participant," and "senior"[10] and "meal participant."[11]
- ACL-AoA: One on webpage,[12] the federal agency uses 5 different terms: "older individuals," "individuals over the age of 60," "older people," "elder," and "adult." In a rule,[13] the federal agency uses "older persons" and "older individuals" in the same sentence. Another rule[14] uses "persons age 60 and over" and "older person."
- Connecticut: "older person."[15]
- Florida Dept. of Elder Affairs: "older person,"[16] "elderly person,"[17]
- Idaho Commission on Aging: "older persons, "seniors age 60 and older," "persons 60 years of age and older," and "adults."[18]
- Illinois Dept. on Aging: "eligible individual," "older person," and "individual older person."[19] Of these, "older person" is the most common.[20]
- Indiana Division of Aging: "individuals," "persons," "elderly," "older individuals," "older adults."[21]
- Kentucky Dept. for Aging and Independent Living: "elders."[22]
- Massachusetts Executive Office of Elder Affairs: "elders"[23]

[10] §339 of the Older Americans Act.
[11] §330 of the Older Americans Act.
[12] http://www.aoa.acl.gov/ accessed on Jul 13, 2015.
[13] 45 C.F.R. 1321.1 (2014)
[14] 45 C.F.R. 1321.69 (2014)
[15] §17b-423-1 (2-98)
[16] 58A-1.001 Definitions and 58A-1.007 Area Agency on Aging Functions and Responsibilities.
[17] 58H-1.0V02 Definitions.
[18] http://www.211.idaho.gov/elibrary/ICOA.html accessed Jul 13, 2015.
[19] Section 230.250 Services
[20] It appears 33 times in Section 230.250.
[21] Title 455 of the Indiana Administrative Code accessed Jul 13, 2015.
[22] http://chfs.ky.gov/dail/ accessed Jul 13, 2015.

- New Mexico Aging and Long-Term Services Dept.: "older adults," "adults," "elder," "senior."[24]
- New York: "elderly people,"[25] "person,"[26] and "recipient."[27]
- North Carolina Division of Aging and Adult Services: "older adults"[28] and seniors."[29]
- Oregon Dept. of Human Services: "older Oregonians," "older individuals," "older adults," "seniors," "people age 60 and over," "older persons," "participants," "clients," "the elderly."[30]
- Pennsylvania Dept. of Aging: "older adult," "older person," and "older relative"[31] and "client."[32]
- Texas Dept. of Aging and Disability Services: "older individual."[33]
- Virginia Dept. of Aging and Rehabilitative Services: "older person," "elderly," and "older individual."[34]

To eliminate multiple terms for the same person within a body of rules, in ODA's proposed new and amended rules, ODA will consistently use "consumer" in the rules for the Older Americans Act Nutrition Program and "individual" in the rules for the PASSPORT Program. The terms "consumer" and "individual" have consistency within their larger bodies of rules.

**"Contracts"** is a term of art for federal programs like the Older Americans Act Nutrition Program. Additionally, ORC§173.392 requires ODA to adopt rules governing contracts between AAAs and providers instead of directly regulating the providers.

ORC§173.392 also mentions grants. ODA is unaware of any grants being issued by Ohio's AAAs to providers. Additionally, defining "contract" to means "contract or grant agreement" would significantly reduce verbosity in the rules that comes from using "contract or grant

[23] http://www.mass.gov/elders/service-orgs-advocates/area-agency-on-aging.html accessed Jul 13, 2015.
[24] New Mexico Aging & Long-Term Services Dept., New Mexico State Plan for Aging & Long-Term Services: Oct 1, 2013-Sept 30, 2017.
[25] 9 CRR-NY 6651.1
[26] 18 CRR-NY 461.1
[27] 18 CRR-NY 461.2
[28] http://www2.ncdhhs.gov/aging/ (Accessed Jul 13, 2015.)
[29] http://www2.ncdhhs.gov/aging/meals.htm (Accessed Jul 13, 2015.)
[30] http://www.aarp.org/content/dam/aarp/livable-communities/learn/health/oregon-congregate-and-home-delivered-nutrition-program-standards-aarp.pdf accessed Jul 13, 2015.
[31] 6 Pa. Code § 11.1, 6 Pa. Code § 15.1, 6 Pa. Code § 20.2 (Accessed Jul 13, 2015.)
[32] 6 Pa. Code § 11.3 (Accessed Jul 13, 2015.)
[33] 40 TAC 85.2
[34] 22VAC30-60-20. Definitions.

agreement" in most paragraphs of the chapter. ODA will address this in an upcoming rule project that involves OAC173-3-01.

Therefore, ODA proposes to systematically replace the occurrences of "provider agreement" in the Older Americans Act rules with "contract" and to define "contract" in OAC173-3-01[35] as a contract or grant agreement.

ODA's provider-certification rules do not use the term "contract" or "grant agreement."

**"Diet Order"** See Appendix O for a detailed background.

**"Electronic Verification"** is prevalent. ODA may switch from requiring signature verification (which may be electronic) to either (1) requiring electronic verification that includes a unique identifier for the consumer or (2) requiring a handwritten signature if no electronic verification that includes a unique identifier is used. This would prevent any misconception that using electronic verification may require identifying the consumer twice: (1) by scanning the consumer's barcode, scanning the consumer's RFID card, or reading the consumer's fingerprint and (2) colleting a handwritten signature. Please review Appendix J for information on the electronic verification's prevalence and benefits.

**"Goods and services":** A meal is a good. Nutrition counseling is a service. So long as the context of a sentence indicates that a rule regulates goods *and* services, ODA's proposed new and amended rules will use "goods and services," not just "services" in the rule.

**"Homebound"**: ODA does not use this term in the rules. Please review Appendix N for more information on eligibility for home-delivered meals paid by Older Americans Act funds.

**"Nutrition counseling"** will replace "nutrition consultation" and "medical nutrition therapy" in OAC173-4-07[36] but not in rule OAC173-39-02.10. ODA must continue to use "nutritional consultation" for rule OAC173-39-02.10 unless/until CMS approves of an amendment to the Medicaid waiver for the PASSPORT Program.

**"Nutrition project"** is a local project of the Nutrition Program. In Ohio, AAAs sometimes rebrand *projects* as *programs.* This is incorrect. Connecticut correctly handles the matter by using the federal program name, Elderly Nutrition Program, then referring to 13 elderly nutrition projects operating under the program.[37] Connecticut defines an "elderly nutrition project" as "an entity that is awarded a subgrant from an area agency to provide nutrition services under the area plan."[38] The Illinois Department on Aging and Oregon Dept. of Human Services also make clear use of "nutrition project."[39]

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[35] OAC173-3-01 is a rule that defines terms for OAC Chapter 173-3 of the Administrative Code. It is presently part of a separate rule project that ODA may file with JCARR near the time ODA files the nutrition rules with JCARR.
[36] The current rule is OAC173-4-06, but ODA proposes to replace the rule with new rule OAC173-4-07.
[37] Connecticut Department on Aging. http://www.ct.gov/agingservices/cwp/view.asp?a=2512&q=313042. (Accessed Jul 7, 2015.)
[38] Connecticut Department on Aging. Sec. 17b-423-1(a)
[39] Illinois: Section 230.250. Oregon: http://www.aarp.org/content/dam/aarp/livable-communities/learn/health/oregon-congregate-and-home-delivered-nutrition-program-standards-aarp.pdf

**"Nutrition project administrator":** ODA used the term in earlier drafts of the proposed new rules. According to ACL, the nutrition project administrator is the nutrition program provider.[40] Therefore, for simplicity, later drafts of ODA's proposed new rules use "provider" in any rule language where it may have previously used "nutrition project administrator."

**"Paid"** is verb that ODA uses in the proposed new Older Americans Act rules to describe being paid (*vs.*, reimbursed, funded, *etc.*) with Older Americans Act funds.

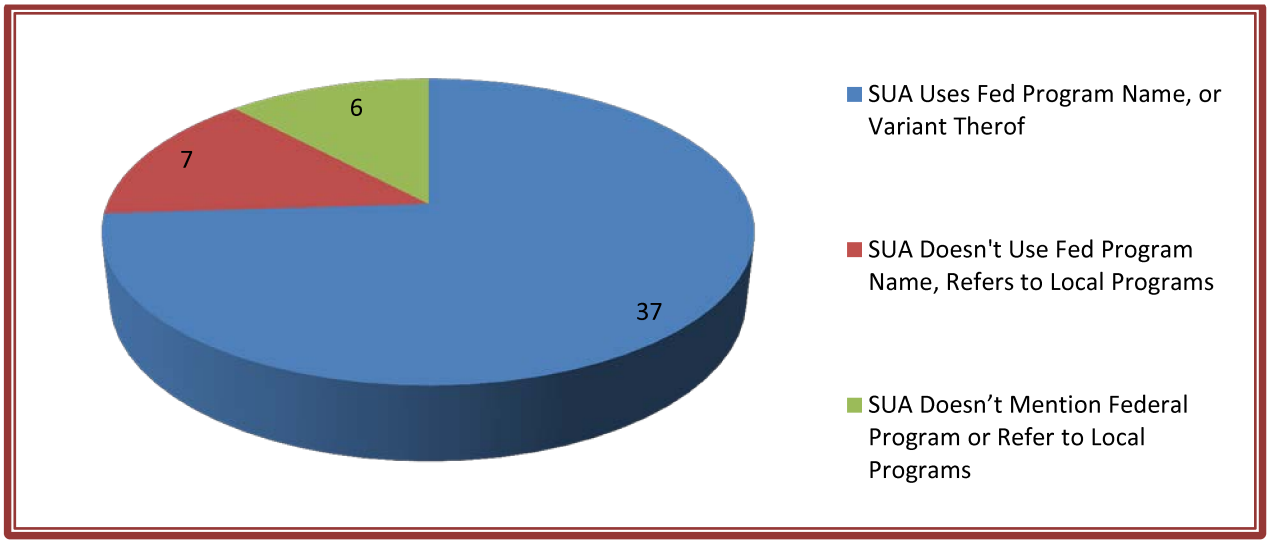
**"Person centered" *vs.*, "Person direction"** (Please review Appendix B and the definition in proposed new rule OAC173-4-04.)

**"Ohio Administrative Code" and "Ohio Revised Code":** The Legislative Service Commission's Rule Drafting Manual requires state agencies to make citations to these bodies of law use the following formulas: "rule 123-4-56 of the Administrative Code" and "section 123.45 of the Revised Code." However, to make the BIA and related documents shorter and easier to read, ODA uses the following unofficial citation formulas in the BIA and related non-rule documents: "OAC123-4-56" and "ORC§123.45."

**"Older Americans Act funds"** is being defined in another rule project that. The resulting rule will apply to OAC Chapter 173-4." "In whole or in part with Older Americans Act funds" will refer to Older Americans Act funds and matching funds (*e.g.*, Senior Community Services Funds, Alzheimer's Respite funds, levy funds, *etc.*).

**"Older Americans Act Nutrition Program"**
Sections 331 and 336 of the Older Americans Act say that the Assistant Secretary of the U.S. Dept. of Health and Human Services shall carry out "a program." The U.S. Dept. of Health and Human Service's Administration on Aging (AoA) and Administration for Community Living (ACL) brand that program as the "Elderly Nutrition Program."[41]

[40] Kathleen Votava. U.S. Dept. of Health and Human Services: Administration for Community Living. Email to Mike Laubert. Jul 31, 2014.
[41] U.S. Dept. of Health and Human Services, Administration on Aging, Elderly Nutrition Program, Fact Sheet (Jun, 2008). Also, U.S. Dept. of Health and Human Services, Administration on Aging and Administration on Community Living, Elderly Nutrition Program, Fact Sheet (jointly published by both administrations). Undated. http://www.acl.gov/NewsRoom/Publications/docs/Elderly_Nutrition_Programs_1.pdf




California, Connecticut, Massachusetts, Minnesota, Pennsylvania, and Wisconsin are part of the 74%, or 37, of the 50 states that use the federal branding or a variant thereof (*e.g.*, "Senior Nutrition Program," "Older Americans Act Nutrition Program," "Congregate Nutrition Program," or "Home-Delivered Nutrition Program"[42]).

14%, or 7, of the 50 states' administrative codes or state unit on aging websites refer only to locally-named programs. No state should choose this route. 45 C.F.R. 75.302 (2014) requires contracts that use Older Americans Act funds to indicate that all expenditures are regulated by the Older Americans Act and state and federal regulations on Older Americans Act fund and to identify the federal program (*i.e.*, Elderly Nutrition Program) under which the Older Americans Act funds were received. A federal requirement to use the federal program's name would rule out local rebranding of the program.

No state unit on aging has rebranded the Elderly Nutrition Program in their state with a unique name. In 2012, a proposal arose in Wisconsin to rebrand that state's program as "Eat4Life" Program because "Eat4Life sounds more 'active' and tied in with the National Institute on Aging's Go4Life campaign.[43] At the present time, Wisconsin appears to still use "Elderly Nutrition Program."[44]

Ohio currently belongs to the smallest category of states. 12%, or 6 of the 50 states, do not name the program or refer to locally-named programs. Again, no state should choose this route because federal regulations require contracts to identify the federal program by name.

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[42] The Administration for Community Living's website uses all these terms on one webpage. http://www.aoa.acl.gov/AoA_Programs/HPW/Nutrition_Services/index.aspx (Accessed Jun 19, 2015).

[43] Greater Wisconsin Agency on Aging Resources, Inc., Modernization of The Elderly Nutrition Program. Mike Glasgow & Pam Vankampen. Slideshow presentation. (Undated, but likely 2012).

[44] Wisconsin Dept. of Health Services, Wisconsin's Elderly Nutrition Program, https://www.dhs.wisconsin.gov/aging/nutrition.htm (Accessed Dec 9, 2015).

If ODA and AAAs use the federal name, they will be in compliance with new federal requirements to identify the names of federal programs in 45 C.F.R., Part 75.

Additionally, if ODA and AAAs use the federal name, compliance with the rules could increase. While reviewing OAC Chapter 173-4 and considering amendments to the chapter, ODA reached out to numerous providers by email and telephone to assess their means for furnishing meals. Unfortunately, some of the providers who were being paid with Older Americans Act funds to provide meals were unaware that the AAA was paying them with Older Americans Act funds or that OAC Chapter 173-4 regulated them. How can a provider comply with a program's rules if the provider doesn't even know the program's name? Thus, if ODA and AAAs use the federal name, or a variant thereof, compliance could increase.

Additionally, if ODA and AAAs use the federal name, doing so could foster person direction by giving the program's name statewide recognition. This would make it possible for a provider who is successful at offering person direction in on planning and service area (PSA) to know that the program is available statewide and to approach neighboring area agencies when it wants to expand its services into neighboring PSAs. This would increase competition for contracts and make it possible for AAAs to have more than one viable bidder, which could lead to more contracts or a contract that offers more person direction.

Perhaps, ODA or the federal government will rebrand the name in the future. For now, ODA will use the term "Older Americans Act Nutrition Program" to describe the nutrition program created by the Older Americans Act.

In the proposed new rules, ODA proposes to use the following variant of the federal name: "Older Americans Act Nutrition Program." To help the public identify a rule when the rule is viewed out of context (*e.g.*, through an Internet search engine), all rules for the Older Americans Act Nutrition Program will have rule titles that begin with "Older Americans Act: nutrition program:".

**"Provide"** is the primary verb that ODA uses in the proposed new and amended rules to describe the action that the rules require of providers. The current rules also use "furnish," "deliver," "serve," *etc.* To prevent the possibility of creating loopholes, in the proposed new rules, ODA chooses to use "provide" over the other options.

**"Requirements" *vs.*, "Criteria" ("Requirement" *vs.*, "Criterion"):** In the proposed new rules, ODA uses "requirements" instead of "criteria" because it's less legalese and because the singular form of the word "criteria" is "criterion." Most readers would not know the meaning of "criterion."

**"Therapeutic diet"** For detailed background information, please review Appendix O.

Ohio | Department of Aging

**John Kasich**, Governor
**Bonnie K. Burman**, Sc.D., Director

# APPENDIX Q
# ONLINE PUBLIC-COMMENT PERIODS

**December, 2015**

ODA conducted an online public-comment period from July 3, 2014 to July 20, 2014 for the proposed new OAC Chapter 173-4. The public viewed any one of the nutrition rules 1,409 times.[1] During the public-comment period, 14 Ohio businesses or business associations made 163 comments, some of which were nearly identical to one another.[2] The comments came from the following businesses and an association of licensed healthcare professionals:

- Ohio Association of Senior Centers
- Guernsey County Senior Citizens Center, Inc.
- Senior Enrichment Services
- United Senior Services
- United Seniors of Athens County
- WSOS Community Action Commission, Inc.
- Community Partnership on Aging
- LifeCare Alliance
- Senior Resource Connection (comments from 2 executives)
- Fairhaven Nutrition Services of Shelby County
- Council for Older Adults of Delaware County
- Crawford County Council on Aging, Inc.
- Hocking-Athens-Perry Community Action
- Ohio Academy of Nutrition & Dietetics

The following 4 designees of ODA, called “area agencies on aging” (“AAAs”), also commented: AAAs 2, 3, 4, and 5.

[1] Google Analytics.
[2] Identical comments indicates that multiple businesses shared comments with one another and that multiple businesses had identical concerns.

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From July 6, 2015 to July 19, 2015, ODA conducted an online public-comment period for OAC173-39-02.2 and 173-39-02.10. Only LifeCare Alliance submitted a comment, which was on OAC173-39-02.10.

From October 19, 2015 to November 1, 2015, ODA conducted an online public-comment period for OAC 173-3-06.1, 173-39-02.1, 173-39-02.14. ODA received comments from the following businesses and associations of licensed healthcare professionals:

- Becky Gardner, RDN, LD
- Ohio Academy of Nutrition & Dietetics
- Ohio Association of Physician Assistants
- On-Site Service Solutions (Sodexo)
- PurFoods, LLC (Iowa)
- Simply-EZ Home-Delivered Meals
- Wesley Community Services (with University of Cincinnati dietetics program)

On November 4, 2015, ODA hosted a webinar to reveal the updated rules as the rule drafts existed at that time. CSIO participated in the webinar. ODA emailed copies of the rules in the presentation to all participants and to others by request. Although the webinar did was not intended to initiate a public-comment period, ODA nevertheless received public comments from the following businesses and an association of licensed healthcare professionals after the webinar:

- LifeCare Alliance
- Ohio Academy of Nutrition & Dietetics

The following designee of ODA, called a “PASSPORT administrative agency” (“PAA”), also commented: PAA5.

The remainder of this document is a compilation of these comments.

| OAC173-4-01<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: INTRODUCTION AND DEFINITIONS | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *In General*<br><br>OASC supports this language.<br><br>*Ohio Association of Senior Centers* | Thank you. |
| *On the Definition of "Congregate Meal Program"*<br><br>Change to Congregate nutrition program<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | To more closely follow the Act and AoA literature that uses "project," ODA will use "congregate dining project."<br><br>To emphasize that greater desirability of meals after the inception of person direction, ODA refers to what was once called a "nutrition site" as a "dining location" and refers to the project as a "congregate dining project." |
| *On the Definition of "Home-Delivered Meals Project"*<br><br>change to Home-delivered nutrition program these program are more than a "meal" -- nutrition screening, education, counseling. This change should be made throughout the Rules.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | To more closely follow the Act and AoA literature regarding "project," and to update the rule citation, ODA will revise the definition in the rule as follows:<br><br>"Home-delivered meals project" means a nutrition project that complies with rule 173-4-05.2 of the Administrative Code.. |

| OAC173-4-01<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: INTRODUCTION AND DEFINITIONS** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On the Definition of "Consumer"*<br><br>What do we call the people that use the Nutrition program – I have seen Client, Consumer, Senior, Elder, etc.<br><br>Why not Participant since they are participating in the program? It is not calling them "old" like Senior or Elder, and it doesn't make me think of a shark or predator like consumer, and it doesn't denote that they are our client (to institutional). Just my 2 cents.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Even if a program or rule title differs, in the rules, ODA rules for the Older Americans Act nutrition program refer to people who receive meals and nutrition services as "consumers."<br><br>For the PASSPORT Program, people who receive meals are "individuals."<br><br>There is no need to define these terms. |
| *On Defining "Meal"*<br><br>What is a Nutrition Regimen? I think it should be – means a prepared meal offered to a participant of Congregate, HDM, or an alternative meal type (not program)<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | During the public-comment period, ODA proposed to define the term "meal." However, doing so seemed unnecessary and problematic. After consultation with AoA, ODA no longer proposes to define this common word.<br><br>Rule 173-4-05 of the Administrative Code will contain the nutritional requirements for meals; therefore, there is no danger that meals will not be nutritionally adequate as a result of no definition of the word.<br><br>This is not much different than the Older Americans Act, which does not define the term, but does state nutritional requirements for meals. By comparison, Illinois, Minnesota, and Wisconsin also have regulations for their Older Americans Act programs that do not define "meal." |

| OAC173-4-01<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: INTRODUCTION AND DEFINITIONS** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Defining "Meal"*<br><br>Introduction and definitions (B) (6) *"Meal" means a prepared meal, which may not comprise a full nutritional regimen . . ."* This definition is not consistent with the new language in 173-4-05.1 that says a meal *"satisfies a minimum of one-third of the DRIs and the 'Dietary Guidelines for American.'"* The proposed meal definition does not to support the intent of the Title III senior dining meal programs, which is to promote health and well-being of its consumers. Enough is said in the rewritten rule 173-4-05.1 that the nutritional levels of a meal could vary if the "consumer refuses to eat a particular meal item," or that nutritional adequacy may be adjusted due to "special dietary needs," or provider should use "flexibility" in meal design; therefore, please remove the words "may not comprise a full nutritional regimen" from the "Meal" definition.<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | Please see ODA's response to the previous comment. |
| *On Defining "Meal" and Other Terms*<br>• Omitted definitions for *expiration date, means testing, outbreak of food-borne illness, serving size.*<br>o Significant Impact: None<br><br>• Added the following definitions: Alternative meal program<br>o Congregate meal program<br>o Home-delivered meal program<br>o Meal<br>o Nutrition Services to include nutrition counseling, nutrition education, nutrition health screening, and/or supermarket shopping assistance<br>o Restaurant<br>o Shelf stable meal<br>o Supermarket<br><br>Impact/Concerns:<br>• The definition for meal *means a prepared meal, which may not comprise a full nutritional regimen.*<br>o What is the definition of nutritional regimen? This needs to be defined.<br>o Per the business impact analysis, | Please see ODA's response to the previous comment.<br><br>Nutritional-adequacy requirements are not part of a definition of "meal." One may find them in proposed new OAC173-4-05. |

| OAC173-4-01<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: INTRODUCTION AND DEFINITIONS | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *this change is derived from the uniform definitions that the National Association of States United for Aging and Disabilities, the Centers for Medicare and Medicaid Services, and the Administration on Aging are promoting for the 50 states. Additionally, because we cannot require seniors to eat food that has a full nutritional regimen, but we will reimburse a provider for furnishing another menu item of the senior's choosing, it is accurate to define a meal as not meeting a full nutritional regimen-or even an exact proportion of a full nutritional regimen (e.g. 1/3 of the DRIs). The senior may make choices that fill his or her body with a greater or lesser proportion of a full nutritional regimen.*<br>○ If nutritional regimen means 1/3 of the daily recommend intake, then the current definition allows the provider to prepare a meal that has no nutrition standards/requirements.<br>○ Excerpt from OAA unofficial 2006 compilation (AOA website link)<br>▪ The state establishes and operates a nutrition project under this chapter shall ...ensure that the project provides meals that—<br>▪ (i) comply with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and<br>▪ (ii) provide to each participating older individual—<br>▪ (I) a minimum of 33 1/3 percent of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the project provides one meal per day, | |

| OAC173-4-01<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: INTRODUCTION AND DEFINITIONS | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| ▪ (II) a minimum of 66 2/3 percent of the allowances if the project provides two meals per day, and<br>▪ (III) 100 percent of the allowances if the project provides three meals per day, and<br><br>o Recommend adding definition for nutritional regimen, and changing language from prepared meal to consumed meal. The prepared or offered meal should still meet a nutrition standard; however, the participant may [choose] what and how much to consume.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | |
| *On Defining "Nutrition Services"*<br><br>This term should encompass all services provided including meals, counseling, screening, etc. In the nutrition and health care world nutrition services is anything the nutrition department offers so it should be Congregate Meals, Home Delivered Meals, Alternative Meals, Nutrition Counseling, Nutrition Education, Nutrition Screening, and Supermarket Shopping Assistance.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The version of the proposed new rule that ODA plans to file with JCARR no longer defines the term "nutrition services." OAC Chapter 173-4 no longer uses the term. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>Including "local levy funds" in this rule exerts ODA influence over local funds. This is beyond the scope of ODA to determine use of local resources outside of their regulatory authority. All references to local levy funds throughout the rules and AC should be removed.<br><br>*Maureen B. Fagans, Executive Director*<br>*United Senior Services*<br>*Springfield, Ohio* | Chapter 173-4 of the Administrative Code has no jurisdiction over local levy funds if those funds are used independently of Older Americans Act funds. However, levy money is generally used as a local match that enables receiving Older Americans Act funds. As such, Chapter 173-4 of the Administrative Code regulates any contract or grant agreement that buys a nutrition project using funds that are comprised of Older Americans Act funds and funds used to match those funds...even local levy funds.<br><br>In the version of the proposed new rule that ODA will file with JCARR, ODA will not have an introductory paragraph for this rule. |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>It is also recommended that ODA should spell-out, disclose, and identify within the new rule changes that they hold no authority over how local funding sources should be utilized. Using terms like "matching funds" & "levy funds" and "other funding sources" implies they have governing authority. Any reference to this effect should be omitted entirely. The overall fear is that one could interpret this to mean that all levy funds (even those not used as the local cash-match) should follow all these rules. Ultimately, ODA's gross over extension of authority to regulate such funding sources would reduce local decision making & flexibility, thus negatively impacting the success and effectiveness to local senior nutrition program demands and requests.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA rejects the reviewer's suggestion that it should spell out in rule that ODA has no authority over how local funding sources should be utilized.<br><br>First, proposed new rule 173-4-02 describes the kinds of consumers who are eligible to have their meals paid with Older Americans Act funds, *which include any state or local funds that are used as match for the Older Americans Act funds that an AAA receives*. As such, there is simply no logical place in this rule for the kind of statement requested by the reviewer.<br><br>Second, while ODA has no interest or authority in how local levy funds are used by the counties, the fact remains that if a county awards local levy funds to a AAA or a provider, and the AAA or the provider wishes to use those funds as match for the Older Americans Act funds that the AAA receives, then the services paid for with that match must be provided in accordance with all laws and regulations governing the use of the Older Americans Act funds themselves. For instance, state laws require certain direct care service providers to undergo criminal background checks. The background checks must, by law, be completed in a particular fashion (*e.g.*, through the State's Bureau of Criminal Identification and Investigation, and not through the local sheriff's department). And, any service provided by persons who have not undergone the required background checks in the manner prescribed by law is ineligible for payment by the AAA using either Older Americans Act funds, or any state or local funds reported as match for those Older Americans Act funds that an AAA receives. Spelling out in rule that ODA has no authority to dictate how the counties utilize their local levy funds may cause AAAs and/or their providers to mistakenly believe that ODA does not have authority to dictate how local levy funds reported a match can be are used, and that the services paid for with local levy funds being used as matching funds are not subject to ODA's rule requirements.<br><br>Additionally, in the version of the proposed new rule that ODA will file with JCARR, ODA will not have an introductory paragraph for this rule. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>It is also recommended that ODA should spell-out, disclose, and identify within the new rule changes that they hold no authority over how local funding sources should be utilized. Using terms like "matching funds" & "levy funds" and "other funding sources" implies they have governing authority, which they do not. Any reference to this effect should be omitted entirely. Ultimately, ODA's gross overextension of authority to regulate such funding sources would reduce local decision making & flexibility, thus negatively impacting the success and effectiveness to local senior nutrition program demands and requests.<br><br>*Ohio Association of Senior Centers* | Please see ODA's responses the previously-listed comments on this paragraph. |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>Including local levy funds in this rule exerts ODA influence over local funds. This is beyond the scope of their authority to determine use of local resources outside of their regulatory authority (i.e. required match). Recommend removal of references to local levy funds here and throughout proposed rules 173-4 of the Administrative Code, plus rule 173-3-06 of the Administrative Code.<br><br>*Ohio Association of Senior Centers* | Please see ODA's responses the previously-listed comments on this paragraph. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>Under the applicability statement of the proposed rule governing senior dining, the rule proposed in eligibility criteria included meals provided by a list of funding sources which included local levy funds. We are deeply concerned that local levy funds would be included in that list. Local levy funds are controlled by the political authority that allowed the levy to be voted on and approved by local residents. The oversight of the funds should remain in control of that entity. The removal of "local levy funds" from this rule, other rules and by reference in other rules will maintain control in the hands of the local authority and maintain the integrity of the voter-approved local levies.<br><br>*Michael C. Turner, Executive Director*<br>*United Seniors of Athens County*<br>*Athens, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>I question and am concerned about the inclusion of language indicating that the criteria for persons to receive meals includes "local levy funds." I believe the decision on the appropriate and allowable use of local levy funds must remain with the jurisdiction generating the levy funds and not with the Department of Aging or the State of Ohio. Inclusion of local levy funds in this proposed rule runs contrary to the rule of local governance and taxing authority. I respectfully request the reference to local levy funds be removed from this section.<br><br>Thank you for your consideration.<br><br>*Doug Stanley, Executive Director*<br>*Hocking-Athens-Perry Community Action*<br>*Glouster, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>Funding at the local level comes from several sources, not levy funds alone. Language should be changed from "local levy funds" to "other local sources."<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>The issue of "local levy funds" mentioned in 173-04-03 is also a problem in this section. Two items recommended for change/revision would be; 1.) Any reference to "local levy funds" be omitted, and 2.) Eligible nutrition program participants, regardless if they are staff, guest, or volunteer should be included in provider reimbursements.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>"The rule establishes the enrollment process for a person who wishes to receive meals that are funded by Older Americans Act funds, Senior Community Service funds, or a combination of Older Americans Act funds, Senior Community Service funds, local levy funds, donations, and voluntary contributions. The rule does not apply to meals that the provider furnishes with funding other than these funds. (E.g., private pay, Medicaid)"<br><br>Issues: from the Business Impact Analysis page 5. Including local levy funds in the above rule exerts ODA influence over local funds. This is beyond the scope of their authority to determine enrollment processes for funds outside of their regulatory authority.<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>The above issue with regards to the Local levy funds is also a problem in this section. Would advocate for two things: 1.) reference to "local levy funds" be omitted, and 2.) that volunteers continue to be included in OASS reimbursement per argument noted by PSA4.<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Volunteers, Staff, Guests*<br><br>If a volunteer is 60 years of age, undergoes an assessment, meets all eligibility criteria, and signs in to dine each day, why wouldn't reimbursement be provided? What if an eligible "volunteer, staff, or guest" files a discrimination suit because they were denied a meal (because the provider cannot get reimbursed) even though at face-value they are indeed eligible to receive a meal? Furthermore, if an eligible volunteer, staff, or guest by right of age and all other criteria is excluded from the program, how is this fair and abiding under non-discrimination age laws? If a meal is prepared and provided to an eligible person "voice over choice" how does this person's voice not get recognized and heard? And, why wouldn't the provider get reimbursed? This does not make sense. Similarly, the term "guest" is very vague and unclear. Technically all customers and clients can also be grouped or defined as "guests". If a staff, volunteer, or guest is at least 60 years of age; meets all other criteria; undergoes an assessment; and signs-in each day why wouldn't these meals be reimbursed from OAA/SCS funds when Federal USDA reimbursements would? All eligible and ineligible meals are tracked and monitored, however, if Title III meals are not billable the provider also losses USDA funding reimbursements determined by AAAs. Also, what about first time visitors? What if a spouse is separated and lives at a different address with no other qualifications? Are they still eligible? OASC recommends that if congregate meals are universally provided to 1) anyone age 60 and older 2) eligible spouse and/or has an established/assessed nutritional need regardless of association or affiliation then we believe the meal should be "billable" and the provider should absolutely be reimbursed.<br><br>*Ohio Association of Senior Centers* | The version of the proposed new rule that ODA published for the comment period did not show that it is possible for Older Americans Act funds to pay for meals provided to volunteers.<br><br>In ODA's revised version of the proposed new rule, ODA shows that the Older Americans Act and AoA allow to use Older Americans Act funds to pay for volunteers' meals.<br><br>This rule addresses the eligibility criteria for a consumer (or others) to receive meals that are purchased with Older Americans Act funds. The proposed new rule does not address NSIP (*i.e.*, UDSA) incentives that providers receive for using government commodities.<br><br>The version of the proposed new rule that ODA plans to file with JCARR does not require spouses to live together. However, it does require that the spouse who is not 60 years of age or older accompany the spouse who is 60 years of age or older to the congregate dining location in order to be eligible. If ODA becomes aware that Congress did not intend for spouses to dine together in order for the spouse who is less than 60 years of age to be eligible, ODA will revisit this matter. |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Volunteers, Staff, Guests*<br><br>The new proposed rule omits the difference between "eligible & ineligible" clientele and states that "The rule does not prohibit a provider from furnishing meals to staff members, volunteers, or guests." "Older Americans Act funds and Senior Community Services funds do not reimburse providers for meals provided to staff members, volunteers, or guests". If a volunteer is 60 years of age, undergoes an assessment, meets all eligibility criteria, and signs in to dine each day, why wouldn't reimbursement be provided? What if an eligible "volunteer, staff, or guest" files a discrimination suit because they were denied a meal (because the provider cannot get reimbursed) even though at face-value they are indeed eligible to receive a meal? Furthermore, if an eligible volunteer, staff, or guest by right of age and all other criteria is excluded from the program, how is this fair and abiding under non-discrimination age laws? If a meal is prepared and provided to an eligible person "voice over choice" how does this person's voice not get recognized and heard? And, why wouldn't the provider get reimbursed? This does not make sense. Similarly, the term "guest" is very vague and unclear. Technically all customers and clients can also be grouped or defined as "guests". If a staff, volunteer, or guest is at least 60 years of age; meets all other criteria; undergoes an assessment; and signs-in each day why wouldn't these meals be reimbursed from OAA/SCS funds when Federal USDA reimbursements would? All eligible and ineligible meals are tracked and monitored, however, if Title III meals are not billable the provider also losses USDA funding reimbursements determined by AAAs. Also, what about first time visitors? What if a spouse is separated and lives at a different address with no other qualifications? Are they still eligible? If congregate meals are universally provided to 1) anyone age 60 and older 2) eligible spouse and/or has an established/assessed nutritional need regardless of association or affiliation then we believe the meal should be "billable" and the provider should absolutely be reimbursed.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA agrees that the Older Americans Act does not create an eligibility category for paid staff members.<br><br>In the version of the proposed new rule that ODA will file with JCARR, ODA will reflect the language in section 339 of the Older Americans Act that authorizes payment for volunteers.<br><br>Also, please see ODA's response to the previous comment. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Volunteers, Staff, Guests*<br><br>Eligible nutrition program participants, regardless if they are staff, guest, or volunteer should be included in provider reimbursements.<br><br>*Ohio Association of Senior Centers* | Please see ODA's responses the previously-listed comments on this paragraph. |
| *On Volunteers, Staff, Guests*<br><br>As spouses of those who qualify for a congregate meal our able to be provided a meal regardless of age or abilities, I would like to suggest for consideration that this offer be extended as well to a caregiver of the person who accompanies the consumer to a congregate meal. This would include a family member or other person in the role. I think as the younger population grows older, and as many have limited or no family members, there needs to be some sensitivity and awareness of that. There may need to be a way to get documentation of some sort, and reservations for the meal may be required.<br><br>*Robin Rosner, Homemaker Program Coordinator*<br>*Community Partnership on Aging*<br>*Cleveland, Ohio* | Section 339 of the Older Americans Act does not cover caregivers by name; but if the caregivers are spouses or are volunteers, the Act and the rule cover them as such.<br><br>Also, please see ODA's responses the previously-listed comments on this paragraph. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Volunteers, Staff, Guests*<br><br>If a volunteer is 60 years of age, undergoes an assessment, meets all eligibility criteria, and signs in to dine each day, why wouldn't reimbursement be provided? What if an eligible "volunteer, staff, or guest" files a discrimination suit because they were denied a meal (because the provider cannot get reimbursed) even though at face-value they are indeed eligible to receive a meal? Furthermore, if an eligible volunteer, staff, or guest by right of age and all other criteria is excluded from the program, how is this fair and abiding under non-discrimination age laws? If a meal is prepared and provided to an eligible person "voice over choice" how does this person's voice not get recognized and heard? And, why wouldn't the provider get reimbursed? This does not make sense. Similarly, the term "guest" is very vague and unclear. Technically all customers and clients can also be grouped or defined as "guests". If a staff, volunteer, or guest is at least 60 years of age; meets all other criteria; undergoes an assessment; and signs-in each day why wouldn't these meals be reimbursed from OAA/SCS funds when Federal USDA reimbursements would? All eligible and ineligible meals are tracked and monitored, however, if Title III meals are not billable the provider also losses USDA funding reimbursements determined by AAAs. Also, what about first time visitors? What if a spouse is separated and lives at a different address with no other qualifications? Are they still eligible? OASC recommends that if congregate meals are universally provided to 1) anyone age 60 and older 2) eligible spouse and/or has an established/assessed nutritional need regardless of association or affiliation then we believe the meal should be "billable" and the provider should absolutely be reimbursed.<br><br>*Ohio Association of Senior Centers* | The version of the proposed new rule that ODA published for the online public-comment period did not show that the Older Americans Act allows Older Americans Act funds to pay for volunteers' meals in certain cases.<br><br>In ODA's revised version of the proposed new rule, ODA reflects the language of section 339 of the Older Americans Act which allows providers decide if they want to use their award of Older Americans Act funds to pay for volunteer's meals.<br><br>This rule addresses the eligibility requirements for a consumer to receive meals that are paid with Older Americans Act funds. The proposed new rule does not address NSIP (*i.e.*, UDSA) incentives that providers receive for using government commodities.<br><br>Additionally, the version of the proposed new rule that ODA will file with JCARR does not address the issue of whether or not a congregate dining location can serve meals to guests who are not eligible for Older Americans Act funds. Providers are welcome to serve meals to any person who pays for the meals by means other than Older Americans Act funds. ODA's rules will not prohibit this. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On "Spouse"*<br><br>Recommend changing language to "The person is the spouse or domestic partner of an eligible person, regardless of age or abilities<br><br>*Ohio Association of Senior Centers* | Section 339 of the Older Americans Act does not cover domestic partners by name, but if the domestic partners are volunteers, the Act and the rule cover them under "volunteers."<br><br>However, if the partner is considered a spouse by state law or the recent Supreme Court decision, Section 339 of the Older Americans Act and ODA's proposed new rule show that the partner would be covered under "spouse."<br><br>Additionally, if a partner is a disabled person who lives with an elder, but is not married to the elder, Section 339 of the Older Americans Act and ODA's proposed new rule show that the partner would be covered. |
| *On Home-Delivered Meals for 60+*<br><br>The new rule is very confusing. It states…."two criteria", yet five (5) total are listed. If each criteria and component must be met, than why not simply state "the following five (5) criteria versus 1 (a-c) & 2.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | The version of the proposed new rule that ODA posted for the public-comment period had two criteria. To meet the first requirement, a consumer needed to be 60 and meet all three additional elements of that requirement. They were not separate requirements. They were elements that, together, made up the first requirement.<br><br>The version of the proposed new rule that ODA will file with JCARR will not be organized in this matter. |
| *On Home-Delivered Meals for 60+*<br><br>The new rule is very confusing. It states…."two criteria", yet five (5) total are listed. If each criteria and component must be met, recommend stating "the following five (5) criteria Versus 1 (a-c) and 2."<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Means Testing*<br><br>Recommend clarification on how it is determined/assessed the qualification "…that the person can afford."<br><br>*Ohio Association of Senior Centers* | 45 C.F.R. 1321.17(f)(3) (Oct 2015) prohibits limiting services to otherwise eligible seniors on the basis of means testing.<br><br>Any consideration of financial means must be done by a consumer's self-reporting of income. However, the revised version of ODA's proposed new rule no longer contains the clause "that the person can afford." |
| *On Home-Delivered Meals for Disabled*<br><br>If a person is the spouse of an eligible person, regardless of age or disabilities and receives a meal, but AAA "classifies" them underage and "ineligible" to which a provider does not receive reimbursement does not seem very fair. We must provide a meal, but we cannot get paid for it? If the rules regulate we must provide them a meal, but does not define or disclose what could be defined or referred to as an "eligible-ineligible" meal than why shouldn't providers get reimbursed and paid for these meals?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA agrees with the reviewer that it would be unfair if an AAA required a provider to provide a meal, then declined to pay the provider with Older Americans Act funds. In the version of the proposed new rule that ODA will file with JCARR, ODA will make spouse coverage clear. |
| *On Home-Delivered Meals for Disabled*<br><br>If a person is the spouse of an eligible person, regardless of age or disabilities and receives a meal, but AAA "classifies" them underage and "ineligible" to which a provider does not receive reimbursement does not seem very fair. We must provide a meal, but we cannot get paid for it? If the rules regulate we must provide them a meal, but does not define or disclose what could be defined or referred to as an "eligible-ineligible" meal than why shouldn't providers get reimbursed and paid for these meals? ***Recommend clarification on this item.***<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Home-Delivered Meals for Disabled*<br><br>Clarification needed: Does the residential facility (i.e. apartment complex) have to be the nutrition provider? Recommend that language allow for a third-party that may be operating a senior center or nutrition site in residential facility with older adults and persons with a disability who are less than sixty years of age to provide the Title IIIC service.<br><br>*Ohio Association of Senior Centers* | Section 339(2)(l) of the Older Americans Act and ODA's proposed new rule require the building to host a congregate dining location. There is no requirement that a nutrition provider own the building or operate a residential program in the building. |
| *On Home-Delivered Meals for Disabled*<br><br>Although the terminology in section (C)(1) has not been changed from the current rule, it might be helpful to add "independent living" before the word, "facility" in the first line to exclude nursing facilities and assisted living facilities where meals are a part of the service provided to their residents since they may host a Title III meal site.<br><br>*Joyce Boling, Chief of Quality Management*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | In the version of the rule that ODA proposes to file with JCARR, ODA will not use the term "facility" at all. Instead, ODA will use "non-institutional residential building." This language is only inserted for the purposes of declaring that Older Americans Act funds may pay for meals of persons with disabilities who reside in those buildings. It does not limit congregate dining sites to any particular settings.<br><br>There is no prohibition in the Act or ODA's rules against an institution from being a congregate dining location. For example, a hospital quality dining operations would make an adequate dining location. Elder caregivers who are attending their loved ones in the hospital would benefit most from having an in-house dining operation where meals could be paid with Older Americans Act funds.<br><br>One of the most highly attended congregate dining locations in Ohio is The Marketplace, a student dining operation at the University of Rio Grande. |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Home-Delivered Meals for Disabled*<br><br>Define "facility". Does this include apartment complexes in general? Clarification is needed on this item. Under the new proposed rule if a patient was "residing" (resident over 30-days by law) in an assisted living facility or hospital facility than couldn't these "facilities" become providers (a.k.a. nutrition project administrators) to receive both congregate and home delivered meal reimbursements if the resident is "residing at a facility a.k.a. hospital/assisted living" the room in which they would reside would be their home and eligible for HDM reimbursement and if they ate in the dining hall couldn't that be a congregate reimbursable setting. This could be problematic when up for regional AAA interpretation and implementation as well as create unclear rules as to what extent and to whom a "nutrition project administrator" can be.<br><br>In addition, pairing the term "provider" with "nutrition project administrator" terminology implies that any nutrition project administrator is therefore eligible to receive reimbursement.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please understand that the current and proposed new versions of this rule do not establish "reimbursable settings."<br><br>The rule simply states which persons are eligible to have Older Americans Act funds pay for their meals. Some persons in the list of eligible persons are only eligible to have their meals paid with the funds in certain locations. However, the primary person in the list, the consumer who is sixty years of age or older, does not need to dine in any specific type of dining location other than a congregate dining location.<br><br>Please see ODA's response to the previous comment. |

| OAC173-4-02<br>OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>MEALS ELIGIBLE FOR PAYMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Home-Delivered Meals for Disabled*<br><br>Define "facility". Does this include apartment complexes in general? Clarification is needed on this item.<br><br>Under the new proposed rule if a patient was "residing" (resident over 30-days by law) in an assisted living facility or hospital facility then couldn't these "facilities" become providers (a.k.a. nutrition project administrators) to receive both congregate and home delivered meal reimbursements if the resident is "residing at a facility a.k.a. hospital/assisted living" the room in which they would reside would be their home and eligible for HDM reimbursement and if they ate in the dining hall couldn't that be a congregate reimbursable setting. This could be problematic when up for regional AAA interpretation and implementation as well as create unclear rules as to what extent and to whom a "nutrition project administrator" can be. In addition, pairing the term "provider" with "nutrition project administrator" terminology implies that any nutrition project administrator is therefore eligible to receive reimbursement.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Home-Delivered Meals for Disabled*<br><br>With regard to eligibility, I am no longer seeing the OAA option for home-delivered meals of a person under the age of 60 with a disability who resides in a senior housing facility.<br><br>I see it mentioned for congregate but not for home-delivered.<br><br>Again, I just wanted to be sure I am interpreting/reading correctly.<br><br>*Molly Haroz, Director, Nutrition Programs*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | The language in the current rule isn't; authorized by the Older Americans Act or federal rules.<br><br>Federal law only authorizes paying for the congregate meals of persons with disabilities in facilities in which congregate meals are served. This is made clear by 45 C.F.R. 1321.17(f)(12) (October, 2015) |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| Clarified this rule sets forth criteria for a person to receive meals that are funded with Older Americans Act Funds, Senior Community Services funds or a combination of OAA, SCS or *local levy funds.* In addition, *Older Americans Act funds and Senior Community Services funds do not reimburse providers for meals provided to staff members, volunteers or guests.*<br><br>Impact/Concerns:<br><br>Not allowing OAA reimbursement for volunteers is a change. Below is an excerpt from the OAA. Please cite the source/language prohibiting the use of OAA funds for volunteer meals.<br><br>ensures that each participating area agency on aging establishes procedures that allow nutrition project administrators the option to offer a meal, on the same basis as meals provided to participating older individuals, to individuals providing volunteer services during the meal hours, and to individuals with disabilities who reside at home with older individuals eligible under this chapter,<br><br>What about voluntary contributions (program income)? The rule delineates OAA funds or SCS funds may not pay for staff, volunteer or guests meals? By omitting program income, does this imply program income may be used for these meals?<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | ODA does not intend to indicate that Older Americans Act funds cannot be used to pay for volunteers' meals and has updated the proposed new rule's language to make this clear.<br><br>Please see ODA's response to a similar comment that OASC made regarding reimbursement for volunteers. |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Local Funds as Match for Older Americans Act Funds*<br><br>Within the "Applicability" section, perhaps the word "and" in place of "or" in the third line would be more appropriate. Secondly, in the last sentence it indicates that the funds do not reimburse for meals provided to certain individuals; however, if the individual meets the eligibility criteria, they would be able to receive these meals. For example, this could be a volunteer at the congregate site who is 60 years of age or older.<br><br>*Joyce Boling, Chief of Quality Management*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | Please see ODA's responses the previously-listed comments on this paragraph. |

| OAC173-4-02<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: MEALS ELIGIBLE FOR PAYMENT** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| Eligibility criteria – *Applicability – The rule does not prohibit a provider from furnishing meals to staff members, **volunteers**, or guests. Older Americans Act and Senior Community Services funds do not reimburse providers for meals provided to staff member, **volunteer**, or guests.* (We assume "volunteers" in this paragraph refers to those who are under 60 years of age.) Previously, the 173-4-02 Eligibility criteria <u>included</u> a person who *"provides services during meal preparation hours or meal-delivery hours and only receives a meal . . ."* The ODA Nutrition Services Incentive Program policy 304.09 (B)1.c. states, *"The meal is reimbursable when served to individuals under the age of 60 and who meet one or more of the following criteria: . . . iii. provide volunteer services for the Congregate Nutrition Programs and Home-Delivered Nutrition Programs."* Does this mean that ODA policy 304.09 (B) 1.c.iii. is no longer valid, <u>or</u> that a meal served to a person who provides volunteer services during meal preparation hours or meal-delivery hours can no longer be paid by OAA and SCS funds but is still eligible for NSIP reimbursement? Meals served to volunteers (under 60) have historically been OAA/SCS and NSIP eligible. The ability for meal provides to receive OAA, SCS, and NSIP funds for these meals has been a valuable support for volunteer services for the meal programs, services which would be otherwise unaffordable to the providers. Please consider maintaining this support to the Title III meal program.<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | Please see ODA's response to the previous comment. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Face-to-Face Assessments*<br><br>The old rule states "AAA may establish criteria…" The new rule states "AAA may develop a process for conducting eligibility assessments for initial enrollment and annual reenrollments that a provider "may" conduct by telephone …" This item brings about grave concerns and opposition to telephone assessments. Industry-wide research has concluded that telephone assessments often lack quality, substance, & truths, but more importantly clients' needs are not fully and completely addressed because of inferior questions asked during the telephone interview process; poor telephone interview skills; and the lack of personable eye-to-eye contact. The assessor cannot fully assess and determine the wellness and overall safety of the individual or the home as well as other issues and concerns that might exist if they do not get a glimpse of the person or an opportunity to visit inside the clients' home. "Seeing is believing". Many seniors can "talk" and sound well, but how they look may tell another story all together.<br><br>Other concerns with conducting a telephone assessment include how the information is logged and transcribed into a client's running record. How do you actually verify the conversation (assessment) ever actually took place? What about a signature? What about all of the other verifications that the AAA already requires that the client needs to verify they've seen or received (HIPAA policy, ombudsman contact information, grievance policy, complaint policy, etc…)? What gets lost in interpretation and listening versus the visual queue of what you see versus what's said?<br><br>The key issues are 1) What does this "process" that AAA's can develop look like? 2) Will provider's input and feedback actually be considered? 3) Does ODA have an idea of what this process already looks like? 4) How does opening a rule up for regional AAA interpretation make sense to the state, providers, or our senior citizens? If no two telephone assessments were ever created or do not look the same than why should we allow or permit telephone assessments in the first place?<br><br>This proposed rule demands more specific details | ODA removed all preference language from the proposed new rules, including a preference for face-to-face assessments. Preferences aren't legally binding, so this creates no regulatory changes from ODA.<br><br>The current rule also permits (*i.e.* "may") AAAs to establish an assessment process. The proposed rule simply requires a provider to assess. A provider would assess according to the requirements in OAC173-4-02. ODA is not proposing to establish a *process* to conduct these assessments. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| and universal state-wide accepted standards. When left up to AAA's to "create a process" this again falls under regional interpretation and causes vast inconsistencies among providers as well as clients that may relocate within the state, but are served by another different AAA authority. One rule, but 10 different processes or interpretations does not sound like good common sense.<br><br>If the rule stands as it is proposed, than AAA's should also be mandated to create training classes for providers on "How to conduct a proper telephone assessment".<br><br>Also, if Adult Protective Service Agencies are going to receive grossly needed additional state funding support to better identify elder abuse related cases and circumstances why should we as providers create fewer opportunities to visit clients face-to-face or less thoroughly asses their other in-home needs or health & safety concerns (i.e. homemaking; transportation; safety; hoarding; physical, emotional, & verbal abuse; neglect, self-neglect, financial exploitation, etc..)? The rule should eliminate telephone assessments and require face-to-face assessments.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | |
| *On Face-to-Face Assessments*<br><br>The old rule states "AAA may establish criteria…" The new rule states "AAA may develop a process for conducting eligibility assessments for initial enrollment and annual reenrollments that a provider "may" conduct by telephone …" This item brings about grave concerns and opposition to telephone assessments. Industry-wide research has concluded that telephone assessments often lack quality, substance, & truths, but more importantly clients' needs are not fully and completely addressed because of inferior questions asked during the telephone interview process; poor telephone interview skills; and the lack of personable eye-to-eye contact. The assessor cannot fully assess and determine the wellness and overall safety of the individual or the home as well as other issues and concerns that might exist if they do not get a glimpse | Please see ODA's response to the previous question. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| of the person or an opportunity to visit inside the clients' home. "Seeing is believing". Many seniors can "talk" and sound well, but how they look may tell another story all together.<br><br>Other concerns with conducting a telephone assessment include how the information is logged and transcribed into a client's running record. How do you actually verify the conversation (assessment) ever actually took place? What about a signature? What about all of the other verifications that the AAA already requires that the client needs to verify they've seen or received (HIPAA policy, ombudsman contact information, grievance policy, complaint policy, etc…)? What gets lost in interpretation and listening versus the visual queue of what you see versus what's said?<br><br>The key issues are 1) What does this "process" that AAA's can develop look like? 2) Will provider's input and feedback actually be considered? 3) Does ODA have an idea of what this process already looks like? 4) How does opening a rule up for regional AAA interpretation make sense to the state, providers, or our senior citizens? If no two telephone assessments were ever created or do not look the same than why should we allow or permit telephone assessments in the first place?<br><br>This proposed rule demands more specific details and universal state-wide accepted standards. When left up to AAA's to "create a process" this again falls under regional interpretation and causes vast inconsistencies among providers as well as clients that may relocate within the state, but are served by another different AAA authority. One rule, but 10 different processes or interpretations does not sound like good common sense.<br><br>If the rule stands as it is proposed, than AAA's should also be mandated to create training classes for providers on "How to conduct a proper telephone assessment".<br><br>Also, if Adult Protective Service Agencies are going to receive grossly needed additional state funding support to better identify elder abuse related cases and circumstances why should we as providers create fewer opportunities to visit clients face-to-face or less thoroughly assess their other in-home needs | |

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| or health & safety concerns (i.e. homemaking; transportation; safety; hoarding; physical, emotional, & verbal abuse; neglect, self-neglect, financial exploitation, etc..)? Recommendation is that the rule should eliminate telephone assessments and require face-to-face assessments.<br><br>*Ohio Association of Senior Centers* | |
| *On Face-to-Face Assessments*<br><br>Enrolling a new client without doing an in-person initial assessment would create a greater opportunity for individuals not eligible for services to sign up. Additionally, the initial assessment is an opportunity for the client and provider to establishment a relationship that could lead to additional assistance.<br><br>Reassessments done via the telephone on alternating years would save time and decrease expense for the provider especially when clients are seen daily and noted changes are reported by the meal delivery staff. However, to make this option cost efficient, additional requirements should not be attached by individual area agencies. Any additional requirement that requires more administrative time by the provider eliminates any benefit by the rule change.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Please see ODA's response to the previous comment. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Face-to-Face Assessments*<br><br>Enrolling a new client without doing an in-person initial assessment would create a greater opportunity for individuals not eligible for services to sign up. Additionally, the initial assessment is an opportunity for the client and provider to establishment a relationship that could lead to additional assistance.<br><br>Reassessments done via the telephone on alternating years would save time and decrease expense for the provider especially when clients are seen daily and noted changes are reported by the meal delivery staff. However, to make this option cost efficient, additional requirements such as additional forms or training for delivery staff added by the area agency should be eliminated.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On "Caregiver"*<br><br><u>Define "caregiver":</u> Does this include home health workers, substitute home health employees?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA defined the term in OAC173-3-01 to have the same meaning as "family caregiver" in Section 302 of the Older Americans Act, which defines the term as follows:<br><br>...an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual or to an individual with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction.<br><br>ODA is in the process of proposing an updated version of OAC173-3-01. In the proposed new rule, ODA presently anticipates including the following definition:<br><br>"'Caregiver' and 'family caregiver' have the same meaning as in Section 302 of the Older Americans Act." |
| *On "Caregiver"*<br><br>Recommendation to define "caregiver". Does this include home health workers, and/or substitute home health employees?<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |

| OAC173-4-03<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Enrolling Before Assessing After a Discharge*<br><br>This paragraph is confusing and needs to be stated in a more concise manner to clarify what the actual rule is.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | In the version of the proposed new rule that ODA proposes to file with JCARR, ODA has included somewhat simplified language. The topic has many qualifications (*i.e.*, "ifs") that prevent the paragraph from being very simple. |
| *On Enrolling Before Assessing After a Discharge*<br><br>The proposed rule is very confusing and almost seems contradictory in and of itself. Mixing the statement "…seven days following discharge" with the phrase "immediately" seems conflicting and confusing. Can providers bill for meals served on days 8 thru 30?<br><br>In addition, the proposed rule states "the provider can only deliver meals after the 13th calendar day following the discharge IF an assessment is performed that verifies that the person…"<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please review ODA's response to the previous comment. |

| OAC173-4-03<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Enrolling Before Assessing After a Discharge*<br><br>The proposed rule is very confusing and almost seems contradictory in and of itself. Mixing the statement "…seven days following discharge" with the phrase "immediately" seems conflicting and confusing. Can providers bill for meals served on days 8 thru 30?<br><br>In addition, the proposed rule states "the provider can only deliver meals after the 30th calendar day following the discharge IF an assessment is performed that verifies that the person…"<br><br>Recommendation to change the phrasing to include "a provider may provide up to 21 meals per week (3 meals per day) or provide meals up to seven days per week". Additionally, this paragraph is confusing and needs to be stated in a more concise manner to clarify what the actual rule is.<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to the previous comment. |
| *On Enrolling Before Assessing After a Discharge*<br><br>the first and second sentences seem to contradict each other in regard to time for service. Needs to be clarified.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Please review ODA's response to the previous comment. |

| OAC173-4-03<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Applicability*<br><br>"The rule establishes the enrollment process for a person who wishes to receive meals that are funded by Older Americans Act funds, Senior Community Service funds, or a combination of Older Americans Act funds, Senior Community Service funds, local levy funds, donations, and voluntary contributions. The rule does not apply to meals that the provider furnishes with funding other than these funds. (E.g., private pay, Medicaid)"<br><br>The phrase "local levy funds, donations, and voluntary contributions" should be omitted altogether and replaced with simply "ODA non-governed other local sources".<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please refer to ODA's response to your comment on this matter for rule 173-4-02. |
| *On Applicability*<br><br>Issues: from the Business Impact Analysis page 5., including local levy funds in the above rule exerts ODA influence over local funds. This is beyond the scope of ODA's authority to determine enrollment processes for funds outside of their regulatory authority.<br><br>Creating and providing an easily accessible and understandable enrollment process can make or break any worthwhile program. Protecting local levy funds is vital to most senior nutrition programs throughout the state and many local levy funds are used to off-set funding gaps and shortfalls as well as in some areas provide 100% of all nutrition program funding. In addition, some civic clubs and other partnering for-profit & non-profit organizations may "sponsor" specific dinners, dining options, and special menus traditionally not paid for by traditional OAA funding sources.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please refer to ODA's response to your comment on this matter for rule 173-4-02. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Applicability*<br><br>Issues: from the Business Impact Analysis page 5., including local levy funds in the above rule exerts ODA influence over local funds. This is beyond the scope of ODA's authority to determine enrollment processes for funds outside of their regulatory authority.<br><br>Creating and providing an easily accessible and understandable enrollment process can make or break any worthwhile program. Protecting local levy funds is vital to most senior nutrition programs throughout the state and many local levy funds are used to off-set funding gaps and shortfalls as well as in some areas provide 100% of all nutrition program funding. In addition, some civic clubs and other partnering for-profit & non-profit organizations may "sponsor" specific dinners, dining options, and special menus traditionally not paid for by traditional OAA funding sources. The phrase "local levy funds, donations, and voluntary contributions" should be omitted altogether and replaced with simply "ODA non-governed other local sources".<br><br>*Ohio Association of Senior Centers* | Please refer to ODA's response to your comment on this matter for rule 173-4-02. |
| *On Applicability*<br><br>"The rule establishes the enrollment process for a person who wishes to receive meals that are funded by Older Americans Act funds, Senior Community Service funds, or a combination of Older Americans Act funds, Senior Community Service funds, local levy funds, donations, and voluntary contributions. The rule does not apply to meals that the provider furnishes with funding other than these funds. (E.g., private pay, Medicaid)"<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please refer to ODA's response to your comment on this matter for rule 173-4-02. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Applicability*<br><br>The rule establishes the enrollment process for a person who wishes to receive meals that are funded by Older Americans Act funds, Senior Community Service funds, or a combination of Older Americans Act funds, Senior Community Service funds, local levy funds, donations, and voluntary contributions.<br><br>Recommend removal of references to local levy funds here and throughout proposed rules 173-4 of the Administrative Code, plus rule 173-3-06 of the Administrative Code.<br><br>Recommend clarification that the rule does not apply to meals that the provider furnishes with funding other than these funds. (i.e. private pay, Medicaid).<br><br>*Ohio Association of Senior Centers* | Please refer to ODA's response to your comment on this matter for rule 173-4-02. |
| *Miscellaneous*<br><br>What does the enrollment process have to do with provider serving hours of operation & meal delivery capacity/capabilities? This is a key item that deserves its own line item or rule section.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | The rule only addresses consumer enrollment, not hours of operation or delivery capabilities. |
| *On AAA Assessments*<br><br>add or AAA --consistent with Congregate<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA has redrafted the proposed new rule to state that providers enroll consumers. |
| *On Waiting Lists*<br><br>How is the nutrition screening used to determine enrollment if the program cannot serve all who need the service? Does high-risk take precedence over enrollment date?<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | 45 C.F.R. 1321.69 requires the provider to prioritize services for certain consumers over others. An impartial screening tool helps to make a fair system for determining nutritional risk. |

| OAC173-4-03<br>OLDER AMERICANS ACT: NUTRITION PROGRAM: ELIGIBILITY VERIFICATION AND ENROLLMENT | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| Added language to include alternative meal program in enrollment process.<br><br>No concerns with proposed changes.<br><br>*Rebecca Liebes, PhD, Dir. of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Thank you. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Availability*<br><br>A provider has reduced flexibility if the new language is implemented **"Provider may provide up to seven meals per week**." For example, in a year when there are heavy snows and emergency closings, the demand for daily congregate meals declines during that period and more emergency or shelf stable meals are used. However, we are contracted for that same 12 month period to provide X number of congregate meals. The flexibility of working to allow service seven days a week and not limit the number of meals allows a provider to remain within the pre-projected budget by offering a second meal of a different menu on the same day in the latter part of a year to make up for the hot meals not served due to weather issues. Projected counts are achieved and budgets stay on track with this flexibility. Additionally, some service providers / senior centers throughout the State are currently serving evening and weekend meals making their current weekly opportunities for meal service at 10 or more.<br><br>As it's currently proposed this rule seems restrictive and limiting to both providers and clients.<br><br>What if providers have the ability to provide greater, more locally preferred options that far extend beyond the proposed rule of providing "up to seven meals per week"? The proposed language implies providers can only provide one congregate meal per day. What if providers choose to provide a lunch and a dinner option 7-days per week? This results in 14 meals, not seven. If a nutritionally compliant breakfast, lunch, and dinner option was "packaged" of "mixed packaged" like various college dining plans as an option for seniors, then a provider might prepare and serve up to 21 meals per week.<br><br>What if a provider hosts a Sunday luncheon or an evening dinner is served the same week at one satellite location? The proposed rule does not address multiple satellite sites. Are meal service schedules counted collectively or individually per satellite site? This is not addressed.<br><br>Recommend changing to may provide up to 21 meals per week or may provide meals up to seven | ODA proposes to revise the paragraph in a way that should resolve OASC's concerns. The Act requires providing at least one meal per day on 5 or more days per week to *individuals*, not to *each individual*. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| days per week.<br><br>*Ohio Association of Senior Centers* | |
| *On Availability*<br><br>As it's currently proposed this rule seems restrictive and limiting to both providers and clients.<br><br>What if providers have to ability to provide greater, more locally preferred options that far extend beyond the proposed rule of providing "up to seven meals per week"? The proposed language implies providers can only provide one congregate meal per day. What if providers choose to provide a lunch and a dinner option 7-days per week? This results in 14 meals, not seven. If a nutritionally compliant breakfast, lunch, and dinner option was "packaged" of "mixed packaged" like various college dining plans as an option for seniors, then a provider might prepare and serve up to 21 meals per week.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please see ODA's response to the previous comment. |
| *On Availability*<br><br>What if a provider hosts a Sunday luncheon or an evening dinner is served the same week at one satellite location? The proposed rule does not address multiple satellite sites. Are meal service schedules counted collectively or individually per satellite site? This is not addressed.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please see ODA's response to the previous comment. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Availability*<br><br>**Issue:** Less service/choice for consumer, and reduction on flexibility for provider<br><br>A provider has reduced flexibility if the new language is implemented **"Provider may provide up to seven meals per week**." For example, in a year when there are heavy snows and emergency closings, the demand for daily congregate meals declines during that period and more emergency or shelf stable meals are used. However, we are contracted for that same 12 month period to provide X number of congregate meals. The flexibility of working to allow service seven days a week and not limit the number of meals allows a provider to remain with in the pre-projected budget by offering a second meal of a different menu on the same day in the later part of a year to make up for the hot meals not served due to weather issues. Projected counts are achieved and budgets stay on track with this flexibility.<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Please see ODA's response to the previous comment. |
| *On Availability*<br><br>Also, ditto comments provided by PSA4. "Recommend changing to may provide up to 21 meals per week or may provide meals up to seven days per week."<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Please see ODA's response to the previous comment. |
| *On Availability*<br><br>Recommendation to change the phrasing to include "a provider may to provide up to 21 meals per week (3 meals per day) or provide meals up to seven days per week".<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please see ODA's response to the previous comment. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Emergency Closings*<br><br>Re: (A) (4) Emergencies…contingency procedures should also be developed for more LONG-TERM situations as once happened due to a serious issue within the facilities of the caterer providing for the meals that was health related.<br><br>*Robin Rosner, Homemaker Program Coordinator*<br>*Community Partnership on Aging*<br>*Cleveland, Ohio* | Your comment reveals the wisdom of awarding more than one contract per geographic area. If a provider is unable to provide meals for a long period, consumers require other options like a back-up plan for serving meals in a local restaurant or finding another provider who can fulfill the contract requirements. |
| *On Quality Assurance*<br><br>change to Feedback or comments from staff and consumer.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Since the online public-comment period, ODA has revised the draft, but continues to not use the word "feedback." In the version of the rule that ODA intends to file with JCARR, ODA said the following:<br><br>Quality assurance: Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements. |
| *On Quality Assurance*<br><br>A participant survey is a participant survey. We oppose the inclusion of staff & volunteer surveys as this can create additional conflict within the work place and tends to micro-manage the internal controls of providers as a viable working environment. Staff surveys should be omitted.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | In the version of the rule that ODA intends to file with JCARR, the rule doesn't require *surveying* consumers, staff, or volunteers. It requires *evaluating* the effectiveness of the project's operations to ensue continuous improvement. Staff and volunteers could be a factor in effectiveness. Perhaps, staff need trained. Perhaps, locals no longer volunteer. These would be factors to consider in order to maintain continuous improvement. They don't involve surveying staff or volunteers. |
| *On Quality Assurance*<br><br>A participant survey is a participant survey. We oppose the inclusion of staff & volunteer surveys as this can create additional conflict within the work place and tends to micro-manage the internal controls of providers as a viable working environment. Staff surveys should be omitted.<br><br>*Ohio Association of Senior Center* | Please see ODA's response to the previous comment. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Quality Assurance*<br><br>[This paragraph] refers to the quality assurance plan including the opinion of the staff regarding the program and services. Comments from any staff member regarding the operations of the company are considered an internal matter and should not be included in a report that is reviewed by the area agency. This reference should be removed from the rule.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Please see ODA's response to the previous comment. |
| *On Quality Assurance*<br><br>Subsection (b) refers to the quality assurance plan including the opinion of the staff regarding the program and services. Comments from any staff member regarding the operations of the company are considered an internal matter and should not be included in a report that is reviewed by the area agency. This reference should be removed from the rule. Recommend removing this requirement.<br><br>*Ohio Association of Senior Center* | Please see ODA's response to the previous comment. |
| *On Quality Assurance*<br><br>As mentioned in the above section, comments and concerns of the staff with regard to the operation of the company are considered an internal personnel matter and does not belong in a quality assurance plan that is reviewed by the area agency. Comments from the staff would be handled internally through the established process of the company. Recommendation that this reference be removed from this section.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Meal Verification*<br><br>Daily Dining Center signatures<br>Would increase staff time and clerical hours to meet compliance<br><br>*John Gregory, Senior Vice President of Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | ODA's recent provider survey showed that most providers use electronic verification systems to verify the meals provided in congregate dining locations. Providers who used such systems reported seeing cost savings and a return on their investment.<br><br>LifeCare Alliance informed ODA that it uses ServTracker to verify its meals. That is all that is required.<br><br>Under federal law, all costs incurred under the Older Americans Act Nutrition Program must be reasonable (45 CFR 75.403(a)), and must be documented (45 CFR 75.403(g)). It is unreasonable to pay for meals that are never delivered. |
| *On Person Direction*<br><br>I think there should be clarification on meal types allowed after meal frequency.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | The proposed new rule doesn't limit the types of meals or the platforms on which they are served (*e.g.*, traditional, salad bar, family style). The only type of meal in ODA's proposed new rules that would require special authorization is a therapeutic meal. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Rule Title*<br><br>Senior Dining in a Congregate Setting – I don't like the name – should just be Congregate Meals or Congregate Meal Service. I know AAA 3 doesn't own the term Senior Dining but it is what we call our program. Rules generally don't have catchy names, they just should be as straight forward and easy to understand as possible.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The important thing about the program's name is that it's the name of a federal program. The new, uniform administrative requirements, cost principles, and audit requirements in 45 C.F.R. Part 75 (December, 2014) require AAAs and providers to properly identify the program's name.<br><br>Although ODA had previously proposed using "Senior Dining Program," ODA now proposes to use Older Americans Act Nutrition Program. |
| *On Availability*<br><br>Frequency of meals has changed from *Provider may provide meals five to seven days per week* to *Provider may provide up to seven meals per week.*<br><br>Impact/Concerns: The language *may provide up to seven meals per week* implies only a maximum of 7 meals may be served per week. If this is correct, breakfast and evening meal programs, which often serve a different group of participants, would be limited. Recommend changing to *may provide up to 21 meals per week* or *may provide meals up to seven days per week.*<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Please see ODA's response to OASC's comment on this paragraph (above). |
| *On Availability*<br><br>Added language allow for meals to be served in different locations on different days to accommodate restaurant and supermarket programs.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | The language would allow a provider to alternate the provision of congregate meals between 2 or more congregate dining locations. Thinking of a traditional mode, this may involve serving congregate meals on at a congregate dining location on the north side of town on M, W, and F, and serving congregate meals at a congregate dining location on the south side of town on T, Th, and S. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Nutrition Counseling and Nutrition Education*<br><br>Nutrition Counseling and Nutrition Education cannot always be provided by the meal provider. In big cities there are bigger companies to provide meals – in rural areas we have caterers, senior centers, and mom & pop establishments that do not employ an LD and it wouldn't make sense to employ an LD. – this should say – will be offered to participants as outlined in 173-4-6 and 173-4-7 in Administrative code. Simple and to the point and allows those rules to outline who does it.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The version of the proposed new rule that ODA intends to file with JCARR will not require contracts for nutrition dining projects to require the meals provider to also be the provider of nutrition counseling or nutrition education. This allows the AAA to separately procure meals, nutrition counseling, and nutrition education. One provider may submit a winning bid for all 3 or different providers may submit the winning bids for each. |
| *On Nutrition Counseling and Nutrition Education*<br><br>Current rules allow for AAA rather than provider to provide nutrition education or nutrition counseling. Proposed rules omit this language. The provider is responsible for furnishing nutrition education, counseling or both.<br><br>Impact/Concerns: Nutrition education and counseling changes will have a major impact on our programs. We have been able to better manage our resources and provide quality, award winning nutrition education developed by licensed dietitians on staff for our providers. Removing this option will result in a decrease in quality and an increase in expense. In addition, most providers do not have an LD on staff. Therefore, nutrition consultation would most likely not be provided because it would cost more to provide.<br><br>*Rebecca Liebes, Dir. of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | §307(a)(8) of the Older Americans Act prohibits AAAs from directly providing these services. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Carry-Out Meals*<br><br>The language regarding removal of food from the dining site was omitted from the proposed rules. Are frozen and carryout meals now allowed in the congregate meal program now?<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | ODA has added clarifying language on "carry-out meals" into the rule. The meals follow the Administration for Community Living's position.[3]<br><br>Please see ODA's response to the previous question. |
| *On Carry-Out Meals*<br><br>In addition, there does not appear to be any clarification in the rule that only hot or shelf stable meals are allowed in the congregate meal program. The language regarding removal of food from the dining site was omitted from the proposed rules. Are frozen and carryout meals now allowed in the congregate meal program?<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Please see ODA's response to the previous question. |
| *On Emergency Closings*<br><br>In addition, there does not appear to be any clarification in the rule that only hot or shelf stable meals are allowed in the congregate meal program.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Please see ODA's response to the previous question on carry-out meals. |

[3] Administration for Community Living. "The Older Americans Act Nutrition Program: Did You Know.....?" May, 2015. *Pg.* 8.

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Meal Verification*<br><br>Changed the language for service verification. Previously, acceptable documentation included daily, monthly, or weekly attendance sheets signed by the provider. The proposed rules eliminate this option. *For each meal the provider furnishes, the provider shall retain a record of the consumer's name, date of the meal, and the consumer's signature. The provider may use a technology-based system (i.e. agency management technology) to collect or retain the records required under this rule.*<br><br>Impact/Concerns: Providers should be able to comply with the signature requirement for congregate programs, since most are already completing this. Sometimes, participants will forget to sign in and the site manager will add his/her name or the spouse will sign. We have cited providers in the past for the site manager adding names. In addition, some providers may have to utilize levy funds for their special meals with high attendance (senior day/senior prom), when capturing signatures is unfeasible.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | ODA's June, 2014 provider survey found that 63% of providers were already using agency management technology and another 7% were actively shopping for the technology. 68% of the providers who were already using the technology said that they have already experienced a return on their investment into the technology.<br><br>It is good to know that providers in PSA4 are also already doing verifying each meal that it serves as it serves the meal. |

**OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
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| *On Meal Verification*<br><br>Service Verification – Would daily initials be acceptable? It would cut down on the size of the paperwork. If we have a signature each day – there would need to be a piece of paper for each day – but if a signature the first day of the month and then initials each day they attend – providers would be able to put a week or more on each page maybe more. With HDM and PCA – most do not receive service everyday but some participants do come to the meals 5 days a week. AAA 3 has 5 meal sites and it wouldn't be cost effective to buy technology to record because the cost to setup, maintain, train, and use should be used for meals. We have no other funds like levies to purchase these items. Our goal is to serve more meals and that is where we put the funds.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | First, ODA proposes to simplify the language and change the sub-heading from "service verification" to "meal verification."<br><br>Second, if a provider does not use an electronic verification system, ODA will now allow the provider to accept handwritten initials from the consumer in lieu of handwritten signatures.<br><br>Third, the AAA is permitted, but not required, to buy electronic verification systems to give to providers. Likewise, providers are permitted to buy electronic verification systems for themselves.<br><br>ODA's June, 2014 provider survey found that 63% of providers were already using agency management technology and another 7% were actively shopping for the technology. 68% of the providers who were already using the technology said that they have already experienced a return on their investment into the technology.<br><br>Certain brands of agency management technology also positively impact quality by helping providers solicit senior's meal preferences and account for voluntary contributions. |

| **OAC173-4-04** (CURRENT RULE) → **OAC173-4-05.1** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAMS: CONGREGATE DINING PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Food Safety*<br><br>Omitted language pertaining to food safety and sanitation, i.e. compliance with food safety code, food borne illnesses reporting, maintain food service licenses, forward critical violations and corrective actions, food sources, removal of food from dining sites, temperature maintenance and monitoring. These were removed because the Ohio Department of Ag and Ohio Department of Health have authority for food safety code and regulations rather than ODA.<br><br>Impact/Concerns: Some of the food safety safeguards/management tools that were removed are not required in the Ohio Uniform Food Safety Code. AOoA will maintain these in our Policy and Procedure Manual for Nutrition and Wellness.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Please review the legal jurisdiction information in Appendix M. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Delivery: Availability*<br><br>This rule diminishes consumer choice and options and does not enhance the dining experience.<br><br>ODA's oversight to grant approval of less frequent delivery is problematic and argumentative, especially singling out "rural areas". What if a large urban area falls on hard economic times and must curtail their program? The rule implies "all rural providers" are somehow sub-standard and subject to non-compliance. If so, how much of this is due to too much ODA oversight or the lack thereof AAA's management and regulatory inconsistencies throughout the state?<br><br>This totally circumvents consumer choice. Neither ODA nor AAA [needs] to provide this oversight per client. The local LSW or LD is reviewing the client registration and signing off. For example, we have clients who are on dialysis and cannot be home during the meal delivery period, there are others that don't want certain meals and call in and cancel in advance for the month.<br><br>Recommendation that the language, for consistency sake, should be drafted to include provisions for providers to provide "up to 21 meals per week or may provide meals up to 7 days per week".<br><br>*Ohio Association of Senior Centers* | The version of the proposed new OAC173-4-05.2 that ODA intends to file with JCARR contains simplified language. ODA's goal is to see meals delivered to consumers who need them, not to mandate 5-10 or 7-14 trips to each consumer's home per week. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Availability*<br><br>This rule diminishes consumer choice and options and does not enhance the dining experience.<br><br>ODA's oversight to grant approval of less frequent delivery is problematic and argumentative, especially singling out "rural areas". What if a large urban area falls on hard economic times and must curtail their program? The rule implies "all rural providers" are somehow sub-standard and subject to non-compliance. If so, how much of this is due to too much ODA oversight or the lack there of AAA's management and regulatory inconsistencies rapid throughout the state?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | §336 of the Older Americans Act indicates that ODA may approve of lesser delivery "frequency."<br><br>The language allows AAAs to contract with meal providers who offer per-meal deliveries or periodic deliveries. Many providers, including Guernsey County Senior Citizens Center, delivery frozen or chilled meals as an alternative to the traditional per-meal deliveries. Frozen or chilled meals are generally delivered periodically with one delivery covering multiple days of meals. |
| *On Delivery: Availability*<br><br>The language, for consistency sake, should be drafted to include provisions for providers to provide "up to 21 meals per week or may provide meals up to 7 days per week".<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | In the version of the proposed new OAC173-4-05.2, ODA simplified the language. ODA makes it clear that the goal is not mandating per-meal trips to consumer's homes, but mandating that consumers who need meals receive meals. |
| *On Delivery: Availability*<br><br>What about consumer choice of requesting multiple frozen meals delivered on one (1) day due to client request?(A) (2) (D) covers delivering a frozen meal on occasion but not necessarily as an on-going request as mentioned before.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | No language in the proposed new rule would prohibit a consumer from switching his or her choice of meal deliveries between per-meal and periodic deliveries. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Delivery: Availability*<br><br>What about consumer choice of requesting multiple frozen meals delivered on one (1) day due to client request? [Paragraph] (A) (2) (D) covers delivering a frozen meal on occasion but not necessarily as an on-going request as mentioned before.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Delivery: Availability*<br><br>Non-hot meals should be further defined to include "frozen meals" that are prepared and blast chilled for consumer delivery.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA is not proposing to define "hot" to include "frozen." Also, ODA doesn't use the terms "hot," "cold," *etc.* in the proposed new rule. Instead, ODA uses "per-meal delivery" and "periodic delivery." |
| *On Delivery: Availability*<br><br>Non-hot meals should be further defined to include "frozen meals" that are prepared and blast chilled for consumer delivery.<br><br>Ohio Association of Senior Centers | Please see ODA's response to the previous comment. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Delivery: Availability*<br><br>Also, an option of offering a "frozen meal" for-sale/purchase in addition to receiving a Title III "donation-only" meal should be added and included within the rule to provide a viable menu option for the consumers who may need nutritional sustenance while away from home (i.e. camping, visiting, transitioning from one child's home to another, temporary relocation, or simply wants more to eat beyond the confines of Title III meal regulations and verbally grants providers the permission and/blessing to do so while also providing an alternative funding source for providers who prepare and package their own in-house frozen meals.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | On one hand, meals delivered to a consumer for consumption outside the home are not payable with Older Americans Act funds. Rule 173-4-02 explains that a consumer must be the following in order to receive home-delivered meals:<br><br>...sixty years of age or older and meets the following requirements: unable to prepare his or her own meals, unable to consume meals at a congregate dining location due to physical or emotional difficulties, and lacking another meal support service in the home or community.<br><br>It would be difficult to be eligible according to the requirements above if the consumer is on a camping trip.<br><br>On the other hand, providers are free to supplement their incomes by selling to anyone meals that are not reimbursed in whole, or in part, with Older Americans Act funds. The Administration on Aging says, "Private pay services can create opportunities to reach a segment of the population not traditionally served by the network, however; such activities are optional for States, Area Agencies and service providers. In general, private payment for services occurs when individuals pay the full cost of the services they receive. Because there is no public funding involved, private pay services are not subject to the 'cost sharing' provisions under the Older Americans Act."[4]<br><br>If the consumer moves from one home to another and meets the requirements in OAC173-4-02 in both homes, Older Americans Act funds could pay for delivering meals to both homes. |

[4] Department of Health and Human Services: Administration on Aging. "Frequently Asked Questions (FAQs)." http://www.aoa.gov/AOA_programs/OAA/resources/faqs.aspx#Private. Undated. As viewed on July 22, 2014.

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Delivery: Availability*<br><br>Also, an option of offering a "frozen meal" for sale/purchase in addition to receiving a Title III "donation-only" meal should be added and included within the rule to provide a viable menu option for the consumers who may need nutritional sustenance while away from home (i.e. camping, visiting, transitioning from one child's home to another, temporary relocation, or simply wants more to eat beyond the confines of Title III meal regulations and verbally grants providers the permission and/blessing to do so while also providing an alternative funding source for providers who prepare and package their own in-house frozen meals.<br><br>Recommendation is to increase options for person-centered choice.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Food Safety: Dating Food Packages*<br><br>Information on packaging date could be simplified.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | The version of the proposed new rule that ODA intends to file with JCARR no longer contains any packaging language.<br><br>For more information, please review the legal jurisdiction information in Appendix M. |
| *On Food Safety: Monitoring Temperatures En Route*<br><br>change to - The provider shall maintain safe temperature per State of Ohio Uniform Food Safety Code for hot, frozen, vacuum-packed, cooked-chilled meals and MAP meals during delivery to the consumer.<br><br>re-think this Rule -- perhaps omit (B) (1),(3) and (4) and perhaps (C) if provider can decide if hot or other form. ???<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the proposed new rules, ODA no longer describes the types of meals that providers deliver on a periodic basis (*e.g.*, frozen, refrigerated). As a result, the proposed new rules also don't describe delivery temperatures.<br><br>Additionally, ODA is not the state agency with jurisdiction over food safety. For more information on jurisdictional matters regarding food safety, please review Appendix M. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *Food Safety: Monitoring Temperatures En Route*<br><br>There is no longer specifications related to monitoring the temperatures on established and newly established home-delivered and existing HDM routes. Will the frequency of temperature monitoring be something that the AAAs specify in their contracts?<br><br>---<br><br>Temperature monitoring is the most-expensive aspect of delivering meals. Some AAAs, like AAA2, require more monitoring than others.<br><br>*Molly Haroz, Director, Nutrition Programs*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | Providers can consult with the Ohio Departments of Agriculture and Health to determine if their rules require the provider's meals to undergo *en route* temperature checks. This could vary depending up on the nature of the food and its packaging.<br><br>If the aforementioned departments do not determine that their rules require the provider's meals to undergo *en route* temperature checks, then Ohio's only regulatory authorities on food safety have determined that the provider is not required to conduct such checks. ODA will not regulate where the appropriate authorities have determined to not do so.<br><br>For more information on jurisdictional matters regarding food safety, please review Appendix M. |
| *Food Safety: Monitoring Temperatures En Route*<br><br>Would increase costs as more test meals would need to be added; increase clerical hours to manage additional temperature records and compliance<br><br>*John Gregory, Senior Vice President of Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | ODA is not proposing to add a new temperature-checking requirement. ODA is proposing to no longer regulate in the area of food safety<br><br>For more information, please see Appendix M. |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Per-Delivery Verification*<br><br>We are not in agreement with the increase in documentation. This will have a negative impact on providers and regarding customer quality satisfaction surveys. It will increase the amount of time to deliver meals, especially when most providers are stretched to delivery route capacity within restrictive time frames. This will also add to costs and expenses. In some instances it may result in increasing the number of routes to include the additional time that is needed to collect and obtain consumer signatures. This is a direct contradiction to a "common sense" approach which is intended to reduce regulations that are beyond OAA guidelines, yet creates additional work and adds to the process.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | As a clarification, the requirement is to verify each delivery, not obtain a verification each day.<br><br>Under federal law, all costs incurred under the Older Americans Act Nutrition Program must be reasonable (45 CFR 75.403(a)), and must be documented (45 CFR 75.403(g)). It is unreasonable to pay for meals that are never delivered.<br><br>Additionally, most providers deliver who deliver meals that are paid with Older Americans Act funds also deliver meals that are paid with Medicaid funds through the PASSPORT Program. Being an ODA-certified provider for the PASSPORT program requires verifying each delivery. Thus, most providers are already capable of managing per-delivery verification.<br><br>Additionally, you previously informed ODA that Guernsey County Senior Citizens Center, Inc. used CoPilot, which offers electronic verification. Using CoPilot to verify meal deliveries means that the provider does not need to collect handwritten signatures to verify deliveries.<br><br>Please review ODA's responses to other comments on this topic.<br><br>For further information, please review Appendix J. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Per-Delivery Verification*<br><br>We are not in agreement with the increase in documentation. This will have a negative impact on providers and regarding customer quality satisfaction surveys. It will increase the amount of time to deliver meals, especially when most providers are stretched to delivery route capacity within restrictive time frames. This will also add to costs and expenses. In some instances it may result in increasing the number of routes to include the additional time that is needed to collect and obtain consumer signatures. This is a direct contradiction to a "common sense" approach which is intended to reduce regulations that are beyond OAA guidelines, yet creates additional work and adds to the process.<br><br>Recommendation to remove proposed daily client signature requirement.<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to the previously-listed comment. |
| *On Per-Delivery Verification*<br><br>Daily client signatures for home delivered meals will require changes to paperwork, will be inconvenient to the client, and will slow down deliveries, adding time and cost to providers. This additional oversight does not stream line any processes, it adds steps to an already heavily regulated program, and creates more paperwork.<br><br>*Maureen B. Fagans, Executive Director*<br>*United Senior Services*<br>*Springfield, Ohio* | Please understand that proposed new OAC173-4-05.2 would not require handwritten signatures if the provider uses electronic verification for meal deliveries. In an August 18, 2014 email, United Senior Services confirmed that it uses MySeniorCenter, an electronic verification technology, but used it for services other than home-delivered meals. Using technologies like this would allow United Senior Services to verify each delivery without requiring handwritten signatures. |
| *On Per-Delivery Verification*<br><br>Daily Home Delivered Meal signatures<br>Would increase actual delivery time calling for the creation of more routes, paid and/or volunteer staff, increase in clerical hours and more test meals for temperature monitoring<br><br>*John Gregory, Senior Vice President of Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | Please see ODA's responses to the previously-listed comments on this paragraph and review Appendix J. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Per-Delivery Verification*<br><br>First, the requirement for a daily signature for Title III MOW customers will have a major negative impact on most if not all providers of the service. Not only will it extend the time each driver is on the road (thus impacting staff costs) but it will also impact critical time requirements in meeting proper temperature holding of delivered foods. It takes time to get a signature from physically and/or cognitively compromised customers. Once a month (as we currently collect) or every two weeks (compromise) would reduce the major expenses somewhat and still allow the customers to indicate receipt of services. On a customer focused basis, since most Title III individuals do not have a case manager… who will make the determination as to who can sign for the customer in those instances when the customer is unable to sign for themselves?<br><br>*Chuck Sousa, Director of Nutrition*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | In a survey, Senior Resource Connection (SRC) indicated that it uses ServTracker technology for its congregate meals. SRC indicated that ServTracker reduced its administrative expenses and that SRC had already experienced a return on its investment into the technology.<br><br>However, SRC indicated that it doesn't use ServTracker or any other technology to verify meal deliveries. Accessible Solutions claims that its ServTracker product would reduce the expenses of tracking home-delivered meals.<br><br>Please see Appendix J for more information.<br><br>Also, please see ODA's responses to the previously-listed comments on this paragraph. |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Per-Delivery Verification*<br><br>Again, we are not in agreement with the increase in documentation. AAA's oversight again has become too over out reaching and providers perceive there is a tendency for AAA's to want Title III to be more like Medicaid Waiver/PASSPORT rules. REQUIRING REPEATED SIGNATURES IS AN INCONVENIENCE TO CONSUMERS AND THEY GROW [WEARY] AND TIRESOME OF SUCH POLICIES. These types of frustrating policies only exacerbate consumer dissatisfaction and create unwarranted stress for some seniors. This will have a negative impact on providers and regarding customer quality satisfaction surveys. It will increase the amount of time to deliver meals, especially when most providers are stretched to delivery route capacity within restrictive time frames. This will also add to costs and expenses. In some instances it may result in increasing the number of routes to include the additional time that is needed to collect and obtain consumer signatures. This is a direct contradiction to a "common sense" approach which is intended to reduce regulations that are beyond OAA guidelines, yet creates additional work and adds to the process.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA agrees that handwritten signatures may cause some seniors to grow weary. That is why ODA clearly allows providers to use electronic verification systems. The technology is easier on elders, has the capacity to improve elders' menu options, and reduces providers' administrative burdens.<br><br>Please review ODA's responses to other comments on this topic.<br><br>For further information, please review Appendix J |
| *On Per-Delivery Verification*<br><br>We are not in agreement with the increase in documentation. AAA's oversight again has become too over out reaching and providers perceive there is a tendency for AAA's to want Title III to be more like Medicaid Waiver/PASSPORT rules. REQUIRING REPEATED SIGNATURES IS AN INCONVENIENCE TO CONSUMERS AND THEY GROW WEARY AND TIRESOME OF SUCH POLICIES. These types of frustrating policies only exacerbate consumer dissatisfaction and create unwarranted stress for some seniors. This will have a negative impact on providers and regarding customer quality satisfaction surveys. It will increase the amount of time to deliver meals, especially when most providers are stretched to delivery route capacity within restrictive time frames. This will also add to costs and expenses. In some instances it | Please see ODA's responses to the previously-listed comments on this paragraph. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| may result in increasing the number of routes to include the additional time that is needed to collect and obtain consumer signatures. This is a direct contradiction to a "common sense" approach which is intended to reduce regulations that are beyond OAA guidelines, yet creates additional work and adds to the process. [173-4-04.1] (A) [(11)]Service verification. (vi) Consumer's signature. "The AAA shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature."<br><br>Issue: We are not in agreement with the increase in documentation. There will be an adverse impact of the new regulation. It will increase the amount of time to deliver meals when we are already stretched to delivery each route within a specified window. This will add cost because it will mean increasing the number of routes to deal with the amount of additional time needed to get signatures. It is in contradiction of Business Analysis which is to reduce regulations that are beyond OAA. Just because this is [in] a Medicaid Waiver rule doesn't mean it is practical, nor even needed as a Title IIIC rule. In addition, the added paperwork and process to have the AAA's record the consumer's signature of choice would take more time and in fact delay the start of services provided to a new consumer.<br><br>Recommendation to remove consumer signature requirement.<br><br>*Ohio Association of Senior Centers* | |

**OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS

| COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS | ODA's RESPONSES |
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| *On Per-Delivery Verification*<br><br>A signature verifying receipt of a meal sounds simple enough until you consider the population receiving home-delivered meals. By virtue of their eligibility they are typically frail, elderly and/or disabled; some are visually impaired, some hearing impaired, some suffer with arthritis and others from dementia leaving them unable to see where to sign, or hear the instructions, or hold a pen without causing discomfort or are unable to comprehend what is expected of them. What purpose does the signature serve that outweighs the imposition to our consumers? Some home-delivered meal volunteers quit out of frustration from having to collect signatures from PASSPORT meal recipients; it is illogical to think that more volunteers will not be lost if this proposed change becomes rule. The ripple widens as routes are shortened allowing extra time to obtain a signature without compromising the quality of the meal; more volunteers are needed to deliver the additional routes at the same time current volunteers are leaving. The only alternative to volunteers is to hire paid employees and we are in a rob Peter to pay Paul scenario; meals will be eliminated to afford additional delivery staff. More tracking will be required on forms that will need to be redesigned and printed to allow space for each client's signature, more monitoring to confirm compliance, additional training for staff and more storage to retain the documentation.<br><br>What has happened under the current rule that caused the need for change and will the proposed change eliminate the problem or is this an attempt to fix something that is not broken? Is the need for change so great that the inconvenience to clients and staff and the increased cost can be justified?<br><br>Please reexamine the proposed requirement that meal recipients must sign verifying that the meal was delivered.<br><br>Thank you for your consideration.<br><br>*Margaret (Peg) Wells, Executive Director*<br>*Crawford County Council on Aging, Inc.*<br>*Bucyrus, Ohio* | Please review Appendix J. Providers who use electronic verification technology report that they experience lower administrative costs and that they see a return on their investment into the technology.<br><br>Also, please see ODA's responses to the previously-listed comments on this paragraph. |
| We did consider some management programs but because none met our needs, we worked with our IT provider to develop a program specific to our operation. Our program does not include electronic signature capability but we can certainly talk with our programmer to determine if it can be added. I'm still | |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Per-Delivery Verification*<br><br>This section increases auditing issues and decreases efficiency for the providers. Requiring that delivery times and signatures for all meals served daily will double our route times. Serving a large rural county the delivery times will certainly begin to fall outside of the allotted 2 hour window. Trying to mirror [PASSPORT] and/or Medicaid Waiver service specifications provides no value to the client and/or provider. If anything, it will increase cost per meal. At the provider level, the additional cost will be seen in more administrative time spent on recording daily times and securing signatures. It is the assumption that the desire is to move Title III service rules to mirror the Passport rules to safeguard against fraud within the services. Since the additional expense of a Title III meal is the responsibility of the Provider, the need to create the safeguards for "fraud" makes no sense.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | At the time of the comment, the provider used SAMScan, but has since switched to SSAID. Both technologies would verify meal deliveries without the need for handwritten signatures.<br><br>Please see ODA's responses to the previously-listed comments on this paragraph. |
| *On Per-Delivery Verification*<br><br>This section increases auditing issues and decreases efficiency for the providers. Requiring that delivery times and signatures for all meals served daily will double our route times. Serving a large rural county the delivery times will certainly begin to fall outside of the allotted 2 hour window. Trying to mirror [PASSPORT] and/or Medicaid Waiver benefits only provide one more that will be audited. The providers, on the other hand, will experience more administrative time spent on this service by recording daily times and securing signatures and then again when preparing for their annual audit. Since the additional expense of a Title III meal is the responsibility of the Provider, the need to create the safeguards for "fraud" makes no sense.<br><br>*Ohio Association of Senior Centers* | Please review ODA's responses to other comments on this topic.<br><br>Please also review Appendix J. |

**OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS

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| *On Per-Delivery Verification*<br><br>A signature verifying receipt of a meal sounds simple enough until you consider the population receiving home-delivered meals. By virtue of their eligibility they are typically frail, elderly and/or disabled; some are visually impaired, some hearing impaired, some suffer with arthritis and others from dementia leaving them unable to see where to sign, or hear the instructions, or hold a pen without causing discomfort or are unable to comprehend what is expected of them. What purpose does the signature serve that outweighs the imposition to our consumers? Some home-delivered meal volunteers quit out of frustration from having to collect signatures from PASSPORT meal recipients; it is illogical to think that more volunteers will not be lost if this proposed change becomes rule. The ripple widens as routes are shortened allowing extra time to obtain a signature without compromising the quality of the meal; more volunteers are needed to deliver the additional routes at the same time current volunteers are leaving. The only alternative to volunteers is to hire paid employees and we are in a rob Peter to pay Paul scenario; meals will be eliminated to afford additional delivery staff. More tracking will be required on forms that will need to be redesigned and printed to allow space for each client's signature, more monitoring to confirm compliance, additional training for staff and more storage to retain the documentation.<br><br>What has happened under the current rule that caused the need for change and will the proposed change eliminate the problem or is this an attempt to fix something that is not broken? Is the need for change so great that the inconvenience to clients and staff and the increased cost can be justified?<br><br>Please reexamine the proposed requirement that meal recipients must sign verifying that the meal was delivered.<br><br>Thank you for your consideration.<br><br>*Margaret (Peg) Wells, Executive Director*<br>*Crawford County Council on Aging, Inc.*<br>*Bucyrus, Ohio* | The electronic verification of meal deliveries doesn't need to be in the form of a handwritten signature stored electronically. Some technologies use bar codes given to seniors on cards or installed in their door frames to verify deliveries.<br><br>For more information, please review Appendix J. |
| We did consider some management programs but because none met our needs, we worked with our IT provider to develop a program specific to our operation. Our program does not include electronic signature capability but we can certainly talk with our programmer to determine if it can be added. I'm still | |

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| *On Per-Delivery Verification*<br><br>I think getting the clients to sign everyday would cause us to be out their delivering longer. I think that once a month is plenty. The longer it takes us to deliver the later some client will get their meals. And we only have a certain amount of time to deliver.<br><br>*Melissa Malone, Site Manager*<br>*Fairhaven Nutrition Services of Shelby County*<br>*Sidney, Ohio*<br><br>---<br><br>No we do not use any agency management technology.<br><br>*Melissa Malone, Site Manager*<br>*Fairhaven Nutrition Services of Shelby County*<br>*Sidney, Ohio* | ODA's survey of providers indicates that providers who use certain brands of electronic verification see a cost savings. This is the way for a provider to verify the delivery of each meal as it happens without slowing down a delivery route. Some electronic verification companies also offer GPS route optimization, so their systems actually speed up routes.<br><br>For more information, please review Appendix J. |
| *On Per-Delivery Verification*<br><br>The Council for Older Adults [now called "SourcePoint"] Meals On Wheels program provides a variety of meal options to five congregate dining sites and over 350 home-delivered meal clients Monday through Friday each week.<br><br>Each consumer who dines at a congregate dining site signs in on a dated log-in sheet for verification of the consumed meal and we will continue to follow this process.<br><br>Our concern, however, is the proposed change for home-delivered meals, requiring a consumer's signature on each and every delivery day. In past, the verification provided by the volunteer deliverer's signature, along with a dated delivery record and time of each client delivery was adequate for proof of client meal delivery. Our deliverers are conscientious, marking not only the time of delivery but the time of "attempted" delivery for those clients who do not answer the door. The deliverers are required to sign the delivery record, which is printed out on the day of the delivery and provides all the necessary information for the deliverer to provide the proper meal(s) to the clients.<br><br>The requirement to have the client sign each delivery day will provide extra work and additional | Please review ODA's responses to other comments on this topic.<br><br>Please also review Appendix J. |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| steps to a verification process already in place. Below is the impact this change will have on our organization:<br><br>**Time Impact**<br>• Our Volunteer deliverers already date and sign records showing proof of delivery. This is a trust issue for our valued volunteers, who deliver 95% of our Meals On Wheels routes.<br>• Delivery times will lengthen due to the wait for signatures from our elderly clients, requiring additional review of routes in event of new route formation to accommodate signature time. This also impacts the availability of some of the volunteers who deliver the routes.<br><br>**Expense Impact**<br>• Each of the below items impacts the meal rate a home-delivered meal unit. Please note that currently the expense for our organization for each meal unit is approximately $7.20 per meal. The Title III-C2 reimbursement rate we receive is $1.93 per meal unit, with our organization absorbing 73.2% of the expense for each meal unit.<br>• IT programming, requiring a fee, to be paid by our organization, will be required to add a signature line for each Title III-C2 client on the delivery record.<br>• Additional paper will be needed to print out each delivery record due to the added signature line and signature instructions for each Title III-C2 client, making the delivery records more cumbersome for the deliverers, require additional filing space in the office, and an added daily expense for the program.<br>• Deliverer training and additional scrutiny will be required each day to ensure each and every client on every delivery record has signed for their meal. This also equates to staff time in hours.<br>• Our case managers, who are all licensed social workers, will need meet with or talk to each Title III-C2 client to revise each consumer's service plan and indicate the | |

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| signature choice and then input this information into their electronic database, "Q." In June this was a total of 362 consumers. This equates to additional staff time in hours.<br>• Each and every service plan will have to be sent to the Meals On Wheels program to revise the delivery database system. For any requiring other than a traditional signature, additional instructions will need to be input into the database for print on the delivery record. The service plan changes will then need to be filed with each client file in the Meals On Wheels program for subsequent review. This equates to additional staff time in hours.<br><br>*Toni Dodge, Nutrition Program Manager, SourcePoint Delaware, Ohio* | |
| *On Electronic Delivery Verification*<br><br>At the July 10, 2014 meeting of the Ohio Association of Senior Centers, some senior centers said that they agreed with ODA that it is easier to verify meal provision with electronic verification technology than it is with consumer's handwritten signatures. Concerning the technology, some senior centers said that not all the brands of technology were compatible with one another, particularly SAMS.<br><br>*Ohio Association of Senior Centers* | Providers need to shop wisely among the various brands of electronic verification technology. ODA's inquiries have indicated great variances in prices. Harmony's SAMS Scan, which uses a bar-code scanner instead of cell phones and electronic signatures was the most expensive system uncovered in our survey. However, Harmony is also the manufacturer of SAMS, a reporting program into which providers and AAAs report. Other technology manufacturers say that their data can be converted and uploaded into SAMS. |

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| *On Electronic Delivery Verification*<br><br>In addition, ODA states they "allow" providers to use technology-based systems, yet if a software system is not currently owned or operated by the state's administratively contracted partner *Harmony (SAMS)* ODA has no publicly known, established criteria, guidelines, process, or authoritative protocol that is easily accessible or available for providers to follow when wanting to incorporate or update technology or even partner with other senior center/provider technology-based systems other than *Harmony (*SAMS) and *Harmony's* sister owned subsidiaries . Providers also want choices and options, but more importantly they want technology that works more efficiently, effectively, generates more beneficial reports, creates greater senior inter-action & community engagement, and can log, record, and translate & convey client choices and preferences all at an affordable price and is convenient & easy for senior citizens to understand and utilize.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA's provider survey revealed that the prices providers paid for electronic verification varied greatly. For more information, please review Appendix J.<br><br>Also, please review ODA's responses to the previously-listed comments on this topic. |

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| *On Electronic Delivery Verification*<br><br>*Service verification. (vi) Consumer's signature. "The AAA shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature."*<br><br>Issue: We are not in agreement with the increase in documentation. There will be an adverse impact of the new regulation. It will increase the amount of time to deliver meals when we are already stretched to delivery each route within a specified window. This will add cost because it will mean increasing the number of routes to deal with the amount of additional time needed to get signatures. It is in contradiction of Business Analysis which is to reduce regulations that are beyond OAA. Just because this is a Medicaid Waiver rule doesn't mean it is practical, nor even needed as a Title IIIC rule. In addition, the added paperwork and process to have the AAA's record the consumer's signature of choice would take more time and in fact delay the start of services provided to a new consumer.<br><br>On July 15, ODA asked for more information. WSOS provided the following as a result:<br><br>We do not use any method of collecting data from Seniors directly that involves computer technology. We have found based on the small number of participants at 3 out of 4 of our sites that this would not be cost effective. We had SAMScan at one point several years ago -- again not cost effective. We have explored MySeniorCenter.com -- again not cost effective for our size.<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | ODA's provider survey revealed that the prices providers paid for electronic verification varied greatly. For more information, please review Appendix J.<br><br>Also, please review ODA's responses to the previously-listed comments on this topic. |

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| *On Electronic Delivery Verification*<br><br>…ODA is proposing to add more language to make it clear that the technology may be used for such purposes and also for validating vouchers used in the alternative meal programs and for allowing seniors to choose the meals that they (as individuals) want for an upcoming meal before the provider cooks food that the individuals would not have chosen if the choice was made in the dining hall, at the senior's residence at delivery time, or in a restaurant or supermarket. This statement lacks substance and details. If this is truly ODA's intentions, then ODA should propose & provide clarification and specific guidelines that address specifically how a client can make these requests. For example, if a client calls their local senior nutrition provider and leaves a message on an answering machine and that message does not get reviewed and communicated to the appropriate kitchen/home delivery staff or volunteer, than "are we truly listening to their voice"…or are we creating greater frustration and dissatisfaction. What if a senior truly fails to communicate or convey their preferences and choices to a nutrition provider, how is that handled and corrected? If a provider cooks and prepares 550-1000+ meals per day where do all of these 500-1000+ clients' preferences get stored, logged, and retained? How would providers ensure "daily individual preference compliance"? Who would fund this technological endeavor and what, if any, technology systems, does the state have waiting in the wings to pre-empt and readily launch to assist providers before putting yet another proposed rule change in place? These are common sense questions providers and their boards of directors will ask…and ODA should be well poised and prepared in advance to answer and address these very basic questions and concerns. More clarification is needed.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | At this time, various electronic verification systems are in use by various providers. ODA has no plan to require one of the systems if many are effective. To do so would stifle innovation.<br><br>In the proposed new rule, ODA's only requirements at the system (A) collect information to verify the provision of the meal, (B) retain the information that it collects, and (C) produce reports, upon request, that the AAA can monitor for compliance.<br><br>For more information, please review Appendix J.<br><br>Also, please review ODA's responses to the previously-listed comments on this topic. |

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| *On Electronic Delivery Verification*<br><br>Use of agency management technology does decrease paperwork. However, benefiting providers would be much more significant if ODA would allow the various software providers to interact with SAMS so delivery of service and reports could be generated without having to duplicate information input.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Please review ODA's response to the previously-listed comment. |
| *On Delivery Verification: Terminology*<br><br>Clarification is needed. Define "delivery time". Is this meal time or route delivery time?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA does not believe that the term requires defining in Ohio law because it is simply means the time that a meal was delivered. |
| *On Delivery Verification: Terminology*<br><br>Clarification is needed. Define "delivery time". Is this meal time or route delivery time?<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previously-listed comment. |

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| *On Delivering to Vacant Homes*<br><br>I know you have been chatting with Chuck Sousa I noticed that you added a bit to the business analysis. I did scan it briefly and noticed that ODA went on several tours. Two the tours were of producers who I believe predominantly focus on frozen meals. I thought that Clossman only does frozen meals and Derringer is essentially a distributor of the same type. Is ODA leaning in the direction of allowing Frozen meal delivery for Home delivered. Also I do not disagree with the theory of Electronic signatures or utilizing technology in the field for the thought of a next meal order. The additional Capital investment would be cost prohibitive for our organization with multiple routes in multiple counties and drivers. I also disagree with the waste theory most of our waste from a cost standpoint ids derived by folks not being home on a particular day and failing to notify us Thanks<br><br>*Chuck Komp, Executive Director*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | If consumers' are frail enough to require home-delivered meals, it makes sense that they're also frail enough to end up hospitalized from time to time. Interruptions in the ability to be home to receive home-delivered meals are an unavoidable factor in delivering meals to their homes.<br><br>A key way for providers to reduce this loss is to use periodic deliveries instead of per-meal deliveries. A driver can make multiple attempts to deliver a package of meals without wasting any of them. The only waste may be 2 delivery attempts for a week's worth of meals (14) instead of 14 delivery attempts with a wasted meal. |

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| *On Availability*<br><br>On March 31, 2013 ODA polled AAAs 5, 7, 9 and also Catholic Social Services of the Miami Valley about person direction in home-delivered meals. The respondents said that a serious barrier is that there aren't enough local meal providers in all parts of Ohio or local providers do not have the capacity to delivery hot meals on a daily basis to remotely-located consumers, which limits consumers' options. Sometimes, a provider of frozen meals is the only option. | Providers who use periodic delivery methods tend to offer more complete meal options to consumers than those who deliver on a per-meal basis. In some cases, current providers are delivering meals on a periodic basis for caterers who produce 30+ meal options. Arrangements like these can preserve current providers' businesses, yet begin to offer many meal options to consumers. |
| *On Availability*<br><br>*Meal frequency* – does this refer to the number of days of delivery, i.e., must be a physical meal delivery on each of five days per week, *or* the number of meals that must be delivered is a minimum of 5 meals per week, which could be delivered on a less than 5 days per week schedule? If meal frequency refers to the number of days of delivery, couldn't the responsibility of approval for the delivery of a lesser frequency continue to be delegated to the AAA, instead of ODA as proposed, which has a better understanding of the service needs of the PSA?<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | In the version of proposed new OAC173-4-05.2, ODA simplified the language. ODA's goal is not mandating numerous deliveries; it's getting meals to consumers. |

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| *On Availability*<br><br>Changes authority from AAA to ODA to approve meals served less frequently than *at least one meal per day to each consumer that it serves on five to seven days per week.* Language is also changed from *may* to *shall* furnish for meal frequency. (Verified State approval is required per the OAA.)<br><br>Frequency of meals: For clarification, it appears ODA will need to approve a once a week delivery of 5 frozen meals, correct? Other situations ODA will also need to approve include requests from participants for fewer or less frequent deliveries and fewer meals delivered as a result of wait lists (4 meals per week rather than 5). How will this be handled logistically (who is responsible for requesting, AAA/provider)? Recommend ODA include these exceptions in the rule.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Please see ODA's response to OASC's comment on this paragraph. (See above.) |
| *On Availability*<br><br>Section (A)(1) states that the "provider shall furnish at least one meal per day to each consumer that it serves on five to seven days per week." This seems to preclude the consumer from having an option of requesting meal service fewer than 5 days per week. We would suggest that verbiage be added or changed to allow for this option.<br><br>*Joyce Boling, Chief of Quality Management*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | The version of proposed new OAC173-4-05.2 will allow providers to deliver meals on a per-meal basis less than five days a week if the consumer does not require meals 5 days per week. |
| *On Person Direction*<br><br>I think there should be clarification on meal types allowed after meal frequency.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | In the version of the proposed new rule that ODA intends to file with JCARR, the types are dichotomized by delivery, not format. (*i.e.*, per-meal delivery *vs.* periodic delivery) |

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| *On Duplicate Food-Safety Inspections*<br><br>Dating Meals – Isn't there labeling guidelines in the Ohio Uniform Food Safety Code and in the USDA regulations that they are to follow since they are the experts? If not we should be specific but if there is shouldn't that be followed since they are a food service establishment that has to have licenses and inspections to follow them. With the said, if we feel this needs to be more defined – be sure this will not be a barrier for providers.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The Ohio Department of Agriculture and local health districts have food safety and sanitation authority over Ohio-based meal providers. ODA does not retain this authority. If providers are going to be required to label individual items, the requirement would come from the Ohio Dept. of Agriculture or through the Ohio Uniform Food Safety Code, which is jointly authored by the Ohio Departments of Agriculture and Health. Providers should consult those Departments to see if the meals that they provide in the format in which they provide meals (*e.g.*, ready to eat, frozen, vacuum sealed) requires special dating of the packages.<br><br>If Ohio's regulatory authorities do not require dating packages, the provider may experience regulatory relief, the savings from which could be reinvested into person direction. |
| *On Duplicate Food-Safety Inspections*<br><br>Meal temperatures – I agree with this.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Thank you. |

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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Meal Verification*<br><br>*Service verification (a) for each meal delivery, the provider shall retain a record of the following: (vi) consumer's signature. . .*"You have stated in your edit notes that the home-delivered meals has been an exception to per-service verification; however, home-delivered meal delivery is a very time-sensitive service, unlike homemaker, personal care, adult day service, congregate and the like, where obtaining signatures is much easier because the unit of service can last hours, and obtaining a signature is easily obtained daily. With home-delivered meals, the unit of service is a meal, and the time required to deliver must be brief. Obtaining daily signatures from each home-delivered meal consumers would burden meal providers with additional costs by extending meal route delivery times, requiring additional route(s) and driver(s) and compromising the assurance that quality meals are still delivered at safe temperatures. Please consider at maximum, weekly signatures.<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | In the rule draft that ODA proposed for the public-comment period, ODA mistakenly inserted language that would only apply to case-managed consumers.<br><br>Please see ODA's responses to the previously-listed comments on this paragraph. |
| *On Meal Verification*<br><br>AAA does not provide case management for OAA participants. Remove the responsibility of AAA to obtain the signature of choice. This is a provider responsibility. Recommend the requirement be waived entirely. One of our largest providers is considering not serving Medicaid waiver participants anymore because of issues with this requirement.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Please see ODA's responses to the previously-listed comments on this paragraph. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Meal Verification*<br><br>Consumer's Signature – Home Delivery enrollment is done via telephone so there is no signature obtained initially but the delivery driver/UPS/FedEx get a signature upon delivery. Keep in mind some participants can't sign due to impairment whether visual, physical, or mental disability. There is no service plan and case management [is] minimal for HDM – providers call the participant or their emergency contact if they miss a delivery and check on them.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Please see ODA's responses to the previously-listed comments on this paragraph. |
| *On Meal Verification*<br><br>Section (A)(11) requires documentation including consumer signature with each meal delivery. We understand the desire to verify each service (meal); we see the value for other types of service; and we realize that the data collected shows that the majority of providers are using an electronic verification system. However, we are concerned that requiring a signature with every delivery may add a considerable amount of time to meal routes. This has the potential of causing issues with maintaining food temperatures and subsequently may mean decreasing the number of consumers per route which then will increase provider costs due to the need to add one or more drivers.<br><br>*Joyce Boling, Chief of Quality Management*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | Please see ODA's responses to the previously-listed comments on this paragraph. |

| **OAC173-4-04.1** (CURRENT RULE) → **OAC173-4-05.2** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: HOME-DELIVERED NUTRITION PROJECTS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Meal Verification*<br><br>Programs utilizing volunteers to deliver meals sometimes don't receive the route sheet back therefore don't have documentation of a signature. One program serving approximately 465 PASSPORT participants was unable to bill $26,000 over the past 11 months because of consumer signature on record requirements.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Please see ODA's responses to the previously-listed comments on this paragraph. |

**OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: CONGREGATE DINING PROJECTS BASED IN RESTAURANTS AND GROCERY STORES

| COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS | ODA's RESPONSES |
|---|---|
| *On Non-Profit vs. For-Profit*<br><br>Overall, we do not support mandatory clauses that promote alternative meal programs at for-profit supermarkets, for-profit restaurants, and other AAA determined dining partners that compete against existing senior dining programs already in operation. We understand this is a viable option in some areas, however, we question if any congregate providers can sustain their programs if we are forced to "operate more and more like restaurants", "compete against nationally recognized chains" versus provide good, nutritional meals as a government subsidized dining option to seniors who traditionally cannot afford to "eat-out". I could see where tax payers and providers alike could take grave issue with this if AAA's were granted authority to grow and expand "restaurant options" before they've even discussed or reviewed "additional dining opportunities" with contracted providers. Perhaps providers could do the job and even do it better if ODA & AAA's focused more on provider relationships rather than growing the for-profit private sector?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA is not focused on amplifying the incomes of for-profit companies over non-profit providers, or *vice versa*. ODA is focused on outcomes. Some providers offer great outcomes. Some offer dismal outcomes. ODA is proposing new rules that encourage outcomes, especially person direction.<br><br>In proposed new OAC173-4-04, ODA would require AAAs to procure for the Older Americans Act Nutrition Program by procuring for person-directed operations.<br><br>§212 of the Older Americans Act explicitly says that the Act "shall to be construed to prevent [AAAs] from entering into an agreement with a profit-making organization for the recipient to provide services...."<br><br>45 C.F.R. 75.328 requires AAAs to procure for providers by "full and open competition." 45 C.F.R. 75.329 requires the AAA to award the contract to the winning bidder(s). Therefore, if the winning bidder should be the provider that promises the greatest outcomes, regardless of its status as a non-profit organization or a for-profit company. |

| **OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>CONGREGATE DINING PROJECTS<br>BASED IN RESTAURANTS AND GROCERY STORES** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Non-Profit vs. For-Profit*<br><br>Overall, we do not support mandatory clauses that promote alternative meal programs at for-profit supermarkets, for-profit restaurants, and other AAA determined dining partners that compete against existing senior dining programs already in operation. We understand this is a viable option in some areas, however, we question if any congregate providers can sustain their programs if we are forced to "operate more and more like restaurants", "compete against nationally recognized chains" versus provide good, nutritional meals as a government subsidized dining option to seniors who traditionally cannot afford to "eat-out". I could see where tax payers and providers alike could take grave issue with this if AAA's were granted authority to grow and expand "restaurant options" before they've even discussed or reviewed "additional dining opportunities" with contracted providers. Perhaps providers provide the service and even do it better if ODA & AAA's focused more on provider relationships rather than growing the for-profit private sector?<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to the previously-listed comment. |
| *On Non-Profit vs. For-Profit*<br><br>This alternative to Title III dining continues to be a nemesis for the non-profit providers. Rules that are applied to these providers are not consistently enforced with the restaurants and grocery stores. Staff training, nutrition education, data entry into SAMS, record retention and quality assurance cannot possibly be enforced at the same level as required by the senior centers that provide Title III meals. If an alternative setting is being offered then the enforcement of rules and the annual auditing should be consistent across the board. If the state intends for us to compete with profit companies then at least make the "playing field" level.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Please review ODA's response to the previously-listed comment. |

| **OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>CONGREGATE DINING PROJECTS<br>BASED IN RESTAURANTS AND GROCERY STORES** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Non-Profit vs. For-Profit*<br><br>This alternative to Title III dining continues to be a nemesis for the non-profit providers. Rules that are applied to these providers are not consistently enforced with the restaurants and grocery stores. Staff training, nutrition education, data entry into SAMS, record retention and quality assurance cannot possibly be enforced at the same level as required by the senior centers that provide Title III meals. If an alternative setting is being offered then the enforcement of rules and the annual auditing should be consistent across the board. If the state intends for us to compete with for-profit companies then at least make the "playing field" level.<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to the previously-listed comment. |
| *On Portion Control*<br><br>At the April 11, 2013 monthly meeting of the Ohio Association of Senior Centers, a few executive directors of senior centers expressed concerns that the current rules require providers to provide meals that comply with the DRIs and the 2010 Dietary Guidelines for Americans, but that ends up being a meal that consumers don't want to eat. The executive director for United Seniors of Athens County also stated that consumers may use vouchers through rule 173-4-04.2 of the Administrative Code to obtain meals from buffets where there is no portion control to ensure that consumers eat meals that were planned to meet the DRIs and the 2010 Dietary Guidelines for Americans. Yet, if a congregate meal site offers a salad bar option for consumers, the requirement to comply with the DRIs and the 2010 Dietary Guidelines for Americans forces the providers to enforce portion control, which makes the consumers look for the voucher options.<br><br>*Ohio Association of Senior Centers* | ODA's proposed new rules will not contain language that requires providers to enforce portion control.<br><br>Additionally, ODA's proposed new rules will allow consumers to "refuse to eat a particular meal item: and allows providers to "adjust" and "use flexibility" to meet consumers' needs and to make meals appealing. §339 of the Older Americans Act allows for adjustment and flexibility. |

| **OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>CONGREGATE DINING PROJECTS<br>BASED IN RESTAURANTS AND GROCERY STORES** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Provider Qualifications: Training*<br><br>We applaud the added training and orientation requirements that mirror those of other providers. This levels the playing field. We applaud the similar requirements for Nutrition Counseling and Education as are required of Congregate and HDM providers. Again, it levels the playing field.<br><br>*Robin Richter, Dir., Senior & Trans. Programs<br>WSOS Community Action Commission, Inc.<br>Fremont, Ohio* | The training requirements are located in proposed new OAC173-4-05 and are the same regardless of the type of setting. |
| *On Provider Qualifications: Training*<br><br>We applaud the added training and orientation requirements that mirror those of other providers. This levels the playing field. We applaud the similar requirements for Nutrition Counseling and Education as are required of Congregate and HDM providers. Again, it levels the playing field.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previously-listed comment. |

| **OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>CONGREGATE DINING PROJECTS<br>BASED IN RESTAURANTS AND GROCERY STORES** | |
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| **COMMENTS FROM ODA'S DESIGNEES** | **ODA's RESPONSES** |
| *On Title*<br><br>How is Grocery Shopping Assistance is not a meal setting? Not sure it should be included in the name.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | The proposed new rule does not mention grocery shopping assistance. |
| *On Provider Qualifications: Training*<br><br>Training and orientation requirements may be a barrier to restaurants and supermarkets to participate in program.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | The training requirements are located in proposed new OAC173-4-05. The requirements would only be to provide orientation and annual continuing education according to what each person; job position would require. This is training that restaurants and grocery stores are likely to already offer. For example, a grocery store may offer an employee who assembles pre-packaged meals a 15-minute training video on food safety. That would suffice according to the proposed new rule. |
| *On Provider Qualifications: Training*<br><br>Staff Training – Since a restaurant's job is to serve meals and they already do their own training and are inspected by the Health Department – I do think their staff training needs to be omitted since the Nutrition program participants are treated like any other customer as far as they are concerned.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Please review ODA's response to the previously-listed comment. |
| *On Nutrition Counseling and Nutrition Education*<br><br>Not feasible for a restaurant to provide nutrition education to participants. First of all, the restaurant may not have access to a licensed dietitian to provide the nutrition education. Second, bias and misinformation may be introduced. Who would provide more reputable, targeted, appropriate nutrition education to older adults? Golden Corral or AAA's licensed dietitian? The AAA should have the option of still providing these services in this setting.<br><br>Rebecca Liebes, Director of Nutrition and Wellness | When an AAA procures for a nutrition project, it is not required to have one provider provide all services that are part of the project. The AAA may separately procure the provision of meals, nutrition counseling, nutrition education, *etc.* Some AAAs even separately procure the production of meals *e.g.*, catering) from the delivery of meals. |

| **OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>CONGREGATE DINING PROJECTS<br>BASED IN RESTAURANTS AND GROCERY STORES** | |
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| **COMMENTS FROM ODA'S DESIGNEES** | **ODA's RESPONSES** |
| Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio | |
| *On Nutrition Counseling and Nutrition Education*<br><br>Nutrition Counseling and Nutrition Education - Restaurants and local grocery stores do not employ an LD and it wouldn't make sense to employ an LD. – this should say - will be offered to participants as outlined in 173-4-6 and 173-4-7 in Administrative code. Simple and to the point and allows those rules to outline who does it.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | In order for Older Americans Act funds to pay for nutrition counseling or nutrition education, the provider must comply with rules OAC 173-4-07 and 173-4-08. ODA doesn't need to reference those two rules every time it mentions counseling or education. |
| *On Terminology*<br><br>Section (E) line 2 refers to "the provider's home-delivered meal program." It is our understanding that programs referred to in this rule are congregate in nature.<br><br>*Joyce Boling, Chief of Quality Management*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | In the version of the proposed new rule that ODA published for public comments, ODA mistakenly used "home-delivered" to refer to the nutrition project. In the revised version of the proposed new rule, ODA now simply uses "nutrition project." |
| *On Quality Assurance*<br><br>Quality Assurance – restaurants and grocery stores will find this as a barrier. Therefore, AAA 3 sends out a survey each year as a Secret Shopper form to get comments on restaurants and uses responses to monitor the restaurant and provide feedback and further instruction if needed. It works well. We send the forms out with the monthly vouchers usually in the summer.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | An AAA may require a waiver from ODA before it can directly provide a component of a service. (*Cf.*, §307(a)(8)(A) of the Older Americans Act) |
| *On Meal Verification*<br><br>AAA does not provide case management for OAA participants. Remove the responsibility of AAA to obtain the signature of choice. This is a provider responsibility. Recommend the requirement be | The version of the proposed new rule that ODA intends to file with JCARR does not contain a reference to case management. |

| **OAC173-4-04.2** (CURRENT RULE) → **OAC173-4-05.3** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM:<br>CONGREGATE DINING PROJECTS<br>BASED IN RESTAURANTS AND GROCERY STORES** | |
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| **COMMENTS FROM ODA'S DESIGNEES** | **ODA's RESPONSES** |
| waived entirely. One of our largest providers is considering not serving Medicaid waiver participants anymore because of issues with this requirement.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | Any provider that uses an electronic verification system could avoid this problem.<br><br>For more information on the cost-effectiveness of electronic verification systems, please review Appendix J. |
| *On Meal Verification*<br><br>Consumer's Signature – Our Application for the restaurant program has their signature and the meal voucher requires a signature on it when used at the restaurant. There is no service plan or case management. They are just using the service.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | INSERT RESPONSE HERE |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Ingredient Information: Using AAA Method for Offering Information to Consumers*<br><br>This entire section needs further review and changes. Again, granting AAA's additional approval and authority is far ranging and already over extended. WHAT IS NEEDED IS AAA OVERSIGHT REGULATION [*i.e.*, regulations to oversee AAAs] NOT [ADDITIONAL] PROVIDER OVERSIGHT AND REGULATION. This is very problematic for providers, especially when a provider works with more than one PSA and both [PSAs] have different rules, polices, and interpretations of the rule.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | ODA's proposed new rules for the PASSPORT Program would require providers to publish ingredient information on the provider's website or to provide it to consumers in writing. The PAA has no discretion in the matter.<br><br>We know that many providers, including, post your menus on your website. Your website would make a good place to store ingredient information.<br><br>Additionally, operating under a statewide standard is generally assumed to incur lower administrative costs than operating under differing standards in different PSAs.<br><br>At the present time, ODA has not decided to propose similar, statewide requirements for the Older Americans Act Nutrition Program.<br><br>On the topic of AAA oversight, many of the proposed new requirements in the Older Americans Act Nutrition Program rules are prohibitions on AAAs prohibiting providers from having options on flexible ways to meet nutritional adequacy, using nutrient analysis or menu patterns, using electronic systems to optimize operations, *etc.* |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Ingredient Information: Using AAA Method for Offering Information to Consumers*<br><br>This entire section needs further review and changes. Add: "unless licensed by the Ohio Department of Agricultural" as the Ohio Department of Agriculture has requirements for ingredients listings and postings. Again, granting AAA's additional approval and authority is far ranging and already over extended. WHAT IS NEEDED IS AAA OVERSIGHT REGULATION [*i.e.*, regulations to oversee AAAs] NOT [ADDITIONAL] PROVIDER OVERSIGHT AND REGULATION. This is very problematic for providers, especially when a provider works with more than one PSA and both [PSAs] have different rules, polices, and interpretations of the rule.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Dietitian Requirements*<br><br>This rule should be standardized throughout the State so all providers could use a local licensed dietitian instead of having to go through the area agency's dietitian. The time consumed waiting submitting menus and then waiting for approval or corrections is time consuming and delays publishing of a final monthly menu. These delays could be eliminated if, in fact, the rule is followed and providers are allowed to use any "licensed dietitian in the State.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Please note that ODA's rules do not require using a dietitian who works for the AAA.<br><br>Fortunately, Ohio's healthy supply of 3,912 licensed dietitians[5] gives nutrition programs many options for hiring or sub-contracting. |

[5] The Ohio Board of Dietetics. Jan 13, 2015.

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Dietitian Requirements*<br><br>This rule should be standardized throughout the State so all providers could use a local licensed dietitian instead of having to go through the area agency's dietitian. The time consumed waiting submitting menus and then waiting for approval or corrections is time consuming and delays publishing of a final monthly menu. These delays could be eliminated if, in fact, the rule is followed and providers are allowed to use any "licensed dietitian in the State.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Nutritional Adequacy*<br><br>**Issue: We would be concerned that just stating** "*For each mealtime, the provider shall offer a meal that satisfies a minimum of one-third of the dietary reference intakes (DRIs*)," eliminates the ability to use the menu pattern method as an option. **We would agree with PSA4 comments regarding the possible narrow interpretation of the rule and the impossible implications of meeting this in every meal**.<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | §339 of the Older Americans Act requires each meal to satisfy 1/3 of the DRIs. Fortunately, the same section allows providers to adjust the nutritional adequacy, *to the maximum extent possible*, to satisfy consumer's needs and allows for flexibility in meeting the DRIs so that meals are appealing to consumers.<br><br>ODA cannot override the Older Americans Act's nutritional-adequacy requirements. However, ODA proposes to not adopt restrictions that would make complying the requirements more difficult. |
| *On Nutritional Adequacy*<br><br>We would be concerned that just stating "*For each mealtime, the provider shall offer a meal that satisfies a minimum of one-third of the dietary reference intakes (DRIs*)," eliminates the ability to use the menu pattern method as an option. We would agree with PSA4 comments regarding the possible narrow interpretation of the rule and the impossible implications of meeting this in every meal.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Nutritional Adequacy*<br><br>This is the concern we have about a nutritionally adequate meal --- the client does choose to eat it or not - but we think it should be "furnished" or a substitute food of equal nutritional value should be provided, e.g. yogurt in place of milk, soy milk in place of cow's milk, a different vegetable, etc.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Even if such a substitution was made, the consumer may not eat the substitution. |
| *On Nutritional Adequacy*<br><br>United Senior Services supports the ODA proposed Meal rule changes that allow more consumer choice and more provider flexibility.<br><br>*Maureen B. Fagans, Executive Director*<br>*United Senior Services*<br>*Springfield, Ohio* | Thank you. |
| *On Nutritional Adequacy*<br><br>Requiring the provider to "adjust the nutritional adequacy to meet a consumer's dietary needs implies that consumers "voicing" their likes and dislikes (tracking nightmare for manually operated systems, small rural programs, and programs with limited staffing) due to "perceived needs versus a "medical need". This rule has serious financial ramifications for providers.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Allowing providers to adjust nutritional adequacy to the maximum extent possible is a requirement of §339 of the Older Americans Act. The Act doesn't define "need." ODA does not intend to place limits on flexibility in areas where the federal government remains flexible. The "need" could be perceived. There is no requirement for it to be medical or for it to even have a diet order.<br><br>Guernsey County Senior Citizens Center may be an example of a rural provider that can do. The center's monthly menus indicate that you have frozen meal options.[6] It also says, "Don't let special diet restrictions worry you."[7] |

[6] Guernsey County Senior Citizens Center, Inc. http://www.guernseysenior.org/Senior_Center/documents/December%202015%20Menu.pdf Accessed Dec 31, 2015.

[7] Guernsey County Senior Citizens Center, Inc. http://www.guernseysenior.org/Senior_Center/nutrition.html Accessed Dec 31, 2015.

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Nutritional Adequacy*<br><br>Requiring the provider to "adjust the nutritional adequacy to meet a consumer's dietary needs implies that consumers "voicing" their likes and dislikes (tracking nightmare for manually operated systems, small rural programs, and programs with limited staffing) due to "perceived needs versus a "medical need". This rule has serious financial ramifications for providers.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Nutritional Adequacy*<br><br>**Flexibility: We wholeheartedly support this direction:** "*ODA is also proposing to rescind its current nutritional adequacy requirements, including restrictions for providers who use menu patterns to determine nutritional adequacy and the prescriptive, preference language (e.g., "The provider shall prefer to not serve X more than 1 time a week."). The requirements for nutrition will be only as strong as the requirements in the Older Americans Act as interpreted by the Administration on Aging.5*"<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Thank you. |
| *On Nutritional Adequacy*<br><br>***Recommendation to continue use of menu patterns to develop meal choices.***<br><br>*Ohio Association of Senior Centers* | ODA is proposing to eliminate the lists of parameters on meeting nutritional adequacy in the 2010 Dietary Guidelines for Americans to a simple requirement to comply with the 2010 Dietary Guidelines for Americans<br><br>This allows the licensed dietitian who works with/for the provider to determine the nutritional adequacy of menus. The proposed new rules do not prescribe the nutrient-analysis method or the menu-pattern method. The dietitian may use either method.<br><br>Additionally, ODA is also proposing to allow the provider to take advantage of the Older Americans Act's permission for providers to use flexibility when determining nutritional adequacy. |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Nutritional Adequacy*<br><br>Menu creation<br>If this changed from using nutritional analysis or patterning to only one [method] it could cause kitchen operations to experience an increase in meal cost, packing logistics (more labor) and perhaps multiple plating lines would need to be in operation<br><br>*John Gregory, Senior Vice President of Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | Please see ODA's response to the previous comment. |
| *On Nutritional Adequacy*<br><br>Recommendation to remove restrictions on use of items such as egg yolks, sauerkraut, desserts, and processed meats (with an alternate choice menu).<br><br>*Ohio Association of Senior Centers* | The proposed new rules allow the licensed dietitian who works with/for the provider to determine the nutritional adequacy of menus. The proposed new rule no longer lists preferences that the provider must adopt in order to determine nutritional adequacy when using the menu-pattern method for determining adequacy.<br><br>Specific to OASC's concerns, the proposed new rules no longer recommend restricting the egg yolks, sauerkraut, desserts, or processed meats. Additionally, the proposed new rules no longer define the alternatives to meats. |
| *On Nutritional-Adequacy Terminology*<br><br>change the word "satisfies" to fulfills or includes or meets :)<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Because §339 of the Older Americans Act requires providers to provide meals that meet "a minimum" of 1/3 of the DRIs, ODA will retain use of "satisfies at least one-third of the [DRIs]" in the version of proposed new OAC173-4-05 of the Administrative Code.<br><br>However, regarding the Dietary Guidelines for Americans, new OAC173-4-05 uses "comply," which also matches §339 of the Act. |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Nutritional-Adequacy Terminology*<br><br>might be better to leave "special dietary" out of the sentence -- just say meets consumers' needs.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | §339(2)(A)(iii) of the Older Americans Act says, "special dietary needs of program participants." That's why ODA proposes to use the term. |
| *On Adverse Impact Reduction: Food Safety*<br><br>We agree that sanitation rules can follow the State of Ohio Uniform Food Safety Code and there is no reason to duplicate**.** The notification of a critical citation does need to be added to senior dining, home delivered and restaurant dining rules.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Thank you.<br><br>Regarding critical violations: In its proposed new rules for the Older Americans Act and PASSPORT Programs, ODA has removed language that currently requires providers to report "critical violations" of the Ohio Uniform Food Safety Code to ODA's designees, the AAAs and PAAs. ODA makes this proposal for the following reasons:<br><br>• The Ohio Department of Agriculture and local health district authorities have jurisdiction over food safety in Ohio. ODA does not.<br><br>• A provider who received a critical violation from a government authority with jurisdiction over food safety may still provide food to the public. For example, upon searching through examples of critical violations, ODA discovered that all "critical violations" aren't necessarily *critical*. For example, a county's department of health cited a business that left a spoon in a sink designated for hand washing. To force providers to submit information to ODA or its designees on matters that do not prohibit them from providing meals is unnecessary. To force AAAs and PAAs to take any time to review citations that do not affect the provision of meals is also unnecessary. Both of these activities can dwindle the Older Americans Act funds and Medicaid funds (through the PASSPORT Program) that could be invested into high-quality meals through person direction.<br><br>• If a government authority with jurisdiction over food safety shuts down a provider for |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| | its non-compliance, then ODA's designees, the AAAs, may terminate the contract with the provider to pay for meals with Older Americans Act funds and ODA may terminate the provider's certification which would, in turn, bring the provider's participation in the PASSPORT Program to an end.<br><br>• If AAAs would like to review a bidder's records with the government authority that conducts food-safety inspections on the provider before entering into a new contract that would pay for meals with Older Americans Act funds, the can readily find—free of charge—inspection reports on retail food establishments in public databases (*e.g.*, Allen[8] and Montgomery[9] Counties) and food safety recalls from food manufacturers from the Ohio Department of Agriculture's database.[10] This would not be a factor for the PASSPORT Program, because ODA must certify allow consumers to choose between any willing and qualified provider.[11] Thus, when ODA examines a provider's application for provider certification, a record of violations of the Ohio Uniform Food Safety Code that did not result in the present loss of ability to provide food would not be a factor.<br><br>For more information, please review Appendix M. |

[8] Allen County Public Health. http://www.healthspace.com/allen Accessed Dec 28, 2015.
[9] Public Health Dayton & Montgomery County. http://inspections.phdmc.org/ Accessed Dec 28, 2015.
[10] Ohio Department of Agriculture. http://www.agri.ohio.gov/foodsafety/ Accessed Dec 28, 2015.
[11] 42 C.F.R. 431.51 (October, 2015 edition) and OAC173-42-06.

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Adverse Impact Reduction: Food Safety*<br><br>ODA is proposing to "clarify" that it does not authorize duplicate food safety and sanitation inspections upon providers. Although most providers support the elimination of duplicate licenses & inspections performed by multiple other agencies, including Ohio Department of Aging, Area Agencies on Aging, USDA, Ohio Department of Agriculture, and local health department, maintaining food safety and sanitation remains a viable concern and priority among nutrition providers. The confusion lies within the state level when multiple state agencies themselves do not fully comprehend or understand "who has the final say" to specific oversight or food safety governance coupled with the fact that the Ohio Department of Aging and AAA's provide little or no guidance to providers as to what rules providers ultimately should or should not follow remains unclear and uncertain. Further clarification and improved communication is needed on this particular subject and among all parties involved.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | |
| *On Adverse Impact Reduction: Food Safety*<br><br>Duplicate (3a) "ODA proposes to clarify that it does not authorize duplicate inspections." How will ODA monitor and maintain compliance of AAAs on this philosophy?<br><br>*Ohio Association of Senior Centers* | ODA will *not* monitor on compliance with the Ohio Uniform Food Safety Act. The Ohio Dept. of Agriculture and local health districts will do that.<br><br>Through its regular monitoring activities under rule 173-2-07 of the Administrative Code, ODA monitors each AAA for compliance with its area plan (*cf.*, rule 173-2-06); state and federal laws (*e.g.*, The Older Americans Act), state and federal rules; and ODA's policies for AAAs. |

| **OAC 173-4-05 AND 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Adverse Impact Reduction: Food Safety*<br><br>We applaud the elimination of the sections [in rule 173-4-04] that are duplicative to ensuring Food Safety and that would go beyond the Ohio Uniform Food Safety Code: Food safety and sanitation: Food temperatures, Monitoring: Food-borne illness. We do not agree with PSA4 recommendation to maintain these policies in their Policy and Procedure Manual for Nutrition and Wellness because this would be in direct opposition to ODA's business analysis point around eliminating minimum standards language so as not to imply hidden requirements. "As ODA has been systematically doing on a project-by-project basis, ODA proposes to remove the term "minimum requirements" from this chapter. The term implies that extra regulations could be created that fly below the radars of CSIO and JCARR."<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Thank you. |
| *On Adverse Impact Reduction: Food Safety*<br><br>Duplicate: We wholeheartedly support this direction: "*a. ODA is proposing to eliminate duplicate food safety and sanitation regulations. The Department of Agriculture and local health districts have food safety and sanitation authority over meal providers. ODA does not retain this authority. Repeating elements of the Ohio Uniform Food Safety Code in ODA's rules may appear to authorize ODA or area agencies on aging (AAAs) to conduct duplicate food safety and sanitation inspections upon providers. ODA is proposing to clarify that it does not authorize duplicate inspections*."<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Thank you. |

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| *On Adverse Impact Reduction: Food Safety*<br><br>We applaud the elimination of the sections that are duplicative to ensuring Food Safety and that would go beyond the Ohio Uniform Food Safety Code: Food safety and sanitation: Food temperatures, Monitoring: Food-borne illness. We do not agree with PSA4 recommendation to maintain these policies in their Policy and Procedure Manual for Nutrition and Wellness because this would be in direct opposition to ODA's business analysis point around eliminating minimum standards language so as not to imply hidden requirements. "As ODA has been systematically doing on a project-by-project basis, ODA proposes to remove the term "minimum requirements" from this chapter. The term implies that extra regulations could be created that fly below the radars of CSIO and JCARR."<br><br>*Ohio Association of Senior Centers* | Thank you. |
| *On Adverse Impact Reduction: Food Safety*<br><br>OASC appreciates the elimination of duplication of food safety and sanitation guidelines. Standards of the Ohio Department of Agriculture and the Ohio Department of Health, as well as their monitoring tools and unannounced inspections, will strengthen food safety for our client base.<br><br>*Ohio Association of Senior Centers* | Thank you. |

**OAC173-4-05 and 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
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| *On Licensed Dietitians*<br><br>Stating that a meal that *"satisfies a minimum of one-third of the dietary reference intakes"* and *"satisfies 2010 Dietary Guidelines"* requires interpretation; does the rule language as proposed, permit AAA licensed dietitians to interpret and determine menu design as they deem best suited for their PSAs? Our PSA has always encouraged and incorporated flexibility in menu design and has receive few complaints from meal providers regarding the use of a menu pattern, in fact, it has been useful in assisting our meal providers to select economical, nutritious, and well-received menus. We trust that the new rule as written does not bar the AAA licensed dietitian from allowing providers to continue using the menu pattern or nutrient analysis software (which both reflect the DRIs and 2010 Dietary Guidelines).<br><br>Jeanne Mbagwu, Community Services Manager<br>Area Agency on Aging, PSA 2<br>Dayton, Ohio | §307(a)(8)(A) of the Older Americans Act prohibits AAAs from directly providing nutrition services without ODA's permission, which ODA may only offer in limited cases. The rules require providers to hire or consult with one of Ohio's 3,912 licensed dietitians.[12] The license qualifies each dietitian to determine nutritional adequacy.<br><br>The rules do not instruct AAAs to perform the duties of the licensed dietitians when they are required components of nutrition services. Instead, AAAs' licensed dietitians should monitor the work of provider's dietitians for compliance. It is a conflict of interest for the licensed dietitian of an AAA to be a provider's dietitian and also the dietitian at the AAA who monitor's the provider's dietitian for compliance with §339 of the Act.<br><br>If an AAA separates the dietitian-component of a nutrition service from the remaining components of the service, 45 C.F.R. 75.327 to 75.335 (December 26, 2014) would require the AAA to separately procure the dietitian duties through open and free competition. The aforementioned 3,912 licensed dietitians may be willing to bid on such a contract. If the AAA qualified for non-competitive bidding under the limited circumstances afforded by 45 C.F.R. 75.329 and OAC173-4-05, the AAA would still not be authorized to contract with itself unless it had permission from ODA according to §307(A)(8)(A) of the Older Americans Act.<br><br>See Appendix N for more information on licensed dietitians.<br><br>When monitoring the work of a providers' licensed dietitians for compliance with §339 of the Older Americans Act, the AAA's licensed dietitian should allow for the maximum-possible flexibility afforded by the Act.<br><br>As you had hoped, the version of the proposed new rules that ODA intends to file with JCARR makes it clear that no AAA shall enter into a contract that prohibits a provider from using either nutrient analysis or menu patterns to determine nutritional adequacy. |

[12] The Ohio Board of Dietetics. Jan 13, 2015.

**OAC173-4-05 and 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
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| *On Licensed Dietitians*<br><br>This rule should state that the menus should be approved by the AAA LD. Why? As a AAA LD I have the interests of the program and the older adults at the center of my decisions. A LD that is hired by the provider or consulted to plan the menus are not motivated to provide the best menus for the older adult but will have cost and simplicity for their employers. That is why the rule should state that the AAA LD should approve all menus and substitutions. See OAA Section. 339. NUTRITION below. The LD is the nutrition specialist and should be the go to professional for the Nutrition Program.<br><br>OAA Section. 339. NUTRITION.<br>A State that establishes and operates a nutrition project under this chapter shall—<br>**(1) solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science, or**<br>**if such an individual is not available, an individual with comparable expertise in the planning of nutritional services,**<br>**and**<br>(2) ensure that the project—<br>(A) provides meals that—<br>(i) comply with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and<br>(ii) provide to each participating older individual—<br>(I) a minimum of 33 1/3 percent of the **dietary reference intakes** established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the project provides one meal per day,<br>(II) a minimum of 66 2⁄3 percent of the allowances if the project provides two meals per day, and<br>(III) 100 percent of the allowances if the project provides three meals per day, and<br>(iii) to the maximum extent practicable, are adjusted to meet any special dietary needs of program participants,<br>(B) provides flexibility to local nutrition providers in designing meals that are appealing to program participants,<br>(C) encourages providers to enter into contracts that limit the amount of time meals must spend in transit before they are consumed,<br>(D) where feasible, encourages **joint** arrangements with schools and other facilities serving meals to children in order to promote intergenerational meal programs,<br>(E) provides that meals, other than in-home meals, are provided in settings in as close proximity to the majority of eligible older individuals' residences as feasible,<br>(F) comply with applicable provisions of State or local laws regarding the safe and sanitary handling of food, | Please review ODA's response to the previous comment. |

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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| equipment, and supplies used in the storage, preparation, service, and delivery of meals to an older individual,<br>**(G) ensures that meal providers solicit the advice and expertise of—**<br>**(i) a dietitian or other individual described in paragraph (1),**<br>**(ii) meal participants, and**<br>**(iii) other individuals knowledgeable with regard to the needs of older individuals,**<br>(H) ensures that each participating area agency on aging establishes procedures that allow nutrition project administrators the option to offer a meal, on the same basis as meals provided to participating older individuals, to individuals providing volunteer services during the meal hours, and to individuals with disabilities who reside at home with older individuals eligible under this chapter,<br>(I) ensures that nutrition services will be available to older individuals and to their spouses, and may be made available to individuals with disabilities who are not older individuals but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided,<br>(J) provides for nutrition screening and nutrition education, and nutrition assessment and counseling if appropriate, and<br>(K) encourages individuals who distribute nutrition services under subpart 2 to provide, to homebound older individuals, available medical information approved by health care professionals, such as informational brochures and information on how to get vaccines, including vaccines for influenza, pneumonia, and shingles, in the individuals' communities.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | |
| *On Nutritional Adequacy*<br><br>Again, it appears some of the language changes to the rules are mirroring the Medicaid Waiver programs, i.e. the meal provides 1/3 DRI. Unfortunately, the Medicaid Waiver nutrition program rules appear to be missing the input of a licensed, registered dietitian.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | ODA is not attempting to mirror the rules for any Medicaid waiver program with its proposed new version of this rule. Instead, the rule is mirroring language found in §339 of the Older Americans Act.<br><br>Additionally, both ODA's current and proposed new rule for the PASSPORT Program's home delivered meals (OAC173-39-02.314) requires all menus to be approved by a licensed dietitian. |

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| *On Nutritional Adequacy*<br><br>"2 meals per day shall provide 2/3 DRIs unless there is a need for flexibility or the consumer chooses menu options" sounds like a frozen meal provider can serve a less nutritious, lower quality, cheaper meal. The meal offered should still meet high quality nutrient stands; however, the participant still has the choice of what and how much to eat.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The nutritional-adequacy requirements in §339 of the Older Americans Act are the same regardless of the format in which the meals are delivered. |

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| *On Nutritional Adequacy*<br><br>The proposed rules may be interpreted too broadly or too narrowly. A literal interpretation of the proposed rule is each meal will need to provide 1/3 DRI for every nutrient. This is almost impossible to offer, while still providing variety and choice. The amount of some nutrients, especially the micronutrients, is not known for many food items. You would need to serve the same types of foods or sprinkle a "magic pixie dust" of vitamins and minerals to meet these standards. Nutrition is a young research field compared to other sciences. New discoveries and insights are made frequently, regarding how nutrients interact within foods and affect our health. Beneficial phytochemicals are not part of the DRIs. By focusing on DRIs alone, and limiting variety, these phytochemicals are also limited. Essentially, nutrient analysis would be required to determine adequacy, which increases the time a dietitian needs to spend developing menus, which would increase costs for providers. Most providers do not have a licensed dietitian on staff, so they utilize consultant dietitians. It would also decrease the provider's flexibility to make substitutions. It is much easier to make substitutions using a meal pattern than nutrient analysis. Detailed nutrient analysis shifts the focus from whole foods to individual nutrients. The senior nutrition program is supposed to be a model to help older adults in their food choices. Following a meal pattern is much easier for the public to understand and replicate. The federal government has shifted from a food pyramid to a food plate partly because it is easier to understand.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | §339 of the Older Americans Act requires ODA to ensure flexibility and the adjustment of nutritional adequacy standards. Thus, the same law that requires offering meals that have at least 1/3 of the DRIs also requires flexibility. Person direction would require allowing as much flexibility as the consumer directs.<br><br>When monitoring the work of a providers' licensed dietitians for compliance with §339 of the Older Americans Act, the AAA's licensed dietitian should allow for the maximum-possible flexibility afforded by the Act.<br><br>It may be helpful to view the language in §339 that allows for person direction and to review the commentary of the Administration on Aging and the Administration for Community Living on §339.[13]<br><br>The version of the proposed new rules that ODA intends to file with JCARR makes it clear that no AAA shall enter into a contract that prohibits a provider from using either nutrient analysis or menu patterns to determine nutritional adequacy.<br><br>Please also review Appendices B through J. |

[13] Administration for Community Living: "The Older Americans Act Nutrition Program: Did You Know.....?" May, 2015.

| **OAC173-4-05 and 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS** | |
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| *On Nutritional Adequacy*<br><br>The proposed 1/3 rule may be interpreted too broadly, as well. When there is a dispute, who determines the adequacy? We've seen how the Dietary Guidelines and latest nutrition research has been interpreted differently by dietitians within the State.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | §339 of the Older Americans Act requires ODA to ensure flexibility and the adjustment of nutritional adequacy standards. Thus, the same law that requires offering meals that have at least 1/3 of the DRIs also requires flexibility. Person direction would require allowing as much flexibility as the consumer directs. |
| *On Nutritional Adequacy*<br><br>Recommend changing *2010 Dietary Guidelines for Americans* to the *most current Dietary Guidelines for Americans.* The Dietary Guidelines for Americans are updated every 5 years, so the next version will be published in 2015. Omitting a specific year from the text, as does the OAA, will eliminate the need to update the rule just for a date change.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Ohio's incorporation-by-reference laws are in ORC§§ 121.71 to 121.75. The laws prohibit citing federal laws by referring to "current" laws.<br><br>Instead, rules cite an actual, publicly-available document and also cite the date of publication. After a new set of guidelines replaces the old, ODA must file the rule again to require compliance with the new guidelines. |
| *On Nutritional Adequacy*<br><br>With more people turning 60 every year, I think we should encourage choice and person centered care that is flexible and includes all options for choice while allowing each AAA to look at their situation, resources, and population we serve to determine what works best in their setting.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | We agree. |

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| *On Nutritional Adequacy*<br><br>Is it correct that section (D) is referring to adjusting the nutritional adequacy for the group of consumers to meet their special dietary needs, and not based on the needs of an individual?<br><br>*Joyce Boling, Chief of Quality Management*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | The language arose from §339 of the Older Americans Act, which requires the state to ensure that nutrition projects provide meals that comply with the Dietary Guidelines for Americans and 1/3 of the DRIs and that "to the maximum extent practicable, are adjusted to meet any special dietary needs of participants."<br><br>Interpreting it in the singular or plural would allow offering kosher meals based on the needs of a group of consumers, or offering gluten-free meals and nut-free meals to 2 consumers, each based upon their individual needs. |
| *On Nutritional Adequacy*<br><br>I believe that both nutrient analysis and the menu pattern should be options because not all providers have the resources both financial and administrative to always use nutrient analysis. Flexibility in this matter is helpful to keep meal prices down. The current rules stipulate the provider shall offer a meal that satisfies a minimum of 1/3 the dietary reference intake (DRI), and 2010 Dietary Guidelines for Americans. This can be interpreted in many different ways both very narrow and very broad. It also states "The provider may use flexibility in designing meals that are appealing to consumers." I agree and I think the providers should be encouraged to provide a meal that is colorful and provides variety. Not all providers are senior centers that deal with the participants daily and have their best interest at heart. Some are caterers, larger business, restaurants, etc. The nutrition adequacy rule should be more specific to ensure the OAA meals provided across the state are similar in nutrition. It appears some of the language changes to the rules are mirroring the Medicaid Waiver programs, i.e. the meal provides 1/3 DRI.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The version of the proposed new rules that ODA intends to file with JCARR makes it clear that no AAA shall enter into a contract that prohibits a provider from using either nutrient analysis or menu patterns to determine nutritional adequacy. |

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| *On Nutritional Adequacy*<br><br>The rest of the rule that gives food groups in the pattern and guidance on how to follow the pattern could be added to the Nutrition info on the ODA website. LDs know serving sizes and how to follow the Dietary Guidelines. The Guidelines change every 5 years so in the proposed rule the year should be removed. I have checked state guidelines in several states and they included a menu pattern and DRI guidance since there is no way every meal can meet the DRIs with adding vitamins and minerals.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | When ODA adopts *guidelines* for menu patters, AAAs and providers interpret them as *regulations*.<br><br>ODA's goal is to give consumers as much person direction with their meals as possible which requires complete menu options. Guidelines interpreted strictly will diminish those options.<br><br>ODA reviewed the regulations of other states and found little state-driven effort to give consumers options. Meanwhile, AoA/ACL have been publishing fact sheets to remind states that the Older Americans Act allows for flexibility. Therefore, ODA intends to adopt new rules follow the path that leads to options, not the path other states have taken. |
| *On Nutritional Adequacy*<br><br>The menu adequacy rule needs to be more specific. "the provider shall adjust the nutritional adequacy to meet the consumers' special dietary needs" is not specific enough. There should be some info in the rule about being aware of the aging population does have some special dietary needs like their dental health and challenges(nuts, seeds, tough meat, trouble chewing and swallowing), dexterity due to arthritis (easy to open containers, pealing and cutting), and milk intolerance (many don't drink milk due to gastrointestinal issues). Is there a substitute we can use for milk/yogurt for them to drink if they can't tolerate or don't want the milk?<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Please review ODA's response to the previous comment. |
| *On Nutritional Adequacy*<br><br>As an RDN, LD and a nutrition professional that has worked with Older adults and the nutrition program for 15+ years. We clearly have an obligation to serve nutritious meals that meet the guidelines. The past rule was written by an LD and agreed upon by other LDs that work with providers, menus, and participants regularly. I would like to see the following put back into the rule:<br><br>The provider shall offer a menu to consumers that is nutritionally adequate as determined by nutrient analysis, | Please review ODA's response to the previous comment. |

**OAC173-4-05 and 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)

# OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
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| menu patterns, or a combination of both. "Nutrient analysis" means a process by which food, beverage, and supplement intake are evaluated for nutrient content over a specific period of time that is based upon standard references for nutrients in the component foods. "Menu pattern" means a menu-planning tool used to identify the types and amounts of foods that are recommended to meet specific nutritional requirements. Of these options, the preferred method is to determine nutritional adequacy by means of nutrient analysis.<br>DRI Nutrient-Value Requirements (for Nutrient-Analysis Method)<br>LEADER NUTRIENTS TARGET VALUES COMPLIANCE RANGES<br>Calories 700 calories 600-800 calories<br>Protein 19 gm No less than 18 gm<br>Fat 20 gm No more than 25 gm<br>Vitamin A 275 µg No less than 210 µg<br>Vitamin B6 0.53 mg No less than 0.5 mg<br>Vitamin B12 0.8 µg No less than 0.7 µg<br>Vitamin C 28 mg No less than 24 mg<br>Vitamin D 200 iu No less than 175 iu<br>Calcium 400 mg No less than 360 mg<br>Magnesium 125 mg No less than 110 mg<br>Zinc 3.1 mg No less than 2.75 mg<br>Sodium 500 mg No more than 1100 mg<br>Potassium 1,567 mg No less than 1000 mg<br>Fiber 9 gm No less than 6 gm<br>(A) Nutrient-analysis method: The provider shall only determine the nutritional adequacy of a meal by means of nutrient analysis if the provider complies with the following:<br>(1) Software: The provider's nutrient-analysis software has been approved by the<br>LD of the AAA with which the provider has entered into a provider agreement to provide a meal service;<br>(2) Compliance ranges:<br>(a) Per-meal: Unless the provider uses the option in paragraph (A)(2)(b) of this rule on menu averaging, each meal shall fall within the compliance ranges for the adjusted DRI nutrient-value requirements established by the "DRI Nutrient-Value Requirements" table of this rule. The target values for each leader nutrient are based upon one meal per day (one-third of the DRI) for the average older population served by the nutrition program, except for the sodium compliance ranges, which are based on the "Dietary Guidelines for Americans." When serving three meals to a consumer in one day, the target values and compliance ranges are tripled (one hundred per cent of the DRI).<br>(b) Menu averaging: The provider using the nutrient analysis option shall meet the compliance ranges for leader nutrients in the daily menu or as averaged based on the week's menu for ten out of the fourteen leader nutrients, so long as one of the ten leader nutrients is vitamin B12.<br>Menu Pattern (for Menu-Pattern Method)<br>FOOD TYPES BREAKFAST or BRUNCH LUNCH or | |

**OAC173-4-05 and 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
|---|---|
| DINNER<br>Meat or meat alternate 1-2 servings 2-3 servings<br>Vegetables or fruits 2 servings 3 servings<br>Bread or bread alternate 2 servings 2 servings<br>Milk or milk alternate 1 serving 1 serving<br>Desserts Optional Optional<br>Fat Optional Optional<br>Accompaniments (e.g., condiments, sauces, spreads)<br>Optional Optional<br>Beverages (e.g., water,coffee, tea)<br>Optional Optional<br>(B) Menu-pattern method: The provider may use the menu-pattern method instead of the nutrient-analysis method that ODA recommends, but only if the provider uses the menu pattern in the "Menu Pattern" table of this rule:<br>(1) Double classification: Although the provider has the option to classify some individual food items as belonging to one food type or another in the "Menu Pattern" table of this rule, the provider may only classify a single serving of any individual food item in any single meal as part of one type. For example, although the provider may classify a serving of dried beans as either a meat alternate or vegetable, the provider may not classify dried beans as both a serving of a meat alternate and a vegetable in the same meal. Also, although the provider may classify cheese as either a serving of a meat alternate or a serving of a milk alternate, the provider may not classify cheese as both a serving of a meat alternate and a milk alternate in the same meal.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | |

**OAC173-4-05 and 173-4-05.1** (CURRENT RULES) → **OAC173-4-05** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION PROJECTS

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
|---|---|
| *On Nutritional Adequacy*<br><br>I am adamantly opposed to removing the menu pattern and nutrient analysis DRI values and compliance ranges.<br><br>The proposed rule leaves too much interpretation. Who is going to decide what is right or wrong if a provider complains since there is no concrete guidelines? This is one rule that should not be short and sweet. The purpose of the OAA Nutrition Program is to:<br>• Reduce hunger and food insecurity<br>• Promote socialization of older individuals<br>• Promote the health and well-being of older individuals and delay adverse health conditions through access to nutrition and other disease prevention and health promotion services.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Please review ODA's response to the previous comment. |
| *On Nutritional Adequacy*<br><br>Recommend maintaining current meal pattern and leader nutrient analysis guidelines. Remove controversial, prescriptive restrictions, such as limits on egg yolks, sauerkraut and desserts.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | In the version of the proposed new rules that ODA intends to file with JCARR, ODA has removed the prescriptive *guidelines* on egg yolks, sauerkraut, and desserts.<br><br>Please review ODA's response to the previous comment. |

| **OAC173-4-05.2** (CURRENT RULE) →**OAC173-4-06** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>DIET ORDERS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On "Diet Order" Definition*<br><br>Additionally, you may be interested in legislation that we will be proposing related to dietitians authority to write therapeutic diet orders and to modify enteral and parenteral nutrition orders.<br><br>*KayMavko, State Regulatory Specialist<br>Ohio Academy of Nutrition & Dietetics* | ODA drafted the new definition with general phrasing that will allow providers to accept diet orders from licensed dietitians if the Ohio General Assembly adds ordering therapeutic diets to licensed dietitians' scope of practice. |
| *On "Diet Order" Definition*<br><br>All the services provided in the rules are within the scope of practice of a physician assistant and there is no reason they should not be able to perform them.'<br><br>Unfortunately, we have discovered over the years that unless :physician assistant" is spelled out in a rule, the rule has been interpreted to exclude them. We realize that the draft rules have been written to include a number of professions that can perform those services but we continue to request that physician assistants be listed along with physicians.<br><br>*Elizabeth Adamson, Exec. Dir.<br>Ohio Association of Physician Assistants* | ODA has also consulted with the State Board of Medicine and the State Board of Nursing on this matter. We've arrived at a consensus with the boards to not mention *any* licensed healthcare professional by name, which would eliminate any perceived preferences to receive diet orders, orders for nutrition counseling, or plans of treatment from physicians. Additionally, every healthcare professional whose scope of practice includes diet orders *etc.*, is a licensed professional. With these two things in mind, ODA and the Boards have agreed that using the following formula would work best for ODA's rules:<br><br>...a licensed healthcare professional whose scope of practice includes X. |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>This rule needs clarification. Under the guise of Consumer Choice can a consumer request a meal modified, cut, and ground, pureed without a doctor's orders if following an already approved menu? How do you accept a change two days (48-hours) prior to meal preparation if the menu was approved over a month or three months ago by the nutritionist & dietician? Under this rule wouldn't the client's requests impact nutritional value and sustenance of the meal and therefore also require additional "authoritative approval"?<br><br>*Shon Gress, Executive Director<br>Guernsey County Senior Citizens Center, Inc.<br>Cambridge, Ohio* | Some providers, such as Wesley Community Services, have indicated to ODA that the elders to whom they deliver meals on a periodic basis (*i.e.*, weekly delivery) are able to choose between 31 meal options for each meal—even if they are receiving a therapeutic diet. It's the provider's experience that it's possible to provide both a therapeutic diet and choice.<br><br>The proposed new rule addresses providers' responsibility to adjust the therapeutic diet if the provider receives an updated diet order from a physician or other healthcare professional whose scope of practice includes ordering therapeutic diets. |

| **OAC173-4-05.2** (CURRENT RULE) →**OAC173-4-06** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>DIET ORDERS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>This rule needs clarification. Under the guise of Consumer Choice can a consumer request a meal modified, cut, and ground, pureed without a doctor's orders if following an already approved menu? How do you accept a change two days (48-hours) prior to meal preparation if the menu was approved over a month, three months or 12-months ago by the AAA nutritionist & dietician? Under this rule wouldn't the client's requests impact nutritional value and sustenance of the meal and therefore also require additional "authoritative approval"?<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>Diabetic Meals is a phrase that can also be used as a self-determined diet plan (i.e. cut out the sugar and carbs). This item requires further review and clarification. For example, can a consumer "self-diagnose" and request a diabetic meal without medical verification?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | If the meal choice is self-determined (without a diet order), then it is person direction. If the consumer has a diet order, then it becomes a therapeutic diet. Thus, a consumer is free to request a "diabetic meal" without a diet order. |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>Diabetic Meals is a phrase that can also be used as a self-determined diet plan (i.e. cut out the sugar and carbs). This item requires further review and clarification. For example, can a consumer "self-diagnose" and request a diabetic meal without medical verification?<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |

| **OAC173-4-05.2** (CURRENT RULE) →**OAC173-4-06** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>DIET ORDERS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>Consumers who are phobic of high-carbohydrate or sugar concentrated meals have been identified as requesting diabetic meals. At the consumer's request should a provider substitute and replace "diabetic food items" for medically diagnosed diabetics only yet substitute lower carbohydrate menu item options or less concentrated sweet item options for non-medically diagnosed diabetic meals.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please see ODA's response to the previous comment. |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>Consumers who are phobic of high-carbohydrate or sugar concentrated meals have been identified as requesting diabetic meals. At the consumer's request should a provider substitute and replace "diabetic food items" for medically diagnosed diabetics only yet substitute lower carbohydrate menu item options or less concentrated sweet item options for non-medically diagnosed diabetic meals.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Definitions*<br><br>Definitions need to be here if not in the definitions rule.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA will use a definition for "therapeutic diet" that aligns with the definition of "complex therapeutic diet" in rule 3701-17-01 of the Administrative Code for nursing homes and in rule 3701-17-51 of the Administrative Code for residential care facilities.<br><br>ODA is also proposing to define "diet order." |

| **OAC173-4-05.2** (CURRENT RULE) → **OAC173-4-06** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>DIET ORDERS** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Therapeutic vs. Person-Directed Meal Option*<br><br>By removing clarifications/definitions for diabetic meals, essentially all meals offering a non-concentrated sweet alternate may be considered therapeutic. This is not congruous with Medicaid waiver rulings, regarding diabetic meals.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | Basically, the meal is defined by the presence of a valid diet order. A consumer is free to request a low-carbohydrate or "diabetic" meal. Such a choice would be a choice of meal options for a consumer. If the consumer had a valid diet order, the meal could be considered a therapeutic diet. |
| *In General*<br><br>The Diabetic, low sodium, and low fat meal guidelines were removed. These are the most popular therapeutic diets. There needs to be guidelines. I always say the meals we provide are "Healthy Aging Diet" because following the nutrient analysis or menu pattern along with the Dietary Guidelines to eat less salt, fat, and sugar; and the portions are controlled. That takes away the need for a modified meal in my opinion.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Please see ODA's response to the previous comment. |
| *In General*<br><br>I think the rule should be in a different order.<br>(A) Physician Order<br>(B) Therapeutic Meals<br>(1) Diabetic<br>(2) Low sodium<br>(3) Heart Healthy (Low fat, Low Salt)<br>(4) Dysphagia Meals<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Although ODA is proposing to define "diet order" in a definitions paragraph, there are specific diet-order regulations for therapeutic diets that don't apply to modified meals. Therefore, ODA will place that language underneath the "therapeutic diet" subheading. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Introductory Paragraph*<br><br>Recommend that the term "shall only" should be omitted and provide greater meal preparation flexibility and increased delivery options for both the consumer and the provider.<br><br>*Ohio Association of Senior Centers* | The version of the proposed new rule that ODA intends to file with JCARR no longer contains this introductory paragraph. |
| *On Person Direction: Congregate Dining*<br><br>For small providers, providing menu options as outlined in this paragraph would create problems with meeting this requirement. Requiring an increase in options daily present a storage issue for many providers that do not have the capacity to keep additional food. In addition, the added cost of purchasing "options" could significantly impact their consumable budget. Although clients may choose an option there is no guarantee they will not change their mind before the meal is served or not be able to receive the meal. The result would be lost revenue in unserved meals.<br><br>*Ohio Association of Senior Centers* | Some providers already offer person direction under ODA's current rules.<br><br>If ODA adopts the proposed new rules, which contain 200+ fewer requirements in them and reductions in adverse impact in 35 other requirements, it should be easier for other providers to offer person direction.<br><br>Even so, proposed new OAC173-4-04 requires AAAs to either assess their PSA, then procure for the level of person direction that their assessment shows the PSA can offer, or to use competitive-proposal methods for procuring person direction. Either way, the level of person direction required by contracts will be tempered by the availability of person direction in a PSA.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Congregate Dining*<br><br>For small providers, providing menu options as outlined in this paragraph would create problems meeting this requirement. Requiring an increase in options daily presents a storage issue for many providers that do not have the capacity to keep additional food. In addition, the added cost of purchasing "options" could significantly impact their consumable budget. Although clients may choose another option, there is no guarantee they will not change their mind before the meal is served or not be able to receive the meal. Either way, the result would be lost revenue in unserved meals to the provider. Although client choice is a good idea, it needs to be limited to what the individual provider can offer without impacting their overall budget.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Senior Enrichment Services is an example of a provider that already offers person direction. Your soup and salad bar, taco bar, and potato bar allow consumers to build their own meals—and you offer them as options instead of the traditional plated meals. These DIY options are examples of person direction.<br><br>If ODA adopts the proposed new rules, which contain 200+ fewer requirements in them and reductions in adverse impact in 35 other requirements, it should be easier to offer more person direction and for other providers to begin offering person direction.<br><br>Even so, proposed new OAC173-4-04 requires AAAs to either assess their PSA, then procure for the level of person direction that their assessment shows the PSA can offer, or to use competitive-proposal methods for procuring person direction. Either way, the level of person direction required by contracts will be tempered by the availability of person direction in a PSA.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person-Direction: Congregate Dining*<br><br>We do not support family style dining due to cross contamination concerns. In addition, present staffing restrictions limit us to serving buffet style, however, we would not be able to afford additional staffing required to provide individual service at each table…for example "like a restaurant". Some consumers could potentially be concerned about the cleanliness of other seniors at the table causing increased opportunities for confrontation and discontentment among dining participants. Equally notable we have concerns regarding keeping food "to temperature" and keeping it hot and issues regarding "frailty of the senior" and inability to pass the bowl or platter of food is also an issue.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | The rule doesn't require family-style dining. It's *an option* for providers who choose the self-direction method, just like a soup and salad bar, is a DIY option providers may take to offer person direction.<br><br>This Family Living Magazine article discusses the prevention of cross-contamination in family-style dining.<br><br>On staffing:<br><br>This forum speaks on staffing needs for family-style dining, but mostly in a positive light. It does not address staff levels, but staff satisfaction. Search for "family style."<br><br>Here is Northern Illinois University's first factor to consider when planning a conference:<br><br>For every plated meal, allow for at least one wait staff for every 25 guests at breakfast and one for every 20 at lunch and dinner. For a buffet, allow one wait staff for every 40 guests at breakfast and one for every 30 at lunch and dinner.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM**<br>**PERSON DIRECTION** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person-Direction: Congregate Dining*<br><br>We do not support family style dining due to cross contamination concerns. In addition, present staffing restrictions limit us to serving buffet and/or cafeteria style, however, we would not be able to afford additional staffing required to provide individual service at each table…for example "like a restaurant". Some consumers could potentially be concerned about the cleanliness of other seniors at the table causing increased opportunities for confrontation and discontentment among dining participants. Equally notable we have concerns regarding keeping food "to temperature" and keeping it hot and issues regarding "frailty of the senior" and inability to pass the bowl or platter of food is also an issue.<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to the previous comment. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Home-Delivered Meals*<br><br>Thirdly, the issue of choice is not cost effective to the program intent. Larger programs serving multiple counties under numerous funders will find choice options an additional expense that would be best suited to serving more customers a single nutritionally adequate meal. I may be in the minority on this subject however I believe that Title III programs were never meant to be a catered service. The intent was to offer a nutritionally sound meal, at least once per day to as many 60+ individuals as possible who otherwise would not have a meal available to them.<br><br>[A portion of the comment was moved to the comments for rule 173-3-06.]<br><br>If ODA wants to make an impact… the payment to providers for meals prepared, packaged & delivered to homes where no one is home to accept them should be addressed. We lose over $120,000 dollars a year in undeliverable meals as a result of the customers not being home and not notifying the office in advance. We have many checkpoints to address this concern but it still occurs. Even placing customers on hold until assurances are made makes only a small impact. Consider the offer of a second entrée or completely different meal on a daily basis a bid process item not a must have requirement. If A offers everything that B does but also offers a choice menu then go with A in awarding the contract. Choice does not enhance the nutritional quality of the meal and only serves to increase the cost… which in turn results in less customers served. Meals On Wheels customers cannot be compared with Nursing Home customers where there is a specific number of individuals, on-site facilities and they are always home. What if you had to eat whatever was put in front of you? Or worse yet….What if there was no one to deliver the meal at all?<br><br>*Chuck Sousa, Director of Nutrition*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | ODA understands that, since the time that you commented, Senior Resource Connection has begun offering many menu options through the Choice Meal Program that Senior Resource Connection inaugurated on April 6, 2015.[14] We also understand that you offer those menu options to all consumers other than those whose meals are paid, in whole or in part, with Older Americans Act funds. Our proposed new rules will make it clear that periodic deliveries of frozen meals are allowable.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

[14] Senior Resource Connection. http://www.seniorresourceconnection.com/seniors-nutrition-program.asp Accessed Dec 31, 2015.

**OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM PERSON DIRECTION

| COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS | ODA's RESPONSES |
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| *On Person Direction: Home-Delivered Meals*<br><br>Just wanted to comment on some items.<br><br>Also having an alternate choice is a problem. We already do a choice, but the choice is if they don't like what's on the menu they will get a sub. Some businesses don't have the space and employees to cook all the different types of meals. I can also see some clients not sending their paper back in with a meal on it or calling at the last minute to change something.(which would be their choice to do)<br><br>Also some meal providers don't have the ability to create different dinning solutions.<br><br>I understand we are trying to provide meals to these clients, but at the same time you can only do so much.<br><br>*Melissa Malone, Site Manager*<br>*Fairhaven Nutrition Services of Shelby County*<br>*Sidney, Ohio*<br><br>---<br><br>And by sub I mean if there is something they do not like we will give them something different in place of it.<br><br>*Melissa Malone, Site Manager*<br>*Fairhaven Nutrition Services of Shelby County*<br>*Sidney, Ohio* | Offering a two complete meal options everyday—even if one of those meal options is the same from day to day—is an example of a way to offer person direction. If this option is printed clearly on menus, it would inform consumers that they have a choice for each meal.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Home-Delivered Meals*<br><br>Issue: This section needs a lot of work with regards to the practicality of implementing this level of choice for consumers by the majority of providers. There will be an adverse impact of the new regulation. It will increase the raw food cost, production staff cost, inventory holding costs, time in ordering and documenting every single choice, delivery costs in counting out and ensuring customized meals per client beyond what has been done. The only way this works is for a non-daily traditional HDM provider. It tips the playing field toward a once a week HDM delivery or restaurant method of congregate delivery. If the intent of the reg is to change the Service Delivery Model, then it will successfully do that and push most Congregate Senior Centers to use the Self-direction method of offering a family-style setting. We will all need to invest in "platters" for every meal item, for every table, for every center and also add additional time to the cleanup schedule. For frail seniors passing the platter will be an issue. Alternatively investing in soup bars and the wastage will add cost.<br><br>*Robin Richter, Dir., Senior & Trans. Programs*<br>*WSOS Community Action Commission, Inc.*<br>*Fremont, Ohio* | Some providers already offer person direction under ODA's current rules.<br><br>If ODA adopts the proposed new rules, which contain 200+ fewer requirements in them and reductions in adverse impact in 35 other requirements, it should be easier for other providers to offer person direction.<br><br>Even so, proposed new OAC173-4-04 requires AAAs to either assess their PSA, then procure for the level of person direction that their assessment shows the PSA can offer, or to use competitive-proposal methods for procuring person direction. Either way, the level of person direction required by contracts will be tempered by the availability of person direction in a PSA.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Home-Delivered Meals*<br><br>This change assumes one central site for distribution and technology based systems. Our agency distributes from multiple sites around our small county, and logistics would prove extremely difficult. Enforcing robust choices will be a hardship on our staffing capacity. Because of our multiple distribution sites for home delivered and congregate dining we do not use technology for real time ordering and daily managing, and are unclear that our meal volume would warrant the investment.<br><br>Also, cognitive impairments will make meal choice participation difficult for many of our consumers. We currently use Derringers Savoy Selects meal choices for one of our meal programs and have learned that two meal choices would work better than entrée and side choices within meals, and choice in general would work better for home delivered meals than congregate.<br><br>Choice does slow down home delivery schedules and times. Food choices in our county's 7 congregate locations would increase waste, not reduce it, as clients may not remember what they ordered or change their mind about what they want.<br><br>We quickly establish long term relationships with our clients. We recommend offering manageable choice to those clients with a high enough level of independence to follow ordering procedure and reserve the flexibility to help or limit choices for those that cannot.<br><br>*Maureen B. Fagans, Executive Director*<br>*United Senior Services*<br>*Springfield, Ohio* | Person direction would not work the same for every consumer. If a consumer is cognitively unable to order from a menu, but lives at home, it is likely that he or she is able to live at home (*vs.*, a nursing facility) because he or she has a family caregiver. In the same way that the consumer can exercise his or her choices, the consumer can authorize the family caregiver to make those choices.<br><br>It is also understandable that complex menus may be appropriate for certain consumers, while simple ones may be appropriate for others. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Home-Delivered Meals*<br><br>Additionally, cognitive impairments will make meal choice participation difficult for many consumers. Two meal choices would work better than entrée and side choices within meals, and choice in general would work better for home delivered meals than congregate. Choice will affect home delivery schedules and times. Food choices in multiple sites could increase waste rather than reduce it, as clients may not remember what they ordered or change their mind about what they want.<br><br>We quickly establish long term relationships with our clients. We would like to offer manageable choices to those that want/appreciate/expect it and reserve the flexibility to help or limit choices for those that are confused, overwhelmed or unwilling.<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to previously-listed comment.. |
| *On Person Direction: Home-Delivered Meals*<br><br>The term "refrigerated" is problematic. We do not have refrigeration or refrigerators in home delivered meal drivers' cars. Typically providers utilize "insulated coolers". This term should be replaced with "ensure the maintenance of proper food temperatures" or include at least "pre-approved cooling devices".<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | In the proposed new rules, ODA no longer describes the types of meals that providers deliver on a periodic basis (*e.g.*, refrigerated).<br><br>ODA's new strategy for increasing person direction on a statewide basis is no longer to list the possible ways to give consumers options. The new strategy would require AAAs to procure person-directed nutrition projects when it procures. Please review proposed new OAC173-4-04. |
| *On Person Direction: Home-Delivered Meals*<br><br>The term "refrigerated" is problematic. Many providers do not have refrigeration or refrigerators in home delivered vehicles and/or cars of volunteers. Typically providers utilize "insulated coolers".<br><br>Recommend that this term should be replaced with "ensure the maintenance of proper food temperatures" or include at least "pre-approved cooling devices".<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Home-Delivered Meals*<br><br>Frozen meals<br>Change takes away client choice and would require agency to have more delivery staff; clerical hours would increase with more daily delivery<br><br>*John Gregory, Senior Vice-President of Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio*<br><br>---<br><br>My understanding was that frozen choice is being proposed to be attached to a nutritional screen outcome. Meaning you must meet certain criteria to exercise this choice. So if clients were not allowed FC this could call for more delivery staff, etc...<br><br>*John Gregory, Senior Vice-President of Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | The goal of the frozen-meal language was to prevent the delivery of frozen meals to a person who cannot open a package or use a microwave.<br><br>However, in the proposed new rules, ODA no longer describes the types of meals that providers deliver on a periodic basis (*e.g.*, frozen).<br><br>ODA's new strategy for increasing person direction on a statewide basis is no longer to list the possible ways to give consumers options, but to require AAAs to procure person-directed nutrition projects. Please review proposed new OAC173-4-04. |
| *On Person Direction: Home-Delivered Meals*<br><br>This is controversial and unclear. Additional rule language should consider: What about clients who request a "frozen meal" in advance prior to a date that the provider will be closed (i.e. closed holidays, etc…). The term "shall only" should be omitted and provide greater meal preparation flexibility and increased delivery options for both the consumer and the provider.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Please see ODA's response to the previous comment. |
| *On Person Direction: Home-Delivered Meals*<br><br>This is controversial and unclear. Additional rule language should consider: What about clients who request a "frozen meal" in advance prior to a date that the provider will be closed (i.e. closed holidays, etc…).<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM**<br>**PERSON DIRECTION** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction: Diabetic Meal Options*<br><br>Diabetic Meals is a phrase that can also be used as a self-determined diet plan (i.e. cut out the sugar and carbs). This item requires further review and clarification. For example, can a consumer "self-diagnose" and request a diabetic meal without medical verification?<br><br>*Ohio Association of Senior Centers* | Providers may offer low-carbohydrate or gluten-free meals to consumers without a diet order if the meals offer at least 1/3 of the DRIs and follow the Dietary Guidelines for Americans.<br><br>If the meals don't comply with those federal standards, the provider could offer them if the consumer has a diet order.<br><br>Additionally, providers are only required to offer meals that comply with the federal standards. A consumer may voluntarily refuse to eat certain portions of the meal, which may result in refusing to eat high-carbohydrate items and gluten. |
| *On Person Direction*<br><br>What about choice of breads and milk? Also, there are general concerns about how increased menu options will impact program operating costs and expenses among already "financially strapped" program providers, especially when provider unit of service reimbursement rates are grossly substandard, past-due for increases, and quite simply a dereliction by ODA & State legislators oversight (while AAA's receive administrative increases for themselves) that has been ignored and neglected for far too long.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Enough providers already offer person direction under ODA's current rules to convince ODA that only offering a choice between skim and 2% milk and wheat and white bread is adequate. Fortunately, we know that you have embraced person direction with your recent offering of frozen meal options.<br><br>If ODA adopts the proposed new rules, which contain 200+ fewer requirements in them and reductions in adverse impact in 35 other requirements, it should be easier to offer greater levels of person direction.<br><br>Proposed new OAC173-4-04 requires AAAs to either assess their PSA, then procure for the level of person direction that their assessment shows the PSA can offer, or to use competitive-proposal methods for procuring person direction. Either way, the level of person direction required by contracts will be tempered by the availability of person direction in a PSA.<br><br>For more information on what's possible, please review Appendices C through J.<br><br>Please also review ODA's responses to other comments on person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction*<br><br>What about choice of breads and milk? Also, there are general concerns about how increased menu options will impact program operating costs and expenses among already "financially strapped" program providers, especially when provider unit of service reimbursement rates are grossly substandard, past-due for increases, and quite simply a dereliction by ODA & State legislators oversight (while AAA's receive administrative increases for themselves) that has been ignored and neglected for far too long.<br><br>*Ohio Association of Senior Centers* | Please review ODA's response to the previously-listed comment. |
| *On Person Direction*<br><br>We appreciate the opportunity to comment and realize that some of our concerns may be due to lack of complete understanding of the policy and procedures.<br><br>We understand the importance of flexibility and choice, but have concerns that a full, nutritionally adequate meal should be sent/offered to the client. The purpose of the programs are, we think, to provide the calories and other nutrients that older adults need to stay as healthy as possible as they age. Clients should be offered a choice between complete meals, not parts of a meal. These are "public dollars" and we have an obligation to use them to meet the nutritional needs of older adults. When the provider is allowed to not send vegetables, fruit or other parts of the meal --- the meal is no longer nutritionally adequate. If the older adult never sees vegetables, they are never going to eat them. :). The question then is, will the provider be reimbursed for the meal if it is NOT a complete meal????<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Please review Appendix A for the goals for congregate dining locations and home-delivered meals. Nutrition is only 1 of the goals.<br><br>Also, please review Appendix B regarding the rationale for person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Person Direction*<br><br>Ditto comments provided by PSA4.<br><br>*Robin Richter, Dir., Senior & Trans. Programs<br>WSOS Community Action Commission, Inc.<br>Fremont, Ohio* | We're uncertain which of AAA4's comments you support. Please review ODA's responses to those of AAA4's comments to find ODA's response to the comment that you support. |
| *On Person Direction: Documentation*<br><br>Recommendation that it be clarified as to how a provider would document the client's choice (if they choose not to receive specific items i.e. bread or milk).<br><br>*Ohio Association of Senior Centers* | In the proposed new rules, ODA is not requiring, nor recommending, that providers document consumer's choices of meals or even to say how they built a salad at a salad bar. |
| *On Person Direction: Technology*<br><br>This rule assumes one central site for distributions and technology based systems. Some providers distribute from multiple sites in their county/service area, and logistics would prove extremely difficult. Enforcing robust choices will be a hardship on smaller agencies and their staffing capacity. Many organizations do not use technology for real time ordering and daily managing, and are unclear that the meal volume would warrant the cost/investment.<br><br>*Ohio Association of Senior Centers* | The strategy in the version of the rule that ODA intends to file with JCARR is to require the AAAs to procure for nutrition projects that have person direction in them. Whether the AAA assesses the availability of person direction in a PSA before procuring or whether they use competitive-proposal procurement, the result would be tolerance-tested according to each PSAs ability to offer person direction. |
| *Monitoring AAAs*<br><br>Flexibility (1b) "The requirements for nutrition will be only as strong as the requirements in the Older Americans Act as interpreted by the Administration on Aging." How will ODA monitor and maintain compliance of AAAs on this philosophy?<br><br>*Ohio Association of Senior Centers* | Through its regular monitoring activities under rule 173-2-07 of the Administrative Code, ODA monitors each AAA for compliance with its area plan (*cf.*, rule 173-2-06); state or federal laws (*e.g.*, The Older Americans Act), state or federal rules, or ODA's policies; or agreements that govern the programs and funds that the AAA administers through grants from, or contracts with ODA.<br><br>ODA's new strategy for increasing person direction statewide is no longer to list the possible ways to give consumers options, but to require AAAs to procure person-directed nutrition projects. Please review proposed new OAC173-4-04. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Person Direction*<br><br>There has always been choice in the nutrition program and participants have the opportunity to suggest menu changes, they can determine when they want meals, how often they want to go to a mealsite, and they eat what they want from a meal. No one has ever been forced to take something they don't want.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Suggesting items for future menus could lead to person-directed methodology, but it would be inadequate by itself to foster person direction. Person direction gives consumers options at a given mealtime that allow them to have immediate options on what they want to eat. |
| *Person Direction: Complete Meal Options*<br><br>Most current providers do not comply with these revised, required choice options. The proposed choice options actually offer less options for choice and will dramatically increase the cost of the meal service for most providers. While the family-style setting option may seem the least cost prohibitive to implement, our providers have chosen to discontinue this service with participant support. Some of their concerns were with food safety and disabilities preventing some individuals to pass the serving plates around the table.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | Under ODA's current rules, some providers offer consumers no more than a choice between skim milk and 2% milk and whole or white bread, which is the *lowest level of options*. It is an insignificant level of options and an insufficient level of person direction.<br><br>We fail to see how offering complete meal options could be lower than the aforementioned options. |

**OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)

## OLDER AMERICANS ACT: NUTRITION PROGRAM PERSON DIRECTION

| COMMENTS FROM ODA's DESIGNEES | ODA's RESPONSES |
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| *Person Direction: Complete Meal Options*<br><br>A choice of offering either two meals or two side dishes for *every meal* would be a challenge for our meal providers. We support the concept of choice, but to mandate the two meals and two sides offered at every meal as the only other consumer choice option creates a financial and logistical burden for our providers – some do not have kitchen staff or space and equipment to support additional menu offerings. At a minimum, our providers have always offered a choice in two menu items, i.e., milk or bread at all meals and sometimes have also been able to provide a choice in desserts at some meals, in keeping with 173-4-05, as previously written. Some of our providers also have been able to offer a choice between the regular hot menu and a seasonal cold menu or a year-round vegetarian menu, but not all providers are able to afford offering beyond the minimum of milk, bread and occasional dessert choices. The rural counties in our PSA have a much lower level of Title III funding for the meal programs and minimal competition; there is not enough funding to mandate offering either two meals or two side dishes as the only other option in addition to the self-directed method, which none of our providers use. The option that the provider offers two meals or two side dishes as a choice should be included as *one of several options* listed. Please retain the original option of allowing consumer choice between two or more food items: meat, vegetable, fruits, bread, milk, desserts, meat or meat-alternate; this option is the most affordable to our meal providers, especially for those serving the rural areas.<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | Under ODA's current rules, some providers offer consumers no more than a choice between skim milk and 2% milk and whole or white bread, which is the *lowest level of options*. It is an insignificant level of options and an insufficient level of person direction.<br><br>Meanwhile, providers in PSA2 and around the state offer complete meal options under the same rules. Please see Appendices C through G for examples.<br><br>Because ODA is proposing to adopt new rules that contain many fewer requirements that the present rules, it seems likely that the reduced adverse impact of the new rules should encourage more person direction.<br><br>The proposed new OAC173-4-04 would require AAAs to procure for contracts by offering the highest scores to bidders who offer the *highest levels of options*, which will facilitate person direction. If the AAA cannot determine the level of person direction needed and the level of person direction possible, the AAA shall rely upon the competitive-proposal method in 45 C.F.R. 75.329. The competitive-proposal method would allow providers to propose offering more person direction than the AAA envisioned. The competitive-proposal method also relieves the AAA from establishing minimum levels of person direction. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *Person Direction: Complete Meal Options*<br><br>Meal requirements (A) (4) (a) Menu option method: a provider "shall allow consumers . . . a choice between two side dishes in the same meal, or a choice between two meals that do not share the same dishes or sides dishes.<br><br>*Jeanne Mbagwu, Community Services Manager<br>Area Agency on Aging, PSA 2<br>Dayton, Ohio* | Please review ODA's responses to previous comments. |
| *Person Direction: Complete Meal Options*<br><br>Consumer Choices- the new options are too narrow. The 2 choices to provide choice and both are going to cost more to provide the meals and in turn funding will be used more quickly. It has always been our philosophy to utilize the funds in the most efficient manner to serve more meals to more participants. The options in the proposed rule will require additional cost for both food and personnel on the part of the provider. Our providers currently use choice of bread and milk to meet the choice requirement and the participant is able to decide how when they want to receive meals for both HDM and cong. To offer 2 entrees or side dishes or 2 completely different meals will require more administrative time/cost to do the meal orders for our smaller caterers. Our current provider is a rural operation and they make their food from scratch in most cases. For home delivery that would be a little more feasible. For congregate the participants like the home cooked food they get in bulk.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | In rural areas, home-delivered meal providers are offering menu options in rural areas for individuals enrolled in the PASSPORT Program. These providers could offer the same options to consumers whose meals are paid with Older Americans Act funds.<br><br>ODA does not intend to allow the *lowest level of options*. Instead, ODA proposes to require AAAs to award contracts to providers who offer the *highest level of options*.<br><br>For further information, please review new OAC173-4-04, Appendix B, and ODA's responses to previous comments. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Person Direction: Home-Delivered Meals*<br><br>The language "2 meals per day shall provide 2/3 DRIs *unless there is a need for flexibility or the consumer chooses menu options"* is concerning. This essentially allows a frozen meal provider to serve a less nutritious, lower quality, cheaper meal. The meal offered should still meet high quality nutrient stands; however, the participant still has the choice of what and how much to eat.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | ODA's proposed new strategy for increasing person direction statewide no longer involves adopting into rules "guidelines" and "alternatives" that instruct providers to only offer consumers limited options.<br><br>Instead, ODA's proposed new rules would require AAAs to enter into contracts with providers who offer the highest levels of options.<br><br>The proposed new version of OAC173-4-05 requires providers to offer meals that comply with the nutritional-adequacy requirements in §339 of the Older Americans Act. This applies regardless of the format of the delivered meal (*e.g.*, warm, blast chilled, frozen). |
| *On Person Direction: Home-Delivered Meals*<br><br>Non-therapeutic and non-modified meals – I am not sure that this is the best description of vegetarian, frozen, vacuum-packed, cook chilled, or MAP meals. Maybe Other Meal Types since vegetarian is meal without meat, Kosher meals are a cultural meal, and Frozen, vacuum packed etc is a different type of meal packaging.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Please see ODA's response to the previous comment. |
| *On Person direction: DIY Options*<br><br>Why were soup and salad bar guidelines, breakfast/brunch meals, shelf stable meals and sack/boxed lunch omitted? Are these not allowable in the program anymore? Soup and salad bar was referenced in the consumer choice mandate section of *173-4-5.*<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | ODA's proposed new strategy for increasing person direction statewide no longer involves adopting into rules "guidelines" and "alternatives" that instruct providers to only offer consumers limited options.<br><br>Instead, ODA's proposed new rules would require AAAs to enter into contracts with providers who offer the highest levels of options.<br><br>Nothing in the rule prohibits providers from submitting bids to offer breakfasts, brunches, or soup and salad bars. The winning bidders may propose to offer all three to beat competing proposals from other providers. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Person direction: DIY Options*<br><br>Why were soup and salad bar guidelines, breakfast/brunch meals, shelf stable meals and sack/boxed lunch omitted? Are these not allowable in the program anymore? Soup and salad bar provides choice. Sack/boxed lunches are offered to those who do not have a means to heat up a meal or cannot use stove or microwave for safety reasons. Participants like breakfast meals as a change of pace once in a while and some providers offer them regularly.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Please see ODA's response to the previous comment. |
| *On Person Direction: DIY Options*<br><br>Trying Family style will be a logistical nightmare. We get phone calls now if someone from the mealsite touched their plate or milk without gloves. I can only imagine sending a platter around the table not to mention the cost of the dishes and the personnel to wash them. Our mealsite get food packed bulk that is taken to the site and served by the provider staff. It works and the cost is high enough for that.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | Providers are not required to offer family-style dining. PointSource in Delaware, Ohio is an example of a provider that offers a family-style congregate dining location. However, providers are more likely to offer consumers soup and salad bars as a DIY option. Some providers, like Senior Enrichment Services in Norwalk, Ohio offer soup and salad bars as an option instead of the plated meal of the day.<br><br>For more information, please review Appendix E. |
| *On Person-Direction Terminology*<br><br>Cultural should be Alternative because I could be a vegetarian or eat Kosher because I choose to and it has nothing to do with my culture.<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>PSA3 Area Agency on Aging, Inc.<br>Lima, Ohio* | ODA's proposed new strategy for increasing person direction statewide no longer involves adopting into rules "guidelines" and "alternatives" that instruct providers to only offer consumers limited options. As such, the version of OAC173-4-04 that ODA intends to file with JCARR no longer lists alternative meal options, including cultural, vegetarian, or kosher diets.<br><br>ODA's new strategy for increasing person direction statewide is no longer to list the possible ways to give consumers options, but to require AAAs to procure person-directed nutrition projects. |

| **OAC173-4-05.3** (CURRENT RULE) → **OAC173-4-04** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>PERSON DIRECTION** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Person-Direction Terminology*<br><br>I think this should just be Alternative Meals and Meal Types<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | ODA's proposed new strategy for increasing person direction statewide no longer involves adopting into rules "guidelines" and "alternatives" that instruct providers to only offer consumers limited options. As such, the version of OAC173-4-04 that ODA intends to file with JCARR no longer lists alternative meals or meal types.<br><br>ODA's new strategy for increasing person direction statewide is no longer to require AAAs to procure person-directed nutrition projects without limiting what providers may offer. |

| **OAC173-4-05.4** (CURRENT RULE) → **OAC173-4-06** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM<br>DIET ORDERS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| No comments for this section.<br><br>*Ohio Association of Senior Centers* | Thank you. |

| **OAC173-4-05.4** (CURRENT RULE) → **OAC173-4-06** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM**<br>**DIET ORDERS** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| [Miscellaneous]<br><br>This rule is being rescinded with no replacement. This rule essentially allowed for medical foods, such as meal replacement liquids for chronic conditions (renal failure, trauma, COPD, cancer), thickened liquids, and gluten-free products.<br><br>Impact/concerns:<br>ODA rescinded because no AAAs were contracting for medical food.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | That is correct. |
| [Miscellaneous]<br><br>This rule is being rescinded with no replacement. This rule essentially allowed for medical foods, such as meal replacement liquids for chronic conditions (renal failure, trauma, COPD, cancer), thickened liquids, and [gluten-free] products.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | That is correct. |
| [Miscellaneous]<br><br>In the past we had provided Ensure Plus to Nutrition consultation participants if indicated and their physician.<br>It was a great service. We stopped for a while but would still like the option to possibly do it again.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | That's good to know. |

| **OAC173-4-06** (CURRENT RULE) → **OAC173-4-07** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM<br>NUTRITION COUNSELING** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *In General*<br><br>No comments for this section.<br><br>*Ohio Association of Senior Centers* | Thank you. |
| *On Orders and Limits*<br><br>All the services provided in the rules are within the scope of practice of a physician assistant and there is no reason they should not be able to perform them.'<br><br>Unfortunately, we have discovered over the years that unless "physician assistant" is spelled out in a rule, the rule has been interpreted to exclude them. We realize that the draft rules have been written to include a number of professions that can perform those services but we continue to request that physician assistants be listed along with physicians.<br><br>OAPA respectfully requests that the language "treating physician (or other healthcare professional whose scope of practice includes authorizing nutrition counseling)" be changed to "treating physician, physician assistant or advance practice nurse (or other healthcare professional whose scope of practiced includes authorizing nutrition counseling)."<br><br>*Elizabeth Adamson, Exec. Dir.*<br>*Ohio Association of Physician Assistants* | ODA has also consulted with the State Board of Medicine and the State Board of Nursing on this matter. We've arrived at a consensus with the boards to not mention *any* licensed healthcare professional by name, which would eliminate any perceived preferences to receive diet orders, orders for nutrition counseling, or plans of treatment from physicians. Additionally, every healthcare professional whose scope of practice includes diet orders *etc.*, is a licensed professional. With these two things in mind, ODA and the Boards have agreed that using the following formula would work best for ODA's rules:<br><br>...a licensed healthcare professional whose scope of practice includes X. |

| **OAC173-4-06** (CURRENT RULE) → **OAC173-4-07** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM<br>NUTRITION COUNSELING** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Definitions*<br><br>We are pleased to see the references to ORC- 4759 - the Dietetic Practice Act and the indication that the licensed dietitian is the professional who does nutrition counseling.<br><br>We question the need for (b) (i) (a) through (e). This is information the dietitian would gather in the assessment and counseling, but the dietitian would use foods rather than nutrients in his/her questions. For example -- "Are you more aware of the foods you are eating that have added sugar" -- not "Have you begun to monitor your carbohydrate intake". We are not sure how the answers to these questions would be used. We suggest omitting those questions and just leave (i) as a stand-alone activity.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Thank you. |

| **OAC173-4-06** (CURRENT RULE) → **OAC173-4-07** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM**<br>**NUTRITION COUNSELING** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Outcome Questions*<br><br>Recommend removing the specific nutrient intake questions regarding monitoring fat, carbohydrate, sodium and fiber intake in the subsequent outcomes section. These may not be pertinent to the situation/medical nutrition therapy provided. When providing MNT, a licensed dietitian will assist the participant/caregiver in developing a few attainable goals. In follow-up sessions additional goals may be added. It is highly unlikely all potential beneficial diet and behavior changes will be expected in the first session. The subsequent follow-up session will assess the progress toward reaching these goals. Thus, the nutrient intake questions should be related to these goals, as well as the medical condition.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | The version of the proposed new rule that ODA intends to file with JCARR no longer contains this language. |
| *On Outcome Questions*<br><br>I don't think the rule should tell the LD what to ask to obtain outcomes when each counseling is different and based on the participants individual needs. The nutrition professional is bound by licensure and code of ethics and is to practice accordingly. I do believe outcomes are important and I already collect outcomes after counseling through a mailed survey and my goal is to see if they have made behavior changes.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The version of the proposed new rule that ODA intends to file with JCARR no longer contains this language. |
| *Unknown*<br><br>shall furnish an intervention plan to the physician (or other healthcare professional with prescriptive authority) and the case manager (if they have one).<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Unfortunately, ODA does not understand the point of this comment. |

| **OAC173-4-06** (CURRENT RULE) → **OAC173-4-07** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM**<br>**NUTRITION COUNSELING** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Units*<br><br>Unit of Service – wondered [why] changing unit to 15 minutes from 1 hour.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*Area Agency on Aging 3*<br>*Lima, Ohio* | The rule changed from 1-hour units reported in 15-minute increments (*e.g.*, 1.25 units, 1.75 units) to just 15-minute units. This is more natural.<br><br>It also corresponds with the 15-minute units in rule 173-39-02.10 of the Administrative Code. |

| **OAC173-4-07** (CURRENT RULE) → **OAC173-4-08** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT NUTRITION PROGRAM<br>NUTRITION EDUCATION** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| Clarification is needed on this item. If this service is now being required of meal providers, where is the funding that covered the AAA's costs when they developed and printed these materials being redirected? In PSA4, the Ohio State Extension office bid on this service and were denied because the AAA was providing the service to providers.<br><br>*Ohio Association of Senior Centers* | §307(a)(8)(A) of the Older Americans Act prohibits an AAA from directly providing the services unless ODA determines that only the AAA is capable of adequately providing the services in the PSA, the services are directly related to the AAA's administrative functions, and the AAA would provide services of comparable quality to providers, but more economically than providers. See OAC173-4-05 for details. |
| Recommendation that minimum credentials be determined and established by ODA not AAA, for consistency.<br><br>*Ohio Association of Senior Centers* | The only credentials that ODA presently requires in the rules if for the leader of group sessions to be a licensed dietitian. |
| Recommendation that language be included to specify this is for contracted services only. Many service providers do additional services that are not related to the OAA funded AAA contract.<br><br>*Ohio Association of Senior Centers* | The only services that Chapter 173-4 regulates are those that are paid, in part or in full, with Older Americans Act funds. |
| (B)(1)(a)(i) and (iii) could be combined -- they say essentially the same thing.<br><br>We are very pleased that instructor qualifications are spelled-out. It is VERY important that those who provide nutrition education are using evidence-based information.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA has resolved the matter in the version of the proposed new rule that ODA intends to file with JCARR. |

| **OAC173-4-07** (CURRENT RULE) → **OAC173-4-08** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION EDUCATION** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| Omitted the requirement to provide nutrition education on the topic food safety every even-numbered year and physical activity and weight every odd-numbered year.<br><br>No issues with change.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Thank you. |
| Removed the requirement to provide nutrition education on the topic food safety every even-numbered year and physical activity and weight every odd-numbered year. I think this is a good move.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | Thank you. |

| **OAC173-4-08** (CURRENT RULE) → **OAC173-4-09** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION HEALTH SCREENING** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Referrals*<br><br>We support removing the question regarding excessive alcohol consumption, however, should this requirement be omitted in the final ruling process than shouldn't the SAMS computer program system and SAMS generated forms also be reconstructed to omit this question. Additional investigation into updating data bases as well as omitting existing data bases where this client information has been asked, answered, and entered for data prosperity would now have no use and to protect the client's personal information be properly omitted and deleted.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Good point! That is an issue that is separate from these rules, but one that ODA should address. |
| *On Referrals*<br><br>***We support removing the question regarding excessive alcohol consumption, however, should this requirement be omitted in the final ruling process then shouldn't the SAMS computer program system and SAMS generated forms also be reconstructed to omit this question.***<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| *On Service Verification*<br><br>too many "refers" in that sentence -- not clear.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA corrected this in the version of the rule that ODA proposes to file with JCARR. |

| **OAC173-4-08** (CURRENT RULE) → **OAC173-4-09** (PROPOSED NEW RULE)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM: NUTRITION HEALTH SCREENING** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Referrals*<br><br>Agree with changes to alcohol consumption. We previously advocated for the removal of this information.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | Thank you. |
| *Screening in Congregate Dining Centers*<br><br>No issues with proposed changes; however, this may be an opportunity to address screening congregate meal participants. This is a barrier to service in the dining site setting. Providers have commented how difficult it is to obtain this information. Often, individuals with high nutrition risk avoid filling out the form out. Recommend removing the requirement to screen all congregate and alternative meal participants. Instead, incorporate into a group nutrition education session and utilize to prioritize if waiting list exists.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness*<br>*Area Office on Aging of Northwestern Ohio, Inc.*<br>*Toledo, Ohio* | §339(2)(J) of the Older Americans Act *requires* the state to require "nutrition screening." |
| *In General*<br><br>No Comments<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*Area Agency on Aging 3*<br>*Lima, Ohio* | Thank you. |

| **OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On the Definition of "Grocery Shopping Assistance"*<br><br>Note that (A) (1) (a) and (C) (1) are not consistent. Is a unit of service one way or both ways???<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | Just because the service means *both* transportation to and from a grocery store, does not mean that every service involves having the same person transport the consumer to and from the grocery store. That is why a unit of service is only for one-way transportation. |
| *In General*<br><br>This is a viable service and it would be nice to see increased funding support available to all providers in all PSA service regions to grow and expand this service.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | AAAs are welcome to initiate competitive bidding to procure these services. They would be paid, in part or in full, with either Title III-B or Title III-E funds. |
| *In General*<br><br>This is a viable service and it would be nice to see increased funding support available to all providers in all PSA service regions in order to grow and expand this service option.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |
| The rules seem very vague and trigger questions for clarification:<br><br>1. When grocery ordering and delivery are mentioned, would this include paying for an existing grocery shopping/delivery service to provide the service to a consumer?<br><br>2. Would an agency be able to enter into an agreement with such a service?<br><br>3. Would an agency be able to participate as an intermediary for such a service? For instance, we do have both a shopping service in our area, as well as a newer service that ONLY allows orders to be placed on-line. As many of our consumers do not have computer access, and do not want to have a computer, agency staff may | The rule does not require a provider to be an "existing" provider. If an AAA procures this service, it should enter into contracts with the winning bidder(s).<br><br>If an AAA is willing to consider a bid from 2 companies working together, then the AAA could enter into a contract for grocery ordering and delivery where one provider operated the website and delivery and another provider helped consumers who could not access the website to order.<br><br>For future rule development, ODA will consider amending the rule to allow the ordering and delivery of essential household products. |

**OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)

## OLDER AMERICANS ACT: NUTRITION PROGRAM GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY

| COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS | ODA's RESPONSES |
|---|---|
| be able to work with the consumer and place the order for them.<br><br>4. The rules go so far as to define groceries as "foods for a household to eat" specifying breads/cereals, fruits, vegetables, meats, fish, poultry and dairy products. Having read other materials the ODA has made available, and seeing the huge focus on consumer CHOICE, I am wondering if this rule is banning items…while I can see not purchasing items such as alcohol and tobacco products, does this mean that a service could not provide things such as soup, juice, bakery items beyond bread, snack foods (which include nuts), or frozen meals which many consumers rely on to avoid the physical effort needed to prepare a meal? I suggest that it might be easier to specify what is OFF the list. Also, since it seems the funds being used are the clients, and the program is only for the service, not the goods being bought, that it should be clear, if needed, that the shopper or service can also purchase essential items for daily living which would include personal care, cleaning/laundry supplies and perhaps even pet food.<br><br>What good is a service that appears to be helping a homebound person and their family if that person is still caused to struggle to get these other essential items?<br><br>5. More thought needs to be put into the vague directive about providers developing and implementing procedures for assuring the safe delivery of groceries. It is unclear as to what the rule is specifically referring to or what the concerns are…is it the physical risk of having goods stolen while making a delivery? Slipping on ice/snow? Not providing service if there are severe weather conditions or risks? Pulling muscles? The ODA should provide some of the aspects to consider and provide examples to guide the agencies.<br><br>I have had some significant experience helping our | |

**OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)

## OLDER AMERICANS ACT: NUTRITION PROGRAM GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY

| COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS | ODA's RESPONSES |
|---|---|
| agency consumers with shopping. It is TOTALLY inappropriate to consider ONE EPISODE OF GROCERY ORDERING AND DELIVERY AS ONE UNIT OF ASSISTANCE.<br><br>I cannot begin to tell you how involved and time consuming this task can be. At the very least, it should be **<u>one unit per hour of service</u>** being able to break it down to quarter hours as needed. Here are just some of the issues:<br><br>1. The older person has a cognitive or speech related disability…perhaps had a stroke, is memory impaired… and the simple act of creating a grocery list can be VERY time consuming.<br><br>2. When you take a grocery list it is necessary to get multiple details: Brand, size, variety, alternate.<br><br>3. Our consumers are trying to make ends meet, so the shopper must often take time to find the least expensive item.<br><br>4. Finding the items can be a challenge…in fact the shopping experience is sometimes like a scavenger hunt depending on where the store categorizes certain items.<br><br>5. Check-out lines and traffic are not taken into consideration.<br><br>6. Delivering goods to consumers who live in multi-family dwellings (i.e. apartment buildings) results in it taking longer to deliver the goods to the door. It may take more than one trip. On more than one occasion these individuals have taken advantage of the service by requesting very large orders and/or heavy, bulky or awkward items. Think multiples of canned goods or half-gallons of milk, juice etc. FYI, one gallon weighs over 8 lbs.<br><br>7. The plan doesn't take into consideration that larger orders would take longer to fill.<br><br>[ODA asked for more information. The response is | |

| OAC173-4-09 (CURRENT RULE) → OAC 173-4-10 + 173-4-11 (PROPOSED NEW RULES)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| below.]<br><br>Yes, we did provide shopping service **for** clients of the Community Partnership on Aging.<br><br>Initially we thought shopping alone might be a welcome service for our residents and created our own pilot program. We had minimal response with one regular user for a while and we have somewhat phased it out, but are still available in an emergency.<br><br>We wrestled with the initial guidelines, and said 10 items or less it was $10, and 11 items or more it was $20. A locally owned grocery provides delivery service which is around $22 or more (plus an expected tip). That grocery has a reputation for being one of the most expensive and is not used by the majority of people we serve who are on tighter budgets.<br><br>We HAD provided homemaker service through AoA funding for MANY years. Grocery shopping was a homemaker program task staff were allowed to provide, though at times we had some people who tended to use it primarily for shopping and we would discourage that or require at least half the service time was spent in housekeeping as well. It remains unclear why such an essential service had the funding pulled a couple years back, though we know we were one of only two or three left providing it.<br><br>It's all well and good to help people stay at home, but if the home is not kept up, or food is not provided and prepared…to what end is this is a benefit?<br><br>So, originally, it was a funded program. I have been here over 20 years, so I can speak to how much our program has assisted people and made a difference in their quality of life. I might add that finding quality individuals to provide the service at wages that remain low can also be a challenge. There are times when we are unable to provide as much service as we wish because it is so hard to find good people.<br><br>In spite of the local AoA pulling all funding to what we believed was an essential service to help older adults stay at home, our Homemaker Program continues to exist thanks to the generosity of the 5 suburban cities we serve and because we changed | |

| **OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| our guidelines and now charge a nominal co-pay for the service of $10 per hour. The grocery shopping developed out of that; it allows those that need more assistance to have the homemaker visit focus on housekeeping tasks, while I can pick up the slack and get groceries. Until you grocery shop for another person you have no idea how complex it can get!<br><br>The comments I made reflect on my observations having done it many times.<br><br>Over time, the idea of it as a separate program somewhat fizzled, but we still fill in as needed…for instance if a homemaker regularly goes shopping for a homebound individual, I will go if the homemaker is out ill or on vacation should the client want it. We bill at the homemaker rates for the most part. We can also stop to pick up prescriptions.<br><br>Hope this helps to answer your questions.<br><br>*Robin Rosner, Homemaker Program Coordinator*<br>*Community Partnership on Aging*<br>*Cleveland, Ohio* | |
| *On Vehicle Qualifications*<br><br>This rule requires clarification and "rule compliance". This rule implies that it is acceptable to transport a client in non-agency vehicles to and from a supermarket. In addition, it also could imply the use of two vehicles. For example, both the consumer and direct service worker could drive separate cars to and from the supermarket and the direct service worker's only role would be to put the groceries in and out of the consumer's vehicle. What about existing client transport rules & insurance rules?<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | Rule 173-3-06 requires compliance with other laws including Ohio's Financial Responsibility Act. |

| **OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Vehicle Qualifications*<br><br>This rule requires clarification and "rule compliance". This rule implies that it is acceptable to transport a client in non-agency vehicles to and from a supermarket. In addition, it also could imply the use of two vehicles. For example, both the consumer and direct service worker could drive separate cars to and from the supermarket and the direct service worker's only role would be to put the groceries into and take out of the consumer's vehicle. What is the status of existing client transport rules and insurance rules?<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |
| *On Prohibiting AAAs from Using Funds to Directly Provide Services + On Homemaker vs. Grocery Shopping Assistance and Grocery Ordering and Delivery*<br><br>This is beneficial only if ODA requires AAA's to contract with providers (not themselves) to provide this service and makes grocery shopping service a separately funded non-homemaking, non-personal care service category. Not all PSAs/AAAs currently offer this service.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | First, §307 of the Older Americans Act prohibits AAAs from providing services unless ODA acknowledges that a situation defined in that section is present.<br><br>Second, an AAA could request bids for a homemaker to do this because one of the components of homemaker is grocery shopping assistance.<br><br>However, a homemaker requires homemaker training that isn't necessary for this service. If the AAA procures for just grocery shopping assistance or grocery ordering and delivery, other providers (even local stores) could qualify. |

| **OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Prohibiting AAAs from Using Funds to Directly Provide Services + On Homemaker vs. Grocery Shopping Assistance and Grocery Ordering and Delivery*<br><br>This is beneficial only if ODA requires AAA's to contract with providers (not themselves) to provide this service and makes grocery shopping service a separately funded non-homemaking, non-personal care service agency category. Not all PSAs/AAAs currently offer this service category.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous question. |

| **OAC173-4-09** (CURRENT RULE) → **OAC 173-4-10 + 173-4-11** (PROPOSED NEW RULES)<br>**OLDER AMERICANS ACT: NUTRITION PROGRAM<br>GROCERY SHOPPING ASSISTANCE + GROCERY ORDERING AND DELIVERY** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *In General*<br><br>Added language about technology-based system to collect service information<br><br>No issues with changes.<br><br>*Rebecca Liebes, Director of Nutrition and Wellness<br>Area Office on Aging of Northwestern Ohio, Inc.<br>Toledo, Ohio* | Thank you. |
| *In General*<br><br>No Comment<br><br>*Rhonda Davisson, Nutrition Care Specialist<br>Area Agency on Aging 3<br>Lima, Ohio* | Thank you. |

| OAC173-3-06.1<br>**OLDER AMERICANS ACT:<br>ADULT DAY SERVICE** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Plans of Treatment*<br><br>All the services provided in the rules are within the scope of practice of a physician assistant and there is no reason they should not be able to perform them.'<br><br>Unfortunately, we have discovered over the years that unless "physician assistant" is spelled out in a rule, the rule has been interpreted to exclude them. We realize that the draft rules have been written to include a number of professions that can perform those services but we continue to request that physician assistants be listed along with physicians.<br><br>OAPA respectfully requests that the language "physician or other healthcare professional whose scope of practice includes making plans of treatment" be changed to "treating physician, physician assistant or advance practice nurse or other healthcare professional whose scope of practiced includes making plans of treatment."<br><br>*Elizabeth Adamson, Exec. Dir.*<br>*Ohio Association of Physician Assistants* | ODA has also consulted with the State Board of Medicine and the State Board of Nursing on this matter. We've arrived at a consensus with the boards to not mention *any* licensed healthcare professional by name, which would eliminate any perceived preferences to receive diet orders, orders for nutrition counseling, or plans of treatment from physicians. Additionally, every healthcare professional whose scope of practice includes diet orders is a licensed professional. With these two things in mind, ODA and the Boards have agreed that using the following formula would work best for ODA's rules:<br><br>...a licensed healthcare professional whose scope of practice includes X. |

| OAC173-3-06.1<br>**OLDER AMERICANS ACT:<br>ADULT DAY SERVICE** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| No comments | No responses necessary |

| OAC173-39-02.1<br>**ODA PROVIDER CERTIFICATION:<br>ADULT DAY SERVICE** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Plans of Treatment*<br><br>All the services provided in the rules are within the scope of practice of a physician assistant and there is n reason they should not be able to perform them.'<br><br>Unfortunately, we have discovered over the years that unless "physician assistant" is spelled out in a rule, the rule has been interpreted to exclude them. We realize that the draft rules have been written to include a number of professions that can perform those services but we continue to request that physician assistants be listed along with physicians.<br><br>OAPA respectfully requests that the language "physician or other healthcare professional whose scope of practice includes making plans of treatment" be changed to "treating physician, physician assistant or advance practice nurse or other healthcare professional whose scope of practiced includes making plans of treatment."<br><br>*Elizabeth Adamson, Exec. Dir.*<br>*Ohio Association of Physician Assistants* | ODA has also consulted with the State Board of Medicine and the State Board of Nursing on this matter. We've arrived at a consensus with the boards to not mention *any* licensed healthcare professional by name, which would eliminate any perceived preferences to receive diet orders, orders for nutrition counseling, or plans of treatment from physicians. Additionally, every healthcare professional whose scope of practice includes diet orders is a licensed professional. With these two things in mind, ODA and the Boards have agreed that using the following formula would work best for ODA's rules:<br><br>...a licensed healthcare professional whose scope of practice includes X. |

| OAC173-39-02.1<br>**ODA PROVIDER CERTIFICATION:<br>ADULT DAY SERVICE** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| No comments | No responses necessary |

| OAC173-39-02.2<br>**ODA PROVIDER CERTIFICATION:<br>ALTERNATIVE MEALS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| No comments | No responses necessary |

| OAC173-39-02.2<br>**ODA PROVIDER CERTIFICATION:<br>ALTERNATIVE MEALS** | |
|---|---|
| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| No comments | No responses necessary |

| OAC173-39-02.10<br>**ODA PROVIDER CERTIFICATION: NUTRITIONAL CONSULTATIONS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Orders and Limits*<br><br>All the services provided in the rules are within the scope of practice of a physician assistant and there is no reason they should not be able to perform them.'<br><br>Unfortunately, we have discovered over the years that unless :physician assistant" is spelled out in a rule, the rule has been interpreted to exclude them. We realize that the draft rules have been written to include a number of professions that can perform those services but we continue to request that physician assistants be listed along with physicians.<br><br>OAPA respectfully requests that the language "treating physician (or other healthcare professional whose scope of practice includes authorizing nutrition counseling)" be changed to "treating physician, physician assistant or advance practice nurse (or other healthcare professional whose scope of practiced includes authorizing nutrition counseling)."<br><br>*Elizabeth Adamson, Exec. Dir.*<br>*Ohio Association of Physician Assistants* | ODA has also consulted with the State Board of Medicine and the State Board of Nursing on this matter. We've arrived at a consensus with the boards to not mention *any* licensed healthcare professional by name, which would eliminate any perceived preferences to receive diet orders, orders for nutrition counseling, or plans of treatment from physicians. Additionally, every healthcare professional whose scope of practice includes diet orders is a licensed professional. With these two things in mind, ODA and the Boards have agreed that using the following formula would work best for ODA's rules:<br><br>...a licensed healthcare professional whose scope of practice includes X. |
| *On Orders and Limits*<br><br>Current (B)(1)(b) and (c) are redundant! The language in each is identical.<br><br>Current (B)(1)(d) is only different from (b)and(c) in that it does not include the word "provides". It is substantially redundant to (B)(1)(b) and (c). Please remove (B)(1)(c) and (d) and re-order the section.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the proposed new rule that ODA will file with JCARR, this has been corrected. |

| OAC173-39-02.10<br>**ODA PROVIDER CERTIFICATION:<br>NUTRITIONAL CONSULTATIONS** | |
|---|---|
| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Orders and Limits*<br><br>(B)(1)(e) appears to restrict a dietitian to consulting with only the individual OR the consumer's representative or caregiver – not both. It is necessary for the dietitian to be able to include all parties in order to plan nutritional and diet interventions that will improve the consumer's well-being. Spouses, representatives, and caregivers often prepare the meals and purchase the foods in the home of individuals served by this program. There must be input and "buy-in" from all responsible parties for dietary interventions to benefit the individual served.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA had no intention of prohibiting giving a consultation to both a consumer and the caregiver together. In the version of the proposed new rule that ODA will file with JCARR, this has been corrected. |
| *On Terminology*<br><br>for consistency throughout the rule the word "consumer" should be replaced with "individual"<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the proposed new rule that ODA will file with JCARR, this has been corrected. |
| *Rates*<br><br>My comment is the low rate we get for nutrition counseling.<br><br>*John Gregory, Senior Vice-President, Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | ODA does not establish the maximum-possible rates. Instead, Ohio Dept. of Medicaid, establishes the maximum-possible rates for all Medicaid-waiver programs. In the appendix to rule 5160-1-06.1 of the Administrative Code, ODM established the maximum-possible rate for nutritional consultations at $13.34 per unit (*i.e.*, $13.34 for every 15 minutes) for the PASSPORT Program. |

| OAC173-39-02.10<br>**ODA PROVIDER CERTIFICATION: NUTRITIONAL CONSULTATIONS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Terminology*<br><br>The Ohio Academy of Nutrition & Dietetics has reviewed rule 173-39-02.10 "ODA provider certification: Nutritional consultation" which is being drafted. We feel that the rule lacks clarity related to who the provider of nutrition consultation services can be. Because the provision of nutritional consultation is within the licensed dietitian's scope of practice in Ohio it is important that the rule be clear and concise.<br>We suggest that at section 173-39-02.10 (A) which defines the term "nutrition consultation" it be made clear that the nutritional consultation services means dietitian directed service. We suggest the following language be added:<br><br>173-39-02.10 (A) "Nutritional consultation" (aka, "medical nutrition therapy" means a dietitian directed service that provides individualized guidance to an individual who has special dietary needs. A nutritional consultation takes into consideration the individual's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions."<br><br>The rest of the rule refers to "provider" numerous times and specifically includes provider qualifications at 173-39-02.10 (6) that are consistent with the dietitian licensure requirements in Ohio. That language should remain the same and also helps in making it clear that a dietitian should provide the service.<br><br>Please let me know if you have any questions or comments about our request.<br><br>Thank you in advance for considering our suggestions.<br><br>*Kay Mavko, MS, RD, LD*<br>*State Regulatory Specialist*<br>*Ohio Academy of Nutrition & Dietetics* | ODA believes that the rule, as it is currently drafted, is sufficiently clear regarding licensed dietitians. The rule describes the service in the earlier parts of the rule and describes the qualifications to provide the service later in the rule—a pattern found in most all of ODA's service regulations.<br><br>When the rule refers to "provider," it is referring to the business that provides the service, not the practitioner. The exception would be a non-agency provider, which is a self-employed person with no employees or sub-contracts. In that case, the provider would always refer to the licensed dietitian. |

| OAC173-39-02.10<br>**ODA PROVIDER CERTIFICATION: NUTRITIONAL CONSULTATIONS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Face-to-Face vs. Telecommunications*<br><br>again the restriction that the dietitian is only able to consult with the consumer OR the caregiver limits the ability of the dietitian to effectively assess, plan and treat the nutritional needs of the individual.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the proposed new rule that ODA will file with JCARR, this has been corrected. |
| *On Face-to-Face vs. Telecommunications*<br><br>I have a couple questions about the ODA Provider Certification: Nutrition section.<br><br>The rule reads:<br>*(7) Service verification: (a) For each episode of service provided, the provider shall retain a record of the: (i) Consumer's Individual's name; (ii) Date of service; (iii) Time of day that each service begins and ends; (iv) Name and signature of individual providing the consultation; and, 173-39-02.10 4 (v) Consumer's Individual's signature. The case manager shall record the consumer's individual's signature of choice in the consumer's Individual's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.*<br><br>1. Do the consultations need to be in person or can they be over the phone? Is it at the discretion of the dietitian?<br><br>2. If phone is okay, would a "phone signature" also be valid similar to the electronic signature is?<br><br>*Sarah Bednar*<br>*Director of Wellness Services: Community, Corporate, Immunization*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | At this time, ODA does not have a separate payment for travel. |

| OAC173-39-02.10<br>ODA PROVIDER CERTIFICATION:<br>NUTRITIONAL CONSULTATIONS | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Service Verification*<br><br>(B)(6)(b) both indicate that the provider may use technology-based systems to develop and retain clinical records and to collect and retain records required by this rule which seem redundant. Yet there is no mention of the use of technology-based systems for the nutrition assessment or nutrition intervention plan. Certainly technology-based systems should be use for all aspects of nutritional information collected, retained, shared or maintained. I suggest that a new section 173-39-02.10 (B)(7) "Use of technology-based systems:" be added and state: " The provider may use a technology-based system to assess, plan, revise, and implement nutrition interventions and to develop and retain the individual's clinical record." And that (B)(5)(b) and (B)(6)(b) be deleted.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the proposed new rule that ODA will file with JCARR, this has been corrected. |

| OAC173-39-02.10<br>ODA PROVIDER CERTIFICATION:<br>NUTRITIONAL CONSULTATIONS | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| No comments | No responses necessary |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On the Definition of "Home-delivered meals"*<br><br>The last sentence includes the words "safely" and "safe" in the same sentence, and is redundant and difficult to read. The original sentence (prior to changing the action verbs to all end in "ing" is much clearer and is more consistent with the titles "Planning" at (B)(1)"food safety" at (B) (2), and "Delivery" at (B) (3).<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | The redundancy was eliminated in the version of the rule that ODA intends to file with JCARR. |
| *On the Definition of "Therapeutic Diet"*<br><br>We suggest that the following definition of "therapeutic diet" that is about to be adopted by the Academy of Nutrition and Dietetics be adopted or adapted for this rule and others promulgated by the State of Ohio.<br>"Therapeutic Diet is a diet intervention prescribed by a physician or other authorized non-physician practitioner to provide food or nutrients (via oral, enteral and parenteral routes) as part of disease treatment or clinical condition to modify, eliminate, decrease, or increase identified micro-and macro-nutrients in the diet. For purposes of this rule therapeutic diet includes calculated nutritive regimens including the following regimens:"<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA worked carefully with two other boards to develop language on the licensed healthcare professionals from whom providers may accept orders for therapeutic diets. The language that you propose would perpetuate a physician-bias present today.<br><br>ODA modelled its language after that of the Ohio Dept. of Health. |
| *On the Definition of "Therapeutic Diet"*<br><br>(a)(b)(c)(d) leave as they are.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA modelled its language after that of the Ohio Dept. of Health. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On the Definition of "Therapeutic Diet"*<br><br>In reviewing the proposed new guidelines for what a "therapeutic diet" means; one of the regimens specified is "(a) Diabetic and other nutritive regimens requiring a daily specified calorie level". I would caution referring to a diabetic diet as one that is only specified by a calorie level. When, in fact, nutrition therapy for someone with diabetes is much more complicated and should take many factors into account. In fact, in a position statement published in *Diabetes Care* in October 2013, "It is the position of the American Diabetes Association (ADA) that there is not a "one-size-fits-all" eating pattern for individuals with diabetes. The ADA also recognizes the integral role of nutrition therapy in overall diabetes management and has historically recommended that each person with diabetes be actively engaged in self-management, education, and treatment planning with his or her health care provider, which includes the collaborative development of an individualized eating plan".<br><br>With that being said, I would like to see more defined parameters of what ODA would consider a "diabetic diet" in order to determine, as a meal provider, what guidelines will need to be met.<br><br>Thank you for your consideration.<br><br>*Amanda Daines, Admin. Dir. of R&D*<br>*Pur Foods, LLC (Mom's Meals)*<br>*Ankeny, Iowa* | ODA modelled its language after that of the Ohio Dept. of Health.<br><br>What makes a "diabetic" meal a therapeutic diet is the presence of a diet order from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets. Without such a diet order, a "diabetic" meal is just another menu option for an individual. |
| *On the Definition of "Diet Order"*<br><br>Leave (A)(3) as is.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | No response is necessary. |

| OAC173-39-02.14<br>ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Planning: Menus*<br><br>I am not a proponent for listing the ingredients of each meal item on the website for the following reason. Suppose I order cheese ravioli and my purveyor routinely sends me the cheese ravioli from vendor A. One week the purveyor does not have vendor A's cheese ravioli in stock and sends me a substitute product from Vendor B. This rule would necessitate that I go to the website and remove the ingredients in Vendor A's cheese ravioli and post the ingredients from Vendor B's cheese ravioli.<br><br>*Elise Cowie, MEd, Assistant Professor*<br>*Dept. of Nutritional Sciences, Univ. of Cincinnati*<br>*Wesley Community Services*<br>*Cincinnati, Ohio* | In order to facilitate person direction, individuals need to know their meal options. This would include ingredients and nutritional information. Additionally, ODA (and its designees) must monitor the providers for nutritional adequacy and also need to see the ingredients and nutritional information.<br><br>Avoiding the inconvenience of making regular updates to a website could be a matter of choosing reliable food vendors.<br><br>Also, ODA's proposed new OAC173-39-02.14 does not require developing menus far in advance of the meals. ODA simply requires them to be published. This should allow providers and their dietitians to develop and approve menus according to the availability of fresh, local foods; in-season foods; or foods that a food vendor has in stock. |
| *On Planning: Menus*<br><br>173-39-02.14(B)(1)(a)(v) This paragraph requires a provider to furnish menus and ingredient information showing compliance with standards and references "paragraph (B)(2)(a)" of this rule. This does not seem correct as section (B)(2)(a) Food Safety: directs a provider to not deliver meals if a state or federal department prohibits the provider from manufacturing food or feeding the public. I think the reference should be to the entire section (B)(1) that describes the requirements for nutritional adequacy of meals.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the rule that ODA intends to file with JCARR, "(B)(2)(a)" will be the correct citation. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Planning: Menus*<br><br>We are currently required to have our staff create a menu, indicate all the nutritional information for each entrée and then send it to the AAA for approval by their dietician. We are not allowed to use a local state licensed dietician for menu approval even though the state rules states otherwise.<br><br>*Lucinda Smith, Executive Director<br>Senior Enrichment Services<br>Norwalk, Ohio* | The rule requires a licensed dietitian to approve the menu. It does not require a licensed dietitian working for the PAAs to approve the menu. It's the job of the PAA's dietitian to monitor providers, which would include monitoring the work that dietitians perform for providers. It would be unethical for a PAA to act as both a provider and as the auditor of providers. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Planning: Menus*<br><br>I would like to see the PAAs standardized with the state rules. For instance – we are required to use a dietician that is under contract with our district office instead of being able to use the local hospital's licensed dietician. At times this creates problems because of the time between menus sent, reviewed, approved and returned. Working with a local dietician would decrease the amount of time spent getting menus approved and meets the state requirement. It would be nice to make that option available to all centers. | Regarding dietitians, please see ODA's response to the previous comment. |
| The second standardization I would like to see is the requirement of what the senior center staff member is required to do in order to submit a menu for approval. For instance I know that some senior centers are required to have their staff submit not only the size of each meal item, but also all the amounts of nutrients and vitamins before they can be submitted; while others simply send a copy of their menus (items only) to their AAA for approval. The reimbursement rate for Passport meals is the same across the state yet under the current system of allowing each AAA decide on additional requirements for menu submission, some centers are doing far more administrative work than others and therefore are seeing less of the reimbursement going to the cost of the meal.<br><br>[The remainder of this comment appears in "Miscellaneous."]<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Regarding menu information: ODA's proposed new rule should eliminate actual paper submission because it requires each provider to publish its menus on its website. The PAA could monitor the menu from the website.<br><br>Regarding rates: Under the Older Americans Act nutrition program, providers submit a bid to the AAA and the winning bidders are those whose bids offer meals at the lowest price. Under the PASSPORT Program, providers may still set the price for their meals, but the Ohio Dept. of Medicaid establishes maximum-possible rates. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Planning: Nutritional Adequacy*<br><br>Perhaps the RDIs could be used as a pattern and menu writers could be expected to provide them as an average over a week's worth of meals IF the provider was providing all 3 meals each day. Since most of our clients only receive 1 meal per day, and they have client choice, they may receive the entrée and hot sides as written on the menu, but then their cold sides (juices, desserts, fruits) would not necessarily adhere to the menu as written, and the 1/3 of DRIs would not be provided to the client. Therefore I am a strong proponent of the meal pattern system. Again, due to client choice, the client may not receive the meal as written according to the meal pattern system, but the time savings (and subsequent cost savings) would be huge as opposed to analyzing each meal for nutrient content.<br><br>*Elise Cowie, MEd, Assistant Professor*<br>*Dept. of Nutritional Sciences, Univ. of Cincinnati*<br>*Wesley Community Services*<br>*Cincinnati, Ohio* | Nothing in the rule prohibits using menu patterns. In the version of the rule that ODA intends to file with JCARR, ODA has added language to make this overtly clear. |
| *On Planning: Nutritional Adequacy*<br><br>The health assessment (including nutrition components) should be encouraged for individuals who have a therapeutic diet ordered in order to achieve maximum nutritional adequacy.<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA presently requires providers to determine nutritional adequacy according to federal laws and guidelines, not assessments. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Planning: Nutritional Adequacy*<br><br>In the rule, it states that "The provider shall deliver each meal according to the consumer's service plan."<br><br>It has been difficult to know if we are serving Aetna and Molina consumers properly. For our PASSPORT consumers who were are serving via Aetna and Molina we don't have service plans or authorizations for close to 70% of these consumers. After making this realization, we have been trying diligently to get this information from both companies for approximately two months now. As of today, we have not yet received the requested information from either company. Therefore, by default, we are not in compliance with the 173-39-02.14 rule.<br><br>This is a topic that we (LifeCare Alliance) would like to discuss in further detail with the Ohio Department on Aging, and I believe that John (copied above) is working on coordinating.<br><br>*Molly Haroz, Director, Nutrition Programs*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | Although the MyCare Ohio program uses ODA's rule, the Ohio Dept. of Medicaid (ODM) oversees the MyCare Ohio program. Aetna and Molina have contracts with ODM to perform administrative duties for the program. We recommend raising this issue with ODM. |
| *On Delivery: Per-Meal Delivery with Periodic Delivery of Milk, Bread, and Butter:*<br><br>Insert "as."<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the proposed new rule that ODA will file with JCARR, ODA has inserted "as" between "so long" and "the meals." |
| *On Delivery: Records:*<br><br>Replace "hat" with "that."<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the proposed new rule that ODA will file with JCARR, ODA has replaced "hat" with "that." |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Provider Qualifications: Auto Liability Insurance*<br><br>In the second line strike the word "used"<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | ODA agrees that the word "used" is unnecessary and the sentence works fine without it. In the version of the rule that ODA will file with JCARR, the word will not appear in the sentence. |
| *On Provider Qualifications: Training: Continuing Ed*<br><br>I do not think the reference to (B)(5)(d)(i) is correct, as there are not topics listed in (5)(d)(i). It should be (B)(4)(d)(i).<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | In the version of the rule that ODA will file with JCARR, the paragraphs that lists orientation topics will no longer appear in the rule. Therefore, the requirement that continuing education cover those topics will also not be in the rule. |
| *On Provider Qualifications: Training: Continuing Ed*<br><br>I will probably lose all my volunteers who help deliver some of our meals if we require them to have 4 hours of continuing education each year. I am pretty sure they will feel like they are already showing up every week to help us out, so why should they have to give even more time.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | The current version of the rule requires all providers of home-delivered meals to individuals in the PASSPORT Program to have all employees, including volunteers, complete 4 hours of continuing education each year. ODA was not proposing a new requirement for the program.<br><br>However, in the version of the rule that ODA intends to file with JCARR, ODA no longer requires the continuing education to last 4 hours per year. ODA reasons that some job positions may require fewer than 4 hours of continuing education per year. However, ODA also reasons that continuing education is critical for knowing how to deliver meals in a way that preserves the safety and sanitation of the food. To be an enrolled individual in the PASSPORT Program, a person needs to require a nursing-home level of care. Therefore, knowing how to handle emergencies is a critical training topic. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Meal Verification*<br><br>This section does not seem to include any verification of delivery of the periodic delivery of milk, bread, and butter that is authorized in (B)(3)(b)(iii). How would the delivery of those foods be recorded or verified?<br><br>*Pat McKnight, MS, RDN, LD*<br>*Ohio Academy of Nutrition & Dietetics, State Policy*<br>*Mt. Carmel College of Nursing, Assistant Professor* | It would be no different. The requirement is to verify *per delivery* and part of the verification is including the number of meals in the delivery. |
| *On Meal Verification*<br><br>There are certain clients who need the option of allowing a caregiver or spouse to sign for meals despite being at home during delivery. Certain conditions related to vision, mobility and cognition should be valid in making this exception available to clients who qualify.<br><br>*John Gregory, Senior Vice-President, Operations*<br>*LifeCare Alliance*<br>*Columbus, Ohio* | Any place in the rules that requires a consumer to verify is an action that a consumer's authorized representative may complete. The language would apply to authorized representatives who are family caregivers or powers of attorney. It would also apply to court-appointed legal guardians. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *In General*<br><br>Unfortunately, the Medicaid Waiver offers meals no a nutrition program. The Medicaid rules appear to be missing the input of a licensed, registered dietitian and their participants can choose between different meal providers and the reimbursement rates are set by Medicaid. The OAA Nutrition Program receives a limited amount of funding, goes through a bid process to get the best prices, and the participants are not offered choice and the purpose of the nutrition program is not the same as the Medicaid waiver.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | There is no state or federal prohibition against an individual enrolled in the PASSPORT Program participating in the Older Americans Act Nutrition Program so long as there is no duplication of goods or services.<br><br>Additionally, when an AAA goes through a bid process to get the best prices, the AAA is not required to only award a contract to the lowest bidder. The AAA may award a contract to the lowest bidders (plural) so in order to give consumers options between providers. Additionally, ODA's proposed new OAC173-4-04 will require AAAs to incorporate person direction into the RFPs, so each bidder will end up needing to demonstrate how it would offer the person direction the AAA is trying to procure. |
| *On Diet Orders*<br><br>I have seen some Medicaid meals that deliver meals in a box and the meals provided offer an orange every day and they get nuts to meet the requirements. Many seniors have trouble pealing oranges and nuts tend to cause trouble for people without teeth or ill-fitting dentures or those with diverticulitis. That is a majority of the people OAA meals serve.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | If a licensed healthcare professional whose scope of practice includes ordering therapeutic diets orders a therapeutic diet for such an individual, the PASSPORT Program could cover it. |
| *On Provider Qualifications: Training: Continuing Ed*<br><br>There should be more flexibility in the provision of continuing education. The rule references the topics required, but there could be topics outside of the rule that could be pertinent and interesting. Perhaps the rule could read "including but not limited to" the topics….<br><br>*Jennifer Bishop & Joyce Boling*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | In the version of the rule that ODA intends to file with JCARR, ODA has removed the current requirement to offer continuing education on a fixed number of subjects. The requirement in the new version would be to obtain continuing education on topics relevant to the job position.<br>This would inherently allow for greater flexibility. |

| OAC173-39-02.14<br>**ODA PROVIDER CERTIFICATION:<br>HOME-DELIVERED MEALS** | |
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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Limitations*<br><br>Could the rule be rewritten to state that a provider will not be paid for meals delivered to an individual's residence when the individual is hospitalized or residing in an institutional setting?<br><br>*Jennifer Bishop & Joyce Boling*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | A theme of this rule-development project is to not adopt rules that tell providers what to do in general, when ODA's scope of authority only pertains to limiting what an ODA-administered program would pay for. This will be reflected in the version of the rule that ODA intends to file with JCARR. |
| *On Meal Verification*<br><br>the reference to (B)(7) is incorrect and should be (B)(6).<br><br>*Jennifer Bishop & Joyce Boling*<br>*Ohio District 5 Area Agency on Aging, Inc.*<br>*Ontario, Ohio* | In the version of the proposed new rule that ODA intends to file with JCARR, (B)(7) will be the correct reference. |

| MISCELLANEOUS | |
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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On Reporting of Significant Changes*<br><br>Could you also have some discussion on the problems of communication gaps between Passport case managers and providers where the result it the provider losing several days of meals before notification is received if at all. Is there a way that the loss of meals and/or "no show" trip costs can be absorbed by both the provider and the AAA because of the inadequate communication that can happen on both sides. If nothing else, maybe some suggestions of how to decrease the losses.<br><br>*Lucinda Smith, Executive Director*<br>*Senior Enrichment Services*<br>*Norwalk, Ohio* | Under a HCBS Medicaid waiver program, like the PASSPORT Program, individuals are free to set their own schedules which may include travel or other temporary absence from their primary residence as a result of a medical intervention. In many instances, this travel is occurs without the knowledge of the case manager. In cases where the case manager is aware of the individual's absence or relocation to another setting, the case manager will modify service authorizations with providers as appropriate. If the case manager is not made aware of the individual's absence, such modifications do not occur.<br><br>Should the provider become aware that an individual has moved or absent from their residence, it is the responsibility of the provider to notify the case manager so they may address the status of the individual as appropriate. (*Cf.*, OAC173-39-02)<br><br>The rules do not delineate all manners of service delivery nor do they prohibit the provider from taking proactive steps to contact the individual or the individual's case manager to confirm service delivery.<br><br>Providers could minimize the cost associated with not-home consumers by making periodic deliveries (*vs.* per-meal deliveries). Arriving with a week's worth on frozen, chilled, *etc.* meals that don't need to be eaten at once allows for a driver to reschedule a delivery if the consumer is temporarily not home. |
| *On Reporting of Significant Changes*<br><br>If ODA wants to make an impact… the payment to providers for meals prepared, packaged & delivered to homes where no one is home to accept them should be addressed. We lose over $120,000 dollars a year in undeliverable meals as a result of the customers not being home and not notifying the office in advance. We have many checkpoints to address this concern but it still occurs. Even placing customers on hold until assurances are made makes only a small impact. Consider the offer of a second entrée or completely different meal on a daily basis a bid process item not a must have requirement. If A offers everything that B does but also offers a choice menu then go with A in awarding the contract. Choice does not enhance the nutritional quality of the meal and only serves to | Please see ODA's response to the previous comment. |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| increase the cost… which in turn results in less customers served. Meals On Wheels customers cannot be compared with Nursing Home customers where there is a specific number of individuals, on-site facilities and they are always home. What if you had to eat whatever was put in front of you? Or worse yet….What if there was no one to deliver the meal at all?<br><br>*Chuck Sousa, Director of Nutrition*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | |
| *On Reporting of Significant Changes*<br><br>Most of our waste from a cost standpoint is derived by folks not being home on a particular day and failing to notify us.<br><br>*Chuck Komp, Executive Director*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | Please see ODA's response to the previous comment. |
| *On Rates*<br><br>Secondly, in the Business Impact Analysis at the bottom of page 18 it appears that major weight was given to the statement "When the provider places a bid to furnish meals and nutrition services, the provider establishes the price that the provider will be paid should the provider win the contract or grant. Therefore, no requirements in this rule would go unfunded for the provider in this scenario." That statement is not true in all cases. Some PSAs place a cap on the reimbursement rate (PSA 2 for example) and if a provider truly wants to serve the community they will accept the cap even if it means a revenue/expense gap that they will attempt to close by other means. OAC rule 173-3-04 does not allow AAA's the ability to make adjustments to reimbursement rates during a multi-year contract period which could be as long as three years with extensions. As we move forward will the rules regarding reimbursement adjustment change as a result of this analysis or will caps be eliminated for competitive bids in the State? If left to the PSAs it is possible that the practice will continue.<br><br>*Chuck Sousa, Director of Nutrition*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | In the Older Americans Act Nutrition Program, providers must submit bids to win contracts to provide meals to consumers using Older Americans Act funds.<br><br>However, neither federal nor state laws currently prohibit AAAs from establishing rate caps in their RFPs.<br><br>If an AAA states in the RFP that the contract will include annual inflationary adjustments, then the AAA may adjust the rates from one year to the next. If an AAA does not state in the RFP that the contract will include annual inflationary adjustments, the AAA must enter into a new bidding period if it wants to pay new rates.<br><br>The latest version of the BIA no longer contains the blanket statement on which you've commented. |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| Yes I have something that I can e-mail that mentions the cap. It is a part of the RFP that was issued back in mid 2012 for the funding years 2013-2015. It is attached [after this comment]. Please do not misunderstand my intention in bringing this issue up. I understand the need for caps at the PSA level. There are numerous services needed in many different areas and only so much allocated monies to meet the demand. As you can see in the attachments there is an avenue allowing providers to bid over the cap with AAA review and board approval. The AAA also takes into account the funding environment and increasing operating expenses. So the cap could be construed as a guideline for a competitive bid process. Of course providers want to be as competitive as possible to ensure they are awarded the contract and will stay within the guidelines to make that happen even if it means they may have to take it on the chin as far as costs go.<br><br>My issue was with the blanket statement in the Business Impact Analysis on page 18 that read in part "the provider establishes the price that the provider will be paid should the provider win the contract or grant. Therefore, no requirements in this rule would go unfunded for the provider in this scenario." Again, the statement is not true in all cases and to place major weight on it in justifying changes that do in fact create additional expenses for providers is misleading.<br><br>Cost containment becomes more of a challenge with every new requirement and/or procedure levied on the provider of services. For those not involved in direct service it may seem that the providers roll with the punches as they continue to serve the community. Those punches take a toll. Fewer individuals served, the loss of experienced employees, concerns over quality and regrettably the closing of longtime providers to name just a few. Providers get beat over the head on a regular basis by administrators as a result of what other administrators consider minor changes. Attention must be paid.<br><br>*Chuck Sousa, Director of Nutrition*<br>*Senior Resource Connection*<br>*Dayton, Ohio* | |

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| **COMMENTS FROM BUSINESSES AND BUSINESS ASSOCIATIONS** | **ODA's RESPONSES** |
| *On AAAs' Prohibition on Directly Furnishing Services*<br><br>Clarification is needed on this item. If this service is now being required of meal providers, where is the funding that covered the AAA's costs when they developed and printed these materials being redirected? In PSA4, the Ohio State Extension office bid on this service and were denied because the AAA was providing the service to providers.<br><br>*Ohio Association of Senior Centers* | Federal law requires the AAAs to award the Older Americans Act funds they receive from ODA to the winning bidders (*i.e.*, providers) in free and open competition. (*Cf.*, OAC 173-3-04 and 173-3-05)<br><br>Section 307(a)(8)(A) of the Older Americans Act prohibits an AAA from directly providing the services unless ODA determines that only the AAA is capable of adequately providing the services in the PSA, the services are directly related to the AAA's administrative functions, and the AAA would provide services of comparable quality to providers, but more economically than providers.<br><br>Providers who are adversely affected by an AAA's contracting decisions may request administrative hearings on the matter. (*Cf.*, OAC173-3-09) |
| *On the Common-Sense Initiative*<br>It is perceived that ODA has been proposing to remove the term "minimum requirements" from various regulatory policies. The term implies that additional oversight regulations, rules, and policies could be created that are not transparent, but rather translucent and shielded and hidden from CSIO and JCARR monitoring and control.<br><br>*Ohio Association of Senior Centers* | Thank you. |
| *On Technical Assistance*<br>Trainings regarding program implementation and scheduling capabilities should be further identified and shared by ODA with interested providers throughout the state.<br><br>*Shon Gress, Executive Director*<br>*Guernsey County Senior Citizens Center, Inc.*<br>*Cambridge, Ohio* | The appendices to the BIA may help in this regard. Some of the appendices show methods that other providers used to develop sustainable person-direction initiatives for their consumers. In this way, the appendices allow providers to be trained by the positive experiences of their fellow providers. |
| *On Technical Assistance*<br>Trainings regarding program implementation and scheduling capabilities should be further identified and shared by ODA with interested providers throughout the State.<br><br>*Ohio Association of Senior Centers* | Please see ODA's response to the previous comment. |

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| **COMMENTS FROM ODA's DESIGNEES** | **ODA's RESPONSES** |
| *On Rates*<br><br>The Business Impact Analysis says that providers set their own prices per meal; therefore none of the proposed changes in the meal rules (such as this one) should be a burden to the meal providers. This assumption is not true for our PSA. Our providers do not set their own prices per meal. We set recommended reimbursement rate caps. Our rate cap policy was established out of necessity many years ago when it became clear that Title III funding levels would continue to remain flat while the senior population in our PSA would continue to increase. In an attempt to control costs and maintain fair coverage for all eligible individuals, these caps are reviewed every three years, prior our competitive bid process, and are adjusted, taking COLA and other environmental factors into account.<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | In the Older Americans Act Nutrition Program, providers must submit bids to win contracts to provide meals to consumers using Older Americans Act funds.<br><br>However, neither federal or state statutes or regulations currently prohibit AAAs from establishing rate caps in their RFPs. |
| *On the Effective Date*<br><br>My first question is - when will these rules, if approved, go into effect. We will be awarding a new 3 yr contract after the current bid process plays out in October 2014. It would be best if they go into effect in the next contract period since our bid info did not include any of these changes.<br><br>*Rhonda Davisson, Nutrition Care Specialist*<br>*PSA3 Area Agency on Aging, Inc.*<br>*Lima, Ohio* | The earliest-possible effective date will be 76 days after ODA makes the original filing of the proposed new rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's rule-review process. If ODA makes the original filing in January, the earliest-possible date would be in March. If in February, the earliest-possible date would be in April.<br><br>OAC173-3-06 requires AAAs to amend current contracts with any new statutes enacted through legislation or new regulations adopted through rules. |
| *On the Effective Date*<br><br>Could you please inform us when the Senior Dining rules become effective and how much time the AAAs will have to phase in any changes?<br><br>*Jeanne Mbagwu, Community Services Manager*<br>*Area Agency on Aging, PSA 2*<br>*Dayton, Ohio* | Please review ODA's response to the previous comment. |

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173-3-06.1 **Older Americans Act: ~~Adult~~ adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an ADS center, which is a non-institutional, community-based setting. ADS includes recreational and educational programming to support a consumer's health and independence goals; at least one meal, but no more than two meals per day ~~that meet the consumer's dietary requirements~~; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the ADS center.

(B) Every contract or grant agreement for ADS that is paid, in part or in full, with Older Americans Act funds, shall comply with the ~~Requirements~~ requirements for ~~ADS in addition to the mandatory clauses~~ every contract or grant agreement under rule 173-3-06 of the Administrative Code and the following requirements:

(1) In general:

(a) Service levels: The required components of the three service levels are presented in this paragraph and in "Table 1" to this rule:

(i) Basic ADS shall include structured activity programming, health assessments, and the supervision of one or more ADL.

(ii) Enhanced ADS shall include the components of basic ADS, plus hands-on assistance with one or more ADL (bathing excluded), supervision of medication administration, assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status, and hands-on assistance with personal hygiene activities (bathing excluded).

(iii) Intensive ADS shall include the components of enhanced ADS, plus hands-on assistance with two or more ADLs, regular monitoring of health status, hands-on assistance with personal hygiene activities (bathing included, as needed), social work services, skilled nursing services (e.g., dressing changes), and rehabilitative services, including physical therapy, speech therapy, and occupational therapy.

Table 1: Levels and Components of ADS

| | BASIC ADS | ENHANCED ADS | INTENSIVE ADS |
|---|---|---|---|
| Structured activity programming | Yes | Yes | Yes |

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|---|---|---|---|
| Health assessments | Yes | Yes | Yes |
| Supervision of ADLs | One or more ADL | One or more ADL | All ADLs |
| Hands-on assistance with ADLs | No | Yes, one or more ADL (bathing excluded) | Yes, minimum of two ADLs (bathing included) |
| Hands-on assistance with medication administration | No | Yes | Yes |
| Comprehensive therapeutic activities | No | Yes | Yes |
| Monitoring of health status | No | Intermittent | Regular |
| Hands-on assistance with personal hygiene activities | No | Yes (bathing excluded) | Yes (bathing included, as needed) |
| Social work services | No | No | Yes |
| Skilled nursing services | No | No | Yes |
| Rehabilitative services | No | No | Yes |

(b) Transportation: The provider shall transport each consumer to and from the ADS center by performing a transportation service that complies with rule 173-3-06.6 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-3-06.6 of the Administrative Code, or unless the caregiver provides or designates another person or non-provider, other than the ADS center provider, to transport the consumer to and from the ADS center.

(c) Case manager's assessment: If the consumer receives a case management service, as defined under section 102(a)(11) of the Older Americans Act, as part of care coordination:

(i) The case manager shall assess each consumer's needs and preferences then specify which service level will be approved for each consumer; and,

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(ii) The provider shall retain records to show that it furnishes the service at the level that the case manager authorized.

(d) Provider's initial assessment:

(i) The provider shall assess the consumer before the end of the consumer's second day of attendance at the center. If the consumer is enrolled in care coordination, the provider may substitute a copy of the case manager's assessment of the consumer if the case manager assessed the consumer no more than thirty days before the consumer's first day of attendance at the center.

(ii) The initial assessment shall include both of the following components:

*(a)* Functional and cognitive profiles that identify the ADLs and IADLs that require attention or assistance of ADS center staff; and,

*(b)* Social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.

(e) Health assessment: No later than thirty days after the consumer's initial attendance at the ADS center or before the consumer receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain a health assessment of each consumer from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN,~~ licensed healthcare professional whose scope of practice includes health assessments or require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional to perform a health assessment of each consumer. The health assessment shall include the consumer's psychosocial profile and shall identify the consumer's risk factors, diet, and medications. If a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional who is not a staff member of the provider performs the health assessment, the provider shall retain a record of the professional's name and phone number.

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(f) Activity plan: No later than thirty days after the consumer's initial attendance at the ADS center or before the consumer receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional whose scope of practice includes developing activity plans to draft an activity plan for each consumer or the provider shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional to draft an activity plan for each consumer. The plan shall identify the consumer's strengths, needs, problems or difficulties, goals, and objectives. The plan shall describe the consumer's:

(i) Interests, preferences, and social rehabilitative needs;

(ii) Health needs;

(iii) Specific goals, objectives, and planned interventions of ADS that meet the goals;

(iv) Level of involvement in the drafting of the plan, and, if the consumer has a caregiver, the caregiver's level of involvement in the drafting of the plan; and,

(v) Ability to sign his or her signature versus alternate means for a consumer signature.

(g) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition ~~consultation~~ counseling, physical therapy, or speech therapy, the provider shall obtain ~~an order~~ a plan of treatment from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife~~ licensed healthcare professional whose scope of practice includes making plans of treatment. The provider shall obtain the ~~order for the~~ plan of treatment at least every ninety days for each consumer that receives medication, ~~meals with a therapeutic diet,~~ a nursing service, nutrition ~~consultation~~ counseling, physical therapy, or speech therapy. ~~The~~ For diet orders that may be part of a plan of treatment, a new diet order is not required every ninety days. Instead, the provider shall comply with the diet-order requirements for ~~meals with a~~ therapeutic ~~diet~~ diets under rule ~~173-4-05.2~~ 173-4-05 of the

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Administrative Code.

(h) Interdisciplinary care conference:

(i) Frequency: The provider shall conduct an interdisciplinary care conference for each consumer at least once every six months.

(ii) Participants: The provider shall conduct the conference between the provider's staff members and invitees who choose to participate. If the consumer receives case management as part of care coordination, the provider shall invite the case manager to participate in the conference. The provider shall invite any ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional who does not work for the provider, but who furnished the provider with a health assessment of the consumer or an activity plan for the consumer, to participate in the conference. If the consumer has a caregiver, the provider shall invite the caregiver to the conference. The provider may also invite the consumer to the conference. The provider shall invite the case manager, ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, RN,~~ licensed healthcare professional, caregiver, or consumer by furnishing the date and time to the case manager seven days before the conference begins.

(iii) Revise activity plan: If the conference participants identify changes in the consumer's health needs, condition, preferences, or responses to the service, the provider shall obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, RN~~ licensed healthcare professional to revise the activity plan accordingly or shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, RN~~ licensed healthcare professional to revise the activity plan accordingly.

(iv) Records: The provider shall retain records on each conference's determinations.

(i) Activities: The provider shall post daily and monthly planned activities in prominent locations throughout the center.

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(j) Lunch and snacks:

(i) The provider shall provide lunch and snacks to each consumer who is present during lunchtime or snacktime.

(ii) The provision of lunch shall comply with the meal service requirements of rule 173-4-05 of the Administrative Code.

(2) Center requirements:

(a) Specifications: The provider shall only perform ADS in a center with the following specifications:

(i) If the center is housed in a building with services or programs other than ADS, the provider shall assure that a separate, identifiable space and staff are available for ADS activities during all hours in which the provider furnishes ADS in the center.

(ii) The center shall comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R. Part 36 (July 1, ~~2012 edition~~ 2015).

(iii) The center shall have at least sixty square feet per individual that it serves, excluding hallways, offices, rest rooms, and storage areas.

(iv) The provider shall store consumers' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.

(v) The provider shall store toxic substances in an area that is inaccessible to consumers.

(vi) The center shall have at least one toilet for every ten individuals present that it serves and at least one wheelchair-accessible toilet.

(vii) If the center provides intensive ADS, the center shall have bathing facilities suitable to the needs of consumers who require intensive ADS.

(b) Emergency safety plan:

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(i) The provider shall develop and annually review a fire inspection and emergency safety plan.

(ii) The provider shall post evacuation procedures in prominent locations throughout the center.

(c) Evacuation drills:

(i) At least quarterly, the provider shall conduct an evacuation drill from the center while consumers are present.

(ii) The provider shall retain records on the date and time it completes each evacuation drill.

(d) Fire extinguishers and smoke alarms:

(i) The provider shall have fire extinguishers and smoke alarms in the center and shall provide routine maintenance to them.

(ii) At least annually, the provider shall conduct an inspection of the fire extinguishers and smoke alarms and shall document the completion of each inspection.

(3) Staffing levels:

(a) The provider shall have at least two staff members present whenever more than one consumer is present, including one who is a paid personal care staff member and one who is certified in CPR.

(b) The provider shall maintain a staff-to-consumer ratio of at least one staff member to every six consumers at all times.

(c) The provider shall have one RN, or LPN under the direction of an RN, present whenever a consumer who receives enhanced ADS or intensive ADS requires components of enhanced ADS or intensive ADS that fall within a nurse's scope of practice.

(d) The provider shall employ an activity director to direct consumer activities.

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(4) Provider qualification:

(a) Type of provider: A provider shall only furnish ADS if the provider is an agency provider.

(b) Staff qualifications:

(i) Every RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, dietitian, occupational therapist, or occupational therapy assistant planning to practice as a personal care staff member shall possess a current, and valid license to practice in their profession.

(ii) The activity director shall possess at least one of the following:

*(a)* A baccalaureate or associate degree in recreational therapy or a related degree;

*(b)* At least two years of experience as an activity director or activity assistant in a related position; or,

*(c)* Compliance with the qualifications required to direct consumer activities in a nursing facility under paragraph (G) of rule 3701-17-07 of the Administrative Code.

(iii) Each activity assistant shall possess at least one of the following:

*(a)* A high school diploma;

*(b)* A high school equivalence diploma as defined in section 5107.40 of the Revised Code; or,

*(c)* At least two years of employment in a supervised position to furnish personal care, to furnish activities, or to assist with activities.

(iv) Each personal care aide shall possess at least one of the following:

*(a)* A high school diploma;

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*(b)* A high school equivalence diploma as defined in section 5107.40 of the Revised Code;

*(c)* At least two years of employment in a supervised position to furnish personal care, to furnish activities, or to assist with activities; or,

*(d)* The successful completion of a vocational program in a health or human services field.

(v) Each staff member who provides transportation to consumers shall comply with all requirements under rule 173-3-06.6 of the Administrative Code.

(vi) The provider shall retain records to show that each staff member who has in-person interaction with consumers complies with the staff qualifications under paragraph (B)(4)(b) of this rule.

(c) Staff training:

(i) Orientation: Before each new personal care aide furnishes an ADS, the provider shall train the staff member on all of the following:

*(a)* The expectation of employees;

*(b)* The provider's ethical standards;

*(c)* An overview of the provider's personnel policies;

*(d)* A description of the provider's organization and lines of communication;

*(e)* Incident reporting procedures; and,

*(f)* Universal precautions for infection control.

(ii) Task-based training: Before each new personal care aide furnishes an ADS, the provider shall furnish task-based training.

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(iii) Continuing education: Each staff member shall complete at least eight hours of in-service or continuing education on appropriate topics each calendar year, unless the staff person holds a professional certification that requires at least eight hours in order to maintain the certification.

(iv) Records: The provider shall retain records showing that it complies with the training requirements under paragraph (B)(4)(c) of this rule. In doing so, the provider shall list the instructor's title, qualifications, and signature; date and time of instruction; content of the instruction; and name and signature of ADS personal care staff completing the training.

(d) Performance reviews:

(i) The provider shall complete a performance review of each staff member in relation to the staff member's job description.

(ii) The provider shall retain records to show that it complies with paragraph (B)(4)(d)(i) of this rule.

(5) Service verification:

(a) For each service furnished, the provider shall retain a record of all of the following:

(i) Consumer's name;

(ii) Date of service;

(iii) Consumer's arrival and departure times;

(iv) Consumer's mode of transportation;

(v) Name of each staff member having contact with the consumer;

(vi) The consumer's signature (The activity plan shall note if the consumer is unable to sign. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.); and,

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(vii) ADS staff person's signature.

(b) The provider may use a daily attendance roster to retain the records required under paragraph (B)(5)(a) of this rule.

(c) The provider may use a technology-based system to collect or retain the records required under this rule.

~~(d) The provider shall retain records required under this rule and furnish access to those records for monitoring according to paragraph (A)(21) of rule 173-3-06 of the Administrative Code.~~

(C) Units of service:

(1) Units of ADS are calculated as follows:

(a) One-half unit is less than four hours of ADS per day.

(b) One unit is four to eight hours of ADS per day.

(c) A fifteen-minute unit is each fifteen-minute period of time over eight hours up to, and including, a maximum of twelve hours of ADS per day.

(2) A unit of ADS does not include a transportation service, as defined by rule 173-3-06.6 of the Administrative Code, even if the transportation service is provided to transport the consumer to or from the ADS center.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-01 Introduction and definitions.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) Introduction: Chapter 173-4 of the Administrative Code: establishes criteria that each AAA shall follow when entering into a provider agreement for the provision of a nutrition program or a nutrition-related service by a non-certified provider under section 173.392 of the Revised Code. (See Chapter 173-39 of the Administrative Code for criteria regarding providers certified under section 173.391 of the Revised Code.)

(B) Definitions for this chapter:

(1) "Area agency on aging" ("AAA") means a public or non-profit entity that ODA designates, under Section 305 of the Older Americans Act, to serve as an AAA. Each AAA receives state and federal funds from ODA to administer aging-related programs within a particular PSA.

Comment [ODA2]: This term is defined in rule 173-3-01 of the Administrative Code.

(2) "Consumer's signature" means the signature, mark, or electronic signature of a consumer, or the consumer's family caregiver, who may verify that a service was performed. Examples of means to record an electronic signature are the "SAMS Scan," "MJM Swipe Card," call-in verification, etc.

Comment [ODA3]: This term is defined in rule 173-3-01 of the Administrative Code.

(3) "Expiration date" means the date that ensures that the consumer has notice of when a product is no longer safe to eat and needs to be discarded.

(4) "Family caregiver" has the same meaning as in Section 302 of the Older Americans Act.

Comment [ODA4]: This term is defined in rule 173-3-01 of the Administrative Code.

(5) "Licensed dietitian" ("LD") means a person who holds a current, valid license to practice as a licensed dietitian issued under Chapter 4759. of the Revised Code. A LD assesses nutritional needs and food patterns, makes recommendations for appropriate food and nutrient intake, provides nutritional education and counseling, and develops nutritional care standards for individuals and groups.

Comment [ODA5]: ODA proposes to not add this additional information. Section 4759.06 of the Revised Code makes an adequate definition.

(6) "Means testing" means the consideration a consumer's financial resources (i.e., "means") in order to determine eligibility for a service or to determine cost sharing or voluntary contribution amounts.

Comment [ODA6]: The term is not used in the proposed amended and new rules for this chapter.

(7) "ODA" means "the Ohio department of aging."

Comment [ODA7]: This term is defined in rule 173-3-01 of the Administrative Code.

(8) "Older Americans Act" means the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended in 2006.

Comment [ODA8]: This term is defined in rule 173-3-01 of the Administrative Code.

(9) "Older Americans Act funds" means funds appropriated to ODA through Title III of the Older Americans Act.

Comment [ODA9]: This term is defined in rule 173-3-01 of the Administrative Code.

(10) "Outbreak of food-borne illness" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food or a single case of illness if the consumer is ill with botulism or chemical poisoning.

Comment [ODA10]: The term is not used in the proposed amended and new rules for this chapter.

(11) "Planning and service area" ("PSA") means a geographical region of Ohio that ODA designates as a PSA under Section 305 of the Older Americans Act. ODA lists the PSAs it has designated in rule 173-1-03 of the Administrative Code.

Comment [ODA11]: This term is defined in rule 173-3-01 of the Administrative Code.

(12) "Provider" means an organization that has entered into a provider agreement with an AAA to provide any one or more of the following within the PSA: a congregate nutrition program, a home-delivered nutrition program, a restaurant and grocery meal service, or a nutrition-related service.

Comment [ODA12]: This term is defined in rule 173-3-01 of the Administrative Code.

(13) "Serving size" means a standardized amount of a food, such as a cup or an ounce, that is used in

Comment [ODA13]: The term is not used in the proposed amended and new rules for this chapter.

providing dietary guidance or in making comparisons among similar foods.

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

# ***DRAFT - NOT FOR FILING***

**173-4-01 Introduction and definitions.**

(A) Introduction to Chapter 173-4 of the Administrative Code:

(1) Chapter 173-4 of the Administrative Code governs meals and nutrition services that are funded in part or in full with Older Americans Act funds.

(2) If a provider furnishes a meals or nutrition services to consumers through an Older Americans Act program and also furnishes services to consumers through an ODA-administered medicaid waiver program, the provider shall also comply with the provider-certification requirements of Chapter 173-39 of the Administrative Code.

(B) Definitions for Chapter 173-4 of the Administrative Code:

(1) The definitions in rule 173-3-01 of the Administrative Code apply to Chapter 173-4 of the Administrative Code.

(2) "Alternative meal program" means a provider's package of services that includes meals furnished in a restaurant or supermarket setting according to rule 173-4-04.2 of the Administrative Code and nutrition services.

(3) "Congregate meal program" means a provider's package of services that includes meals furnished in a congregate setting according to rule 173-4-04 of the Administrative Code and nutrition services.

(4) "Home-delivered meal program" means a provider's package of services that includes meals furnished in a consumer's home according to rule 173-4-04.1 of the Administrative Code and nutrition services.

(5) "Licensed dietitian" means a person who holds a valid license to practice dietetics under section 4759.06 of the Revised Code.

(6) "Meal" means a prepared meal, which may not comprise a full nutritional regimen, that a provider furnishes to a consumer through a congregate meal program, a home-delivered meal program, or an alternative meal program (restaurants and supermarkets).

(7) "Nutrition services" means the following services:

(a) Nutrition counseling furnished according to rule 173-4-06 of the Administrative Code.

(b) Nutrition education furnished according to rule 173-4-07 of the Administrative Code.

(c) Nutrition health screening furnished according to rule 173-4-08 of the Administrative Code.

(d) Supermarket shopping assistance furnished according to rule 173-4-09 of the Administrative Code.

(8) "Restaurant" has the same meaning as "food service operation" in rule 3717-1-01 of the Administrative Code.

(9) "Shelf-stable meal" means a meal that is non-perishable, ready-to-eat, stored at room temperature, and eaten without heating.

(10) "Supermarket" has the same meaning as "retail food establishment" in rule 3717-1-01 of the Administrative Code.

**Comment [ODA1]:** Throughout the chapter, ODA proposes to use "meals" in many places where the current rules use "nutrition." This is part of the person-centered care transformation of the rules, which involves a reorientation from nutrition to the person who is dining.

**Comment [ODA2]:** ODA proposes to refer to the statutory description, rather than to redefine the term.

**Comment [ODA3]:** Key use of the term is in paragraph (D) of rule 173-4-02 of the Administrative Code.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-02 Eligibility criteria.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) A person may participate in a congregate nutrition program if:

(1) The person is at least sixty years of age;

(2) The person is the spouse of an eligible person, regardless of age or abilities;

(3) The person provides volunteer services during meal-preparation hours or meal-service hours and only receives a meal (and not any other nutrition-related services of the congregate nutrition program);

(4) The person is a guest who is otherwise ineligible to participate in a congregate nutrition program and who pays the provider for the provider's actual contracted unit cost of the meal; or,

(5) The person is a staff member who is otherwise ineligible to participate in a congregate nutrition program and who pays the provider's suggested donation or pays a rate mutually agreed upon by the provider and the AAA.

Comment [ODA2]: Topic covered in "Applicability" paragraph in proposed new rule.

(B) A person may participate in a home-delivered nutrition program if:

(1) The person is at least sixty years of age and meets the following criteria:

(a) The person is unable to prepare his/her own meals;

(b) The person is unable to participate in a congregate nutrition program because of physical or emotional difficulties; and,

(c) The person lacks another meal support service in the home or the community.

(2) The person is the spouse of an eligible person, regardless of age or abilities, who lives in the home of the eligible person;

Comment [ODA3]: "who lives in the home of the eligible person" is not in the Older Americans Act.

(3) The person provides services during meal-preparation hours or meal-delivery hours and only receives a meal (and not any other nutrition-related services of the home-delivered nutrition program); or,

(4) The person is a guest who is otherwise ineligible to participate in a home-delivered nutrition program and who pays the provider for the provider's actual contracted unit cost of the meal; or,

(5) The person is a staff member who is otherwise ineligible to participate in a home-delivered nutrition program and who pays the provider's suggested donation or pays a rate mutually agreed upon by the provider and the AAA.

Comment [ODA4]: Topic covered in "Applicability" paragraph in proposed new rule.

(C) The AAA shall establish procedures that allow providers of a congregate or home-delivered nutrition program the option to offer a meal to the following persons with disabilities:

(1) A person who is less than sixty years of age and is a person with a disability who resides in a facility that is primarily occupied by residents who are at least sixty years of age at which a congregate nutrition program or home-delivered nutrition program is provided; or,

(2) A person with a disability who resides in a home with another person who is eligible to participate in a home-delivered nutrition program.

**ONLINE PUBLIC-COMMENT PERIOD**

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# ***DRAFT - NOT FOR FILING***

**173-4-02 Eligibility criteria.**

Applicability: This rule sets forth criteria for a person to receive meals that are funded with Older Americans Act funds, Senior Community Services funds, or any combination of Older Americans Act funds, Senior Community Services funds, or local levy funds. The rule does not prohibit a provider from furnishing meals to staff members, volunteers, or guests. Older Americans Act funds and Senior Community Services funds do not reimburse providers for meals provided to staff members, volunteers, or guests.

(A) A person may participate in a congregate meal program if the person meets one of the following two criteria:

(1) The person is at least sixty years of age.

(2) The person is the spouse of an eligible person, regardless of age or abilities.

(B) A person may participate in a home-delivered meal program if the person meets one of the following two criteria:

(1) The person is at least sixty years of age and meets all of the following three criteria:

(a) The person is unable to prepare his/her own meals.

(b) The person is unable to participate in a congregate meal program because of physical or emotional difficulties.

(c) The person lacks another meal support service in the home or the community that the person can afford.

(2) The person is the spouse of an eligible person, regardless of age or abilities.

(C) ,Every provider of a congregate or home-delivered meal program may offer meals to persons with a disability who are less than sixty years of age if those persons meet one of the following two criteria:

(1) The person resides in a facility that is primarily occupied by residents who are at least sixty years of age if the facility is also a provider of a congregate meal program or home-delivered meal program.

(2) The person resides in a home with a person who is eligible to participate in a home-delivered meal program according to paragraph (B) of this rule.

(D) The provider that offers meals to a person according to paragraph (C)(1) of this rule may also offer nutrition services to the same person.

(E) As used in this rule, "provider" also means the "nutrition project administrator" in 42 USC 339(2)(H).

**Comment [ODA1]:** New language based upon decision in Audrey Brown *et al*. v. Department of Health and Human Services. 2006 ME 63; 989 A.2d 387, 2006 Me LEXIS 69 (March 22, 2006)

**Comment [ODA2]:** Rogue comma = software glitch.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-03 Enrollment process.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) Congregate nutrition program: Before enrolling a person into a congregate nutrition program, the provider of the program, the AAA, or another entity designated by the AAA, shall ensure that the person who desires to enroll in the program meets the eligibility criteria for a congregate nutrition program in rule 173-4-02 of the Administrative Code.

(B) Home-delivered nutrition program:

(1) Before enrolling a person into a home-delivered nutrition program, the provider of the program shall ensure that the person who desires to enroll in the program meets the eligibility criteria for a home-delivered nutrition program under rule 173-4-02 of the Administrative Code.

(2) The AAA may establish criteria for initial and annual eligibility assessments that a provider may conduct by telephone with a consumer or a consumer's family caregiver. Face-to-face assessments are preferred.

(3) For any person who is discharged from a hospital or nursing home, the AAA may deem that the discharge summary from the hospital or nursing home complies with paragraphs (B)(1)(a) and (B)(1)(b) of rule 173-4-02 of the Administrative Code for seven calendar days following the discharge so that the person may receive home-delivered meals immediately following the discharge. A provider may only deliver meals after the thirtieth calendar day following the discharge if an assessment is performed that that verifies that the person who desires to receive home-delivered meals meets the eligibility criteria for a home-delivered nutrition program under rule 173-4-02 of the Administrative Code.

(C) If a waiting list for enrollment into a congregate nutrition program or a home-delivered nutrition program exists, the provider shall develop a prioritization system that distributes meals equitably by prioritizing persons who are determined to have high nutritional risk. At a minimum, the provider shall base the nutritional risk status of a person upon the following:

(1) The nutritional risk status of the consumer as determined by a nutrition health screening service conducted under rule 173-4-08 of the Administrative Code;

(2) The nutritional risk status of a married couple is determined by the spouse with the higher nutritional risk; or,

(3) The income of the person, since the person with the lowest income should receive the service before those with higher incomes, although income level is not a criterion for eligibility for this service.

Comment [ODA2]: This paragraph is unnecessary. The nutrition health screening ask if a person is unable to afford meals. The Older Americans Act prohibits means testing.

**ONLINE PUBLIC-COMMENT PERIOD**
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**173-4-03 Enrollment process.**

(A) Congregate meal program: The congregate meal provider or the AAA shall ensure that any person who desires to enroll in the provider's congregate meal program meets the eligibility criteria for congregate meal programs in rule 173-4-02 of the Administrative Code before the provider or AAA enrolls the person into the program.

(B) Home-delivered meal program:

(1) The home-delivered meal provider shall ensure that any person who desires to enroll in its home-delivered meal program meets the eligibility criteria for home-delivered meal programs under rule 173-4-02 of the Administrative Code before the provider enrolls the person into the program.

(2) The AAA may develop a process for conducting eligibility assessments for initial enrollments and annual reenrollments that a provider may conduct by telephone with a consumer or a consumer's caregiver. Face-to-face assessments are preferred.

(3) For any person that a hospital or nursing home discharges, the AAA may deem that the discharge summary from the hospital or nursing home complies with paragraphs (B)(1)(a) and (B)(1)(b) of rule 173-4-02 of the Administrative Code for seven calendar days following the discharge so that the person may receive home-delivered meals immediately following the discharge. A provider may only deliver meals after the thirtieth calendar day following the discharge if an assessment is performed that verifies that the person who desires to receive home-delivered meals meets the eligibility criteria for a home-delivered meal program under rule 173-4-02 of the Administrative Code.

(C) Alternative meal program (restaurants and grocery stores): The alternative meal provider or the AAA shall ensure that any person who desires to enroll in a providers alternative meal program meets the criteria for congregate meal programs in rule 173-4-02 of the Administrative Code before the provider or the AAA enrolls the person into the program.

(D) If a waiting list for enrollment into a congregate meal program or a home-delivered meal program exists, the provider shall develop a prioritization system that distributes meals equitably by prioritizing persons who are determined to have high nutritional risk. The provider shall base the nutritional risk status of a person upon the following two criteria:

(1) Nutritional health screening conducted according to rule 173-4-08 of the Administrative Code determines the nutritional risk status of each consumer.

(2) The nutritional risk status of the spouse with the higher nutritional risk determines the nutritional risk status of the couple.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-04 Congregate nutrition program.**

(A) "Congregate nutrition program" means a program that consists of administrative functions; meal production; the provision of nutritious, safe, and appealing meals for eligible consumers in a group setting; and the provision of the nutrition-related services described in rules 173-4-05 to 173-4-09 of the Administrative Code. The purpose of a congregate nutrition program is to promote health, to reduce risk of malnutrition, to improve nutritional status, to reduce social isolation, and to link older adults to community services.

(B) Minimum requirements for a congregate nutrition program:

(1) Eligibility and enrollment:

(a) Before the provider provides a meal to a person, the provider shall verify the person's eligibility under rule 173-4-02 of the Administrative Code.

(b) For a guest or paid staff member who desires to receive a meal from the provider but is ineligible to participate in a congregate nutrition program, the provider shall require the guest or paid staff member to pay for the meal. The provider shall use all collected fees to expand the service for which the fees were given and to supplement (not supplant) funds given to the provider to provide the service.

(2) Frequency of meals: The provider may provide meals five to seven days per week. If this frequency is not feasible, the provider may provide meals on a less-frequent basis, if the less-frequent basis is approved by the AAA.

(3) Voluntary contributions:

(a) The provider shall provide each consumer with the opportunity to voluntarily contribute to a meal's cost and the provider shall accept the voluntary contributions. When soliciting for voluntary contributions, the provider shall:

(i) Clearly inform each consumer that he/she has no obligation to contribute and that the contribution is purely voluntary. It is the consumer who determines how much he/she is able to contribute toward the meal's cost. The provider may not deny a consumer a meal because the consumer does not contribute;

(ii) Protect each consumer's privacy and confidentiality with respect to the consumer's contribution or lack of contribution; and,

(iii) Establish appropriate procedures to safeguard and account for all contributions.

(b) The provider shall use all collected contributions to expand the congregate nutrition program for which the contributions were given and to supplement (not supplant) funds given to the provider to operate the program.

(c) The provider may not choose to base suggested contribution levels on a means test. Instead, the provider may choose to base suggested contribution levels on one or more of the following options:

(i) A suggested contribution;

(ii) A set range of suggested contribution levels based on income ranges from the United States census bureau; and,

**Comment [ODA1]:** FOR RESCISSION. Please also review the proposed new version of the rule.

**Comment [ODA2]:** This term is used many times in Chapter 173-4 of the Administrative Code. ODA proposes to no longer define it here. Instead, ODA proposes to define it in rule 173-4-01 of the Administrative Code.

**Comment [ODA3]:** As ODA has been systematically doing on a project-by-project basis, ODA proposes to remove the term “minimum requirements” from this chapter. The term implies that extra regulations could be created that fly below the radars of CSIO and JCARR

**Comment [ODA4]:** ODA proposes to no longer duplicate its own eligibility criteria language here. Please see rules 173-4-02 and 173-4-03 of the Administrative Code.

**Comment [ODA5]:** ODA is proposing to delete the second sentence. There is no need for an exception to a permissible (*i.e.*, “may,” not “shall”) requirement.

**Comment [ODA6]:** ODA proposes to no longer duplicate its own voluntary contributions language here. Please see rule 173-3-07 of the Administrative Code.

(iii) The meal's actual cost. For a person whose self-declared income is at or above one hundred eighty-five per cent of the poverty line, the provider shall encourage a voluntary contribution based on the meal's actual cost.

(4) Records: The provider shall develop and utilize a system for documenting meals served. Acceptable methods for documenting meals served include the following:

(a) On a daily, weekly, or monthly basis, obtain the signatures of consumers who received meals on an attendance sheet; or,

(b) Maintain a daily, weekly, or monthly attendance sheet for meals that is signed by the provider or a designee of the provider.

(5) Nutrition consultation and nutrition education: The provider agreement shall determine whether it is the responsibility of the provider or the AAA to provide to each consumer enrolled in the congregate nutrition program a nutrition consultation service under rule 173-4-06 of the Administrative Code, a nutrition education service under rule 173-4-07 of the Administrative Code, or both services.

(6) Food safety and sanitation:

(a) The provider shall maintain documentation that demonstrates that all meals prepared by the provider or a subcontractor comply with sections 918.01 to 918.31 of the Revised Code and Chapter 3717-1 of the Administrative Code, which is also known as "The State of Ohio Uniform Food Safety Code."

(b) The provider shall maintain appropriate licenses and demonstrate compliance with local health department inspections and Ohio department of agriculture inspections.

(c) No later than five calendar days after receipt of a critical citation issued by the local health department or the Ohio department of agriculture, the provider shall report to the AAA the critical citation and also a corrective action plan.

(d) Regardless of whether the food items are purchased or donated, the provider shall only use food items from a source approved by the AAA.

(e) The provider shall not reuse a food item that has been served to a consumer that is a time/temperature controlled for safety food.

(f) The provider may not serve food obtained from food banks or other food sources that surpasses its use by date or expiration date.

(g) The provider shall develop written materials on the procedure for allowing a consumer to remove items from the congregate nutrition program after the consumer finishes eating.

(7) Food temperatures:

(a) Thermometers:

(i) To protect the integrity of packaged food (e.g., milk carton or thermal meal container), a provider may use an infrared thermometer that measures the food's surface temperature.

(ii) If the provider measures the packaged food's temperature with an infrared thermometer and finds that the food does not meet standards, the provider shall use a probe thermometer to measure the

**Comment [ODA7]:** For every service that ODA regulates, including home-delivered meals under rule 173-39-02.14 of the Administrative Code, ODA requires a per-service verification that the goods or services were delivered. For meals, that meals that the meal was delivered. The congregate and home-delivered meals under rules 173-4-04 and 173-4-04.1 have been the exceptions. The proposed new rules will not contain any such exception.

**Comment [ODA8]:** ODA is proposing to eliminate duplicate food safety and sanitation regulations. The Department of Agriculture and local health districts have food safety and sanitation authority over meal providers. ODA does not retain this authority. Repeating elements of the Ohio Uniform Food Safety Code in ODA's rules may appear to authorize ODA or area agencies on aging (AAAs) to conduct duplicate food safety and sanitation inspections upon providers. ODA is proposing to clarify that it does not authorize duplicate inspections. This will bring ODA into compliance with section 119.032 of the Revised Code.

**Comment [ODA9]:** Please see the previous note.

food's internal temperature. Before inserting a probe thermometer into the food, the provider shall clean and sanitize the probe thermometer and practice proper hand-washing techniques.

(b) Monitoring:

(i) A provider who produces food on site shall measure the food temperatures when the food is ready to serve. If the temperatures do not meet standards, the provider shall reheat or refrigerate the food until the proper temperatures are reached.

(ii) A provider who receives bulk food from food preparers shall measure the food temperatures upon receiving the food from the food preparers. If the temperatures do not meet standards, the provider shall not accept the food.

(8) Food-borne illness:

Comment [ODA10]: Please see the previous note.

(a) The provider shall promptly notify the local health department when any person complains of a food-borne illness.

(b) No more than two calendar days after the occurrence or receipt of a complaint regarding an outbreak of food-borne illness, the provider shall report the complaint to the AAA.

(9) Emergencies: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include:

(a) Providing timely notification of emergency situations to consumers; and,

(b) The distribution of:

(i) Information to consumers on how to stock an emergency food shelf; or,

(ii) Shelf-stable meals to consumers for emergency situations.

(10) Staff training:

(a) For each staff member, whether the staff member works as a paid employee or a volunteer, the provider shall provide an orientation and adequate training to perform assigned responsibilities.

(b) Using a protocol established by the AAA, the provider shall maintain documentation of training provided to each staff member, whether the staff member works as a paid employee or a volunteer.

(11) Quality assurance:

(a) The provider shall monitor all aspects of the congregate nutrition program and take action to improve services. This includes the monitoring of food packaging, food temperatures during storage, food preparation, holding food before and during the meal service, retention of food quality characteristics (e.g., flavor and texture), delivery of the food to the congregate nutrition site, and all applicable federal, state, and local regulations.

(b) The provider shall develop and implement an annual plan to evaluate and improve the effectiveness of the program's operations and services to ensure continuous improvement. In the plan, the provider shall include:

(i) A review of the existing program;

(ii) Satisfaction survey results from consumers, staff, and program volunteers;

(iii) Program modifications made that responded to changing needs or interests of consumers, staff, or volunteers;

(iv) Proposed program and administrative improvements; and,

(v) Results of program monitoring.

(c) The provider shall elicit comments from consumers on the dining environment, type of food, portion size, food temperatures, nutrition program schedule, and staff professionalism.

**ONLINE PUBLIC-COMMENT PERIOD**
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# ***DRAFT - NOT FOR FILING***

**173-4-04 Senior dining in a congregate setting.**

(A) In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a provider of a congregate meal program shall comply with the following requirements:

(1) Frequency of meals: The provider may provide up to seven meals per week. The provider may offer the meals in different locations on different days.

Comment [ODA1]: A proposed new option (*i.e.*, "may," not "shall")

(2) Voluntary contributions: The provider shall comply with rule 173-3-07 of the Administrative Code.

(3) Nutrition counseling and nutrition education: To each consumer who is enrolled in the provider's congregate meal program, the provider shall offer nutrition counseling under rule 173-4-06 of the Administrative Code, nutrition education under rule 173-4-07 of the Administrative Code, or both.

(4) Emergencies: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include:

(a) Providing timely notification of emergency situations to consumers; and,

(b) The distribution of:

(i) Information to consumers on how to stock an emergency food shelf; or,

(ii) Shelf-stable meals to consumers for emergency situations.

(5) Staff training: The provider shall furnish an orientation and adequate training to each staff member, whether the staff member works as a paid employee or a volunteer. The provider shall furnish adequate training for each staff member to perform the duties that the provider assigns to the staff member. Using a protocol that the AAA establishes, the provider shall retain records to verify that each staff member successfully completed the training.

Comment [ODA2]: Records retention terminology replaces document maintenance terminology.

(6) Quality assurance: Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the program's operations and services to ensure continuous improvement. In the plan, the provider shall include all of the following:

(a) A review of the existing program;.

(b) A survey of staff and volunteer satisfaction.

(c) Proposed program and administrative improvements.

(7) Service verification:

Comment [ODA3]: See notes on the rule that ODA is proposing to rescind.

(a) For each meal the provider furnishes, the provider shall retain a record of the consumer's name, date of the meal, and the consumer's signature.

(b) The provider may use a technology-based system (i.e., agency management technology) to collect or retain the records required under this rule.

(c) The provider shall retain all records required under this rule and provide access to those records for

monitoring according to rule 173-3-06 of the Administrative Code.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-04.1 Home-delivered nutrition program.**

(A) "Home-delivered nutrition program" means a program that consists of administrative functions; meal production; the delivery of nutritious and safe meals to eligible consumers in a home setting; and the provision of the nutrition-related services described in rules 173-4-05 to 173-4-08 of the Administrative Code. The purpose of a home-delivered nutrition program is to sustain or improve a consumer's health through safe and nutritious meals served in a home setting.

(B) Minimum requirements for a home-delivered nutrition program:

(1) Eligibility and enrollment: Before the provider provides a meal to a person, the provider shall verify the person's eligibility under rule 173-4-02 of the Administrative Code.

(2) Frequency of meals: Each provider may provide five to seven days per week. In areas where this frequency is not feasible, the provider may provide meals on a less-frequent basis, if the frequency is approved by the AAA.

(3) Delivery:

(a) The provider shall only leave a meal with the consumer or the family caregiver.

(b) The provider shall develop and implement procedures for assuring the delivery of safe meals.

(c) The provider shall use supplies and carriers for packaging and transporting meals that are appropriate for the length of the route.

(d) The provider may make arrangements with a consumer to deliver an additional meal so that the consumer may store the additional meal for consumption at an upcoming time if it is anticipated that he/she will not be home during an upcoming normal delivery time and, as a result, would otherwise have no meal.

(4) Voluntary contributions:

(a) The provider shall provide each consumer with the opportunity to voluntarily contribute to a meal's cost and shall accept the voluntary contributions. When soliciting for voluntary contributions, the provider shall:

(i) Clearly inform each consumer that he/she has no obligation to contribute and that the contribution is purely voluntary. It is the consumer who determines how much he/she is able to contribute toward the cost. The provider shall not deny a consumer a meal because the consumer does not contribute;

(ii) Protect each consumer's privacy and confidentiality with respect to the consumer's contribution or lack of contribution; and,

(iii) Establish appropriate procedures to safeguard and account for all contributions.

(b) The provider shall use all collected contributions to expand the home-delivered nutrition program for which the contributions were given and to supplement (not supplant) funds given to the provider to operate the program.

(c) The provider shall not choose to base suggested contribution levels on a means test. Instead, the

**Comment [ODA1]:** FOR RESCISSION. Please also review the proposed new version of the rule.

**Comment [ODA2]:** This term is used many times in Chapter 173-4 of the Administrative Code. ODA proposes to no longer define it here. Instead, ODA proposes to define it in rule 173-4-01 of the Administrative Code.

**Comment [ODA3]:** As ODA has been systematically doing on a project-by-project basis, ODA proposes to remove the term "minimum requirements" from this chapter. The term implies that extra regulations could be created that fly below the radars of CSIO and JCARR

**Comment [ODA4]:** ODA proposes to no longer duplicate its own eligibility criteria language here. Please see rules 173-4-02 and 173-4-03 of the Administrative Code.

**Comment [ODA5]:** ODA is proposing to delete the second sentence. There is no need for an exception to a permissible (*i.e.*, "may," not "shall") requirement.

**Comment [ODA6]:** ODA proposes to no longer duplicate its own voluntary contributions language here. Please see rule 173-3-07 of the Administrative Code.

provider may choose to base suggested contribution levels on one or more of the following options:

(i) A suggested contribution;

(ii) A set range of suggested contribution levels based on income ranges from the United States census bureau; and,

(iii) The meal's actual cost. For a person whose self-declared income is at or above one hundred eighty-five per cent of the poverty line, the provider shall encourage a voluntary contribution based on the meal's actual cost.

(5) Records: The provider shall develop and utilize a system for documenting meals delivered. Acceptable methods include the following:

(a) On a daily, weekly, or monthly basis, obtain the signatures of consumers who received meals on a route sheet;

(b) Maintain a daily, weekly, or monthly route sheet that identifies the name of each consumer, the number of meals served to that consumer, the delivery person's signature, and any other necessary documentation; or,

(c) Another documentation system approved by the AAA.

(6) Nutrition consultation and nutrition education: The provider agreement shall determine whether it is the responsibility of the provider or the AAA to provide to each consumer enrolled in the home-delivered nutrition program a nutrition consultation service under rule 173-4-06 of the Administrative Code, a nutrition education service under rule 173-4-07 of the Administrative Code, or both services.

(7) Food safety and sanitation:

(a) The provider shall maintain documentation that demonstrates that all meals prepared by the provider or a subcontractor comply with sections 918.01 to 918.31 of the Revised Code and Chapter 3717-1 of the Administrative Code, which is also known as "The State of Ohio Uniform Food Safety Code."

(b) The provider shall maintain appropriate licenses and demonstrate compliance with local health department inspections and Ohio department of agriculture inspections.

(c) No later than five calendar days after receipt of a critical citation issued by the local health department or the Ohio department of agriculture, the provider shall report to the AAA the critical citation and also a corrective action plan.

(d) Regardless of whether the food items are purchased or donated, the provider shall only use food items from a source approved by the AAA.

(e) The provider shall not reuse a food item that has been served to a consumer that is a time/temperature controlled for safety food.

(f) The provider shall not serve food obtained from food banks or other food sources if the food has surpassed its use by date or expiration date.

(8) Food temperatures:

**Comment [ODA7]:** For every service that ODA regulates, including home-delivered meals under rule 173-39-02.14 of the Administrative Code, ODA requires a per-service verification that the goods or services were delivered. For meals, that meals that the meal was delivered. The congregate and home-delivered meals under rules 173-4-04 and 173-4-04.1 have been the exceptions. The proposed new rules will not contain any such exception.

**Comment [ODA8]:** ODA is proposing to eliminate duplicate food safety and sanitation regulations. The Department of Agriculture and local health districts have food safety and sanitation authority over meal providers. ODA does not retain this authority. Repeating elements of the Ohio Uniform Food Safety Code in ODA's rules may appear to authorize ODA or area agencies on aging (AAAs) to conduct duplicate food safety and sanitation inspections upon providers. ODA is proposing to clarify that it does not authorize duplicate inspections. This will bring ODA into compliance with section 119.032 of the Revised Code.

(a) Thermometers:

(i) To protect the integrity of packaged food (e.g., milk carton or thermal meal container), a provider may use an infrared thermometer to measure the surface temperature.

(ii) If the provider measures a temperature of packaged food with an infrared thermometer that does not meet standards, the provider shall use a probe thermometer to obtain the food's internal temperature. Before inserting a probe thermometer into the food, the provider shall clean and sanitize the probe thermometer and practice proper hand-washing techniques.

(iii) If the food is in a closed environment (e.g., an insulated tray system or a thermostatically-controlled food-delivery vehicles), the provider may measure the closed environment's ambient air temperature.

(b) Monitoring:

(i) The provider shall monitor a thermostatically-controlled food-delivery vehicle's food temperatures on a quarterly basis. If the temperatures are outside standards, the provider shall monitor the vehicle's temperatures on three consecutive delivery days. Once the temperatures meet standards, the provider may revert to monitoring the vehicle's food temperatures on a quarterly basis.

(ii) The provider shall monitor food temperature of the last meal in a non-thermostatically-controlled vehicle on a new route until the route's food temperatures meet standards. Once the temperatures meet standards, the provider shall monitor the route's temperatures according to the frequency under paragraph (B)(8)(b)(iii) of this rule.

(iii) The provider shall monitor food temperature of the last meal in a non-thermostatically-controlled vehicle on each established route on a monthly basis. If the temperatures on a particular route are outside standards, the provider shall monitor the route's temperatures on three consecutive delivery days. Once the temperatures meet standards, the provider may revert to monitoring the route's food temperatures on a monthly basis.

(c) Disposition of meals after measuring temperature:

(i) The provider shall not deliver a meal if the food temperatures do not meet standards. If the provider is unable to serve a meal to a consumer because the food temperatures do not meet standards, the provider shall serve a shelf-stable meal or an alternative meal as a replacement meal, if doing so is approved by the AAA.

(ii) The provider may deliver a meal to a consumer if the vehicle's driver measures the food temperature with a probe thermometer placed into the food container at the point of food packaging, rather than probing the food.

(iii) The provider may deliver a meal to a consumer if the provider measures the food temperature by measuring the ambient air temperature, rather than probing the food, if the thermometer is placed in the food carrier system at the point of food packaging.

(9) Food-borne illness:

Comment [ODA9]: Please see ODA;s previous comment.

(a) The provider shall promptly notify the local health department when any person complains of a

food-borne illness.

(b) No more than two calendar days after the occurrence or receipt of a complaint regarding an outbreak of food-borne illness, the provider shall report the complaint to the AAA with which it has entered into a contract or grant to provide the home-delivered nutrition program.

(10) Emergencies: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include:

(a) Providing timely notification of emergency situations to consumers; and,

(b) Either the distribution of:

(i) Information to consumers on how to stock an emergency food shelf; or,

(ii) Shelf-stable meals to consumers for an emergency food shelf.

(11) Staff training:

(a) For each staff member, whether the staff member works as a paid employee or a volunteer, the provider shall provide an orientation and adequate training to perform assigned responsibilities.

(b) Using a protocol established by the AAA, the provider shall maintain documentation of training provided to each staff member, whether the staff member works as a paid employee or a volunteer.

(12) Quality assurance:

(a) The provider shall monitor all aspects of the program and take action to improve services. This includes the monitoring of food packaging, food temperatures during storage, food preparation, holding food before and during the meal service, retention of food quality characteristics (e.g., flavor and texture), delivery of the food, and all applicable federal, state, and local regulations.

(b) The provider shall develop and implement an annual plan to evaluate and improve the effectiveness of the program's operations and services to ensure continuous improvement. In the plan, the provider shall include:

(i) A review of the existing program;

(ii) Satisfaction survey results from consumers, staff, and program volunteers;

(iii) Program modifications made that responded to changing needs or interests of consumers, staff, or volunteers; and,

(iv) Proposed program and administrative improvements.

(c) The provider shall elicit comments from consumers on the type of food, portion size, food appearance, food packaging, food temperatures, nutrition program schedule, and staff professionalism.

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

# ***DRAFT - NOT FOR FILING***

**173-4-04.1 Senior dining programs for home-delivered meals.**

(A) In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a provider of a home-delivered meal program shall comply with the following requirements:

(1) Meal frequency: Each provider shall furnish at least one meal per day to each consumer that it serves on five to seven days per week. In rural areas where this frequency is not feasible, the provider may provide meals on a less-frequent basis, if ODA approves of the lesser frequency.

**Comment [ODA1]:** Section 336 of the Older Americans Act requires ODA to decide.

(2) Delivery:

(a) The provider shall only leave a meal with the consumer or the consumer's caregiver.

(b) The provider shall develop and implement procedures for assuring the safe delivery of meals.

(c) The provider shall use supplies and carriers for packaging and transporting meals that are appropriate for the length of the route.

(d) The provider may make arrangements with a consumer to deliver an additional meal so that the consumer may store the additional meal for consumption at an upcoming time if it is anticipated that he/she will not be home during an upcoming normal delivery time and, as a result, would otherwise have no meal.

(e) The provider may use a technology-based system (i.e., agency management technology) to schedule meal deliveries and to plan efficient delivery routes.

**Comment [ODA2]:** This is permissive language ("may," not "shall") that appears many places in this chapter as well as in Chapters 173-3 and 173-39 of the Administrative Code.

The technology would help providers satisfy section 339(2)(C) of the Act, which says that ODA must ensure that a nutrition project "encourages providers to enter into contracts that limit the amount of time meals must spend in transit before they are consumed."

(3) Voluntary contributions: The provider shall comply with rule 173-3-07 of the Administrative Code.

(4) Nutrition consultation and nutrition education: The provider shall furnish nutrition counseling, nutrition education, or both services to each consumer who is enrolled in the provider's home-delivered meal program.

(5) Dating meals:

(a) Hot meals: The provider shall individually package each home-delivered meal that it intends to deliver as a hot meal. The provider shall label the meal with the month, day, and year that it prepared the meal and shall list the date immediately following the term "packing date" or "pack date," unless the provider uses a dating system that follows a widely-accepted industry standard for dating packaged food.

(b) Non-hot meals: The provider may individually package each component of a home-delivered meal that it does not intend to deliver as a hot meal if the provider labels each individual package with the month, day, and year before which the consumer should consume the individual package, and shall list the date immediately following the term "use before," unless the provider uses a dating system that follows a widely-accepted industry standard for dating packaged food. As used in this paragraph, "individual package" does not include a whole fruit (e.g., a fresh apple or banana) that may be a component of a non-hot meal, but that is not packaged.

**Comment [ODA3]:** This requirement also appears in the current version of rule 173-4-05.3, however, ODA proposes to delete the language from the proposed new version of rule 173-4-05.3 and move it to the proposed new version of this rule.

(6) Meal temperatures during delivery: The provider shall use a time-and-temperature monitoring system to monitor the temperature of the meals that it delivers. The provider shall monitor the temperature of

meals on each new route. Thereafter, the provider shall monitor the temperature of meals delivered in thermostatically-controlled meal-delivery vehicles at least monthly and meals delivered in other types of vehicles at least weekly. The provider shall retain records to verify that it complies with this paragraph.

Comment [ODA4]: New

(7) Delivery vehicles and containers: The provider shall ensure that all meal-delivery vehicles and containers are safe and sanitary.

(8) Emergencies: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, etc. In the procedures, the provider shall include:

(a) Providing timely notification of emergency situations to consumers; and,

(b) Either the distribution of:

(i) Information to consumers on how to stock an emergency food shelf; or,

(ii) Shelf-stable meals to consumers for an emergency food shelf.

(9) Staff training: The provider shall furnish an orientation and adequate training to each staff member, whether the staff member works as a paid employee or a volunteer. The provider shall furnish adequate training for each staff member to perform the duties that the provider assigns to the staff member. Using a protocol that the AAA establishes, the provider shall retain records to verify that each staff member successfully completed the training.

(10) Quality assurance: Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the program's operations and services to ensure continuous improvement. In the plan, the provider shall include the following:

(a) A review of the existing program.

(b) Program modifications made that responded to changing needs or interests of consumers, staff, or volunteers.

(11) Service verification:

(a) For each meal delivery, the provider shall retain a record of the following:

(i) Consumer's name.

(ii) Delivery date.

(iii) Delivery time.

(iv) Number of meals in the delivery.

(v) Delivery person's signature or initials.

(vi) Consumer's signature. The AAA shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(b) The provider may use a technology-based system (i.e., agency management technology) to collect or

retain the records required under this rule.

(c) The provider shall retain all records that this rule requires the provider to retain according to rule 173-3-06 of the Administrative Code.

**Comment [ODA5]:** For every service that ODA regulates, including home-delivered meals under rule 173-39-02.14 of the Administrative Code, ODA requires a per-service verification that the goods or services were delivered. For meals, that meals that the meal was delivered. The congregate and home-delivered meals under rules 173-4-04 and 173-4-04.1 have been the exceptions. The proposed new rules will not contain any such exception.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-04.2 Restaurant and grocery meal service.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) "Restaurant and grocery meal service" means a service that consists of administrative functions; meal production; and the provision of nutritious, safe, and appealing meals for eligible consumers who are at least sixty years of age; and the provision of the nutrition-related services described in rules 173-4-05 to 173-4-09 of the Administrative Code. The purpose of a the service is to promote health, to reduce risk of malnutrition, to improve nutritional status, to reduce social isolation, and to link older adults to community services.

(B) Minimum requirements for a restaurant and grocery meal service:

(1) Through an agreement with a restaurant or grocery, the provider or the AAA may provide a meal service from the restaurant or grocery to a consumer who is geographically isolated, to a consumer with religious or ethnic dietary needs, or to a consumer who needs meals at a time when the usual congregate nutrition program is not open, such as during mornings, evenings, or weekends, or to a consumer who needs a home-delivered meal, or as authorized by the AAA.

(2) Vouchers: The provider or the AAA may institute a system of issuing meal vouchers for congregate or home-delivered meals that a consumer may redeem at the restaurant or grocery so long as the provider or the AAA:

(a) Offers the vouchers to the eligible consumers while asking for a voluntary contribution;

(b) Keeps the consumer's level of the voluntary contribution in confidence;

(c) Provides instructions to the consumer on how to voluntarily contribute as little or as much as the consumer can afford; and,

(d) Clearly informs each consumer that he/she has no obligation to contribute and that the contribution is purely voluntary. It is the consumer who determines how much he/she is able to contribute toward the cost. The provider shall not deny a consumer a meal because the consumer does not contribute.

(3) Consumer identification: The provider or the AAA shall adopt one of the following three policies when providing a meal service through a restaurant or grocery:

(a) A policy that requires a consumer to register with the provider or the AAA to receive an identification card. When the consumer visits the restaurant or grocery store, the consumer may show the identification card to the designated staff person at the restaurant or grocery store to receive a prepared meal or to select a prepared meal from a menu of meals that meet the meal requirements established in rule 173-4-05 of the Administrative Code. The restaurant or grocery shall provide the consumer with the opportunity to voluntarily contribute to the cost of the meal;

(b) A policy that requires a consumer to register with the provider or the AAA to receive meal vouchers. At the time the vouchers are received, the provider or AAA shall provide the consumer with the opportunity to voluntarily contribute to the cost of the meal. When the consumer visits the restaurant or grocery store, the consumer shall provide a voucher to the designated staff person at the restaurant or grocery store to receive a prepared meal or to select a prepared meal from a menu of meals that meet the meal requirements established in rule 173-4-05 of the Administrative Code; or,

(c) A policy that requires the restaurant or grocery that has entered into an agreement with the provider or the AAA to verify that a new consumer is at least sixty years of age before providing a meal, to have each consumer sign in, to complete the required SAMS data, and to obtain a disclosure signature

from the consumer. The restaurant or grocery shall regularly submit all required documentation to the AAA that identifies the individual consumers and the number of meals served to those consumers.

(4) Menus: The restaurant or grocery shall only provide meals that:

(a) Comply with the meal requirements and unit-of-service requirements under rule 173-4-05 of the Administrative Code;

(b) Are approved by a LD;

(c) Contain a meal substitution only if the substitution is approved by a LD; and,

(d) Include menus or food production menus that list serving sizes for each food item.

(5) Food safety and sanitation:

(a) The restaurant or grocery shall maintain documentation that all meals prepared by the restaurant or grocery comply with sections 918.01 to 918.31 of the Revised Code and Chapter 3717-1 of the Administrative Code, which is also known as "The State of Ohio Uniform Food Safety Code."

(b) The restaurant or grocery shall maintain appropriate licenses and demonstrate compliance with local health department inspections and Ohio department of agriculture inspections.

(c) No later than five calendar days after receipt of a critical citation issued by the local health department of the Ohio department of agriculture, the restaurant or grocery shall report to the provider or the AAA the critical citation and also a corrective action plan.

(6) Food-borne illness:

(a) The restaurant or grocery shall promptly notify the local health department when a person complains of an outbreak of food-borne illness.

(b) No more than two calendar days after the occurrence or receipt of a complaint of an outbreak of food-borne illness, the restaurant or grocery shall report the complaint to provider or the AAA.

(7) Emergencies: The provider or the AAA shall distribute information to consumers on how to stock an emergency food shelf.

(8) Staff training: Using a protocol established by the AAA, the restaurant or grocery shall maintain documentation of training provided to each staff member.

(9) Nutrition consultation and nutrition education: The provider agreement shall determine whether it is the responsibility of the provider or the AAA to provide to each consumer enrolled in the home-delivered or congregate nutrition programs a nutrition consultation service under rule 173-4-06 of the Administrative Code, a nutrition education service under rule 173-4-07 of the Administrative Code, or both services.

(10) Records: The provider shall develop and utilize a system for documenting meals served. Acceptable methods for documenting meals served include:

(a) Maintaining a daily, weekly, or monthly attendance sheet for meals that is signed by the provider or a designee of the provider; or,

(b) Maintaining receipt of the meal vouchers.

(11) Quality assurance: The provider or the AAA shall elicit comments from consumers on dining environments, food appearance, type of food, food temperatures, and staff professionalism.

(12) Definitions:

(a) "Grocery" has the same meaning as "retail food establishment" in rule 3717-1-01 of the Administrative Code.

(b) "Restaurant" has the same meaning as "food service operation" in rule 3717-1-01 of the Administrative Code.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-05 Meal service.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) "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.

(B) 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:

(1) Nutritional adequacy:

(a) The provider shall only provide a meal that complies with the most recent "Dietary Guidelines for Americans" which are published by the secretaries of the United States department of health and human services and the United States department of agriculture and found on http://www.health.gov/dietaryguidelines and in the appendix to this rule.

(b) The provider shall provide a meal that meets a minimum of one-third of the dietary reference intakes (DRIs). DRIs are a comprehensive set of nutrient reference values based on healthy persons for assessing and planning individual and group diets. The food and nutrition board, institute of medicine, and the national academy of sciences establishes DRIs and lists them on http://fnic.nal.usda.gov/.

(c) The provider shall use rule 173-4-05.1 of the Administrative Code to determine the nutritional adequacy of the meals for which it seeks reimbursement from the AAA.

(2) 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.

(3) Menu planning:

(a) The provider shall assure that all menus meet the meal requirements of this rule.

(b) 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.

(c) The provider shall only offer a menu that is approved by a LD.

(d) The provider shall only offer menu substitutions that are approved by a LD.

(e) The provider shall list the serving size for each food item on each production menu.

(4) Consumer choice: Consistent with self-directed care practices, the provider shall offer a consumer the opportunity to make choices about the meals served by using one or more of the following methods:

(a) Allow consumers to choose between two or more food items within at least two of the following categories:

(i) Meat and meat alternates;

(ii) Vegetables;

(iii) Fruits;

(iv) Bread or bread alternates;

(v) Milk or milk alternates;

(vi) Desserts (if offered); or,

(vii) Meat or meat-alternate entrees combined with servings of other foods.

(b) Allow consumers to select an alternative meal type (e.g., boxed lunch, frozen meal, or vacuum-packed meal) that has the same nutrient content of a regular meal or follows the meal pattern for a regular meal;

(c) Offer consumers of home-delivered meals options regarding the frequency of meal deliveries;

(d) Offer consumers of congregate meals options regarding:

(i) Brunch meals;

(ii) Weekend meals;

(iii) Dining at restaurants;

(iv) Days of service for rural areas; or,

(v) Two meals per day at the congregate meal site.

(5) Therapeutic and modified meals: A provider shall only provide therapeutic or modified meals if those meals meet the additional requirements under rule 173-4-05.2 of the Administrative Code.

(6) Alternative meals: A provider shall only provide alternative meals if those meals meet the additional requirements under rule 173-4-05.3 of the Administrative Code.

(7) Medical food and food for special dietary use: A provider shall only offer medical food or food for special dietary use if the food meets the additional requirements under rule 173-4-05.4 of the Administrative Code.

(8) Dietary supplements: The AAA shall not allow a provider to serve multi-vitamin or mineral supplements nor reimburse a provider for them unless they qualify as medical food or food for special dietary use under rule 173-4-05.4 of the Administrative Code.

(C) Units of service:

(1) Congregate nutrition program: A unit of service is one meal prepared and served in compliance with this rule and rule 173-4-04 of the Administrative Code.

(2) Home-delivered nutrition program: A unit of service is one meal prepared and delivered in compliance with this rule and rule 173-4-04.1 of the Administrative Code.

(3) Restaurant and grocery meal service: A unit of service is one meal acquired in compliance with this rule and rule 173-4-04.2 of the Administrative Code.

*****DRAFT - NOT FOR FILING*****

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-05 Meal service.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) "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.

(B) 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:

(1) Nutritional adequacy:

(a) The provider shall only provide a meal that complies with the most recent "Dietary Guidelines for Americans" which are published by the secretaries of the United States department of health and human services and the United States department of agriculture and found on http://www.health.gov/dietaryguidelines and in the appendix to this rule.

(b) The provider shall provide a meal that meets a minimum of one-third of the dietary reference intakes (DRIs). DRIs are a comprehensive set of nutrient reference values based on healthy persons for assessing and planning individual and group diets. The food and nutrition board, institute of medicine, and the national academy of sciences establishes DRIs and lists them on http://fnic.nal.usda.gov/.

(c) The provider shall use rule 173-4-05.1 of the Administrative Code to determine the nutritional adequacy of the meals for which it seeks reimbursement from the AAA.

(2) 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.

(3) Menu planning:

(a) The provider shall assure that all menus meet the meal requirements of this rule.

(b) 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.

(c) The provider shall only offer a menu that is approved by a LD.

(d) The provider shall only offer menu substitutions that are approved by a LD.

(e) The provider shall list the serving size for each food item on each production menu.

(4) Consumer choice: Consistent with self-directed care practices, the provider shall offer a consumer the opportunity to make choices about the meals served by using one or more of the following methods:

(a) Allow consumers to choose between two or more food items within at least two of the following categories:

(i) Meat and meat alternates;

(ii) Vegetables;

(iii) Fruits;

(iv) Bread or bread alternates;

(v) Milk or milk alternates;

(vi) Desserts (if offered); or,

(vii) Meat or meat-alternate entrees combined with servings of other foods.

(b) Allow consumers to select an alternative meal type (e.g., boxed lunch, frozen meal, or vacuum-packed meal) that has the same nutrient content of a regular meal or follows the meal pattern for a regular meal;

(c) Offer consumers of home-delivered meals options regarding the frequency of meal deliveries;

(d) Offer consumers of congregate meals options regarding:

(i) Brunch meals;

(ii) Weekend meals;

(iii) Dining at restaurants;

(iv) Days of service for rural areas; or,

(v) Two meals per day at the congregate meal site.

(5) Therapeutic and modified meals: A provider shall only provide therapeutic or modified meals if those meals meet the additional requirements under rule 173-4-05.2 of the Administrative Code.

(6) Alternative meals: A provider shall only provide alternative meals if those meals meet the additional requirements under rule 173-4-05.3 of the Administrative Code.

(7) Medical food and food for special dietary use: A provider shall only offer medical food or food for special dietary use if the food meets the additional requirements under rule 173-4-05.4 of the Administrative Code.

(8) Dietary supplements: The AAA shall not allow a provider to serve multi-vitamin or mineral supplements nor reimburse a provider for them unless they qualify as medical food or food for special dietary use under rule 173-4-05.4 of the Administrative Code.

(C) Units of service:

(1) Congregate nutrition program: A unit of service is one meal prepared and served in compliance with this rule and rule 173-4-04 of the Administrative Code.

(2) Home-delivered nutrition program: A unit of service is one meal prepared and delivered in compliance with this rule and rule 173-4-04.1 of the Administrative Code.

(3) Restaurant and grocery meal service: A unit of service is one meal acquired in compliance with this rule and rule 173-4-04.2 of the Administrative Code.

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

# ***DRAFT - NOT FOR FILING***

**173-4-05 Meal requirements.**

(A) In addition to complying with the requirements for meal programs in rule 173-4-04, 173-4-04.1, and 173-4-04.2 of the Administrative Code, providers shall comply with the following requirements regarding meals:

(1) Nutritional adequacy: The provider shall comply with rule 173-4-05.1 of the Administrative Code.

(2) 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 the method for offering the ingredient information before the provider implements the method.

(3) Menu planning:

(a) 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.

(b) The provider shall only offer a menu that is approved by a licensed dietitian.

(c) The provider shall list the serving size for each food item on each production menu.

(4) Consumer choices: The provider shall use one or both of the following methods to offer choices to consumers about the meal items the provider furnishes to them:

Comment [ODA1]: New choices compared to the current version of the rule.

(a) Menu options method: A provider that uses this method shall allow consumers to choose between menu items in the following combinations: a choice between two main dishes in the same meal, a choice between two side dishes in the same meal, or a choice between two meals that do not share the same main dishes or side dishes. The provider may use a technology-based system (e.g., agency management software) to obtain the consumers' choices for an upcoming meal during a previous meal.

(b) Self-direction method: A provider that uses this method shall offer a salad bar, soup bar, or a family-style setting to consumers. As used in this paragraph, "family-style setting" means table setting that involves a serving platter for each menu item from which all consumers who are seated at the table may serve to themselves.

(5) Therapeutic and modified meals: A provider shall only furnish therapeutic or modified meals if those meals meet the additional requirements under rule 173-4-05.2 of the Administrative Code.

(6) Non-therapeutic, non-modified meal types requiring special consideration: A provider shall only furnish non-therapeutic, non-modified meal types that require special consideration if those meals meet the additional requirements under rule 173-4-05.3 of the Administrative Code.

(7) Dietary supplements: The provider shall not furnish multi-vitamin or mineral supplements to consumers. AAAs shall not reimburse a provider for furnishing multi-vitamin or mineral supplements.

(B) Units of service:

(1) Congregate meal program: A unit of service is one meal that is furnished in compliance with this rule and rule 173-4-04 of the Administrative Code.

(2) Home-delivered meal program: A unit of service is one meal that is delivered in compliance with this rule

and rule 173-4-04.1 of the Administrative Code.

(3) Alternative meal program (restaurants and supermarkets): A unit of service is one meal furnished in compliance with this rule and rule 173-4-04.2 of the Administrative Code.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-05.1 Methods for determining nutritional adequacy.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

The provider shall offer a menu to consumers that is nutritionally adequate as determined by nutrient analysis, menu patterns, or a combination of both. "Nutrient analysis" means a process by which food, beverage, and supplement intake are evaluated for nutrient content over a specific period of time that is based upon standard references for nutrients in the component foods. "Menu pattern" means a menu-planning tool used to identify the types and amounts of foods that are recommended to meet specific nutritional requirements. Of these options, the preferred method is to determine nutritional adequacy by means of nutrient analysis.

DRI Nutrient-Value Requirements (for Nutrient-Analysis Method)

| LEADER NUTRIENTS | TARGET VALUES | COMPLIANCE RANGES |
|---|---|---|
| Calories | 700 calories | 600-800 calories |
| Protein | 19 gm | No less than 18 gm |
| Fat | 20 gm | No more than 25 gm |
| Vitamin A | 275 µg | No less than 210 µg |
| Vitamin B6 | 0.53 mg | No less than 0.5 mg |
| Vitamin B12 | 0.8 µg | No less than 0.7 µg |
| Vitamin C | 28 mg | No less than 24 mg |
| Vitamin D | 200 iu | No less than 175 iu |
| Calcium | 400 mg | No less than 360 mg |
| Magnesium | 125 mg | No less than 110 mg |
| Zinc | 3.1 mg | No less than 2.75 mg |
| Sodium | 500 mg | No more than 1100 mg |
| Potassium | 1,567 mg | No less than 1000 mg |
| Fiber | 9 gm | No less than 6 gm |

(A) Nutrient-analysis method: The provider shall only determine the nutritional adequacy of a meal by means of nutrient analysis if the provider complies with the following:

(1) Software: The provider's nutrient-analysis software has been approved by the LD of the AAA with which the provider has entered into a provider agreement to provide a meal service;

(2) Compliance ranges:

(a) Per-meal: Unless the provider uses the option in paragraph (A)(2)(b) of this rule on menu averaging, each meal shall fall within the compliance ranges for the adjusted DRI nutrient-value requirements established by the "DRI Nutrient-Value Requirements" table of this rule. The target values for each leader nutrient are based upon one meal per day (one-third of the DRI) for the average older population served by the nutrition program, except for the sodium compliance ranges, which are based on the "Dietary Guidelines for Americans." When serving three meals to a consumer in one day, the target values and compliance ranges are tripled (one hundred per cent of the DRI).

(b) Menu averaging: The provider using the nutrient analysis option shall meet the compliance ranges for leader nutrients in the daily menu or as averaged based on the week's menu for ten out of the fourteen leader nutrients, so long as one of the ten leader nutrients is vitamin B12.

# ***DRAFT - NOT FOR FILING***

Menu Pattern (for Menu-Pattern Method)

| FOOD TYPES | BREAKFAST or BRUNCH | LUNCH or DINNER |
|---|---|---|
| Meat or meat alternate | 1-2 servings | 2-3 servings |
| Vegetables or fruits | 2 servings | 3 servings |
| Bread or bread alternate | 2 servings | 2 servings |
| Milk or milk alternate | 1 serving | 1 serving |
| Desserts | Optional | Optional |
| Fat | Optional | Optional |
| Accompaniments (e.g., condiments, sauces, spreads) | Optional | Optional |
| Beverages (e.g., water, coffee, tea) | Optional | Optional |

(B) Menu-pattern method: The provider may use the menu-pattern method instead of the nutrient-analysis method that ODA recommends, but only if the provider uses the menu pattern in the "Menu Pattern" table of this rule:.

(1) Double classification: Although the provider has the option to classify some individual food items as belonging to one food type or another in the "Menu Pattern" table of this rule, the provider may only classify a single serving of any individual food item in any single meal as part of one type. For example, although the provider may classify a serving of dried beans as either a meat alternate or vegetable, the provider may not classify dried beans as both a serving of a meat alternate and a vegetable in the same meal. Also, although the provider may classify cheese as either a serving of a meat alternate or a serving of a milk alternate, the provider may not classify cheese as both a serving of a meat alternate and a milk alternate in the same meal.

(2) Meat or meat alternates:

(a) The provider shall not serve high-fat and high-sodium processed meats (e.g., hot dogs, bologna, or sausage) more than twice per month.

(b) The provider may serve egg whites or low-cholesterol egg substitutes, but shall not serve more than one egg yolk per meal.

(c) The provider shall serve a variety of meat and meat alternates to help meet the DRI requirements for protein, iron, vitamin B6, vitamin B12, and zinc.

(d) The provider may serve meatless meals that contain eggs; dried beans, peas, or lentil soups; tofu-based products; or vegetarian entrées so long as the meals meet the DRI requirements for protein.

(e) When planning a meal under the menu-pattern method, the provider may use the guidelines in the "Serving Sizes for Meat and Meat Alternates" table to this rule to determine one serving of meat or meat alternate.

# ***DRAFT - NOT FOR FILING***

Serving Sizes for Meat and Meat Alternates

| FOOD | SERVING SIZE |
|---|---|
| Cooked, lean meat, poultry, or fish | 1 ounce, which is equivalent to 7 grams of protein |
| Cheese or processed cheese (if the processed cheese are pasteurized and nutritionally equivalent to cheese) (low-fat preferred) | 1 ounce |
| Egg | 1 |
| Cooked, dried beans, peas, or lentils | 1/2 cup |
| Peanut butter | 2 tablespoons |
| Cottage cheese, low-fat | 1/4 cup |
| Tofu | 1/2 cup |

(3) Vegetables and fruits:

(a) Throughout each week, the provider shall serve a variety of fruits and vegetables, especially dark-green, orange, red, and legume items.

(b) The provider shall consider all full-strength vegetable juices and all full-strength, unsweetened fruit juices to be vegetables and fruits.

(c) The provider shall prefer usage of vitamin-fortified juices, low-sodium vegetable juice, or sodium-reduced tomato juice over other juices.

(d) The provider shall consider one-half cup of cooked, dried beans, peas, or lentils; one-half cup of full-strength (i.e., one hundred per cent) sodium-reduced vegetable juice; or, one cup of raw, leafy vegetables as one serving of vegetables.

(e) The provider shall consider a serving of soup, stew, casserole, or other combination dish a serving of a vegetable only if the soup, stew, casserole, or other combination dish contains at least one-half cup of vegetables per serving.

(f) The provider shall prefer to use sodium-reduced soup base and tomato products over other soup bases and tomato products.

(g) The provider shall not serve sauerkraut more than once per month, or twice per month if one occurrence of sauerkraut is as an ingredient in another food item.

(h) The provider shall not consider rice, spaghetti, macaroni, or noodles to be a vegetable.

(i) The provider shall consider a medium-sized apple, an orange, a pear, or a small banana; one-half cup of full-strength fruit juice; one-half cup of cranberry juice drink; or, one fourth of a cup of dried fruit to be one serving of fruit.

(j) The provider shall consider a menu item to be a serving of fruit if one serving of the item contains at least one-half cup of fruit (e.g., fruit cobbler).

(k) The provider shall only consider fresh fruit, frozen fruit, or canned fruit (packed in its own juice, with light syrup, or without sugar) to be fruit.

# ***DRAFT - NOT FOR FILING***

(4) Bread or bread alternates:

(a) The provider shall prefer to serve a variety of enriched whole-grain bread products.

(b) The provider shall not consider starchy vegetables (e.g., potatoes, sweet potatoes, corn, yams, and plantains) to be a serving of bread or a bread alternate.

(c) The provider shall not consider breading on meat (or a meat alternate) or on vegetables to be a serving of bread or a bread alternate.

(d) When planning a meal under the menu-pattern method, the provider may use the guidelines in the "Serving Sizes for Breads and Bread Alternates" table to this rule to determine one serving of bread or bread alternate.

Serving Sizes for Breads and Bread Alternates

| FOOD | SERVING SIZE |
|---|---|
| Animal crackers | 8 crackers |
| Angel food cake | 1/12 of cake or 2 ounces |
| Bagel | 1 ounce or one half of a large bagel |
| Biscuit | One 2.5 inch diameter biscuit |
| Bread | 1 slice |
| Bread dressing/stuffing | 1/2 cup |
| Cake (unfrosted) | One 2-inch square or one ounce |
| Cooked cereal | 1/2 cup |
| Crackers | 4-6 crackers |
| English muffin | 1/2 muffin |
| French toast | 1 slice |
| Ginger snaps | 3 snaps |
| Graham crackers | 3 crackers that are 2.5-inch squares |
| Muffin, roll | 1 ounce |
| Pancake | 4-inch diameter, 1/4-inch thick |
| Pasta, noodles, or rice | 1/2 cup |
| Pita | One 4-inch diameter or 1/2 6-inch diameter |
| Pudding (sugar free) | 1/2 cup or 4 ounces |
| Quick bread | One 2-inch square |
| Ready-to-eat cereal, fortified | 1 cup or 1 ounce |
| Sandwich bun | 1 small bun or 1/2 large bun |
| Tortilla | 1 6-inch diameter tortilla |
| Vanilla wafers | 5 wafers |
| Waffle | One 4-inch square |

(5) Milk or milk alternates:

(a) The provider shall prefer to use fat-free milk, low-fat milk (i.e., milk with no more than one per cent fat content), or fortified soy beverages.

(b) The provider shall not consider calcium-fortified juice to be both a serving of fruit and a serving of milk in the same meal.

(c) The provider shall not consider cheeses or tofu to be both a serving of meat alternate and a serving of milk alternative in the same meal.

(d) When planning a meal under the menu-pattern method, the provider may use the guidelines in the "Serving Sizes for Milk and Milk Alternates" table to this rule to determine one serving of milk or milk alternate.

Serving Sizes for Milk and Milk Alternates

| FOOD | SERVING SIZE |
|---|---|
| Fat-free (skim) or 1% milk, buttermilk, or chocolate milk fortified with vitamins A and D | 8 ounces |
| Lactose-reduces or lactose-free milk | 8 ounces |
| Yogurt, low-fat, fortified with vitamins A and D | 6 ounces or 3/4 cup |
| Soy beverage or rice beverage enriched with calcium and vitamins A and D | 8 ounces |
| Tofu | 1/2 cup |
| Hard, natural cheese (prefer low-fat) | 1.5 ounces |
| Processed cheese (prefer low-fat) | 2 ounces |
| Juice fortified with calcium and vitamin D | 8 ounces |

(6) Desserts (if provided in meal):

(a) The provider shall prefer to serve healthier desserts that include fruit, whole grains, low-fat products, and/or products with limited sugar content and avoid products that contain trans fats.

(b) The provider shall consider one-half cup of fruit and one-half cup of simple dessert (e.g., sugar-free pudding and frozen yogurt) to be a serving of dessert.

(c) The provider shall prefer to serve fresh, frozen, or canned fruits that are packed in juice or light syrup as a dessert item in addition to the serving of fruit that may be provided as another part of the meal.

(d) The provider shall prefer to not serve cakes, single-crust pies, cobblers, and cookies more than twice per week and shall avoid products that contain trans fats.

(e) When planning a meal under the menu-pattern method, the provider may use the guidelines in the "Serving Sizes for Breads and Bread Alternates" table to this rule to determine one serving of dessert.

(7) Fats (if provided in meal):

(a) The provider shall consider one teaspoon of fortified, soft margarine; mayonnaise; or vegetable oil; or one tablespoon of salad dressing to be a serving of fat.

(b) The provider shall not serve more than two servings of fats and oils in a meal. Fat used as an ingredient in a menu item is not counted as a serving of fat.

(8) Accompaniments (if provided in meal):

(a) Condiments: The provider shall prefer to serve mustard, ketchup, tartar sauce, or other traditional accompaniments with a meal item.

(b) Seasonings:

(i) When the provider prepares a meal, the meal must comply with the sodium limits in the federal dietary reference intakes and "Dietary Guidelines for Americans."

(ii) The provider shall prefer to provide herbal or granulated seasonings, instead of salt, for use by a consumer as an accompaniment to a meal.

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

# ***DRAFT - NOT FOR FILING***

**173-4-05.1 Meals and nutritional adequacy.**

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(A) For each mealtime, the provider shall offer a meal that satisfies a minimum of one-third of the dietary reference intakes (DRIs). The provider shall target nutrient levels based on the predominant population and health characteristics of the consumers in the planning and service area. The federal government makes the DRIs available to the general public free of charge on http://fnic.nal.usda.gov/.

(B) For each mealtime, the provider shall offer a meal that satisfies the "2010 Dietary Guidelines for Americans." The federal government makes the guidelines available to the general public free of charge on http://www.health.gov/dietaryguidelines.

(C) A consumer may refuse to eat a particular meal item that the provider offers to the consumer, in which case the provider does not need to furnish the offered item to the consumer.

(D) The provider shall adjust the nutritional adequacy to meet consumers' special dietary needs.

(E) The provider may use flexibility in designing meals that are appealing to consumers.

**Comment [ODA1]:** ODA is proposing to use "offer" instead of "furnish" in this rule to make sense of the "flexibility" available to providers and AoA's FAQ page, which says that a consumer may refuse a particular meal item that the provider offers.

**Comment [ODA2]:** ODA states this to comply with the incorporation-by-reference statutes.

**Comment [ODA3]:** ODA states this to comply with the incorporation-by-reference statutes.

**Comment [ODA4]:** From §339 of the Act.

**Comment [ODA5]:** The Act does not define special dietary needs, which means "needs" could be medical, perceived, or associated with a worldview (*e.g.*, kosher diet, vegetarian diet).

**Comment [ODA6]:** From §339 of the Act.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-05.2 Therapeutic and modified meals.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

Before a provider may offer a therapeutic or modified meal, the provider shall determine the need, feasibility, and cost-effectiveness of offering a therapeutic or modified meal by using the knowledge and expertise of a LD. The provider shall only provide a therapeutic or modified meal that meets the requirements of rule 173-4-05 of the Administrative Code and the following requirements:

(A) Therapeutic meals:

(1) Physician order:

(a) The provider may only provide a therapeutic meal as ordered by a physician, or another healthcare professional with prescriptive authority, as part of a treatment of a disease or a clinical condition to eliminate, decrease, or increase certain foods or nutrients in the diet.

(b) The provider may only provide a therapeutic meal if the order of a physician, or another healthcare professional with prescriptive authority, is on file with the provider or the AAA.

(c) The case manager of the AAA or the provider shall review the physician's written order for a therapeutic meal and update the order any time the physician changes the order.

(d) The provider shall assure that the therapeutic diet contains nutrients consistent with the physician's order by either utilizing nutrient analysis or by using a meal-pattern plan approved by a LD.

(2) Dysphagia therapeutic meals:

(a) The provider may provide a dysphagia therapeutic meal for someone with a diagnosed neurological condition that makes oral or pharyngeal swallowing difficult or dangerous. The provider shall make the dysphagia meal with a consistency that is specific to the consumer's needs.

(b) The physician or other healthcare professional with prescriptive authority shall order either a level-one (puréed) or level-two (chopped or ground) dysphagia therapeutic diet. The order shall include thickening agents, if required.

(3) Diabetic meals using carbohydrate choices:

(a) The provider shall take the following principles into consideration when planning a diabetic meal using carbohydrate choices: The amount of carbohydrates consumed and the timing of meals, rather than the source of the carbohydrates, are the keys to controlling blood-sugar levels. One carbohydrate choice is equivalent to fifteen grams of carbohydrates. Carbohydrates are found in bread/starch, milk, fruit, starchy vegetables, and desserts.

(b) If the provider uses a menu pattern to plan a diabetic meal using carbohydrate choices, the provider:

(i) Shall limit a consumer to four to five carbohydrate choices per meal;

(ii) Shall allow a consumer no carbohydrate choices for meat or meat alternates. Dried beans, peas, and lentils are considered starchy vegetables;

(iii) Shall allow one carbohydrate choice per serving of starchy vegetables and use the same items and serving sizes listed in paragraph (B)(3) of rule 173-4-05.1 of the Administrative Code. Starchy vegetables include baked beans; corn; corn-on-the-cob; cooked, dried beans (e.g., pinto

beans, kidney beans, and navy beans); lima beans; lentils; mixed vegetables with corn; peas; plantain; potato; sweet potato; winter squash (e.g., acorn, butternut, pumpkin); and yams;

(iv) Shall allow one carbohydrate choice per serving of fruit. One carbohydrate choice equals one piece of a small or medium-sized fresh fruit; one-half cup of unsweetened, frozen fruit; one-half cup of unsweetened, canned fruit; one-half cup of unsweetened fruit juice; or one-fourth cup of dried fruit;

(v) Shall allow one carbohydrate choice per serving of milk, yogurt, or soy beverage; but do not allow any carbohydrate choice for cheese or tofu. One carbohydrate choice is equivalent to one cup of buttermilk, low-fat milk, or fat-free milk fortified with vitamins A and D; one cup of lactose-reduced or lactose-free milk; six ounces of low-fat yogurt that is fortified with vitamins A and D; or one cup of low-fat soy beverage that is fortified with calcium and vitamins A and D;

(vi) Shall allow one carbohydrate choice per serving of dessert. One carbohydrate choice equals one ounce or a two-inch square of an unfrosted brownie or cake, two small plain cookies, one-half cup of frozen yogurt; one-half cup of sugar-free pudding; or, a slice of single-crusted pie that is one-sixteenth of an eight-inch-diameter pie; and,

(vii) May use the guidelines in the "Carbohydrate Choice Guidelines" table to this rule. The table's menu illustrates how carbohydrate choices can be used to plan a diabetic meal. The amount of carbohydrates a person consumes and the timing of the meals, rather than the source of the carbohydrates, are the keys to controlling blood-sugar levels. One carbohydrate choice is equal to fifteen grams of carbohydrates.

Carbohydrate Choice Guidelines

| FOODS | CARBOHYDRATE CHOICES | EXAMPLES |
|---|---|---|
| 2 ounces of meat or meat alternate (with the exception of dried beans, peas, and lentils, which are considered starchy vegetables) | 0 | 2 ounces few baked chicken |
| 1 serving of a non-starchy vegetable | 0 | 1/2 cup of green beans |
| 1 serving of a starchy vegetable | 1 | 1/2 cup of mashed potatoes |
| 1 serving of fruit | 1 | 1/2 cup of unsweetened peaches |
| 1 serving of bread or bread alternate | 1 | 1 slice of whole wheat bread |
| 1 serving of milk or milk alternate | 1 | 8 ounces of low-fat milk |
| TOTAL | 4 | |

(B) Modified meals:

(1) The provider may only provide a modified meal if the nutritional adequacy of the meal is determined by nutrient analysis or the menu pattern.

(2) A modified meal may be provided to a consumer without an order from a healthcare professional.

(3) If the provider offers modified meals, the provider shall offer:

(a) Lower-sodium substitutions for foods containing four hundred eighty milligrams of sodium (or more) per serving~~:~~.

(b) Dental soft substitutions that are chopped, ground, or puréed and that are similar in nutritive value, but have a softer consistency to help with chewing~~:~~.

(c) Milk-alternate substitutions, if milk is offered on the menu; or,

(d) Low-fat, low-cholesterol substitutions, if the regular menu item is high in fat and cholesterol according to the standards established in the national cholesterol education program diet or the heart-healthy diet program. "Heart-healthy diet" means a diet that involves a decrease in the consumption of foods high in cholesterol and fat compared to an average diet. If the provider offers low-fat, low-cholesterol substitutions, the provider shall not offer:

(i) Foods that are high in fat include fatty meats (e.g., ribs, regular hamburger, bacon, sausage, cold cuts, salami, bologna, corned beef, hot dogs, fried meats, fried fish, chicken skin, turkey skin); sauces and gravies; fried vegetables; whole milk dairy products (e.g., whole milk, two per cent milk, whole-milk yogurt, ice cream, cream, half and half, cream cheese, sour cream, whole-milk cheeses); high-fat bakery items (e.g., biscuits, croissants, pastries, doughnuts, pies, cookies, muffins) and solid fats (e.g., butter, stick margarine, shortening, lard).

(ii) Foods that are high in cholesterol include organ meats (e.g., liver).

(iii) Foods that include egg yolks more than twice per week.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

**173-4-05.2 Therapeutic and modified meals.**

Before a provider may offer a therapeutic or modified meal, the provider shall determine the need, feasibility, and cost-effectiveness of offering a therapeutic or modified meal by using the knowledge and expertise of a licensed dietitian. The provider shall only furnish a therapeutic or modified meal that meets the requirements of rule 173-4-05 of the Administrative Code and the following requirements:

(A) Therapeutic meals:

(1) Physician order:

(a) The provider shall only furnish a therapeutic meal if a physician, or another healthcare professional with prescriptive authority, orders the therapeutic meal as part of a treatment of a disease or a clinical condition to eliminate, decrease, or increase certain foods or nutrients in the diet.

(b) The provider shall only furnish a therapeutic meal if the order of a physician, or other healthcare professional, is on file with the provider or the AAA.

(c) The AAA's case manager or the provider shall review the written order for a therapeutic meal and update the order any time the physician, or other healthcare professional, changes the order.

(d) The provider shall assure that the therapeutic diet contains nutrients consistent with the physician's order by either utilizing nutrient analysis or by using a meal-pattern plan approved by a licensed dietitian.

(2) Dysphagia therapeutic meals:

(a) The provider may furnish a dysphagia therapeutic meal for someone with a diagnosed neurological condition that makes oral or pharyngeal swallowing difficult or dangerous. The provider shall make the dysphagia meal with a consistency that is specific to the consumer's needs.

(b) The physician or other healthcare professional with prescriptive authority shall order either a level-one (puréed) or level-two (chopped or ground) dysphagia therapeutic diet. The order shall include thickening agents, if required.

(3) Diabetic meals.

(B) Modified meals:

(1) The provider shall only furnish a modified meal if the nutritional adequacy of the meal is determined by nutrient analysis or the menu pattern.

(2) The provider may furnish a modified meal to a consumer without an order from a healthcare professional.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-05.3 Alternative meals and meal types.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

A provider shall only provide an alternative meal if the meal complies with rules 173-4-05 and 173-4-05.1 of the Administrative Code and the additional requirements under this rule.

(A) Cultural meal:

(1) The provider may provide a cultural meal to meet the particular dietary needs arising from cultural backgrounds or beliefs.

(2) The provider shall only provide a cultural meal if the meal has the same nutrient content of a regular meal or follows the meal pattern for a regular meal, unless restricted by cultural backgrounds or beliefs.

(3) The provider may provide any of the following categories of vegetarian diets:

(a) "Lacto-vegetarian diet" means a diet of only foods derived from plants and also cheese and other dairy products.

(b) "Ovo-lacto-vegetarian diet" means a diet of only plant foods, cheese and other dairy products, and eggs.

(c) "Semi-vegetarian diet" means a diet that does not include red meat, but includes chicken, fish, plant foods, dairy products, and eggs.

(B) Breakfast and brunch-style meal: A provider may only offer a breakfast or brunch-style meal if the breakfast or brunch-style meal has the same nutrient content of a regular meal or follows the breakfast meal pattern.

(C) Salad bar or soup and salad bar meal (self-directed care):

(1) The provider may provide a salad bar or soup and salad bar meal service that allows consumers to serve themselves a partial or complete meal from an array of cold foods or a combination of hot and cold foods contained in a piece of equipment designed to maintain foods at proper temperatures.

(2) A salad bar served as a meal accompaniment shall offer at least three raw vegetables, one of which is deep green, red, or orange; two fruits; two salad dressings, one of which is low-fat; one mixed salad that contains fruits or vegetables like coleslaw, waldorf salad, etc. This counts as two servings of fruits or vegetables.

(3) A salad bar served as a meal replacement shall offer four raw vegetables, one of which is deep green, red, or orange; two fruits; two meats or meat substitutes; a calcium source equivalent to eight ounces of milk per serving; two salad dressings; and two servings from the bread group; and an optional dessert. This counts as a full meal if all menu requirements are met.

(4) A soup and salad bar served as a meal replacement shall meet the criteria under paragraph (C)(3) of this rule and contain one soup that is a lower-sodium and lower-fat soup.

(5) The provider shall document that it provided food safety and sanitation training before serving a salad bar or soup and salad bar meal.

(D) Frozen, vacuum-packed, cooked-chilled, or modified atmosphere packed (MAP) meal: A "vacuum-packed" meal is a prepared, pre-cooked meal that is packaged in a container in which all the air is removed before the container is sealed to prolong the shelf life and preserve the flavor. A "modified atmosphere packed"

("MAP") meal is a prepared, pre-cooked meal in which a combination of gases (e.g., oxygen, carbon dioxide, nitrogen) are introduced into the package at the time it is sealed to extend the shelf life of the food package:

(1) The provider may only provide a frozen, vacuum-packed, cooked-chilled, or MAP meal that has the same nutrient content of a regular meal or follows the meal pattern for a regular meal.

(2) If the frozen, vacuum-packed, cooked-chilled, or MAP meal is intended as a second meal, the two meals served that day shall together meet two-thirds of the DRI.

(3) The provider shall refrigerate frozen, vacuum-packed, cooked-chilled meals, and MAP meals during delivery to the consumer.

(4) The provider shall provide written preparation instructions for the consumer.

(5) The provider shall label the meal with the use by date or expiration date on the meal package.

(6) The provider may only provide a frozen, vacuum-packed, cooked-chilled, or MAP meal to a consumer if the consumer's assessment stipulates that the meal is appropriate.

(E) Non-perishable, emergency, and shelf-stable meal: A "shelf-stable meal" is a meal that is non-perishable, ready-to-eat, stored at room temperature, and eaten without heating. Shelf-stable meals use commercially-produced, approved sources (e.g., canned food, dried foods, or ultra-high temperature pasteurized items such as shelf-stable milk, shelf-stable puddings, and shelf-stable juices):

(1) Every provider of a congregate or home-delivered nutrition program shall develop a written plan for continuing services for the congregate and home-delivered meal service during a weather-related emergency or other emergency. At a minimum, in the plan, the provider shall explain how it plans to enact one of two strategies:

(a) Distribute information to consumers on how a consumer may stock his/her emergency food shelf; or,

(b) Distribute shelf-stable meals to consumers for storage on a consumer's emergency food shelf.

(2) The provider may only provide a non-perishable, emergency, or shelf-stable meal that has the same nutrient content of a regular meal or follows the meal pattern.

(3) The provider may only provide a non-perishable, emergency, or shelf-stable meal if the provider includes a use by date or an expiration date with the meal.

(F) Sacked lunch or boxed lunch:

(1) The provider may only provide a sacked or boxed lunch that has the same nutrient content of a regular meal or follows the meal pattern for a regular meal.

(2) The provider may only provide a sacked or boxed lunch if the provider includes a use by date or expiration date.

**ONLINE PUBLIC-COMMENT PERIOD**
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**173-4-05.3 Non-therapeutic, non-modified meal types that require special consideration.**

A provider shall only provide the following non-therapeutic, non-modified meal types if the meals comply with rules 173-4-05 and 173-4-05.1 of the Administrative Code and the additional requirements under this rule.

(A) Cultural meals:

(1) The provider may provide a cultural meal to meet the particular dietary needs arising from cultural backgrounds or beliefs.

(2) The provider may provide any of the following categories of vegetarian diets:

(a) "Lacto-vegetarian diet" means a diet of only foods derived from plants and also cheese and other dairy products.

(b) "Ovo-lacto-vegetarian diet" means a diet of only plant foods, cheese and other dairy products, and eggs.

(c) "Pesco-vegetarian diet" which means a vegetarian who consumes dairy products, eggs, and fish, but does not consume other animal flesh.

(d) "Semi-vegetarian diet" means a diet that does not include red meat, but includes chicken, fish, plant foods, dairy products, and eggs.

(B) Frozen, vacuum-packed, cooked-chilled, or MAP meals. A provider that furnishes frozen, vacuum-packed, cooked-chilled, or MAP meals shall also comply with the following:

(1) If the frozen, vacuum-packed, cooked-chilled, or MAP meal is intended as a second meal, the two meals served that day shall together meet two-thirds of the dietary reference intakes unless there is a need for flexibility or the consumer chooses menu options that do not comprise two-thirds of the dietary reference intakes.

(2) The provider shall refrigerate frozen, vacuum-packed, cooked-chilled meals, and MAP meals during delivery to the consumer.

(3) The provider shall provide written preparation instructions for the consumer.

(4) The provider shall only furnish a frozen, vacuum-packed, cooked-chilled, or MAP meal to a consumer if the consumer's assessment stipulates that the meal is appropriate.

(C) Definitions for this rule:

(1) "Modified atmosphere packed meal" ("MAP meal") means a prepared, pre-cooked meal that is packaged in a container into which a combination of gases (e.g., oxygen, carbon dioxide, nitrogen) are introduced at the time the container is sealed to extend the meal's shelf life and flavor.

(2) "Vacuum packed meal" means a prepared, pre-cooked meal that is packaged in a container from which all the air is removed before the container is sealed to prolong the meal's shelf life and flavor.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind.

# ***DRAFT - NOT FOR FILING***

**173-4-05.4 Medical food and food for special dietary use.**

Comment [ODA1]: ODA is proposing to rescind this rule. In 2012, only AAA3 had a contract. A provider served 676 meals that year to 28 consumers. In 2013, AAA3's provider served 384 meals to 15 consumers. In 2014, not a single AAA has entered into a contract with a provider to furnish such meals.

A provider shall only provide medical food or food for special dietary use if the food complies with rule 173-4-05 of the Administrative Code and the additional requirements under this rule.

(A) Medical food:

(1) The AAA shall determine the need, feasibility, and cost-effectiveness of establishing a service for implementing medical food by using the expertise of a LD.

(2) Under the "Orphan Drug Amendment of 1988," Public Law 100-290, medical food is formulated to be consumed or administered internally under the direction of a physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(3) Medical food is not intended for the general public.

(4) Examples are enteral products that treat:

(a) Kidney disease (dialyzed patients with chronic or acute renal failure);

(b) Liver disease (liver dysfunction, and encephalopathy);

(c) Hypermetabolic states (severe burns, trauma, or infection); or,

(d) Lung disease (chronic obstructive pulmonary disease, and acute respiratory distress syndrome).

(B) Food for special dietary use:

(1) The provider shall determine the need, feasibility, and cost-effectiveness of establishing a service for implementing food for special dietary use by using the knowledge and expertise of a LD.

(2) Under the "Food, Drug, and Cosmetics Act," 21 U.S.C. 350 (c)(3), food for special dietary use means a particular use for which a food purports or is represented to be used, including, but not limited to:

(a) Supplying a special dietary need that exists by reason of a physical, physiological, pathological, or other condition, including, but not limited to, the condition of disease, convalescence, allergic hypersensitivity to food, being underweight, being overweight, or the need to control the intake of sodium or simple sugars; or,

(b) Supplying a dietary need by a food for special dietary use as the sole item of the consumer's diet.

(3) Food for special dietary use is intended for the general public and may be used as a supplement to a normal diet or as a meal replacement.

(4) Examples of food for special dietary are:

(a) Thickened liquids used for dysphasia;

(b) Gluten-free products for those with celiac sprue;

(c) Meal-replacement liquids;

(d) High-calorie liquid supplements;

(e) High-calorie, high-protein liquid supplements for those with fluid restrictions;

(f) High-calorie puddings; or,

(g) A meal replacement with additional calcium for those at risk of fractures or recovering from fractures.

(5) Providers offering medical food or food for special dietary use shall:

(a) Only offer a consumer medical food or food for special dietary use if a physician, or healthcare professional with prescriptive authority, has prescribed the food for the consumer no more than ninety calendar days ago;

(b) Keep any prescription for the food on file with the provider or the AAA;

(c) Ask the physician, or healthcare professional with prescriptive authority, who has written a prescription for the food to review and update the prescription every ninety calendar days; and,

(d) Rely upon LDs for oversight for consumers who receive medical food or food for special dietary use, who may use the food in the following ways:

(i) It may replace a meal for a consumer if it is ordered by a physician or healthcare professional with prescriptive authority and meets one-third of the DRI, except in cases where the consumer's nutrition care plan dictates otherwise; or,

(ii) It may be needed as an addition to a complete meal, or to replace one item in the menu pattern. The combined meal plus the medical food or food for special dietary use shall meet one-third of the DRI, except in cases where the consumer's nutrition care plan dictates otherwise.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-06 Nutrition consultation service.**

Comment [ODA1]: FOR RESCISSION. Please also review the proposed new version of the rule.

(A) Definitions:

(1) "Nutrition consultation service" (i.e., "medical nutritional therapy") means a service that provides individualized guidance on appropriate food and nutrient intakes for consumers who require disease management. The service includes nutrition assessment, intervention, education, and counseling.

(2) "Consultant" means a person who performs a nutrition consultation service.

(B) Minimum requirements for a nutrition consultation service:

(1) In general:

(a) Authorization: The consultant shall not provide the service to a consumer unless a physician (or another healthcare professional with prescriptive authority) has authorized it for the consumer.

(b) Face-to-face: The consultant shall provide the service to the consumer or family caregiver (on behalf of the consumer) on a face-to-face basis or by means of a telecommunications system. As used in this paragraph, "telecommunications" means technologies that exchange health information and provide health care services across geographic, time, social, and cultural barriers.

(c) Records: For each service performed, the provider shall document the consumer's name; service date and duration of service; service description, including a description of follow-up plans; consultant's name, consultant's signature; and consumer's signature.

(2) Nutrition assessment:

(a) The consultant shall conduct an initial individualized nutrition assessment of the consumer's nutritional needs and, when necessary, subsequent nutrition assessments by assessing:

(i) Nutrient intake;

Comment [ODA 2]: ODA proposes to systematically replace semi-colons with periods in rules to eliminate the run-on sentences in the rules.

(ii) Anthropometic measurements;

(iii) Biochemical values;

(iv) Physical and metabolic parameters;

(v) Socio-economic factors;

(vi) Current medical diagnosis and medications;

(vii) Pathophysiological processes; and,

(viii) Access to food and food-assistance programs.

(b) No later than seven calendar days after the assessment, the consultant shall furnish the results of the assessment to the consumer's case manager, if the consumer has a case manager, and physician (or other healthcare professional with prescriptive authority).

(3) Nutrition intervention plan:

(a) Based upon the results of the nutrition assessment, the consultant shall develop a nutrition intervention plan that includes:

(i) Clinical and behavioral goals and a care plan;

(ii) Intervention planning, including nutrients required, feeding modality, and method of nutrition education and consultation, with expected measurable outcomes;

(iii) Consideration for input from the consumer, physician, case manager, and, when applicable, any family caregiver or relevant service providers; and,

(iv) The scheduling of any follow-up nutrition consultation service.

(b) No later than seven calendar days after the nutrition assessment, the consultant shall furnish the intervention plan to the consumer's case manager and physician (or other healthcare professional with prescriptive authority).

(c) The consultant shall furnish documentation of the plan's implementation and the consumer's outcomes to the case manager and the physician (or other healthcare professional with prescriptive authority).

(d) The consultant shall provide a plan to the consumer.

(4) Consultant qualifications and limitations:

(a) The provider shall furnish evidence to the AAA that the consultant holds a current, valid license to practice as a LD under Chapter 4759. of the Revised Code or a current, valid license to practice another profession in which the license-holder may perform a nutrition consultation service as part of their profession's scope of practice.

(b) The consultant shall not provide a service that exceeds the limitations of the provider agreement with the AAA.

(C) Unit of service: A unit of service is one hour, reported in increments of one-quarter hours.

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

# ***DRAFT - NOT FOR FILING***

**173-4-06 Nutrition counseling.**

Comment [ODA 1]: ODA proposes to switch from "nutrition consultation" to "nutrition counseling."

(A) Definitions for this rule:

(1) "Nutritional assessment" has the same meaning as in rule 4759-2-01 of the Administrative Code.

(2) "Nutrition counseling" has the same meaning as "medical nutrition therapy" in rule 4759-2-01 of the Administrative Code.

(B) In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a nutrition counseling provider shall comply with the following requirements:

(1) In general:

(a) Authorization:

(i) Initial: If the provider receives a signed and dated authorization from the consumer's treating physician (or another healthcare professional with prescriptive authority) indicating that the consumer needs nutrition counseling, the provider may begin to furnish the counseling, subject to the other requirements of this rule. The provider may continue to furnish counseling for up to sixty days after the date of the physician's authorization.

(ii) Subsequent: The provider may furnish counseling for subsequent periods of up to sixty days only if the provider receives a subsequent signed and dated authorization from a physician (or another healthcare professional with prescriptive authority) indicating that the consumer continues to need counseling.

(b) Face-to-face: A licensed dietitian shall furnish the counseling to the consumer or family caregiver (on behalf of the consumer) on a face-to-face basis or by means of a telecommunications system. As used in this paragraph, "telecommunications" means technologies that exchange health information and furnish health care services across geographic, time, social, and cultural barriers.

Comment [ODA 2]: The requirements of the current rule for a consultant are the requirements for a licensed dietitian in the proposed new rule.

(2) Nutritional assessment:

(a) Initial: A licensed dietitian shall conduct an initial nutritional assessment of the consumer by assessing the following:

(i) Nutrient intake.

(ii) Anthropometic measurements.

(iii) Biochemical values.

(iv) Physical and metabolic parameters.

(v) Socio-economic factors.

(vi) Current medical diagnosis and medications.

(vii) Pathophysiological processes.

(viii) Access to food and food-assistance programs.

(b) Subsequent: When necessary, the licensed dietitian shall conduct subsequent nutritional assessments of the consumer by assessing the following:

(i) Nutrient intake, including the following outcome-oriented questions about previously-furnished nutrition counseling:

(a) "Did the counseling assist you in making better food choices?"

(b) "Have you begun to monitor your carbohydrate intake since receiving the counseling?"

(c) "Have you begun to monitor your fat intake since receiving the counseling?"

(d) "Have you begun to monitor your sodium intake since receiving the counseling?"

(e) "Have you begun to monitor your fiber intake since receiving the counseling?"

Comment [ODA 3]: New

(ii) Anthropometic measurements.

(iii) Biochemical values.

(iv) Physical and metabolic parameters.

(v) Socio-economic factors.

(vi) Current medical diagnosis and medications.

(vii) Pathophysiological processes.

(viii) Access to food and food-assistance programs.

(c) No later than seven calendar days after the assessment, the licensed dietitian shall furnish the results of the assessment to the consumer's case manager, if the consumer has a case manager, and physician (or other healthcare professional with prescriptive authority).

(3) Nutrition intervention plan:

(a) Based upon the results of the nutritional assessment, the licensed dietitian shall develop a nutrition intervention plan that includes the following:

(i) Clinical and behavioral goals and a care plan.

(ii) Intervention planning, including nutrients required, feeding modality, and method of nutrition education and counseling, with expected measurable outcomes.

(iii) Consideration for input from the consumer, physician, case manager, and, when applicable, any caregiver or relevant service providers.

(iv) The scheduling of any follow-up counseling.

(b) No later than seven calendar days after the nutritional assessment, the licensed dietitian shall furnish the intervention plan to the consumer's case manager and physician (or other healthcare professional with prescriptive authority).

(c) The licensed dietitian shall furnish documentation of the plan's implementation and the consumer's

outcomes to the case manager and the physician (or other healthcare professional with prescriptive authority).

(d) The licensed dietitian shall furnish a plan to the consumer.

(4) Licensed dietitian qualifications and limitations:

(a) The provider shall furnish evidence to the AAA that the licensed dietitian is a licensed dietitian.

(b) The licensed dietitian shall not furnish counseling that exceeds the limitations of the provider agreement with the AAA.

(5) Service verification:

(a) For each counseling session, the provider shall retain a record of the consumer's name, the date of the counseling, the time of day that the counseling begins and ends, the name and signature of the licensed dietitian who furnished the counseling, and the consumer's signature.

Comment [ODA 4]: ODA proposes to use records-retention language instead of document-maintenance language.

(b) The provider may use a technology-based system to collect and retain this rule's records requirements.

Comment [ODA 5]: New

(C) Unit of service: A unit of service is equal to fifteen minutes of counseling.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-07 Nutrition education service.**

Comment [ODA1]: FOR RESCISSION. Please also review the proposed new rule.

(A) "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.

(B) 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:

(1) In general:

(a) Education materials: The provider may only provide the service if the provider retains a record to show that the AAA's LD determined that the educational materials that the provider plans to distribute:

(i) Are tailored to the consumers' needs, interests, and abilities, including literacy levels;

(ii) Contain accurate and relevant information; and,

(iii) Are written at an appropriate literacy level for the target population, with appropriate font sizes.

(b) Evaluation: The provider shall establish a methodology for evaluating the effectiveness of its nutrition education service; but, the provider shall not utilize the methodology until the AAA's LD has approved the methodology. The provider shall retain records of all the evaluations completed using this methodology for the period of time the AAA's contract with the provider requires.

(c) The AAA shall require a nutrition education service provider to offer to congregate nutrition programs, home-delivered nutrition programs, and providers of a restaurant and grocery meal service one of the following:

(i) A nutrition education service two times per year;

*(a)* Every even-numbered year, the provider shall conduct one of the nutrition-education sessions on the topic of food safety referenced in appendix three to the "Dietary Guidelines for Americans, 2010."

*(b)* Every odd-numbered year, the provider shall conduct one of the nutrition-education sessions on the topic of the relationship between physical activity and healthy weight referenced in chapter two of the "Dietary Guidelines for Americans, 2010."

Comment [ODA2]: ODA proposes to delete this prescriptive criteria in the proposed new rule.

(ii) A nutrition consultation service under rule 173-4-06 of the Administrative Code within an individual county; or,

(iii) A combination of paragraphs (B)(1)(c)(i) and (B)(1)(c)(ii) of this rule.

(2) Congregate nutrition programs:

(a) Group setting: If the provider provides the service through a congregate nutrition program, the provider shall do so in a group setting.

(b) Records: For each service performed, the provider shall record each consumer's name (e.g.,

attendance sheet); the service date and duration of service; the educational topic; the service units; the instructor's name; and the instructor's signature.

(c) Instructor qualifications: The provider may only provide the service if the AAA's LD determines that the provider meets the minimum credentials for an instructor of nutrition education based upon regulations regarding the practice of dietetics found in Chapter 4759. of the Revised Code.

(3) Home-delivered nutrition programs and restaurant and grocery meal services: For each service a provider provides through a home-delivered nutrition program or restaurant and grocery meal service, the provider shall retain a record to show the number of consumers who received the educational materials, the service date, the topic of the educational materials, and the provider's signature.

(C) Unit of service: A unit of nutrition education service is one nutrition education session per consumer.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

**173-4-07 Nutrition education.**

(A) "Nutrition education" 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.

(B) In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a nutrition education provider shall comply with the following requirements:

(1) In general:

(a) Education materials: The provider shall only furnish the service if the provider retains a record to show that the AAA's licensed dietitian determined that the educational materials that the provider plans to distribute:

(i) Are tailored to the consumers' needs, interests, and abilities, including literacy levels;

(ii) Contain accurate and relevant information; and,

(iii) Are written at an appropriate literacy level for the target population, with appropriate font sizes.

(b) Evaluation: The provider shall establish a methodology for evaluating the effectiveness of its nutrition education; but, the provider shall not utilize the methodology until the AAA's licensed dietitian has approved the methodology. The provider shall retain records of all the evaluations completed using this methodology for the period of time the AAA's contract with the provider requires.

(c) The provider shall offer to congregate meal programs, home-delivered meal programs, and providers of alternative meal programs (restaurants and supermarkets) one of the following three options:

(i) A nutrition education two times per year.

(ii) Nutrition counseling under rule 173-4-06 of the Administrative Code within an individual county.

(iii) A combination of paragraphs (B)(1)(c)(i) and (B)(1)(c)(ii) of this rule.

(2) Congregate meal programs:

(a) Group setting: If the provider furnishes the service through a congregate meal program, the provider shall do so in a group setting.

(b) Service verification: For each unit of service, the provider shall record each consumer's name (e.g., attendance sheet); the service date and duration of service; the educational topic; the service units; the instructor's name; and the instructor's signature.

(c) Instructor qualifications: The provider may only furnish the service if the AAA's licensed dietitian determines that the provider meets the minimum credentials for an instructor of nutrition education based upon regulations regarding the practice of dietetics found in Chapter 4759. of the Revised Code.

(3) Home-delivered meal programs and alternative meals-restaurants: For each service a provider furnishes through a home-delivered meal program or restaurant and grocery meal service, the provider shall retain a record to show the number of consumers who received the educational materials, the service date, the

topic of the educational materials, and the provider's signature.

(C) Unit of service: A unit of nutrition education is one nutrition education session per consumer.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-08 Nutrition health screening.**

Comment [ODA1]: FOR RESCISSION. Please also review the proposed new version of the rule.

(A) Definitions for this rule:

(1) "Nutrition health screening" ("screening") means using the "Determine Your Own Nutritional Health" checklist to screen consumers for nutritional risks and referring consumers with high nutritional risks to community-based services.

(2) "Determine Your Own Nutritional Health" checklist means form ODA0010 (http://www.aging.ohio.gov/information/rules/forms.aspx), which is a health screening instrument issued by ODA that indicates a person's level of nutritional risk.

(3) "High nutritional risk" means the status of a consumer whose score on the "Determine Your Own Nutritional Health" checklist is six or above.

(B) 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:

(1) Frequency:

(a) Congregate or restaurant and grocery: The provider shall screen each consumer who is enrolled in a congregate nutrition program according to rule 173-4-02 of the Administrative Code, which includes consumers enrolled in a restaurant and grocery nutrition service, and shall do so no later than one month after the consumer's enrollment into the program and at least annually thereafter.

(b) Home-delivered: The provider shall screen each consumer who is enrolled in a home-delivered nutrition program according to rule 173-4-02 of the Administrative Code, and shall do so no later than one month after the first meal is delivered to the consumer's home and at least annually thereafter.

(2) Referrals for high nutritional risk:

(a) The provider shall establish a referral system that allows for potential interventions for consumers with a high nutritional risk, unless the AAA has already established a referral system.

(b) The provider shall use the referral system to refer any consumer who is determined to have a high nutritional risk.

(3) Information on excessive alcohol consumption:

(a) The provider shall provide information to consumers about excessive alcohol consumption that correspond with the recommendations of the "Dietary Guidelines for Americans," unless the AAA is providing this information to consumers.

(b) The provider shall provide information about agencies or organizations that address excessive alcohol consumption to any consumer who answers "yes" to the alcohol consumption question on the "Determine Your Own Nutritional Health" checklist.

Comment [ODA2]: ODA is proposing to delete the excessive alcohol consumption requirements in the proposed new rule.

(4) Records:

(a) The provider shall record the number of consumers that it refers at high risk that it refers through screening and for potential intervention.

***DRAFT - NOT FOR FILING***

(b) The provider shall indicate whether the consumer is at high nutritional risk in SAMS (social assistance management system).

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

# ***DRAFT - NOT FOR FILING***

**173-4-08 Nutrition health screening.**

(A) Definitions for this rule:

(1) "Nutrition health screening" ("screening") means using the "Determine Your Own Nutritional Health" checklist to screen consumers for nutritional risks and referring consumers with high nutritional risks to community-based services.

(2) "Determine Your Own Nutritional Health" checklist means form ODA0010 (Rev. May 28, 2009), which is a health screening instrument issued by ODA that indicates a person's level of nutritional risk. The form is available to the general public, free of charge, on ODA's website.

**Comment [ODA1]:** ODA states this to comply with the incorporation-by-reference statutes for rules.

(3) "High nutritional risk" means the status of a consumer whose score on the "Determine Your Own Nutritional Health" checklist is six or above.

(B) 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:

(1) Frequency:

(a) Congregate meals or alternative meals: The provider shall screen each consumer who is enrolled in a congregate meal program or an alternative meal program and shall do so no later than one month after the consumer's enrollment into the program and at least annually thereafter.

(b) Home-delivered: The provider shall screen each consumer who is enrolled in a home-delivered meal program and shall do so no later than one month after the first meal is delivered to the consumer's home and at least annually thereafter.

(2) Referrals for high nutritional risk:

(a) The provider shall establish a referral system that allows for potential interventions for consumers with a high nutritional risk, unless the AAA has already established a referral system.

(b) The provider shall use the referral system to refer any consumer who is determined to have a high nutritional risk.

(3) Service verification:

(a) The provider shall record the number of consumers that it refers at high risk that it refers through screening and for potential intervention.

(b) The provider shall indicate whether the consumer is at high nutritional risk in SAMS (social assistance management system).

(c) The provider may use a technology-based system to collect and retain this rule's records requirements.

**ONLINE PUBLIC-COMMENT PERIOD**
This is the current version of the rule that ODA is proposing to rescind. ODA proposes to replace this rule with a new rule.

# ***DRAFT - NOT FOR FILING***

**173-4-09 Grocery shopping assistance service.**

Comment [ODA1]: FOR RESCISSION. Please see the proposed new version of the rule.

(A) Definitions:

(1) "Grocery shopping assistance service" means a service that provides transportation to and from a grocery store or grocery ordering and delivery for a consumer who needs assistance to shop for groceries. The service is only reimbursed with funds from Title III, Part B or Title III, Part E of the Older Americans Act (or any source used to match those funds) or senior community services funds.

(2) "Groceries" mean foods for a household to eat, such as breads and cereals; fruits and vegetables; meats, fish, and poultry; and dairy products.

(B) Minimum requirements for a grocery shopping assistance service:

(1) Introductory packet: Upon enrollment in the service, the provider shall provide the consumer with a packet of introductory information that explains how the service works, defines eligible foods, lists eligible grocery stores, and explains how to safely store and handle groceries

(2) Transportation to and from a grocery store: As part of transporting a consumer to and from a grocery store, the provider may help the consumer transfer groceries from the store/shopping cart to the vehicle and from the vehicle to the consumer's home.

(3) Grocery ordering and delivery:

(a) As part of grocery ordering and delivery, the provider shall carry the groceries into the consumer's home.

(b) The provider shall develop and implement procedures for assuring the safe delivery of groceries.

(4) Records: For each service performed, the provider shall document the consumer's name; service date; pick-up time and location (if transportation was provided); drop-off time and location (if transportation was provided); service units; provider's signature; and consumer's signature.

Comment [ODA 2]: ODA proposes to replace the document-maintenance language with records-retention language.

(C) Unit of service: One unit of grocery shopping assistance service equals:

(1) One-way transportation to or from a grocery store; or,

(2) One episode of grocery ordering and delivery.

**ONLINE PUBLIC-COMMENT PERIOD**

This is the version of the proposed new rule that ODA published on its website for a public-comment period. Since the comment period, ODA has revised the proposed new rule. ODA presents this older version in the BIA for the purpose of reviewing public comments.

*****DRAFT - NOT FOR FILING*****

**173-4-09 Grocery shopping assistance service.**

(A) Definitions:

(1) "Grocery shopping assistance" means both of the following:

(a) Transportation to and from a supermarket.

(b) Grocery ordering and delivery for a consumer who needs assistance to shop for groceries.

(2) "Groceries" mean foods for a household to eat, such as breads and cereals; fruits and vegetables; meats, fish, and poultry; and dairy products.

(B) In addition to complying with the mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code, a provider of grocery shopping assistance shall comply with the following requirements:

(1) Introductory packet: Upon enrollment in the service, the provider shall provide the consumer with a packet of introductory information that explains how the assistance works.

(2) Transportation to and from a supermarket: As part of transporting a consumer to and from a supermarket, the provider may help the consumer transfer groceries from the supermarket or shopping cart to the vehicle and from the vehicle to the consumer's home.

(3) Grocery ordering and delivery:

(a) As part of grocery ordering and delivery, the provider shall carry the groceries into the consumer's home.

(b) The provider shall develop and implement procedures for assuring the safe delivery of groceries.

(4) Service verification:

(a) For each episode of assistance, the provider shall retain a record of the consumer's name; service date; pick-up time and location (if the provider furnished transportation); drop-off time and location (if the provider furnished transportation); service units; provider's signature; and consumer's signature.

(b) The provider may use a technology-based system to collect and retain this rule's records requirements.

(C) Unit of service: One unit of grocery shopping assistance equals:

(1) One-way transportation to or from a supermarket; or,

(2) One episode of grocery ordering and delivery.

(D) Only Older Americans Act funds from Title III, Part B or Title III, Part E of the of the act (or any source used to match those funds) or senior community services funds may reimburse a provider for this service.

**Comment [ODA 1]:** ODA proposes to use "supermarket" for the store, but "groceries" for the food in the store.

**Comment [ODA 2]:** ODA proposes to use records-retention language instead of document-maintenance language.

**Comment [ODA 3]:** New

DRAFT FOR ONLINE PUBLIC-COMMENT PERIOD
*** DRAFT - NOT YET FILED ***

173-39-02.1 **ODA provider certification: ~~Adult~~ adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an ADS center, which is a non-institutional, community-based setting. ADS includes recreational and educational programming to support ~~a consumer's~~ an individual's health and independence goals; at least one meal, but no more than two meals per day ~~that meet the consumer's dietary requirements~~; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the ADS center.

(B) Requirements for providers of ADS in addition to the ~~conditions of participation~~ requirements for every ODA-certified provider under rule 173-39-02 of the Administrative Code:

(1) In general:

(a) Service levels: The required components of the two services levels are presented in this paragraph and in "Table 1" to this rule:

(i) Enhanced ADS: Enhanced ADS includes structured activity programming, health assessments, supervision of all ADLs, supervision of medication administration, hands-on assistance with ADL activities (except bathing) and hands-on assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status; and, hands-on assistance with personal hygiene activities (except bathing).

(ii) Intensive ADS: Intensive ADS includes all the components of enhanced ADS plus hands-on assistance with two or more ADLs; hands-on assistance with bathing; regular monitoring of, and intervention with, health status; skilled nursing services (e.g., dressing changes and other treatments) and rehabilitative nursing procedures; rehabilitative and restorative services, including physical therapy, speech therapy, and occupational therapy; and, social work services.

Table 1: Levels and Components of ADS

| | ENHANCED ADS | INTENSIVE ADS |
|---|---|---|
| Structured activity programming | Yes | Yes |
| Health assessments | Yes | Yes |
| Supervision of ADLs | All ADLs | All ADLs |

DRAFT FOR ONLINE PUBLIC-COMMENT PERIOD
*** DRAFT - NOT YET FILED ***



| | | |
|---|---|---|
| Hands-on assistance with ADLs | Yes, one or more ADL (bathing excluded) | Yes, minimum of two ADLs (bathing included) |
| Hands-on assistance with medication administration | Yes | Yes |
| Comprehensive therapeutic activities | Yes | Yes |
| Monitoring of health status | Intermittent | Regular, with intervention |
| Hands-on assistance with personal hygiene activities | Yes | Yes |
| Social work services | No | Yes |
| Skilled nursing services and rehabilitative nursing services | No | Yes |
| Rehabilitative and restorative services | No | Yes |

(b) Transportation: The provider shall transport each ~~consumer~~ individual to and from the ADS center by performing a transportation service that complies with rule 173-39-02.13 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-39-02.13 of the Administrative Code, or unless the caregiver provides or designates another person or non-provider, other than the ADS center provider, to transport the ~~consumer~~ individual to and from the ADS center.

(c) Case manager's assessment:

(i) The case manager shall assess each ~~consumer's~~ consumer's needs and preferences then specify which service level will be approved for each ~~consumer~~ consumer.

(ii) The provider shall retain records to show that it furnishes the service at the level that the case manager authorized.

(d) Provider's initial assessment:

(i) The provider shall assess the ~~consumer~~ individual before the end of

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the ~~consumer's~~ individual's second day of attendance at the center. The provider may substitute a copy of the case manager's assessment of the ~~consumer~~ individual if the case manager assessed the ~~consumer~~ individual no more than thirty days before the ~~consumer's~~ individual's first day of attendance at the center.

(ii) The initial assessment shall include both of the following components:

*(a)* Functional and cognitive profiles that identify the ADLs and IADLs that require the attention or assistance of ADS center staff; and,

*(b)* A social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.

(e) Health assessment: No later than thirty days after the ~~consumer's~~ individual's initial attendance at the ADS center or before the ~~consumer~~ individual receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain a health assessment of each ~~consumer~~ individual from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional whose scope of practice includes health assessments or shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional to perform a health assessment of each ~~consumer~~ individual. The health assessment shall include the ~~consumer's~~ individual's psychosocial profile and shall identify the ~~consumer's~~ individual's risk factors, diet, and medications. If ~~a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ the licensed healthcare professional ~~who~~ is not a staff member of the provider performs the health assessment, the provider shall retain a record of the professional's name and phone number.

(f) Activity plan: No later than thirty days after the ~~consumer's~~ individual's initial attendance at the ADS center or before the ~~consumer~~ individual receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional whose scope of practice includes developing activity plans to draft an

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activity plan for each ~~consumer~~ individual or the provider shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional to draft an activity plan for each ~~consumer~~ individual. The plan shall identify the ~~consumer's~~ individual's strengths, needs, problems or difficulties, goals, and objectives. The plan shall describe the ~~consumer's~~ individual's:

(i) Interests, preferences, and social rehabilitative needs;

(ii) Health needs;

(iii) Specific goals, objectives, and planned interventions of ADS services that meet the goals;

(iv) Level of involvement in the drafting of the plan, and, if the ~~consumer~~ individual has a caregiver, the caregiver's level of involvement in the drafting of the plan; and,

(v) Ability to sign his or her signature versus alternate means for the ~~consumer's~~ individual's signature.

(g) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition consultation, physical therapy, or speech therapy, the provider shall obtain ~~an order~~ plan of treatment from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife~~ licensed healthcare professional whose scope of practice includes making plans of treatment. The provider shall obtain the ~~order for the~~ plan of treatment at least every ninety days for each ~~consumer~~ individual that receives medication, ~~meals with a therapeutic diet,~~ a nursing service, nutrition consultation, physical therapy, or speech therapy. ~~The~~ For diet orders that may be part of a plan of treatment, a new diet order is not required every ninety days. Instead, the provider shall comply with the diet-order requirements for ~~meals with a~~ therapeutic ~~diet~~ diets under rule 173-39-02.14 of the Administrative Code.

(h) Interdisciplinary care conference:

(i) Frequency: The provider shall conduct an interdisciplinary care conference for each ~~consumer~~ individual at least once every six

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months.

(ii) Participants: The provider shall conduct the conference between the provider's staff members and invitees who choose to participate. The provider shall invite the case manager to participate in the conference. The provider shall invite any ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional who does not work for the provider, but who furnished the provider with a health assessment of the ~~consumer~~ individual or an activity plan for the ~~consumer~~ individual, to participate in the conference. If the ~~consumer~~ individual has a caregiver, the provider shall invite the caregiver to the conference. The provider may also invite the ~~consumer~~ individual to the conference. The provider shall invite the case manager, ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, RN,~~ licensed healthcare professional, caregiver, or ~~consumer~~ individual by furnishing the date and time to the case manager seven days before the conference begins.

(iii) Revise activity plan: If the conference participants identify changes in the ~~consumer's~~ individual's health needs, condition, preferences, or responses to the service, the provider shall obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional to revise the activity plan accordingly or shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, or RN~~ licensed healthcare professional to revise the activity plan accordingly.

(iv) Records: The provider shall retain records on each conference's determinations.

(i) Activities: The provider shall post daily and monthly planned activities in prominent locations throughout the center.

(j) Lunch and snacks:

(i) The provider shall furnish lunch and snacks to each ~~consumer~~ individual who is present during lunchtime or snacktime.

(ii) Each meal that the provider furnishes shall comply with all the

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requirements for the home-delivered meal service under rule 173-39-02.14 of the Administrative Code, except for the requirements in that rule that pertain to the delivery of the meal.

(2) Center requirements:

(a) Specifications: The provider shall only furnish an ADS in a center with the following specifications.

(i) If the center is housed in a building with other services or programs other than ADS, the provider shall assure that a separate, identifiable space and staff is available for ADS during all hours that the provider furnishes ADS in the center.

(ii) The center shall comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R., Part 36 (July 1, ~~2012 edition~~ 2015).

(iii) The center shall have at least sixty square feet per individual that it serves (not just individuals who are enrolled in an ODA-administered program) , excluding hallways, offices, rest rooms, and storage areas.

(iv) The provider shall store ~~consumers'~~ individuals' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.

(v) The provider shall store toxic substances in an area that is inaccessible to ~~consumers~~ individuals.

(vi) The center shall have at least one working toilet for every ten individuals present that it serves (not just individuals who are enrolled in an ODA-administered program) and at least one wheelchair-accessible toilet.

(vii) ODA shall only certify the provider to furnish intensive ADS if the center has bathing facilities suitable to the needs of ~~consumers~~ individuals who require intensive ADS.

(b) Emergency safety plan:

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(i) The provider shall develop and annually review a fire inspection and emergency safety plan.

(ii) The provider shall post evacuation procedures in prominent areas throughout the center.

(c) Evacuation drills:

(i) At least quarterly, the provider shall conduct an evacuation drill from the center while ~~consumers~~ individuals are present.

(ii) The provider shall retain records on the date and time it completes each evacuation drill.

(d) Fire extinguishers and smoke alarms:

(i) The provider shall have fire extinguishers and smoke alarms in the center and shall routinely maintain them.

(ii) At least annually, the provider shall inspect the fire extinguishers and smoke alarms. The provider shall retain records on the date and time it completes each inspection.

(3) Staffing levels:

(a) The provider shall have at least two staff members present whenever more than one ~~consumer~~ individual is present, including one who is a paid personal care staff member and one who is certified in CPR.

(b) The provider shall maintain a ~~staff-to-consumer~~ staff-to-individual ratio of at least one staff member to six ~~consumers~~ individuals at all times.

(c) The provider shall have a RN, or LPN under the direction of a RN, on site at the ADS center to provide nursing services that require the skills of a RN, or LPN under the direction of a RN, and that are within the nurse's scope of practice.

(d) The provider shall employ an activity director to direct ~~consumer~~ activities.

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(4) Provider qualifications:

(a) Type of provider:

(i) A provider shall only furnish the service if ODA certifies the provider as an agency provider.

(ii) For each provider that ODA certifies, ODA shall certify the provider as an enhanced or intensive provider. If ODA certifies a provider to furnish an intensive service level, the provider may also directly furnish, or arrange for, the enhanced service level.

(b) Staff qualifications:

(i) Every RN, LPN under the direction of a RN, social worker, physical therapist, physical therapy assistant, speech therapist, licensed dietitian, occupational therapist, occupational therapy assistant, or other licensed professional acting as a personal care care staff member, shall possess a current, valid license to practice in their profession.

(ii) Each activity director shall possess at least one of the following:

*(a)* A baccalaureate or associate degree in recreational therapy or a related degree;

*(b)* At least two years of experience as an activity director, activity coordinator, or a related position; or,

*(c)* A certification from the national certification council for activity professionals (NCCAP).

(iii) Each activity assistant shall possess at least one of the following:

*(a)* A high school diploma;

*(b)* A high school equivalence diploma as defined in section 5107.40 of the Revised Code; or,

*(c)* At least two years of employment in a supervised position to

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furnish personal care, to furnish activities, or to assist with activities.

(iv) Each personal care aide shall possess at least one of the following:

*(a)* A high school diploma;

*(b)* A high school equivalence diploma as defined in section 5107.40 of the Revised Code;

*(c)* At least two years of employment in a supervised position to furnish personal care, to furnish activities, or to assist with activities; or,

*(d)* The successfully completion of a vocational program in a health or human services field.

(v) Each staff member who furnishes transportation to ~~consumers~~ individuals shall comply with all requirements under rule 173-39-02.13 of the Administrative Code.

(vi) The provider shall retain records to show that each staff member who has in-person interaction with ~~consumers~~ individuals complies with paragraph (B)(4)(b) of this rule.

(c) Staff training:

(i) Orientation: Before each new personal care staff member furnishes an ADS, the provider shall train the staff member on all of the following:

*(a)* The expectation of employees;

*(b)* The provider's ethical standards, as required under ~~paragraph (B)(1)(c) of~~ rule 173-39-02 of the Administrative Code;

*(c)* An overview of the provider's personnel policies;

*(d)* A description of the provider's organization and lines of communication;

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*(e)* Incident reporting procedures; and,

*(f)* Universal precautions for infection control.

(ii) Task-based training: Before each new personal care staff member furnishes an ADS, the provider shall furnish task-based training.

(iii) Continuing education: Each staff member shall participate in at least eight hours of in-service or continuing education on appropriate topics each calendar year, unless the staff person holds a professional certification that requires at least eight hours in order to maintain the certification.

(iv) Records: The provider shall retain records showing that it complies with the training requirements under paragraph (B)(4)(c) of this rule. In doing so, the provider shall list the instructor's title, qualifications, and signature; date and time of instruction; content of the instruction; and name and signature of ADS personal care staff completing the training.

(d) Performance reviews:

(i) The provider shall complete a performance review of each staff member in relation to the staff member's job description.

(ii) The provider shall retain records to show that it complies with paragraph (B)(4)(d)(i) of this rule.

(5) Service verification:

(a) For each service furnished, the provider shall retain a record of all of the following:

(i) ~~Consumer's~~ Individual's name;

(ii) Date of service;

(iii) ~~Consumer's~~ Individual's arrival and departure times;

(iv) ~~Consumer's~~ Individual's mode of transportation;

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(v) Name of each staff member having contact with the ~~consumer~~ individual;

(vi) The ~~consumer's~~ individual's signature (The activity plan shall note if the ~~consumer~~ individual is unable to sign. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.); and,

(vii) ADS staff person's signature.

(b) The provider may use a daily attendance roster to retain the records required under paragraph (B)(5)(a) of this rule.

(c) The provider may use a technology-based system to collect or retain the records required under this rule.

~~(d) The provider shall retain records required under this rule and furnish access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code.~~

(C) Units and rates:

(1) Attendance:

(a) Units of ADS attendance are calculated as follows:

(i) One-half unit is less than four hours ADS per day.

(ii) One unit is four through eight hours ADS per day.

(iii) A fifteen-minute unit is each fifteen-minute period of time over eight hours up to, and including, a maximum of twelve hours of ADS per day.

(b) A unit of ADS attendance does not include transportation time.

(2) Transportation: A unit of ADS transportation is a round trip, a one-way trip, or one mile with the trip cost based on a case manager's pre-determined calculation of distance between the ~~consumer's~~ individual's residence and the ADS center multiplied by an established ADS mileage rate. If the provider

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furnishes the transportation simultaneously to more than one PASSPORT ~~or choices consumer~~ individual who resides in the same household in the same vehicle to the same destination, the provider's ~~reimbursement~~ payment rate for that trip is seventy-five per cent of the per-unit rate, in accordance with ~~rules~~ rule ~~5101:3-31-07~~ 5160-31-07 ~~and 5101:3-32-07~~ of the Administrative Code.

(3) The maximum rates allowable for units of ADS attendance and ADS transportation are established in appendix A to ~~rule 5101:3-1-06.1~~ 5160-1-06.1 of the Administrative Code ~~for the PASSPORT program and rule 5101:3-1-06.4 of the Administrative Code for the choices program~~.

(4) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

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TO BE RESCINDED

173-39-02.2 **Alternative meal service.**

(A) "Alternative meal service" means a service that sustains a consumer's health by enabling the consumer to procure up to two meals per day from a non-traditional provider, such as a restaurant.

(B) Requirements for an alternative meal service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) In general: Each meal that the provider furnishes shall comply with all the requirements for the home-delivered meal service under rule 173-39-02.14 of the Administrative Code, except for the requirements in that rule that pertain to the delivery of the meal.

The current rule says, "non-agency," but the CMS-approved 07/01/2013 Medicaid waiver application for the PASSPORT Program only authorized the service for agency providers.

(2) Provider qualifications:

(a) Only a non-agency provider who is certified under rule 173-39-02 of the Administrative Code shall provide the service.

(b) The provider shall maintain all appropriate vendor licenses.

This is redundant of paragraph (B)(1) because rule 173-39-02.14 already requires appropriate licensure for food service operators and dietitians.

(C) Unit and rate:

(1) A unit of an alternative meal service is one meal.

(2) The maximum rate allowable for one regular home-delivered meal is listed in rule 5101:3-1-06.1 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

| | |
|---|---|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 173.01, 173.02, 173.391, 173.52, 173.522 |
| Rule Amplifies: | 173.391, 173.52, 173.522 |
| Prior Effective Dates: | 03/31/2006, 03/17/2011 |

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173-39-02.2 **ODA provider certification: alternative meal service.**

This comes from the CMS-approved 07/01/2013 Medicaid waiver application for the PASSPORT Program.

(A) "Alternative meal service" means a service that sustains an individual's health by enabling the individual to procure up to two meals per day from a non-traditional provider, such as a restaurant. "Alternative meal service" does not mean meals served in an adult day center.

(B) Requirements for an alternative meal service in addition to the requirements for every provider under rule 173-39-02 of the Administrative Code:

(1) In general: Each meal that the provider furnishes shall comply with all the requirements for home-delivered meals under rule 173-39-02.14 of the Administrative Code, except for the requirements in that rule that pertain to the delivery of the meal.

(2) Provider qualifications: Only an ODA-certified agency provider shall furnish the service.

The current rule says, "non-agency," but the CMS-approved 07/01/2013 Medicaid waiver application for the PASSPORT Program only authorized the service for agency providers.

(C) Unit and rate:

(1) A unit of an alternative meal service is one meal.

(2) The maximum rate allowable for one unit of an alternative meal service is listed in appendix A to rule 5160-1-06.1 of the Administrative Code.

(3) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

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173-39-02.10 **Nutritional consultation service.**

FOR RESCISSION

(A) "Nutritional consultation service" means a service that provides individualized guidance to a consumer who has special dietary needs. A nutritional consultation service takes into consideration the consumer's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions.

(B) Minimum requirements for a nutritional consultation service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) Physician's authorization:

(a) Initial: If the provider receives a signed and dated authorization from the consumer's treating physician indicating that the consumer needs a nutrition consultation service, the provider may begin to provide the nutrition consultation service, subject to the other requirements of this rule. The provider may continue to provide the nutrition consultation service for up to sixty days after the date of the physician's authorization.

(b) Subsequent: The provider may provide the nutrition consultation service for subsequent periods of up to sixty days only if the provider receives a subsequent signed and dated authorization from the physician indicating that the consumer continues to need a nutrition consultation service.

(2) Nutrition assessment:

(a) The provider shall conduct an initial, individualized assessment of the consumer's nutritional needs and, when necessary, subsequent nutrition assessments, using a tool that identifies whether the consumer is at nutritional risk or identifies a nutritional diagnosis that the dietitian will treat. The tool shall include:

(i) An assessment of height and weight history;

(ii) An assessment of the adequacy of nutrient intake;

(iii) A review of medications, medical diagnoses, and diagnostic test results;

(iv) An assessment of verbal, physical, and motor skills that may affect, or contribute to, nutrient needs;

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(v) An assessment of interactions with the caregiver during feeding; and,

(vi) An assessment of the need for adaptive equipment, other community resources, or other services.

(b) The provider shall furnish the case manager and the consumer with a copy of the nutrition assessment no later than seven business days after the provider completes the assessment.

(3) Nutrition intervention plan:

(a) The provider shall develop, evaluate, and revise, as necessary, a nutrition intervention plan with the consumer's and case manager's assistance and, when applicable, the treating physician and other relevant service providers. In the plan, the provider shall outline the purposely-planned actions for changing nutrition-related behavior, risk factors, environmental conditions, or health status, which, at a minimum, shall include the consumer's:

(i) Food and diet modifications;

(ii) Specific nutrients to require or limit;

(iii) Feeding modality;

(iv) Nutrition education and counseling; and,

(v) Expected measurable indicators and outcomes related to the consumer's nutritional goals.

(b) The provider shall use the nutrition intervention plan to prioritize and address the identified nutrition problems.

(c) The provider shall furnish the case manager and the consumer with a copy of the nutrition intervention plan no later than seven business days after the provider develops or revises the plan.

(4) Clinical record:

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(a) The provider shall develop and retain a clinical record for each consumer that includes the consumer's:

(i) Identifying information, including name, address, date of birth, sex, race, marital status, significant phone numbers, and health insurance identification numbers;

(ii) Medical history;

(iii) Treating physician's name;

(iv) Treating physician's authorization for a nutritional consultation service that is required under paragraph (B)(1) of this rule;

(v) Service plan (initial and revised versions);

(vi) Nutrition assessment (initial and revised versions);

(vii) Plan of care for nutrition consultation services (initial and revised versions), specifying the type, frequency, scope, and duration of the services to perform;

(viii) Nutrition intervention plan (initial and revised versions that were implemented);

(ix) Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions;

(x) Discharge summary, which the dietitian who provided the service shall sign and date at the point he or she is no longer going to provide the service to the consumer or the consumer no longer needs the service. The summary shall indicate what progress the consumer made towards achieving the measurable outcomes of the consumer's nutritional goals and any recommended follow-up consultations or referrals.

(b) The provider may use a technology-based system to develop and retain the clinical record.

(5) Limitations:

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(a) The provider shall not provide the service to a consumer in excess of what the case manager authorizes in the consumer's service plan.

(b) The provider shall only bill the PAA for the service provided under the PASSPORT program if the case manager identifies the provider in the service order for the consumer.

(c) The provider shall not provide the service to a consumer if the consumer is receiving a similar service under Chapter 173-39 of the Administrative Code.

(6) Provider qualifications: An individual shall provide this service only if:

(a) An agency that ODA certifies as an agency provider employs the individual, or ODA certifies the individual as a non-agency provider; and,

(b) The individual is registered by the commission on dietetic registration and maintains a license in good standing with the Ohio board of dietetics.

(7) Service verification:

(a) For each episode of service provided, the provider shall retain a record of the:

(i) Consumer's name;

(ii) Date of service;

(iii) Time of day that each service begins and ends;

(iv) Name and signature of individual providing the consultation; and,

(v) Consumer's signature. The case manager shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(b) The provider may use a technology-based system to collect or retain the records required under this rule.

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(c) The provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code.

(C) Unit and rate:

(1) A unit of a nutritional consultation service is equal to fifteen minutes.

(2) The maximum rate allowable for a unit of the service is listed in rule 5101:3-1-06.1 of the Administrative Code.

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# 173-39-02.10 ODA provider certification: nutritional consultations.

(A) Definitions for this rule:

(1) "Nutritional consultations" ("consultations") mean individualized guidance to an individual who has special dietary needs. Consultations take into consideration the individual's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions. Consultations are also known as medical nutrition therapy.

(2) "Nutritional assessment" has the same meaning as in rule 4759-2-01 of the Administrative Code.

(B) Requirements for providers of nutritional consultations in addition to the requirements for every ODA-certified provider under rule 173-39-02 of the Administrative Code:

(1) Orders and limits: The PASSPORT program shall only pay for consultations under the following circumstances:

(a) Only a licensed dietitian ("dietitian") provides consultations to individuals.

(b) Before the dietitian provides consultations to an individual, the dietitian obtains an order for the individual's consultations from a licensed healthcare professional whose scope of practice includes ordering consultations.

(c) Before the dietitian provides consultations to an individual, the dietitian obtains an order for the individual's consultations from a licensed healthcare professional whose scope of practice includes ordering consultations.

(d) Before the dietitian consultations an individual, the dietitian obtains an order for the individual's consultations from a licensed healthcare professional whose scope of practice includes ordering consultations.

(e) The dietitian only provides consultations to the individual unless the licensed healthcare professional's order is to provide consultations to the consumer's authorized representative or caregiver to improve the consumer's well-being.

(f) The dietitian does not provide consultations to an individual in excess of what the case manager authorizes in the individual's service plan.

(g) The provider only bills ODA's designee for consultations if the case manager identifies the provider in the service order for the individual.

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(h) The dietitian does not provide consultations to an individual if the individual is receiving a similar service under Chapter 173-39 of the Administrative Code.

(2) Face-to-face vs. telecommunications:

(a) For an initial consultation, the dietitian shall only provide a face-to-face consultation between the dietitian and the consumer (or between the dietitian and the individual's caregiver to improve caregiver's care to the individual).

(b) For subsequent consultations, the dietitian shall only provide the consultations if the consultations occur on a face-to-face basis or by a telecommunication system.

(3) Nutrition assessment:

(a) The provider shall conduct an initial, individualized assessment of the individual's nutritional needs and, when necessary, subsequent nutrition assessments, using a tool that identifies whether the individual is at nutritional risk or identifies a nutritional diagnosis that the dietitian will treat. The tool shall include the following:

(i) An assessment of height and weight history.

(ii) An assessment of the adequacy of nutrient intake.

(iii) A review of medications, medical diagnoses, and diagnostic test results.

(iv) An assessment of verbal, physical, and motor skills that may affect, or contribute to, nutrient needs.

(v) An assessment of interactions with the caregiver during feeding.

(vi) An assessment of the need for adaptive equipment, other community resources, or other services.

(b) The provider shall furnish the case manager and the individual with a copy of the nutrition assessment no later than seven business days after the provider completes the assessment.

(4) Nutrition intervention plan:

(a) The provider shall develop, evaluate, and revise, as necessary, a nutrition intervention plan with the individual's and case manager's assistance

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and, when applicable, the assistance of the licensed healthcare professional who authorized the consultations. In the plan, the provider shall outline the purposely-planned actions for changing nutrition-related behavior, risk factors, environmental conditions, or health status, which, at a minimum, shall include the following information about the consumer:

(i) Food and diet modifications.

(ii) Specific nutrients to require or limit.

(iii) Feeding modality.

(iv) Nutrition education and counseling.

(v) Expected measurable indicators and outcomes related to the individual's nutritional goals.

(b) The provider shall use the nutrition intervention plan to prioritize and address the identified nutrition problems.

(c) The provider shall furnish the case manager, the individual, and the licensed healthcare professional who ordered the consultations with a copy of the nutrition intervention plan no later than seven business days after the provider develops or revises the plan.

(5) Clinical record:

(a) The provider shall develop and retain a clinical record for each individual that includes the consumer's individual's:

(i) Identifying information, including name, address, date of birth, sex, race, marital status, significant phone numbers, and health insurance identification numbers.

(ii) Medical history.

(iii) The name of the licensed healthcare professional who authorized consultations.

(iv) The authorization for consultations that is required under paragraph (B)(1) of this rule.

(v) Service plan (initial and revised versions).

(vi) Nutrition assessment (initial and revised versions).

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(vii) Plan of care for consultations (initial and revised versions), specifying the type, frequency, scope, and duration of the consultations to perform.

(viii) Nutrition intervention plan (initial and revised versions that were implemented).

(ix) Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions.

(x) Discharge summary, which the dietitian who provided the consultations shall sign and date at the point he or she is no longer going to provide consultations to the individual or the individual no longer needs consultations. The summary shall indicate what progress the individual made towards achieving the measurable outcomes of the individual's nutritional goals and any recommended follow-up consultations or referrals.

(b) The provider may use a technology-based system to develop and retain the clinical record.

(6) Service verification:

(a) For each consultation provided, the provider shall retain a record of the following:

(i) Individual's name.

(ii) Date of service.

(iii) Time of day that each service begins and ends.

(iv) Name and signature of individual providing the consultation.

(v) Individual's signature. The case manager shall record the individual's signature of choice in the Individual's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(b) The provider may use a technology-based system to collect or retain the records required under this rule.

(C) Unit and rate:

(1) A unit of a nutritional consultations is equal to fifteen minutes.

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(2) The maximum rate allowable for a unit of nutritional consultations is listed in rule 5160-1-06.1 of the Administrative Code.

(3) The rate is subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

173-39-02.14 **ODA provider certification: ~~Home-delivered meal service~~home-delivered meals.**

(A) Definitions for this rule:

~~(A)~~(1) "Home-delivered ~~meal service~~ meals" means the service that provides up to two meals per day to ~~a consumer~~ an individual who has a need for a home-delivered meal based on a deficit in an ADL or IADL that a case manager identifies during the assessment process. The service includes ~~the~~ planning, ~~preparation~~ safely preparing, packaging, and ~~delivery of~~ delivering safe and nutritious meals to the ~~consumer~~ individual at his or her home.

(2) "Therapeutic diet" means a calculated nutritive regimen including the following regimens:

(a) Diabetic and other nutritive regimens requiring a daily specific calorie level.

(b) Renal nutritive regimens.

(c) Dysphagia nutritive regimens, excluding simple textural modifications.

(d) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients.

See appendix on therapeutic diets and diet orders for detailed information.

(3) "Diet order" means a written order for a therapeutic diet a from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets.

(B) ~~Minimum requirements~~ Requirements for a home-delivered meal service in addition to the ~~conditions of participation~~ requirements for every provider under rule 173-39-02 of the Administrative Code:

(1) Planning:

(a) Menus:

(i) The provider shall furnish each individual with a menu of meal options that, as much as possible, consider the individual's medical restrictions; religious, cultural, and ethnic background; and dietary preferences.

This language appears in the current rule. ODA proposes to move it to this earlier paragraph.

~~(a)~~(ii) ~~Dietitian:~~ The provider shall only utilize a menu that has received the written approval of a dietitian who is currently registered with the commission on dietetic registration and who is also a licensed

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dietitian, if the state in which the provider is located licenses dietitians.

New

New. This is also required by the current Older Americans Act rules.

(iii) The provider shall publish its menus on its website or offer written menus to individuals.

(iv) The provider shall either publish ingredient information on its website or offer written ingredient information to individuals.

(v) Upon request, the provider shall furnish to ODA (or ODA's designee) copies of menus and ingredient information and other evidence that it complies with the requirements under paragraph (B)(2)(a) of this rule.

(b) Nutritional adequacy:

(i) The provider shall only provide a meal that meets one-third of the current dietary reference intakes that the food and nutrition board of the institute of medicine of the national academy of sciences establishes, unless the meal implements a therapeutic diet.

(ii) The provider shall only provide a meal that follows the current dietary guidelines for Americans, as published by the United States department of health and human services and the USDA, unless the meal implements a therapeutic diet.

(iii) ~~The provider shall retain records to verify that each meal complies with paragraphs (B)(1)(b)(i) and (B)(1)(b)(ii) of this rule.~~Upon request, the provider shall furnish evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(1)(b) of this rule.

See Appendix on therapeutic diets and diet orders for detailed information.

(c) ~~Therapeutic diet~~ Diet orders~~: A provider shall only provide a home-delivered meal with a therapeutic diet to a consumer if~~:

(i) ~~A licensed physician has ordered the~~ The provider shall only provide a therapeutic diet to an individual if the provider received a diet order for the individual~~because the consumer requires a daily amount of, or distribution of, one or more specific nutrients in order to treat the consumer's disease or clinical condition, or to eliminate, decrease, or increase certain substances in the consumer's diet;~~.

~~(ii) The provider provides the therapeutic diet the physician ordered~~

~~instead of a diet that complies with paragraphs (B)(1)(b)(i) and (B)(1)(b)(ii) of this rule;~~

~~(iii)~~(ii) The provider shall only ~~provides~~ provide ~~the~~ a therapeutic diet to an individual for ~~up to ninety days after the date of the physician's~~ the duration established in the diet order~~, unless the provider receives a subsequent order from the physician for any subsequent ninety-day period; and,~~. If the diet order indicates a need to continuously provide the therapeutic diet until further notice, the provider shall continuously provide the therapeutic diet without a need for subsequent or periodic diet orders. If the provider receives an updated diet order, the provider shall furnish the therapeutic diet according to the updated diet order.

(iii) The provider shall furnish the therapeutic diet according to the diet order instead of a diet that complies with paragraphs (B)(1)(b)(i) and (B)(1)(b)(ii) of this rule.

(iv) The provider shall only provide a therapeutic diet if the provider retains a ~~record~~ copy of the ~~physician's~~ therapeutic diet order~~, and subsequent orders,~~ in the ~~consumer's~~ individual's clinical record.

Moved to an earlier paragraph.

~~(d) Consumer choice: The provider shall provide each consumer with a menu of meal options that, as much as possible, consider the consumer's medical restrictions; religious, cultural, and ethnic background; and dietary preferences.~~

~~(2) Preparation and safety:~~

The Ohio Department of Agriculture and local health districts have jurisdiction here, not ODA.

~~(a) Packaging:~~

~~(i) Hot meals: The provider shall individually package each ready-to-eat, temperature-controlled, home-delivered meal. The provider shall label the meal with the month, day, and year that it prepared the meal and shall list the date immediately following the term "packing date" or "pack date."~~

~~(ii) Non-hot meals: The provider may individually package each component of a home-delivered meal that is a frozen meal, a vacuum-packed meal, a modified-atmosphere-packed meal, or a shelf-stable meal if the provider labels each individual package with the month, day, and year before which the consumer should consume the individual package, and shall list the date immediately following the term "use before." As used in this paragraph, "individual package" does not include a whole fruit (e.g., a fresh apple or banana) that is not packaged.~~

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~~(b) Temperature monitoring:~~

~~(i) The provider shall maintain a time-and-temperature monitoring system for food preparation, handling, and delivery.~~

~~(ii) The provider shall monitor meal temperatures delivered in a thermostatically-controlled meal-delivery vehicle at least monthly. The provider shall monitor meal temperatures delivered in any other meal-delivery vehicle at least weekly.~~

~~(iii) The provider shall retain records to show that it complies with paragraphs (B)(2)(b)(i) and (B)(2)(b)(ii) of this rule.~~

~~(c) Delivery vehicles and containers: The provider shall ensure that all meal-delivery vehicles and containers are safe and sanitary.~~

~~(d) "Uniform Food Safety Code": The provider shall comply with Chapters 918., 3715., and 3717. of the Revised Code and Chapter 3717-1 of the Administrative Code. For the purposes of this rule, heating and reheating an already-prepared home-delivered meal is not the same as preparing a meal.~~

~~(e) State and federal inspections of Ohio-based providers:~~

~~(i) The provider shall retain records of all inspection reports from the Ohio department of agriculture and the USDA's food safety inspection service, as well as any resulting plans of correction or follow-up reports, according to the records-retention requirements under paragraph (B)(5)(a) of rule 173-39-02 of the Administrative Code.~~

~~(ii) If the Ohio department of agriculture's division of food safety places the provider on priority status or notice status, the provider shall notify the PAA of the status no more than two business days after the department of agriculture issues a report of priority-status findings or a notice under section 913.42 of the Revised Code. The provider shall send to the PAA a copy of any report and any notice the department of agriculture issues against the provider no more than five business days after the department of agriculture issues the report or notice. If the department of agriculture issues a notice requiring a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction and follow-up report in no more than five business days after the provider submits the plan of correction or follow-up report to the department of agriculture.~~

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~~(iii) If the Ohio department of agriculture's division of meat inspection or the USDA's food safety inspection service takes a withholding action against or suspends the provider under 9 C.F.R. 500.3 or 9 C.F.R. 500.4, the provider shall notify the PAA of the action or suspension no more than two business days after the department of agriculture acts or suspends. The provider shall send to the PAA a copy of the department of agriculture's action of suspension in no more than five days after the department of agriculture acts or suspends. If the department of agriculture requires a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction or follow-up report in no more than five business days after the provider submits the plan of correction or follow-up report to the department of agriculture.~~

~~(f) Federal inspections of non-Ohio-based providers:~~

~~(i) If a provider is located outside of Ohio, the provider shall retain records of all inspection reports from the USDA's food safety inspection service, as well as any plans of correction or follow-up reports, according to the records retention requirements under paragraph (B)(5)(a) of rule 173-39-02 of the Administrative Code.~~

~~(ii) If the USDA's food safety inspection service takes a withholding action against or suspension the provider under 9 C.F.R. 500.3 or 9 C.F.R. 500.4, the provider shall notify the PAA of the action or suspension no more than two business days after the USDA acts or suspends. The provider shall send to the PAA a copy of the USDA's action or suspension in no more than five business days after the USDA acts or suspends. If the USDA requires a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction or follow-up report in no more than five business days after the provider submits the plan or correction or follow-up report to the USDA.~~

~~(g) Local health department inspections of providers:~~

~~(i) The provider shall retain records of all inspection reports from the local health department, as well as any resulting plans of correction or follow-up reports, according to the records retention requirements under paragraph (B)(5)(a) of rule 173-39-02 of the Administrative Code.~~

~~(ii) If the local health department cites the provider for a critical~~

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~~violation, as the term "critical violation" is used in paragraph (B) of rule 3717-1-02.4 of the Administrative Code, the provider shall notify the PAA of the citation no more than forty-eight hours after the citation. The provider shall send to the PAA a copy of the inspection report in no more than forty-eight hours after the local department of health cites the provider. If the local health department requires a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction and follow-up report no more than forty-eight hours after the provider submits the plan of correction or follow-up report to the local health department.~~

~~(h) Sanctions: Pursuant to section 173.391 of the Revised Code and to rule 173-39-05 of the Administrative Code, ODA may issue a level-two or level-three sanction to a provider if the provider is endangering the health, safety, or welfare of one or more consumers because it doesn't comply with one or more requirements in this rule. This may result in the suspension or termination of the provider.~~

(2) Food safety:

(a) If a state or federal departments of agriculture or a local health district prohibits the provider from manufacturing food or feeding the public, the provider shall not deliver meals to any individual.

(b) If a state or federal department of agriculture or a local health district sanctions a provider, the provider shall notify ODA (or ODA's designee) of the sanction no more than five business days after the state or federal department of agriculture or a local health district issues the sanction and shall notify ODA (or ODA's designee) of the provider's plan of correction no more than five business days after the provider furnishes the plan to the state or federal department of agriculture or local health district.

(c) Upon request, the provider shall furnish to ODA (or ODA's designee) a copy of the most recent food-safety inspection by a state or federal department of agriculture or a local health district.

(3) Delivery:

(a) The provider shall deliver ~~each meal~~ meals according to the ~~consumer's~~ individual's service plan.

(b) Delivery dates and times: The provider shall establish a routine delivery date and range of time with each ~~consumer~~ individual and record the

established delivery date and time in the ~~consumer's~~ individual's clinical record.

(i) Per-meal delivery: The provider shall notify the ~~consumer~~ individual if it will deliver a single ready-to-eat ~~home-delivered~~ meal more than one hour ~~past~~ after the established delivery time.

(ii) Periodic delivery: The provider shall notify the ~~consumer~~ individual if it will , in one delivery, deliver multiple ~~home-delivered~~ meals that are ~~not ready-to-eat and temperature-controlled (e.g., deliver ten vacuum-packed meals in one package)~~ not hot meals, but frozen, vacuum-packed, modified-atmosphere-packed meal, or shelf-stable more than one day ~~past~~ after the established delivery date. The provider shall provide the consumer with clear instructions on how to safely heat or reheat a meal and, if the meal is delivered in components (e.g., a vacuum-packed meal), how to assemble the meal.

This information exists in the current rule in a later paragraph. ODA proposes to move it to this paragraph.

(iii) Per-meal delivery with periodic delivery of milk, bread, and butter: Because certain individuals may have difficulty opening small milk cartons or small butter packets (e.g., due to arthritis), if the individual's service plan authorizes the provider to do so, a provider may deliver a pint or half-gallon of milk; a loaf of sliced bread; and a stick of butter to an individual up to once per week if the milk, bread, and butter are components of home-delivered meals that the provider delivers throughout the week, so long the meals comply with this rule, regardless of whether the meals are ready-to-eat, frozen, vacuum-packed, modified-atmosphere-packed, or shelf-stable. (E.g., A provider may furnish a pint of milk for consumption as multiple servings of milk that are part of multiple meals, but not as an ingredient for the individual to use to prepare a meal.

This is a restatement of the current language on delivering milk, bread, and butter periodically for meals that are consumed daily. ODA wants to be clear that these items are part of meals, not bulk food deliver in addition to meals.

(c) Delivery instructions: The provider shall furnish written or electronic delivery instructions to its delivery persons.

(d) Upon request, the provider shall furnish evidence to ODA (or ODA's designee) hat it complies with the requirements under paragraph (B)(4) of this rule.

~~(d) Consumer instructions: The provider shall provide the consumer with clear instructions on how to safely heat or reheat a meal and, if the meal is delivered in components (e.g., a vacuum-packed meal), how to assemble the meal. The provider shall retain records to show it complies with this paragraph.~~

ODA proposes to move this to an earlier paragraph of the rule.

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(4) Provider qualifications:

(a) Type of provider: Only an agency that ODA certifies as an agency provider shall ~~provide this service~~ furnish meals. No individual shall ~~provide the service~~ furnish meals unless the individual is an employee or volunteer of an agency that ODA certifies as an agency provider.

(b) Licensure:

(i) Food service operator's license: The provider shall possess any current, valid license or certificate that the local health department requires the provider to possess.

(ii) Driver's license: The provider shall retain records to show that each of its ~~meal-delivery persons~~ drivers possesses a current, valid driver's license.

(c) Auto liability insurance: The provider shall retain records to show that the owner of each meal-delivery vehicle used ~~for this service~~ carries auto liability insurance on the vehicle.

(d) Training: The provider shall develop a training plan that includes orientation and annual continuing education.

(i) Orientation: The provider shall assure that each employee, including each volunteer, who participates in meal preparation, handling, or delivery receives orientation on any of the following topics that are relevant to the employee's job duties:

*(a)* Sensitivity to the needs of older adults and people with physical disabilities or cognitive impairments~~;~~.

*(b)* Handling emergencies~~;~~.

*(c)* Food storage, preparation, and handling~~;~~.

*(d)* Food safety and sanitation~~;~~.

*(e)* Meal delivery~~; and~~,

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*(f)* Handling hazardous materials.

(ii) Continuing education: The provider shall assure that each employee, including a volunteer, who participates in meal preparation, handling, or delivery completes four hours of continuing education each year on the topics under paragraph ~~(B)(4)(d)(i)~~ (B)(5)(d)(i) of this rule that are relevant to the employee's job duties.

~~(iii)~~(e) ~~The provider shall retain records to show that it complies with paragraphs (B)(4)(d), (B)(4)(d)(i), and (B)(4)(d)(ii) of this rule.~~Upon request, the provider shall furnish evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(5) of this rule.

(5) Limitations:

(a) The provider shall not ~~provide the service~~ furnish meals to ~~a consumer~~ an individual in excess of what the case manager orders ~~in the service order~~ for the ~~consumer~~ individual.

(b) The provider shall only bill ~~the PAA~~ ODA's designee for ~~the service~~ meals under the PASSPORT program if the case manager identifies the provider in the individual's service plan.~~order for the consumer~~

(c) The provider shall not ~~provide the service~~ furnish meals as a supplement or replacement to the purchase of food or groceries.

(d) The provider shall not provide bulk ingredients, liquids, or other food to ~~a consumer~~ an individual, whether or not the ~~consumer~~ individual would prepare a meal independently or with assistance. As used in this paragraph, "bulk ingredients, liquids, and other food" includes food that one portions, prepares, or cooks to eat, but does not include a fully-prepared meal that one heats or reheats to eat. ~~Because certain consumers may have difficulty opening small milk cartons or small butter packets (e.g., due to arthritis), if the service plan authorizes the provider to do so, a provider may deliver a pint or half-gallon of milk; a loaf of sliced bread; and a stick of butter to a consumer up to once per week if the milk, bread, and butter are components of fully-prepared meals that the provider delivers throughout the week. (e.g., A provider may provide a pint of milk for consumption as multiple servings of milk that are part of multiple meals, but not as an ingredient for the~~

ODA proposes to restate this information in an earlier paragraph of the rule where it should cause less confusion.

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~~consumer to use to prepare a meal.)~~

(e) The provider shall not ~~provide the service~~ furnish meals to ~~a consumer~~ an individual who is hospitalized or is residing in an institutional setting.

(6) Service verification:

(a) The provider shall retain a record of the case manager's service order.

(b) For each meal delivery, the provider shall retain a record of the:

(i) ~~Consumer's~~ Individual's name;

(ii) Delivery date;

(iii) Delivery time;

(iv) Number of meals in the delivery;

(v) Delivery person's signature or initials; and,

(vi) ~~Consumer's~~ Individual's signature. ~~The case manager shall record the consumer's signature of choice in the consumer's service plan.~~ The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(c) The provider may use a technology-based system to collect or retain the records required under this rule.

(d) ~~The provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code.~~Upon request, the provider shall furnish evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(7) of this rule.

(C) Unit and rates:

(1) A unit of ~~a~~ regular home-delivered ~~meal service~~ meals is one home-delivered meal that is planned, safely prepared, packaged, and delivered~~, and recorded~~ by qualified employees of an agency provider according to this rule. The

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maximum rate allowable for one regular home-delivered meal is listed in rule ~~5101:3-1-06.1~~ 5160-1-06.1 of the Administrative Code.

(2) A unit of ~~a~~ home-delivered ~~meal service~~ meals with a therapeutic diet is one home-delivered meal with a therapeutic diet that is planned, safely prepared, packaged, and delivered~~, and recorded~~ by qualified employees of any agency provider according to this rule. The maximum rate allowable for ~~one unit of a home-delivered~~ a meal with a therapeutic diet is listed in rule ~~5101:3-1-06.1~~ 5160-1-06.1 of the Administrative Code.

(3) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

~~(D) Definition: "USDA" means "United States department of agriculture."~~