



ONLINE PUBLIC-COMMENT PERIOD MISCELLANEOUS UPDATES (NON-CSIO)

NOVEMBER 3, 2016

ODA proposes to amend the following rules:

- 173-1-02 **Public hearing notices for rule proposals.** ODA proposes to align terminology with Appendix A (attached).
- 173-2-04 **AAAs: currently-designated AAAs.** ODA proposes to amend the address of an AAA.
- 173-3-01 **Older Americans Act: introduction and definitions.** ODA proposes a missing comma into the definition of “consumer’s signature.
- 173-40-01 **PASSPORT program (state-funded component): introduction and definitions.** ODA proposes to (1) replace OAC5160:1-1-55.1 with OAC5160-1-33 to correspond to ODM’s proposed change of rule numbers and (2) to revise the date of ODJFS’s latest version of Form JFS07200.
- 173-40-02 **PASSPORT program (state-funded component): individual eligibility requirements.** ODA proposes to (1) align terminology in the rule with Appendix A (attached), (2) use new ODM rule numbers that replaced older ODJFS rule numbers, and (3) remove references to eligibility based upon losing Medicaid coverage because, in 2015, Am. Sub. H. B. No. 64 (131st G. A.) deleted eligibility based upon loss of Medicaid from ORC§173.522.
- 173-40-03 **PASSPORT program (state-funded component): individual enrollment, disenrollment, and other actions.** ODA proposes to (1) align terminology in the rule with Appendix A (attached), (2) update the ODA’s address in the rule, and (3) remove references to eligibility based upon losing Medicaid coverage because, in 2015, Am. Sub. H. B. No. 64 (131st G. A.) deleted eligibility based upon loss of Medicaid from ORC§173.522.
- 173-40-05 **PASSPORT program (state-funded component): covered services.** ODA proposes to align terminology with Appendix A (attached).
- 173-40-06 **PASSPORT program (state-funded component): individual’s choices and responsibilities.** ODA proposes to rescind this rule and replace it with a new rule. The new rule will only say, “An individual enrolled in the state-funded component of the PASSPORT program has the same choices and responsibilities under rule 173-42-06 of the Administrative Code as an individual enrolled in the Medicaid-funded component of the PASSPORT program.”

ODA invites the public to review the rules and proposed amendments and offer ODA any recommendations for improving the amendments.

Please submit all comments between Thursday, November 3 and Wednesday, November 9 at 11:59PM. To make a comment, please (1) email rules@age.ohio.gov and place the rule number of the rule in which you’re commenting in the subject line or (2) use the “[submit comment](#)” button in ODA’s online rules library.

173-1-02

Public hearing notices for rule proposals.

- (A) Any time ~~that~~ the Ohio department of aging (ODA) proposes to adopt, amend, or rescind a rule under section 119.03 of the Revised Code, ODA shall give a reasonable public notice in the register of Ohio at least thirty days before the date ODA sets for the public hearing, as prescribed by division (A) of section 119.03 of the Revised Code. In the notice, ODA shall include the following:
- (1) A statement of ODA's intention to consider adopting, amending, or rescinding a rule.
 - (2) A synopsis of the proposed rule, amendment, or rule that ODA proposes to rescind or a general statement of the subject matter to which the proposed rule, amendment, or rescission relates.
 - (3) A statement of the reason or purpose for adopting, amending, or rescinding the rule.
 - (4) The date, time, and place of a hearing on the proposed action, which ODA shall set no earlier than the thirty-first nor later than the fortieth day after ODA files the proposed rule, amendment, or rescission under division (B) of section 119.03 of the Revised Code.
- (B) ODA shall promptly ~~furnish~~ provide an electronic copy of the public notice to any person who requests it without charge. ODA shall promptly ~~furnish~~ provide a ~~hard paper~~ hard paper copy of the public notice to any person who requests it and pays a reasonable fee that does not exceed the actual cost of copying and mailing. If the person making the request for a ~~hard paper~~ hard paper copy is affected by the proposed rule, ODA shall provide the ~~hard paper~~ hard paper copy without charge. Although ODA shall respond to all requests for a ~~hard paper~~ hard paper copy promptly, ODA cannot guarantee the provision of a ~~hard paper~~ hard paper copy thirty days before the public hearing unless the request is postmarked at least forty days before the hearing's date.

173-2-04

AAAs: currently-designated AAAs.

ODA designates the following entities as AAAs:

PSA	ENTITY	MAILING ADDRESS	CONTACT INFO
1	"Council on Aging of Southwestern Ohio"	"175 Tri-County Pkwy.; Cincinnati, OH 45246"	http://www.help4seniors.org/ 1-800-252-0155
2	"Area Agency on Aging, PSA2"	"40 W. Second St., Suite 400; Dayton, OH 45402"	http://www.info4seniors.org/ 1-800-258-7277
3	"PSA3 Agency on Aging, Inc."	"200 E. High St., 2nd Floor; Lima, OH 45801"	http://www.aaa3.org/ 1-800-653-7723
4	"Area Office on Aging of Northwestern Ohio, Inc."	"2155 Arlington Ave.; Toledo, OH 43609"	http://www.areaofficeonaging.com/ 1-800-472-7277
5	"Ohio District 5 Area Agency on Aging, Inc."	"2131 Park Ave. W., Suite 100; Ontario, OH 44906"	http://www.aaa5ohio.org/ 1-800-860-5799
6	"Central Ohio Area Agency on Aging"	"3776 S. High St. Columbus, OH 43207-4012"	http://www.coaaa.org/ 1-800-589-7277
7	"Area Agency on Aging District 7, Inc."	"P.O. Box 500; 160 Dorsey Dr.; Rio Grande, OH 45674-0500"	http://www.aaa7.org/ 1-800-582-7277
8	"Buckeye Hills-Hocking Valley Regional Development District: Area Agency on Aging 8"	"P.O. Box 370; Reno, OH 45773" (Physical address: "1400 Pike St. Marietta, OH 45750")	http://www.areaagency8.org/ 1-800-331-2644
9	"Area Agency on Aging Region 9, Inc."	"1730 Southgate Parkway; Cambridge, OH 43725"	http://www.aaa9.org/ 1-800-945-4250
10A	"Western Reserve	"925 Euclid Ave., Suite	http://www.psa10a.org/

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	Area Agency on Aging"	600; Cleveland, OH 44115-1405"	1-800-626-7277
10B	"Direction Home Akron-Canton Area Agency on Aging & Disabilities"	"1550 Corporate Woods Pkwy., Suite 100; Uniontown, OH 44685-8797"	http://directionhomeakroncanton.org/ 1-800-421-7277
11	'Area Agency on Aging 11, Inc."	"5555 Youngstown-Warren Rd., Suite 2685, 2nd Floor; Niles, OH 44446"	http://www.aaa11.org/ 1-800-686-7367

173-3-01

Older Americans Act: introduction and definitions.

(A) Introduction to Chapter 173-3 of the Administrative Code: This chapter regulates AAA provider agreements for goods and services paid, in whole or in part, with Older Americans Act funds.

(B) Definitions for Chapters 173-3 and 173-4 of the Administrative Code:

"AAA-provider agreement" ("agreement") means a contract between an AAA and a provider for the provision of goods or services to consumers.

"Activities of daily living" ("ADLs") means bathing; dressing; eating; grooming; toileting; transferring in and out of a bed or chair; and walking.

"Area agency on aging" ("AAA") means an entity ODA designates to be an AAA under rule 173-2-04 of the Administrative Code.

"Assessment" means a gathering of information about a person's strengths, problems, financial resources, and care needs in the following major functional areas: physical health, utilization of medical care, ADLs, IADLs, mental and social functioning, physical environment, and utilization of services and supports.

"Assistance with self-administration of medication" has the same meaning as in as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is provided by an unlicensed person.

"Care-coordination program" means a program coordinating and monitoring the provision of goods and services.

"Caregiver" and "family caregiver" have the same meaning as "family caregiver" in Section 302 of the Older Americans Act.

"Consumer" means, for the purposes of goods or services paid for, in whole or in part, with Older Americans Act funds, any person sixty years of age or older, unless a different age is required by a state or federal law.

"Consumer's signature" means the signature, mark, or electronic signature of a consumer, or the consumer's caregiver, verifying the provision of goods and services. Examples of technologies used to record electronic signatures are "Co-Pilot," "MealService," "MJM," "MySenior Center," "SAMS Scan," "Santrax," "SeniorDine," "SERVtracker," "SSAID," and call-in verification.

"Contract" has the same meaning as "AAA-provider agreement," unless the context clearly indicates otherwise.

"Day" means a twenty-four-hour period beginning and ending at midnight.

"Incident" means an event that is inconsistent with the routine care or routine provision of goods and services to a consumer. An incident may involve a consumer, caregiver (to the extent it impacts a consumer), provider, provider's staff or facility, another facility, an AAA's staff, ODA's staff, or other administrative authorities. Examples of an incident are abuse, neglect, abandonment, an accident, or an unusual situation resulting in an injury to a person or damage to the person's property or equipment.

"Instrumental activities of daily living" ("IADLs") means preparing meals, shopping for personal items, medication management, managing money, using the telephone, doing heavy housework, doing light housework, and the ability to get and use available transportation without assistance.

"Licensed practical nurse" ("LPN") has the same meaning as in section 4723.01 of the Revised Code.

"ODA" means the Ohio department of aging.

"Older Americans Act" means the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended by the "Older Americans Act Reauthorization Act of 2016."

"Older Americans Act funds" means the federal funds awarded to ODA through Title III of the Older Americans Act and any state or local funds used to match those federal funds, regardless of whether the local funds are public or private funds. For the purposes of this chapter and Chapter 173-4 of the Administrative Code, "Older Americans Act funds" does not mean funds for an ombudsman program.

"Planning and service area" ("PSA") means a geographic region of Ohio that ODA designated as a planning and service area under rule 173-2-02 of the Administrative Code.

"Provider" means a person or entity entering into an AAA-provider agreement with an AAA to provide goods or services to consumers. The three categories of providers are agency providers, self-employed providers, and consumer-directed providers. "Agency provider" means a provider hiring persons to provide goods and services to consumers. "Self-employed provider" means a provider who provides goods and services to consumers and who does not hire, or contract with, other persons to provide those goods or services. "Consumer-directed individual provider" means a provider (e.g., relative, friend, neighbor, or other person) a consumer hired and directs to provide goods and services to the consumer.

"Registered nurse" ("RN") has the same meaning as in section 4723.01 of the Revised Code.

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"RFP" means "request for proposal."

"Service plan" means a written outline of goods and services authorized for a consumer regardless of the funding source for the goods or services.

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173-40-01 **PASSPORT program (state-funded component): introduction and definitions.**

(A) Introduction: Chapter 173-40 of the Administrative Code regulates the state-funded component of the PASSPORT program created under section 173.522 of the Revised Code. (See Chapter 173-42 of the Administrative Code for rules on the medicaid-funded component of the PASSPORT program.)

(B) Definitions for this chapter:

"Authorized representative" has the same meaning as in rule ~~5160:1-1-55.1~~ [5160-1-33](#) of the Administrative Code.

"Form JFS07200" means "form JFS07200 'Request for Cash, Food, and Medical Assistance.' (rev. ~~9/2014~~ [10/2016](#))" The Ohio department of job and family services publishes the form on <http://www.odjfs.state.oh.us/forms/>." It is available to the general public at no cost.

"Form ODA1115" means "form ODA1115 'Financial Assessment Worksheet.' (rev. 09/2011)" ODA publishes the form on www.aging.ohio.gov. It is available to the general public at no cost.

"Form ODA1116" means "form ODA1116 'Enrollment Agreement.' (rev. 09/2011)" ODA publishes the form on www.aging.ohio.gov. It is available to the general public at no cost.

"Form ODA1117" means "form ODA1117 'Notice of Proposed Action and Opportunity for Hearing' (rev. 04/2012)" ODA publishes the form on www.aging.ohio.gov. It is available to the general public at no cost.

"Form ODM02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS)' (07/2014)." ODM publishes the form on <http://medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx>. It is available to the general public at no cost.

"ODA" means "the Ohio department of aging.

"ODA's designee" has the same meaning as in rule 173-39-01 of the Administrative Code.

"ODM" means "the Ohio department of medicaid."

"ODM's administrative agency" has the same meaning as "administrative agency" in rule 5160:1-1-01 of the Administrative Code.

"Service plan" means the written outline of the goods or services that a case manager authorizes a provider to provide to an individual, regardless of the funding

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source for those goods or services. "Service plan" includes the person-centered planning in rule 5160-44-02 of the Administrative Code.

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173-40-02

~~Eligibility criteria for the state-funded~~ **PASSPORT program**
(state-funded component): individual eligibility requirements.

(A) Presumptive: Only an individual who meets all the following criteria requirements is eligible for the state-funded component of the PASSPORT program on the basis of presumptive eligibility:

(1) First time only: The individual was not previously enrolled in the state-funded component of the PASSPORT program or the state-funded component of the assisted living program.

(2) Consultation: The individual has participated in a long-term care consultation under ~~section 173.42 of the Revised Code and~~ Chapter 173-43 of the Administrative Code.

(3) Financial criteria requirements:

(a) The individual completed and submitted forms JFS07200 and JFS02399 to ~~the CDJFS~~ ODM's administrative agency to apply for the medicaid-funded component of the PASSPORT program and the application is still pending because ~~the CDJFS~~ ODM's administrative agency has not yet made a final determination on his or her financial eligibility. (If ~~the CDJFS~~ ODM's administrative agency had already determined ~~that~~ he or she was eligible to participate in the medicaid-funded component of the PASSPORT program, he or she would be enrolled in the medicaid-funded component of the PASSPORT program and no longer be eligible for the state-funded component of the PASSPORT program. If ~~the CDJFS~~ ODM's administrative agency had already determined that he or she was not financially eligible to participate in the medicaid-funded component of the PASSPORT program, he or she would also not be eligible to participate in the state-funded component of the PASSPORT program.)

(b) The individual agreed that, if he or she is enrolled into the state-funded component of the PASSPORT program, then ~~the CDJFS~~ ODM's administrative agency determines that the individual is financially eligible for the medicaid-funded component of the PASSPORT program, that he or she would immediately be transferred to the medicaid-funded component of the PASSPORT program.

(c) The individual is actively assisting ~~the CDJFS~~ ODM's administrative agency in determining if he or she is financially eligible to participate in the medicaid-funded component of the PASSPORT program by expeditiously providing ~~the CDJFS~~ ODM's administrative agency with

copies of any financial records ~~the CDJFS~~ that ODM's administrative agency may need to make its financial eligibility determination.

- (d) ODA ~~(or ODA's designee)~~ or its designee completed form ODA1115 and determined that ~~the CDJFS~~ ODM's administrative agency ~~will~~ would most likely determine that the individual meets the financial eligibility ~~criteria~~ requirements for the medicaid-funded component of the PASSPORT program listed in rules ~~5101:1-38-01.6~~ 5160:1-2-03 and ~~5101:1-38-01.8~~ 5160:1-2-10 of the Administrative Code, and ODA ~~(or ODA's designee)~~ or its designee has no reason to doubt that determination.

(4) Non-financial ~~criteria~~ requirements:

- (a) ODA ~~(or ODA's designee)~~ or its designee and the individual completed form ODA1116, and the form indicated ~~that~~ the individual chose to enroll in the state-funded component of the PASSPORT program, named the individual's representative (if any), and indicated ~~that~~ the individual authorized ODA ~~(or ODA's designee)~~ or its designee to release information.
- (b) ODA ~~(or ODA's designee)~~ or its designee determined ~~that~~ the individual meets the non-financial eligibility ~~criteria~~ requirements for the medicaid-funded component of the PASSPORT program, ~~which are~~ listed in rule ~~5101:3-31-03~~ 5160-31-03 of the Administrative Code.

- (5) Patient liability: ODA ~~(or ODA's designee)~~ or its designee assessed the individual's income and resources using the methodology described in paragraphs (C)(2) and (C)(3) of rule ~~5101:1-39-24~~ 5160:1-3-04.4 of the Administrative Code to determine if the individual should pay any patient liability and the individual agreed to make, and does make, any patient liability payment as it becomes due.

~~(B) Loss of medicaid financial eligibility: Only an individual who meets all the following criteria is eligible for the state-funded component of the PASSPORT program on the basis of losing medicaid financial eligibility:~~

~~(1) Financial criteria:~~

- ~~(a) The individual has had his or her enrollment in the medicaid-funded component of the PASSPORT program terminated due to the loss of medicaid financial eligibility, as determined by the CDJFS.~~
- ~~(b) ODA (or ODA's designee) has determined that the individual still needs~~

~~the home and community-based services he or she received under the medicaid-funded component of the PASSPORT program because it is temporarily necessary to protect the individual's health and safety until the individual transfers to other community-based long-term care services or to a nursing facility.~~

~~(2) Patient liability: ODA (or ODA's designee) assessed the individual's income and resources using the methodology described in paragraphs (C)(2) and (C)(3) of rule 5101:1-39-24 of the Administrative Code to determine if the individual should pay any patient liability and the individual agreed to make, and does make, any patient liability payment as it becomes due.~~

~~(C)~~(B) Grandparented: Only an individual who meets all the following criteria requirements is eligible for the state-funded component of the PASSPORT program on the basis of a grandparented status:

- (1) The individual has been enrolled in the state-funded component of the PASSPORT program since September 1, 1991. (For the individual enrolled in the state-funded component of the PASSPORT program on this basis, the program was formerly known as the "PASSPORT state home care program" and the "PASSPORT grandparented home care program.")
- (2) Before the individual's initial enrollment in the state-funded component of the PASSPORT program, and at least once every twelve months of enrollment thereafter, the individual has applied for and was denied eligibility for either the medicaid-funded component of the PASSPORT program or the Ohio home care waiver program described in Chapter ~~5101:3-12~~ 5160-46 of the Administrative Code, and also one of the following:
 - (a) If the individual is at least sixty years of age, the individual has fully complied with the application and enrollment procedures for the medicaid-funded component of the PASSPORT program and was determined to be ineligible for the medicaid-funded component of the PASSPORT program. ODA ~~(or ODA's designee)~~ or its designee shall disenroll any such individual from the state-funded component of the PASSPORT program who is found to be eligible for enrollment in the medicaid-funded component of the PASSPORT program. An individual's failure or refusal to cooperate in providing either ODA ~~(or ODA's designee)~~ or its designee or ~~a CDJFS~~ an ODM administrative agency with the information and documentation necessary to establish the individual's eligibility for the medicaid-funded component of the PASSPORT program constitutes a failure to meet this eligibility ~~criterion~~ requirement; or,

- (b) If the individual is no older than fifty-nine years of age, the individual has fully complied with the application and enrollment procedures for Ohio home care waiver program and was determined to be ineligible for the Ohio home care waiver program. ODA ~~(or ODA's designee)~~ or its designee shall disenroll any individual from the state-funded component of the PASSPORT program who is found to be eligible for the Ohio home care waiver program. An individual's failure or refusal to cooperate in providing ~~ODJFS ODM~~ or ~~a CDJFS ODM's administrative agency~~ with the information and the documentation necessary to establish the individual's eligibility for the Ohio home care waiver program constitutes a failure to meet this eligibility ~~criteria~~ requirement.
- (3) ODA ~~(or ODA's designee)~~ or its designee and a physician have determined ~~that~~ the individual needs an intermediate level of care, ~~as defined in rule 5101:3-3-06 of the Administrative Code~~, or a skilled level of care, as both are defined in rule ~~5101:3-3-05~~ 5160-3-05 of the Administrative Code.
- (4) The individual is financially eligible for the state-funded component of the PASSPORT program based upon a documented inability of the individual to pay for nursing facility care without assistance from the medicaid program. ODA ~~(or ODA's designee)~~ or its designee shall only consider the individual's income and assets when determining the individual's financial eligibility for the state-funded component of the PASSPORT program. Countable income and assets are determined pursuant to rules ~~5101:1-38-01.6~~ 5160:1-2-03 and ~~5101:1-38-01.8~~ 5160:1-2-10 of the Administrative Code and the medicaid eligibility manual. ODA ~~(or ODA's designee)~~ or its designee shall calculate the inability to pay for nursing facility care in accordance with one of the following:
- (a) If the most recent period of continuous enrollment in the state-funded component of the PASSPORT program for the individual began before April 1, 1988, the individual shall ~~document that the individual~~ present ODA or its designee with documentation to verify he or she lacks eleven thousand, seven hundred, and nine dollars in income and assets available within a ninety-day period to pay for nursing facility care without assistance from the medicaid program; or,
- (b) If the most recent period of continuous enrollment in the state-funded component of the PASSPORT program for the individual began on or after April 1, 1988, the individual shall ~~document that the individual~~ present ODA or its designee with documentation to verify he or she lacks five thousand, eight hundred, fifty-four dollars, and fifty cents in

income and assets available within a forty-five day period to pay for nursing facility care without assistance from the medicaid program.

- (5) ODA ~~(or ODA's designee)~~ or its designee ~~that serves~~ serving the county of the individual's residence has approved a service plan for the individual that is signed by the individual's physician.
 - (6) The individual's approved service plan indicates ~~that~~ the total projected cost of services counted in the service plan cost cap calculation is less than six thousand dollars for a six-month period.
 - (7) The individual agrees to receive home and community-based services only from ODA-certified providers, and agrees to cooperate with ODA ~~(or ODA's designee)~~ or its designee in establishing and re-establishing eligibility for the medicaid-funded component of the PASSPORT program, the Ohio home care program, and/or the state-funded component of the PASSPORT program, when requested by ODA's designee,.
 - (8) The individual's participation ~~of the individual~~ in the state-funded component of the PASSPORT program, as an alternative to admission to a nursing facility, does not present, in the professional judgment of ODA ~~(or ODA's designee)~~ or its designee, a threat to the individual's health and safety ~~of the individual~~.
- ~~(D) If, at any time, a consumer enrolled in the state-funded component of the PASSPORT program on the basis of presumptive eligibility no longer meets all the criteria under paragraph (A) of this rule, unless the only criterion the consumer no longer meets is the patient liability criterion listed in paragraph (A)(5) of the rule, the consumer is no longer eligible for the state-funded component of the PASSPORT program.~~
- ~~(E) If, at any time, a consumer enrolled in the state-funded component of the PASSPORT program on the basis of losing medicaid financial eligibility no longer meets all the criteria under paragraph (B) of this rule, unless the only criterion the consumer no longer meets is the patient liability criterion listed in paragraph (B)(2) of this rule, the consumer is no longer eligible for the state-funded component of the PASSPORT program.~~
- ~~(F)~~(C) An individual who is eligible for the state-funded component of the PASSPORT program because the individual meets all the ~~criteria~~ requirements under paragraph (A) of this rule may not participate in the state-funded component of the PASSPORT program for more than ninety days.
- ~~(G) An individual who is eligible for the state-funded component of the PASSPORT program because the individual meets all the criteria under paragraph (B) of this~~

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~~rule may not participate in the state-funded component of the PASSPORT program for more than thirty days.~~

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173-40-03

PASSPORT program (state-funded component): enrollment process for individuals, Disenrollment and other adverse actions ~~regarding the state-funded PASSPORT program.~~

(A) Presumptive: For each ~~consumer~~ individual who is enrolled in the state-funded component of the PASSPORT program on the basis of paragraph (A) of rule 173-40-02 of the Administrative Code:

(1) Disenrollment: ODA ~~(or ODA's designee)~~ or its designee shall disenroll any ~~consumer individual who if ODA or its designee determines the individual~~ no longer meets all the ~~criteria requirements below under paragraph (A) of rule 173-40-02 of the Administrative Code unless the only criterion the consumer no longer meets is the patient liability criterion listed in paragraph (A)(5) of the rule.~~

(a) The individual was previously enrolled in the state funded component of the PASSPORT program or the state-funded component of the assisted living program.

(b) A CDJFS determined the individual does not qualify for the medicaid-funded component of the PASSPORT program and the individual fails to appeal the CDJFS's decision in a timely manner.

(c) The individual's ninety-day period of enrollment expires.

(2) No appeals: ODA ~~(or ODA's designee)~~ or its designee shall not provide the ~~consumer individual~~ with an opportunity for a hearing in accordance with Chapter 119. of the Revised Code if ODA ~~(or ODA's designee)~~ or its designee disenrolls ~~a consumer~~ the individual for any either or both of the following reasons:

(a) The ~~consumer individual~~ has been enrolled in the state-funded component of the PASSPORT program under the ~~criteria requirement~~ of paragraph (A) of rule 173-40-02 of the Administrative Code for the maximum enrollment period of ninety days; ~~or.~~

(b) The ~~consumer individual~~ voluntarily disenrolled from the state-funded component of the PASSPORT program under the ~~criteria requirements~~ of paragraph (A) of rule 173-40-02 of the Administrative Code before reaching the maximum enrollment period of ninety days.

(3) Post-disenrollment prohibitions:

(a) After ODA ~~(or ODA's designee)~~ or its designee disenrolls ~~a consumer~~ an

individual from the state-funded component of the PASSPORT program, ODA ~~(or ODA's designee)~~ or its designee shall not subsequently re-enroll the ~~consumer~~ individual back into the state-funded component of the PASSPORT program on the basis of presumptive eligibility.

- (b) After ODA ~~(or ODA's designee)~~ or its designee disenrolls ~~a consumer~~ an individual from the state-funded component of the PASSPORT program, ODA ~~(or ODA's designee)~~ or its designee shall not subsequently enroll the ~~consumer~~ individual into the medicaid-funded component of the PASSPORT program until the CDJFS determines ~~that~~ the consumer meets the medicaid financial eligibility ~~criteria~~ requirements and ODA ~~(or ODA's designee)~~ or its designee determines ~~that~~ the ~~consumer~~ individual meets the non-financial eligibility ~~criteria~~ requirements under rule ~~5101:3-31-03~~ 5160-31-03 of the Administrative Code.
- (c) After ODA ~~(or ODA's designee)~~ or its designee disenrolls ~~a consumer~~ an individual from the state-funded component of the PASSPORT program, ODA ~~(or ODA's designee)~~ or its designee shall not subsequently enroll the ~~consumer~~ individual into the state-funded component of the assisted living program.

(4) Appeals:

- (a) ODA ~~(or ODA's designee)~~ or its designee shall provide form ODA1117 (rev. 04/2012) to an individual as a notice of a proposed adverse action against the individual, if ODA ~~(or ODA's designee)~~ or its designee proposes any one or more of the following:
- (i) To deny the individual's enrollment into the state-funded component of the PASSPORT program under the ~~criteria~~ requirements of paragraph (A) of rule 173-40-02 of the Administrative Code~~;~~.
- (ii) To require the ~~consumer~~ individual to pay a specified patient-liability amount each month~~;~~.
- (iii) To change the services the ~~consumer~~ individual receives through the program~~;~~~~or;~~.
- (iv) To disenroll the ~~consumer~~ individual from the program before the ~~consumer~~ individual reaches the maximum enrollment period of

ninety days, unless the ~~consumer~~ individual voluntarily disenrolls from the program.

- (b) On form ODA1117, ODA ~~(or ODA's designee)~~ or its designee shall provide notice of an individual's opportunity to appeal the proposed adverse action by requesting a hearing in accordance with Chapter 119. of the Revised Code. ODA ~~(or ODA's designee)~~ or its designee shall also print a mailing date on the form.
- (c) If an individual wishes to appeal ODA's ~~(or ODA's designee's)~~ or its designee's proposed adverse action, the individual shall request a hearing. To request a hearing, the individual shall sign form ODA1117 and mail the signed form to ODA, addressed as follows:

"Director

Ohio Dept. of Aging

~~50 W. Broad St., 9th Floor~~ 246 N. High St., 1st Floor

Columbus, OH 43215"

- (d) In order for ODA to accept the request for a hearing, ODA must receive the original signed form ODA1117 in its office before five p.m. on or before the thirtieth day after ODA ~~(or ODA's designee)~~ or its designee mailed form ODA1117 to the individual. If ODA does not receive the original signed form on or before the thirtieth day, ODA will proceed with a final order ~~that contains~~ containing findings.

~~(B) Loss of medicaid financial eligibility: For each consumer who is enrolled in the state-funded component of the PASSPORT program on the basis of paragraph (B) of rule 173-40-02 of the Administrative Code:~~

~~(1) Disenrollment: ODA (or ODA's designee) shall disenroll any consumer who no longer meets all the criteria under paragraph (B) of rule 173-40-02 of the Administrative Code unless the only criterion the consumer no longer meets is the patient liability criterion listed in paragraph (B)(3) of the rule.~~

~~(2) No appeals: ODA (or ODA's designee) shall not provide the consumer with an opportunity for a hearing in accordance with Chapter 119. of the Revised Code if ODA (or ODA's designee) disenrolls a consumer for any of the following reasons:~~

~~(a) The consumer has been enrolled in the state-funded component of the PASSPORT program under the criteria of paragraph (B) of rule~~

~~173-40-02 of the Administrative Code for the maximum enrollment period of ninety days; or,~~

~~(b) The consumer voluntarily disenrolled from the state-funded component of the PASSPORT program under the criteria of paragraph (B) of rule 173-40-02 of the Administrative Code before reaching the maximum enrollment period of ninety days.~~

~~(3) Post-disenrollment prohibitions:~~

~~(a) After ODA (or ODA's designee) disenrolls a consumer from the state-funded component of the PASSPORT program, ODA (or ODA's designee) shall not subsequently re-enroll the consumer back into the state-funded component of the PASSPORT program on the basis of presumptive eligibility.~~

~~(b) After (ODA (or ODA's designee) disenrolls a consumer from the state-funded component of the PASSPORT program, ODA (or ODA's designee) shall not subsequently enroll the consumer into the state-funded component of the assisted living program.~~

~~(4) Appeals:~~

~~(a) ODA (or ODA's designee) shall provide form ODA1117 to an individual as a notice of a proposed adverse action against the individual, if ODA (or ODA's designee) proposes any of the following:~~

~~(i) To deny the individual's enrollment into the state-funded component of the PASSPORT program under the criteria of paragraph (B) of rule 173-40-02 of the Administrative Code;~~

~~(ii) To require the consumer to pay a specified patient liability amount each month;~~

~~(iii) To change the services the consumer receives through the program;
or,~~

~~(iv) To disenroll the consumer from the program before the consumer reaches the maximum enrollment period of ninety days, unless the consumer voluntarily disenrolls from the program.~~

~~(b) On form ODA1117, ODA (or ODA's designee) shall provide notice of an individual's opportunity to appeal the proposed adverse action by requesting a hearing in accordance with Chapter 119. of the Revised Code. ODA (or ODA's designee) shall also print a mailing date on the form.~~

~~(e) If an individual wishes to appeal ODA's (or ODA's designee's) proposed adverse action, the individual shall request a hearing. To request a hearing, the individual shall sign form ODA1117 and mail the signed form to ODA, addressed as follows:~~

~~"Director~~

~~Ohio Dept. of Aging~~

~~50 W. Broad St., 9th Floor~~

~~Columbus, OH 43215"~~

~~(d) In order for ODA to accept the request for a hearing, ODA must receive the original signed form ODA1117 in its office before five p.m. on or before the thirtieth day after ODA (or ODA's designee) mailed form ODA1117 to the individual. If ODA does not receive the original signed form on or before the thirtieth day, ODA will proceed with a final order that contains findings.~~

~~(C)~~(B) Grandparented: For ~~a consumer~~ an individual who is enrolled in the state-funded component of the PASSPORT program on the basis of paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code:

(1) Reassessment:

(a) Whenever ODA ~~(or ODA's designee)~~ or its designee reassesses the condition and service needs of ~~a consumer~~ the consumer, ODA ~~(or ODA's designee)~~ or its designee shall verify if the ~~consumer~~ individual continues to meet all eligibility ~~criteria~~ requirements under paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code.

(b) ODA ~~(or ODA's designee)~~ or its designee shall reassess each ~~consumer~~ the individual to assess the ~~consumer's~~ individual's condition and service needs at least once every twelve months or at any time the ~~consumer's~~ individual's condition or service needs change substantially.

(c) At least once every six months ODA ~~(or ODA's designee)~~ or its designee shall develop and implement a revised service plan for ~~each consumer~~ the individual so long as the ~~consumer~~ individual continues to meet all the eligibility ~~criteria~~ requirements under paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code.

- (d) If ~~a consumer~~ the consumer does not continue to meet all the eligibility ~~criteria~~ requirements under paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code, ODA ~~(or ODA's designee)~~ or its designee shall provide the ~~consumer~~ individual with a written notice of intent to disenroll the ~~consumer~~ individual from the state-funded component of the PASSPORT program.

(2) Disenrollment:

- (a) ODA ~~(or ODA's designee)~~ or its designee may propose ~~that any consumer to disenroll an individual in~~ from the state-funded component of the PASSPORT program ~~be disenrolled based upon~~ for any one or more of the following:

(i) The ~~consumer~~ individual does not continue to meet all the eligibility ~~criteria~~ requirements under paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code~~;~~.

(ii) The ~~consumer's~~ individual's permanent relocation~~;~~ or,

(iii) The ~~consumer's~~ individual's death.

- (b) When ~~a consumer's~~ the individual's services are suspended for any reason for sixty calendar days, ODA ~~(or ODA's designee)~~ or its designee shall provide the ~~consumer~~ individual (or the ~~consumer's~~ individual's authorized representative, if any), with notice of disenrollment from the state-funded component of the PASSPORT program.

- (c) Suspensions which ultimately result in disenrollment shall have a disenrollment date that is retroactive to the first day of the suspension of services.

- (3) No appeals: ODA ~~(or ODA's designee)~~ or its designee shall not provide the ~~consumer~~ individual with an opportunity for a hearing in accordance with Chapter 119. of the Revised Code if ODA ~~(or ODA's designee)~~ or its designee disenrolls a consumer if the ~~consumer~~ individual voluntarily disenrolled from the state-funded component of the PASSPORT program under the ~~criteria~~ requirements of paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code.

(4) Post-disenrollment prohibitions:

- (a) After ODA ~~(or ODA's designee)~~ or its designee disenrolls ~~a consumer~~ the individual from the state-funded component of the PASSPORT program, ODA ~~(or ODA's designee)~~ or its designee shall not subsequently re-enroll the ~~consumer~~ individual back into the state-funded component of the PASSPORT program on the basis of presumptive eligibility.
- (b) After ODA ~~(or ODA's designee)~~ or its designee disenrolls ~~a consumer~~ the individual from the state-funded component of the PASSPORT program, ODA ~~(or ODA's designee)~~ or its designee shall not subsequently enroll the ~~consumer~~ individual into the state-funded component of the assisted living program.

(5) Appeals:

- (a) ODA ~~(or ODA's designee)~~ or its designee shall provide form ODA1117 to an individual as a notice of a proposed adverse action against the individual, if ODA ~~(or ODA's designee)~~ or its designee proposes any one or more of the following:
 - (i) To deny the individual's enrollment into the state-funded component of the PASSPORT program under the criteria requirements of paragraph ~~(C)~~ (B) of rule 173-40-02 of the Administrative Code~~;~~.
 - (ii) To require the ~~consumer~~ individual to pay a specified patient-liability amount each month~~; or,~~.
 - (iii) To change the services the ~~consumer~~ individual receives through the program.
- (b) On form ODA1117, ODA ~~(or ODA's designee)~~ or its designee shall provide notice of an individual's opportunity to appeal the proposed adverse action by requesting a hearing in accordance with Chapter 119. of the Revised Code. ODA ~~(or ODA's designee)~~ or its designee shall also print a mailing date on the form.
- (c) If an individual wishes to appeal ODA's ~~(or ODA's designee's)~~ or its designee's proposed adverse action, the individual shall request a hearing. To request a hearing, the individual shall sign form ODA1117 and mail the signed form to ODA, addressed as follows:

"Director

Ohio Dept. of Aging

~~50 W. Broad St., 9th Floor~~ [246 N. High St., 1st Floor](#)

Columbus, OH 43215"

- (d) In order for ODA to accept the request for a hearing, ODA must receive the original signed form ODA1117 in its office before five p.m. on or before the thirtieth day after ODA ~~(or ODA's designee)~~ [or its designee](#) mailed form ODA1117 to the individual. If ODA does not receive the original signed form on or before the thirtieth day, ODA will proceed with a final order ~~that contains~~ [containing](#) findings.

*** DRAFT - NOT YET FILED ***

173-40-05

PASSPORT program (state-funded component): ~~Covered~~
covered services.

- (A) The service plan for ~~a consumer~~ an individual enrolled in the state-funded component of the PASSPORT program shall only authorize services allowed under rule ~~5101:3-31-05~~ 5160-31-05 of the Administrative Code for the medicaid-funded component of the PASSPORT program.
- (B) While a provider may ~~furnish a consumer~~ provide an individual ~~who is~~ enrolled in the state-funded component of the PASSPORT program with a service ~~that is~~ not authorized in the ~~consumer's~~ individual's service plan, ODA ~~(or ODA's designee)~~ or its designee shall not ~~reimburse~~ pay a provider for any service ~~that is~~ not explicitly authorized in the ~~consumer's~~ individual's service plan.

173-40-06

Consumer choices and responsibilities.

(A) Choices:

- (1) Any consumer who is enrolled in the state-funded component of the PASSPORT program may choose to obtain a service under the state-funded component of the PASSPORT program from any agency, non-agency, or consumer-directed personal care provider if:
 - (a) The provider agrees to furnish the service to the consumer;
 - (b) ODA certifies the provider to furnish the service;
 - (c) The case manager authorizes the service in the consumer's service plan;
 - (d) ODJFS enters into a medicaid provider agreement with the provider; and,
 - (e) If the consumer chooses a consumer-directed personal care provider, the case manager determines that the consumer is able to direct services under paragraph (B)(1)(b) of this rule.
- (2) ODA's designee shall assure the health and welfare of each consumer while acknowledging that, according to this rule, every consumer has a right to make informed choices that may impact his or her life.

(B) Responsibilities related to developing a service plan:

- (1) To help the case manager develop a service plan that best addresses the consumer's needs, the consumer shall do the following:
 - (a) The consumer and the case manager shall meet face-to-face to develop the consumer's service plan. The consumer shall decide if anyone other than the case manager shall participate in this meeting.
 - (b) If the consumer chooses to receive a service from a consumer-directed personal care provider, the case manager shall assess the consumer's strengths and weaknesses (and/or, if the consumer has an authorized representative, the authorized representative's strengths or weaknesses) related to his or her ability to direct a provider. The case manager shall retain records supporting the determination. The case manager shall allow the consumer to direct a provider if the case manager's assessment establishes that the consumer demonstrates an

understanding of the elements of the service the provider shall furnish, an understanding of how to direct the provider, and an understanding of, and ability to, perform the responsibilities of an employer, including:

- (i) Completing any consumer training that ODA (or ODA's designee) requires;
- (ii) Understanding which service activities are covered according to rule 173-39-02.11 of the Administrative Code;
- (iii) Understanding of the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code;
- (iv) Understanding of the methods for selecting and dismissing providers;
- (v) Understanding of the methods for entering into written agreements with providers for specific activities;
- (vi) Understanding of the methods for training providers to meet the consumer's specific needs;
- (vii) Understanding of the methods for supervising and monitoring the provider's performance of specific activities, including written approval of the provider's time sheets;
- (viii) Developing a back-up plan for furnishing services if a provider is unable to furnish the agreed-upon service;
- (ix) Understanding of the methods for lodging complaints, including use of the regional and state long term care ombudsman, and familiarity with how to contact the state long-term care ombudsman;
- (x) Familiarity with state appeal and fair hearing request procedures;
- (xi) Understanding the record-retention requirements; and,
- (xii) Managing the provider when the provider furnishes a service.

- (c) If the case manager developed a service plan according to his or her determination that the consumer (and/or, the consumer's authorized representative) was able to direct a consumer-directed personal care provider according to paragraph (B)(1)(b) of this rule, but the case manager later determines that the consumer is no longer able to direct a provider, the case manager shall implement an alternative service plan utilizing an agency or non-agency provider in place of the consumer-directed personal care provider.
 - (d) The consumer shall notify the case manager if the consumer desires to change the type of provider from whom he or she receives a service. If the consumer who directs a consumer-directed personal care provider desires to receive a service from another provider type, ODA's designee shall identify and secure a provider of another type. If a consumer who does not direct a consumer-directed personal care provider desires to receive a service from a consumer-directed personal care provider, ODA's designee shall conduct the assessment under paragraph (B)(1)(b) of this rule.
 - (e) After the case manager has developed the service plan, the consumer shall notify the case manager of any significant change that may affect his or her service needs, including a change that may require more or fewer hours of service, and the case manager shall revise the service plan accordingly. Significant changes include:
 - (i) The consumer moves to another address; or,
 - (ii) The consumer's physical, mental, or emotional status changes; the consumer's environmental conditions change; or other health and safety issues.
 - (2) The consumer shall inform each provider of his or her personal preferences about how the provider will furnish the duties, tasks, or interventions that the case manager authorizes in the consumer's service plan.
 - (3) The consumer shall allow the case manager to exchange information with any of the consumer's service providers on a need-to-know basis.
- (C) Consumer responsibilities related to the provider furnishing services:
- (1) Agency provider: If the consumer chooses to receive a service from an agency provider:

- (a) The consumer shall not aid the provider's staff in furnishing a service, nor request that the provider's staff furnish a service, in a manner that does not comply with any rule or law that regulates the provider, including rule 173-39-02 of the Administrative Code. The requirements of rule 173-39-02 of the Administrative Code include requiring the provider's staff to adhere to the provider's ethical standards and the provider's written policies.
 - (b) The consumer shall report any incident involving the provider's staff to the case manager.
 - (c) The consumer shall notify the provider if he or she is going to miss a scheduled service episode, unless the provider is already informed of the consumer's absence.
 - (d) The consumer shall notify the provider if the provider's staff misses a scheduled service episode.
 - (e) Immediately following the conclusion of each episode of service, the consumer shall provide the provider's staff with his or her signature to verify that the provider's staff furnished the service. The consumer shall never sign blank timesheets or timesheets that the provider's staff completes before furnishing services.
 - (f) ODA's designee shall act as a facilitator to resolve conflicts between the consumer and the provider.
- (2) Non-agency provider: If the consumer chooses to receive a service from a non-agency provider:
- (a) The consumer shall not aid the provider in furnishing a service in a manner that does not comply with any rule or law that regulates the provider, including rule 173-39-02 of the Administrative Code.
 - (b) The consumer shall report any incident involving the provider to the case manager.
 - (c) The consumer shall notify the provider if he or she is going to miss a scheduled service episode, unless the provider is already informed of the consumer's absence.

- (d) Immediately following the conclusion of each episode of service, the consumer shall provide the provider with his or her signature to verify that the provider furnished the service. The consumer shall never sign blank timesheets or timesheets that the provider completes before furnishing services.
 - (e) ODA's designee shall act as a facilitator to resolve conflicts between the consumer and the provider.
- (3) Consumer-directed personal care provider: If the consumer chooses to receive a service from a consumer-directed personal care provider:
 - (a) The consumer shall recruit, select, and dismiss his or her consumer-directed personal care provider and the case manager shall assist the consumer in these responsibilities.
 - (b) The case manager shall provide the consumer with a list of the consumer's rights and responsibilities listed in this rule, with the provider's requirements under rules 173-39-02 and 173-39-02.11 of the Administrative Code, and with other medicaid waiver information and materials. In doing so, ODA's designee shall use communication mechanisms that are most effective for the consumer. The case manager shall review these materials with the consumer and assist him or her to understand his or her specific responsibilities.
 - (c) The consumer shall not aid the provider in furnishing a service in a manner that does not comply with any rule or law that regulates the provider, including rules 173-39-02 and 173-39-02.11 of the Administrative Code.
 - (d) The consumer and the case manager shall work together to develop a back-up plan for furnishing the service if the provider cannot, or does not, meet his or her obligation to furnish services for the consumer.
 - (e) The consumer shall report any incident involving the provider to the case manager. In turn, the case manager shall investigate any reported incident and report any incident that may impact the health and welfare of the consumer to ODA.
 - (f) The case manager shall assist the consumer in resolving conflicts between the consumer and the provider.

- (g) The consumer shall notify the provider if he or she is going to miss a scheduled service episode, unless the provider is already informed of the consumer's upcoming absence.
- (h) The consumer shall work with the case manager and the provider to decide what, if any, additional orientation or training within the provider's scope of practice is necessary for the provider to meet the consumer's needs. The consumer and the case manager shall work with the provider to secure the educational opportunity.
- (i) The consumer shall work with the case manager and the provider to decide what, if any, continuing education requirement within the provider's scope of practice is necessary to meet the consumer's expectations. The consumer and the case manager shall work with the provider to secure the educational opportunity. (The consumer may participate in the continuing education.)
- (j) The case manager shall assist the consumer to retain records that identify the method by which the consumer will verify that the provider furnishes each episode of service according to the service plan.
- (k) Immediately following the conclusion of each episode of service, the consumer shall provide the provider with his or her signature to verify that the provider furnished the service. The consumer shall never sign blank timesheets or timesheets that the provider completes before furnishing services.
- (l) The consumer shall work with ODA's designated financial management service for consumers who direct consumer-directed personal care providers under the PASSPORT program.
- (m) The consumer shall designate a location in his or her home in which the provider may safely store a copy of the consumer's activity plan in a manner that protects the consumer's confidentiality. (Having a copy of the activity plan in the consumer's home contributes to the provider's ability to adhere to the activity plan.)
- (n) The consumer and ODA's designee shall work together to monitor the provider's performance.
- (o) ODA's designee shall communicate with the consumer in a manner that protects the consumer's right to confidentiality.

173-40-06

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(p) ODA's designee shall act as a facilitator to resolve conflicts between the consumer and the provider.

(D) Authorized representative: A consumer's authorized representative may represent the consumer for any purpose under this rule if the consumer authorizes the person to do so.

(E) Definitions for this rule:

- (1) "Agency provider," "non-agency provider," and "consumer-directed personal care provider" have the same meaning as in rule 173-39-01 of the Administrative Code.
- (2) "Incident" has the same meaning as in rule 173-39-01 of the Administrative Code.
- (3) "Financial management service" has the same meaning as in rule 5101:3-31-02 of the Administrative Code.
- (4) "Signature" has the same meaning as "consumer signature" in rule 173-39-01 of the Administrative Code.

*** DRAFT - NOT YET FILED ***

173-40-06

PASSPORT program (state-funded component): individual's choices and responsibilities.

An individual enrolled in the state-funded component of the PASSPORT program has the same choices and responsibilities under rule 173-42-06 of the Administrative Code as an individual enrolled in the medicaid-funded component of the PASSPORT program



APPENDIX A
TERMINOLOGY BACKGROUND
&
OTHER COMPOSITION STANDARDS

November 3, 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.¹ 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.”

¹ 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 that are not incorporated into the rule by reference and readily available to the general public free of charge.

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,² 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:³

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."⁴ 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"). ODA⁵ and ODM⁶ have proposed or made similar changes to other rules.

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

³ *Id.* Pg. 10.

⁴ ORC§1.01 allows LSC to draft legislation using "R.C."

⁵ 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.⁷

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.

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

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

⁷ See OAC5160-31-07.

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.

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.)