

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** OHIO DEPARTMENT OF AGING

**Package Title:** MISCELLANEOUS UPDATES (CSIO)

**Rule Number(s):** 173-4-06, 173-39-01, 173-39-02.1, 173-40-04

**Date:** November 4, 2016. Revised on November 21, 2016.

**Rule Types:**

☒ **5-Year Review:** 173-4-06, 173-39-01, 173-39-02.1, 173-40-04

☐ **Rescinded:** None

☐ **New:** None

☒ **Amended:** 173-4-06, 173-39-01, 173-39-02.1, 173-40-04

☐ **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.

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## **Regulatory Intent**

### **1. Please briefly describe the regulations in plain language.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

ODA proposes to amend the following rules:

OAC173-4-06 regulates the handling of diet orders in AAA-provider agreements for meals paid with Older American Act funds. ODA proposes to (1) replace the unfortunate occurrence of “regime” with “regimen” and (2) clearly require providers to only honor diet orders for a dysphagia nutritive regimen “if the diet order *indicates whether the consumer requires thickening agents in his or her drinks, soups, etc.*” instead of “if the diet order requires *the meals to have* thickening agents.” This should prevent any possible misconception that diet orders must require every item in a meal to have a thickening agent. The current rule was adopted on September 1, 2016. This would amend the recently-adopted rule.

OAC173-39-01 introduces OAC Chapter 173-39 and defines terms used in the chapter. ODA proposes to (1) amend the definition of “individual” so the term has the same meaning as “individual” in rule OAC5160-31-02 and (2) define “ODA-certified provider,” which is a term used throughout the Chapter. The current rule was adopted on July 1, 2016. This would amend the recently-adopted rule.

OAC173-39-02.1 regulates adult day services (ADS) when they are provided to an enrollee of the PASSPORT Program by an ODA-certified provider. ODA proposes to (1) replace the unfortunate occurrence of “meal delivery” in (B)(6)(a) with “ADS session” and (2) replace “ODA (or ODA’s designee)” in (B)(6)(a)(iii) with “ODA or its designee.” The current rule was adopted on September 1, 2016. This would amend the recently-adopted rule.

OAC173-40-04 requires providers of goods and services to individuals enrolled in the state-funded component of the PASSPORT Program to be an ODA-certified provider. ODA proposes list the program name at the beginning of the rule’s title. This assists the public when using internet search engines to search for the rule.

The amendments are not substantive and would not change a provider’s practice or change the adverse impact upon a provider.

### **2. Please list the Ohio statute authorizing the Agency to adopt these regulations.**

For OAC173-4-06: ORC §§ [173.01](#), [173.02](#), [173.392](#); Section 305(a)(1)(C) of the [Older Americans Act of 1965](#), 70 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R 1321.11 (July 1, 2016).

For OAC173-39-01: ORC §§ [173.01](#), [173.02](#), [173.391](#), [173.52](#), and [173.522](#).

For OAC173-39-02.1: ORC §§ [173.01](#), [173.02](#), [173.391](#), [173.52](#), and [173.522](#).

For OAC173-40-04: ORC §§ [173.01](#), [173.02](#), [173.391](#), and [173.522](#).

- 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.***

For OAC173-4-06: The rule implements an aspect of a federally-funded program. The only federal requirements implemented in the rule

For OAC173-39-01: Terms defined in the rule may relate to federal requirements, but the rule itself does not implement any federal requirements. It merely introduces OAC Chapter 173-39 and defines terms used in the chapter.

For OAC173-39-02.1: In Ohio's application to the Centers for Medicare and Medicaid Services (CMS) for a waiver to authorize the Medicaid-funded component of the PASSPORT Program, Ohio indicated it adopted a rule on ADS and cited OAC173-39-02.6. Because CMS authorized a waiver that included ADS, as regulated by OAC173-39-02.1, the state is responsible for maintaining OAC173-39-02.1.

For OAC173-40-04: The rule does not implement a federal requirement. In 1986, the Ohio General Assembly, not the state, created the PASSPORT Program as a state-funded program. Today, the Ohio General Assembly has divided the program into 2 components: (1) Medicaid-funded component created under ORC§173.52 and (2) state-funded component created under ORC§173.522.

- 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 any federal requirements.

- 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)?**

The rules exist because the Ohio General Assembly and the U.S. Congress enacted laws authorizing ODA to adopt the rules.

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

ODA and its designees will monitor the providers for compliance with the rules. However, ODA's proposed amendments to the rule will not create new adverse impacts upon providers and require no additional monitoring from ODA or its designees.

**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.***

On August 23, 2016, Mobile Meals, Inc. (of Akron) asked ODA for clarification on OAC173-4-06 because the rule seemed to require providers to honor only diet orders for *meals* requiring thickening agents.

On November 3, 2016, ODA offered a 2-day opportunity to provide early input on the non-substantive amendments to OAC173-4-06 and to make other recommendations. ODA offered this to 2 providers (Wesley Community Services and Senior Resource Connection).

On November 3, 2016, ODA offered a 2-day opportunity to provide early input on the non-substantive amendments to OAC 173-39-01, 173-39-02.1, and 173-40-04, to indicate if the amendments were actually substantive, and to make other recommendations. ODA offered this to 4 provider associations (Ohio Health Care Association, Ohio Academy of Senior Health Sciences, Inc., Ohio Association of Senior Centers, and Ohio Council for Home Care and Hospice) and Ohio Association of Area Agencies on Aging.

For all rules: From November 4 to November 20, 2016 at 11:59PM, ODA published the BIA and proposed amendments to the rules on its website for an online public-comment period.

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

For OAC173-4-06: In response to the inquiry of Mobile Meals, Inc., ODA is proposing to amend the rule to clearly require providers to only honor diet orders for a dysphagia nutritive regimen “if the diet order *indicates whether the consumer requires thickening agents in his or her drinks, soups, etc.*” instead of “if the diet order requires *the meals to have* thickening agents.” This should prevent any possible misconception that diet orders must require every item in a meal to have a thickening agent.

On November 3, Senior Resource Connection indicated its support for the amendments to OAC173-4-06. At the time of printing, ODA received no input from other stakeholders. This may be due to the benign nature of the amendments ODA proposes for the rules.

For all rules: During the online public-comment period, zero persons commented upon the rules.

**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?**

ODA is not proposing to amend the rules based upon scientific data.

**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?**

ODA did not consider any alternative regulations.

**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.***

ODA did not consider performance-based regulations when considering whether to amend this rule.

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

For OAC173-4-06: ORC§[173.01](#) designates ODA as "the sole state agency to administer funds granted by the federal government under the 'Older Americans Act of 1965,' 79 Stat. 219, 42 U.S.C. 3001, as amended." The Ohio General Assembly only designated rule-making authority for Older Americans Act programs to the sole state agency.

For OAC 173-39-01, 173-39-02.1 173-40-04: ORC§[173.391](#) only authorizes ODA (*i.e.*, not any other state agency) to develop requirements for ODA-certified providers of goods and services to individuals who are enrolled in ODA-administered programs. ORC§[173.522](#) only authorizes ODA (*i.e.*, not any other state agency) to develop requirements for the state-funded component of the PASSPORT Program.

**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.**

For all rules: Before the rules would take effect, ODA will post them on ODA's [website](#). ODA also sends an email to subscribers of our rule-notification service to feature the rules.

For OAC173-4-06: Through its regular monitoring activities under OAC[173-2-07](#), ODA will work with its designees, the AAAs, to ensure that the regulation is applied uniformly.

For OAC 173-39-01, 173-39-02.1 173-40-04: Through its regular monitoring activities, ODA and its designees, the PAAs, will monitor providers for compliance. OAC[173-39-02](#) requires all providers to allow ODA and its designees to monitor.

**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;**

For OAC173-4-06: ODA's March, 2015 poll of AAAs revealed very few nutrition providers provide very few diet-order-related meals paid with Older Americans Act funds. AAA5, for example, reported that no providers in PSA5 used Older Americans Act funds to pay for such meals.<sup>1</sup>

For OAC 173-39-01, 173-39-02.1 173-40-04: Through its regular monitoring activities, ODA and its designees, the PAAs, will monitor providers for compliance. OAC[173-39-02](#) requires all providers to allow ODA and its designees to monitor.

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

For OAC173-4-06: The rule doesn't require providers to provide therapeutic diets, medical meals, or food for special dietary use. If a provider chooses to serve such meals and wants paid by Older Americans Act funds for those meals, the rule would apply. If a provider decides to provide such meals, the provider may only do so if it attains a diet order from a licensed healthcare professional whose scope of practice includes ordering meals with a therapeutic diet, medical meals, or meals for special dietary use. It is the responsibility of the licensed healthcare professional, not the provider, to order such diets, so the adverse impact

For OAC173-39-01: The rule has no adverse impact. It merely introduces OAC Chapter 173-39 and defines terms used in the chapter.

For OAC173-39-02.1: The PASSPORT Program's payment of Medicaid funds for ADS is an all-inclusive payment that includes all aspects of providing the goods and services, including employee training. Generally, a provider can obtain the training necessary from training websites. The rule does not restrict the provider from seeking all training online.

For OAC173-40-04: If a provider voluntarily decides to serve individuals enrolled in the state-funded component of the PASSPORT Program, ODA requires the provider to be certified according to OAC173-39-03. (*cf.*, ORC§§ 173.39, 173.391)

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<sup>1</sup> Overall, meals with a therapeutic diet represent an insignificant percentage of the meals provided. For comparison, the number of meals with a therapeutic diet purchased by the PASSPORT Program represented only 2/3 of 1% of the total number of home-delivered meals provided to individuals enrolled in the program in 2015.

**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.***

For OAC173-4-06: The rule doesn't require providers to provide therapeutic diets, medical meals, or food for special dietary use. If a provider chooses to serve such meals and wants paid by Older Americans Act funds for those meals, the rule would apply. If a provider decides to provide such meals, the provider may only do so if it attains a diet order from a licensed healthcare professional whose scope of practice includes ordering meals with a therapeutic diet, medical meals, or meals for special dietary use. It is the responsibility of the licensed healthcare professional, not the provider, to order such diets, but the provider won't be paid with Older Americans Act funds for a diet-order-related meal until a licensed healthcare professional provides a diet order to the provider. ODA's proposed amendments to the rule create no additional adverse impacts.

For OAC173-39-01: The rule creates no adverse impact. ODA's proposed amendments to the rule also create no adverse impacts.

For OAC173-39-02.1: In the appendix to OAC[5160-1-06.1](#), the Ohio Department of Medicaid establishes the maximum-possible payments of Medicaid funds the PASSPORT Program would make for ADS. As previously stated, the PASSPORT Program's payment of Medicaid funds for ADS is an all-inclusive payment that includes all aspects of providing the goods and services, including training.

The training fees would vary because training organizations aren't required to use standard fees for the training classes that they offer. As previously stated, a provider can obtain the training necessary to furnish the choices home care attendant service from training websites. [CareStar](#) and [Collins Learning](#) and are examples of online vendors.

- CareStar's fees are typically \$7.00 per course, but the price drops to \$5.75 per course if the courses are purchased in bundles of 12.
- Collins Learning's fees for "personal care home administrator" classes are \$14.99 per class or \$99.00 per year for unlimited access to online training.

The courses from online vendors such as Collins Learning and CareStar may be used for initial training and continuing education. Again, the rule does not restrict the provider from seeking all training online.

ODA's proposed amendments to the rule creates no additional adverse impacts to providers. It merely corrects an unfortunate error in one paragraph and updates terminology in another paragraph.

For OAC173-40-04: The cost to become a certified provider is the cost of completing an application, meeting the requirements for every provider in OAC173-39-02, and the



requirements to provide any service regulated in OAC Chapter 173-39. There is no charge to apply. Practically, because individual's in the state-funded component of the program generally transition to the Medicaid-funded component of the program, and because the state-funded component generally enrolls individuals for up to 90 days, there is no incentive for a provider to become ODA certified, but to only serve individuals in the state-funded component. Thus, ODA-certified providers are more likely to rightly view their certification as enabling them to serve individuals regardless of whether they're on the state-funded or Medicaid-funded components of the program.

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

For OAC173-4-06: The version of the rule adopted on September 1, 2016 made providing diet-order-related meals easier for providers by eliminating preferential language for physician-ordered diets to (1) increase the pool of qualified, licensed professionals who could make diet orders, which in turn, made it easier for providers to attain diet orders, and (2) prevent individuals from needing to make office visits to their physicians to obtain diet orders, which would increase costs to individuals and their insurance plans, which may include Medicare and Medicaid. This adverse impact reduction remains in the rule as being presently amended. The amendments create no adverse impact.

For OAC173-39-01: The rule creates no adverse impact. The amendments to the rule create no adverse impact.

For OAC173-39-02.1: ODA is not making any burdens upon providers that the provider would not face in the normal course of duty. Thus, the regulatory burden of providing ADS, creating and retaining records related to ADS, and retaining records that document how the provider qualifies to provide ADS is reasonable compared to the health and safety of individuals who receive long-term care. It also seems reasonable to expect providers' employees to be adequately trained to provide minor home modification, maintenance, or repair. The low costs of training make doing so affordable. Additionally, ODA does not place any limits on the amount of training that a provider may take online.

For OAC173-40-04: Individuals may only be enrolled in the state-funded component of the PASSPORT Program for a maximum of 90 days. It's is a temporary assistance program offering home and community-based services to nursing-home-eligible individuals enrolled in the program. Both components of the PASSPORT Program are geared to allow the individuals to retain as much of their independence as possible and to avoid preventable admissions into nursing homes or other institutions. Therefore, it makes sense for ODA to not jeopardize individuals' health and safety by having separate sets of providers as they transition between the state-funded component and the Medicaid-funded component. Accordingly, ODA requires the providers serving individuals enrolled in the state-funded component to be ODA-certified, just like they are for the Medicaid-funded component. The result is the same pool of providers make continuity of care possible between the two components of the program.

If ODA didn't require ODA certification under ORC§173.391, which allows any willing and qualified provider to provide services, the providers operating in the state-funded component would be the winning bidders for contracts or grants under ORC§173.392. This would not result in an ability to offer continuity to the individuals enrolled in the program.



**Regulatory Flexibility**

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

The rules treat all providers the same, regardless of their size.

**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 does not offer different discriminate between responsible parties, applicants, or employees based upon the size of the business or organization. The majority of businesses that this rule regulates are small businesses according to ORC§119.14.

ODA maintains an [online rules library](#) to assist all providers (and the general public) to find the rules that regulate them. Providers (and the general public) may access the online library 24 hours per day, 365 days per year.

ODA and its designees are available to help providers with their questions.

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



## APPENDIX A

# TERMINOLOGY BACKGROUND & OTHER COMPOSITION STANDARDS

November 10, 2016

### DISCLAIMER

*This appendix does not define terms used in ODA's rules. Instead, it provides background on why ODA is systematically incorporating uniform terminology and other composition standards into new and amended rules. For definitions, please see the definitions in ODA's rules.*

### BACKGROUND FOR TERMINOLOGY

**AAA-provider agreement:** ODA proposes to use "AAA-provider agreement" instead of "provider agreement" to represent agreements between an AAA and the provider. The term is used much in OAC Chapter 173-3, which regulates AAA-provider agreements that pay providers, in whole or in part, with Older Americans Act funds. For now, OAC Chapter 173-4 may use "contract" in place of "AAA-provider agreement." *Compare to "certification agreement" and "Medicaid-provider agreement."*

**Applicable and Appropriate:** ODA proposes to not use "applicable" or "appropriate" in a rule. Adopting those words into law allows the *reader*, not the *author*, of the law to determine what he or she believes is the law.

**Before:** See "Legalisms."

**Certification Agreement:** ODA proposes to use "certification agreement" instead of "provider agreement" or "contract" to represent agreements between ODA's designee and the provider. *Compare to "AAA-provider agreement" and "Medicaid-provider agreement."*

**CDJFS:** See "ODM's administrative agency."

**Certified Provider:** Because "certified provider" and "certified long-term care provider" have the same meaning in ODA's rules, ODA proposes to delete the unnecessary use of "long-term care."

**Certified Service:** ODA does not certify services; it certifies providers to provide goods and services. Therefore, ODA proposes to replace all occurrences of “certified services” with “goods or services ODA certified the provider to provide.”

**Choices:** ODA proposes to delete all references to the now-defunct Choices Program.

**Compliance Reviews:** ODA proposes to use “compliance reviews” refer to the reviews in OAC173-39-04. The term would have the same meaning as “audit or structural compliance review” in ORC§173.391 and “provider structural compliance review” in the current version of OAC173-39-04. Using a general term minimizes the potential for interpreting that OAC173-39-04 only applies to specific types of compliance reviews.

**Days + Deadlines:** Unless the context indicates otherwise, ODA proposes to consider a day to be a 24-hour period that begins and ends at Midnight.<sup>1</sup> The term would not require the modifier “calendar” to differentiate a day from a *business day*.

Additionally, ODA proposes to refrain from using “business day” because the term could be interpreted to mean weekdays, weekdays-minus weekday holidays, days not on vacations (*i.e.*, “holidays”), *etc.* Additionally, “holidays” could be interpreted to mean major holidays, government holidays, vacations, *etc.*

ODA proposes to use the following terminology because (1) it accounts for deadlines that would occur on a day other than a business day, (2) would not be prone to misinterpretation by adversarial interests, and (3) would create a statewide standard within ODA-administered programs:

...no later than five days after X. If the fifth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day that immediately follows the fifth day that is not on a weekend or a legal holiday.

ODA proposes to denote deadlines with terms that would not allow 2 directions of days. For example, “within five days of X” could mean 5 days before *or* after X, or an 11-day period, while “no later than 5 days after X” only means 5 days after X.

**Designed to:** ODA proposes to no longer use “designed to” in definitions defining services. This eliminates a loophole by which a non-compliant provider could argue its service provision was sufficient for payment because it was *designed to* meet the rule, although it turned out to be inadequate.

**Disciplinary Actions:** Although people sometimes refer to “sanctions,” ODA proposes to continue using “disciplinary actions” in its rules. “Disciplinary actions” is used in ORC§173.391 where it refers to the actions taken by ODA that involve hearings. Disciplinary actions are regulated by OAC173-39-05. “Non-disciplinary actions” refers to the actions taken by ODA in ORC§173.391 that do not involve hearings. Non-disciplinary actions are regulated by OAC173-39-05.1.

**Expired:** ODA proposes to no longer use “expired” to refer to individuals who are deceased. Instead, ODA proposes to use “deceased.”

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<sup>1</sup> If a rule would refer to a 24-hour period that would begin and end at a time other than Midnight, the term would be “twenty-four hour period.”

**Goods + Services:** Meals and home medical equipment include service components (e.g., delivery) but are traditionally considered goods, not services. Therefore, ODA proposes to generally use “goods and services” when referring to goods and services but to use “services” when referring to only services.

It is also verbose and unnecessary to insert “service” after the name of goods. It’s also verbose and unnecessary to insert “service” after the name of certain services (e.g., assisted living, chores, and personal care). The same goes for inserting the word “service” before “requirements.” The requirements stand without the word “service.”

Together, ODA’s proposal to use “*goods and services*” and to eliminate “*service requirements*” would prevent potential misconceptions that certain requirements would not apply to providers of goods without changing the meaning of any rule.

For rules that only regulate a service, ODA would continue to use the word “service.”

**Hard copy:** ODA proposes to use “paper copy” instead of “hard copy” to remove information technology jargon from non-information-technology regulations.

**In Accordance With:** See “Legalisms.”

**Includes:** ODA proposes to continue using “includes” but not “includes, but is not limited to.” Both have the same meaning, but the latter is redundant.

**Individual:** ODA proposes to replace “consumer” with “individual” in OAC Chapter 173-39 and for rules that regulate the state and Medicaid-funded components of the Assisted Living and PASSPORT Programs. These would be the exceptions:

1. When referring to consumer-directed providers, ODA proposes to replace “consumer” with “participant.”
2. When referring to person-centered planning, ODA proposes to use “person” where “consumer” would have been used if the term “consumer-centered planning” existed in the current rules.

**Legalisms:** ODA proposes to minimize unnecessary legalisms in rule language, such as replacing “in accordance with” with “according to” and replacing “prior to” with “before.”

**Medicaid-Provider Agreement:** ODA proposes to use “Medicaid-provider agreement” to represent agreements between ODM and the provider. *Compare to “AAA-provider agreement” and “certification agreement.”*

**Minimum requirements:** ODA proposes to continue replacing occurrences of “minimum requirements” with “requirements” because ODA is not authorized to adopt a rule that, in turn, authorizes extra-rule requirements not incorporated into the rule by reference and readily available to the general public free of charge. (See ORC §§ 119.02, 121.71 to 121.76.)

**Must:** See “shall.”

**ODA's designee:** In 2015, ODA adopted a new version of OAC173-39-01 that included a new definition for "ODA's designee." In the BIA for the rule project,<sup>2</sup> ODA explained the following:

In rule 173-39-01 of the Administrative Code, ODA proposes to redefine the term "ODA's designee" in a way that would allow the 13 current PASSPORT administrative agencies to continue to be designees, but that also allows ODA to designate another entity if necessary. The current definition says the following:

"ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."

ODA proposes for the new definition to say the following:

"ODA's designee" is an entity to which ODA delegates one or more of its administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and "Catholic Social Services of the Miami Valley."

In the same BIA, ODA also explained the following:<sup>3</sup>

If ODA wanted to designate another entity to perform administrative duties, the adverse impact would be the entity that ODA didn't designate for to perform these duties. If ODA uses free and open competition to choose the "designee," the adverse impact would be the result of submitting a bid that was not the winning bid.

ODA proposes to continue using "ODA's designee" in this manner.

Instead of using the phrase "ODA (or ODA's designee)," ODA may use "ODA (or its designee)."

**ODM's Administrative Agency:** ODA proposes to use "ODM's administrative agency" instead of "CDJFS" to align with similar changes in ODM rules.

**Ohio Administrative Code + Ohio Revised Code Citations:** §5.2.1 of the Legislative Service Commission's (LSC'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."<sup>4</sup> However, to make the BIA and related documents shorter and easier to read, ODA proposes to use the following unofficial citation formulas in the BIA and related non-rule documents: "OAC123-4-56" and "ORC§123.45."

**Paper copy:** See "hard copy."

**Participant-directed:** ODA proposes to use "participant-directed" instead of "consumer-directed." This would be an exception to the ODA's proposal to change occurrences "consumer" to "individual." Otherwise, "consumer-directed individual provider" would become "individual-directed individual provider." The latter term could be mistaken for a self-employed (*i.e.*, non-agency) provider.

**Pay:** ODA proposes to use forms of "pay" (*e.g.*, "payment") instead of forms of "reimburse" (*e.g.*, "reimbursement"). ODA<sup>5</sup> and ODM<sup>6</sup> have proposed or made similar changes to other rules.

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<sup>2</sup> Ohio Dept. of Aging. *ODA Provider Certification: Terminology*. Business Impact Analysis. Revised, Sept 10, 2015. Pg. 2.

<sup>3</sup> *Id.* Pg. 10.

<sup>4</sup> ORC§1.01 allows LSC to draft legislation using "R.C."

<sup>5</sup> Ohio Dept. of Aging. *Nutrition Rules*. Business Impact Analysis. Revised, Dec 31, 2015.

**Policies and Procedures:** ODA proposes to consistently use “policies” and not “policies and procedures,” because a required procedure would be a policy. Therefore, “and procedures” is redundant.

**Prior to:** See “legalisms.”

**Provide:** ODA proposes to use the verb “provide” instead of “furnish,” “deliver,” “serve,” *etc.*

**Provider:** Because all of OAC Chapter 173-39 is about ODA provider certification and because each rule begins by requiring ODA-certified providers to comply, there is no need to use “certified” or “ODA-certified” before “provider” in the rest of each rule’s text. This reduces verbosity.

When describing the relationship between a provider and a government authority, ODA proposes to consistently use the following terms throughout OAC Chapter 173-39:

- Licensure is a matter between (1) a provider/provider’s employee who requires a license to practice a profession in Ohio and the state’s licensing board or agency or (2) a facility (*e.g.*, a residential care facility) that requires a license to operate in Ohio and the state’s licensing board or agency. Although ODA is not a licensing board or agency, to obtain ODA’s certification, a provider shall have all licenses required by state law.
- “ODA provider certification” and “certification” refer to ODA’s certification of providers. This is the primary topic of OAC Chapter 173-39.
- “Current, valid Ohio Medicaid provider agreement” or “agreement” is an agreement between a provider and the Ohio Dept. of Medicaid to obtain a Medicaid provider number. The number is necessary for billing for the goods and services provided to individuals enrolled in the Assisted Living or PASSPORT Programs.
- “Contract” is an agreement between a provider and ODA’s designee that establishes the rates of payment for each job, item (*i.e.*, “good”), or unit of service.<sup>7</sup>

**Pursuant to:** See “Legalisms.”

**Reimburse:** See “Pay.”

**Requirements:** ODA proposes to use “requirements” instead of “criteria” because the singular form of “criteria” is “criterion.” Most readers would not know the meaning of “criterion.” Fortunately, the single form of “requirements” is simply “requirement.”

ODA proposes to use “requirements” instead of “conditions” because “conditions” is a term more associated with weather (*e.g.*, *weather conditions*) than provider qualifications. Thus, references to “conditions of participation” in OAC173-39-02 become references to the “requirements” in OAC173-39-02.

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<sup>6</sup> Ohio Dept. of Medicaid. *Modifications to Administrative Rules 5160-4-12 and 5160-4-13.* (MHTL 3334-14-XX) Undated.

<sup>7</sup> See OAC5160-31-07.

Together, using “requirements” instead of “criteria” or “conditions” would offer consistent terminology for readers of ODA’s rules.

**Service plan:** ODA proposes to amend the definitions of “service plan” to say that the term includes “person-centered planning” conducted according to OAC5160-44-02.

**Shall:** §5.8.3 of the LSC’s Rule Drafting Manual requires state agencies to make requirements of providers with the term “shall,” not “must.”

**Waiver Services:** ODA proposes to eliminate “waiver” as it appears before “services” in rules. ODA requires providers to comply with OAC Chapter 173-39 when they are providing goods and services to individuals enrolled in both the *State-funded* and *Medicaid-funded* components of the PASSPORT and Assisted Living Programs. Thus not all services are authorized by Medicaid waivers.

**Within X days of:** See “Days + Deadlines.”

## Composition Standards

**Rule Titles:** Chapters of the Ohio Administrative Code do not have official titles. Publishers assign their own titles to chapters. Over the years, ODA has inserted helpful cross-references in its rules when it seemed helpful to let the reader know that they may want to be reading another chapter of rules. Now, ODA is proposing to delete many of those cross references because it is systematically adding “Chapter title” language to each rule’s title. For example, ODA has 2 adult day service rules, each of which regulate on a different basis. Because ODA is proposing (in another rule project) to insert “Older Americans Act” in front of “Adult day service,” there is no need to refer any readers of the provider certification chapter (OAC Chapter 173-39) that a similar regulation exists.

**General First:** ODA proposes to generally raise general topics before specific ones.

- Bad example: Except as set forth in paragraph (B)(2) of the rule, the provider shall not X.
- Good example: The provider shall not X, unless the provider is Y.

**Multi-Paragraph Run-On Sentences:** ODA proposes to continue converting multi-paragraph run-on sentences into paragraphs that end in periods.

**References:** ODA proposes to make as few references as possible within each rule and between rules.

**Paragraph Outline:** For rules that regulate the provision of goods and services, ODA proposes to generally place paragraphs in the following order:

- (A) Definition of the good or service.
- (B) Eligibility of individual.
- (C) Requirements for providing the good or service.
  - (1) General requirements.
  - (2) Facility requirements.
  - (3) Staffing levels.
  - (4) Provider (staff) qualifications, including training.
  - (5) Service verification.



(D) Payment/Unit and Rates

(E) Definitions specific to rule (*i.e.*, a glossary).

Most rules contain the text above in black. Rules that do not contain one or more of the blue paragraphs would be renumbered accordingly.

**Active Voice:** ODA proposes to use the active voice (*vs.*, the passive voice) whenever reasonable.

- Passive example: The consumer shall be provided X. (Who is the responsible party?)
- Active example: The provider shall provide X to the consumer. (The language clearly identifies the responsible party.)