



Department of
Aging

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PARTICIPATING IN ODA'S RULE DEVELOPMENT

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INTRODUCTION

Section 119.0311 of the Revised Code requires ODA to publish this guide to state ODA's regulatory mission, how ODA is structured to achieve its regulatory mission, ODA's sources of rule-making authority, how ODA develops rules, points at which the public may participate in ODA's rule development, how to participate in ODA's rule development, and other information.

ODA encourages older Ohioans, family caregivers, healthcare providers, businesses, advocates, and members of the general public to participate in any stage of ODA's rule-development process.

ODA'S MISSION

The Ohio General Assembly authorized ODA to administer various state and federal programs to provide leadership for the delivery of services and supports that improve and promote quality of life and personal choice for Ohioans sixty years of age and older, adults with disabilities, their families, and their caregivers.

ODA'S STRUCTURE

ODA is reorganizing to better position the agency to serve Ohio's growing and changing older population in the most cost-effective and responsive manner. ODA is focusing its efforts on maximizing the use of public funds for our citizens, creating jobs, improving health for all Ohioans, and reforming Medicaid. After the present effort to reorganize is complete, ODA will be organized into 9 divisions that each contribute to ODA's regulatory mission. The divisions will be:

1. Communications and Government Outreach Division
2. Elder Rights Division
3. Executive Division (including all legal staff)
4. Fiscal Division
5. Human Resources Division
6. Information Systems Division
7. Performance Center
8. Programs Division
9. Strategic Partnerships and Stakeholder Relations Division

Unlike some state agencies, ODA does not divide its chapters of rules into different divisions that correspond with different divisions in ODA's structure. Instead, every rule ODA adopts belongs to a unified set of chapters under Agency 173 of the Administrative Code (*i.e.*, the rules begin with the number "173"). For more information about ODA's structure, please visit <http://aging.ohio.gov/information/oda/structure.aspx>.

RULE-MAKING AUTHORITY

ODA adopts rules as the Ohio General Assembly, the United States Congress, and the Code of Federal Regulations authorize it to do so, as follows:

- Sections 173.01, 173.02, 173.391, and 173.392 of the Revised Code grant ODA general authority to regulate programs that ODA administers, and providers who conduct business in programs that ODA administers, according to the process under section 119.03 of the Revised Code.
- Sections 121.36, 173.01, 173.011, 173.04, 173.06, 173.11, 173.16, 173.19, 173.20, 173.21, 173.26, 173.27, 173.391, 173.392, 173.394, 173.40, 173.42, 173.422, 173.434, 173.46, 173.49, 173.50, 1347.15, and 5111.89 of the Revised Code grant ODA specific authority to adopt rules according to the process under section 119.03 of the Revised Code.
- Sections 173.40 and 5111.89 of the Revised Code grant ODA specific authority to adopt rules according to the process under section 111.15 of the Revised Code.
- Section 305 (a)(1)(C) of the Older Americans Act of 1965, as amended, and 45 C.F.R. 1321.11 grant ODA federal authority to adopt rules.

Additionally, the Ohio General Assembly has authorized ODA to review certain rules of other state agencies:

- Section 173.01 of the Revised Code requires state agencies to notify ODA of any rule proposal they file with the Joint Committee on Agency Rule Review (JCARR) that would primarily affect older Ohioans. After the state agency notifies ODA, ODA has 30 days to provide the state agency with written suggestions for improving their proposal. If the state agency does not intend to comply with ODA's suggestions, the state agency must send ODA a written explanation of its non-compliance at least 30 days before it adopts the rule proposal into law.
- Section 5111.62 of the Revised Code requires the Ohio Department of Job and Family Services to consult with ODA on rule proposals that it files with JCARR regarding the Resident Protection Fund.

PUBLIC PARTICIPATION IN RULE DEVELOPMENT

ANY PERSON, ANY TIME: Any person (*i.e.*, an older Ohioan, family caregiver, healthcare provider, business, advocate, or member of the general public) may contact ODA any time he or she believes ODA needs to adopt a new rule, amend a current rule, or rescind a current rule. Even if ODA is not currently proposing a new rule or proposing to amend or rescind an existing rule, any person may comment on a rule by sending an email to Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

BUSINESS-IMPACT: In addition to contacting ODA, any Ohio business that believes ODA's rules have an adverse impact upon their business may send comments about the adverse impact of ODA's rules to the Common Sense Initiative Office ("CSI Office"). Visit <http://governor.ohio.gov/csi> to go to the CSI Office.

Before ODA publishes a rule proposal on our website for a public-comment period, we will conduct a business-impact meeting to give Ohio businesses an opportunity (1) to hear the state's goals that may lead to rule proposals, (2) to share their views on the state's goals and various strategies for meeting those goals, and (3) to provide adverse-impact information related to the various options the state could choose to meet those goals.

One may subscribe to ODA's email notification service if he or she wants free notification of ODA's business-impact meetings for rule proposals. To subscribe, access <http://aging.ohio.gov/subscribe/>. Additionally, as

part of the CSI process, anyone can sign up to receive notifications of rule proposals through the Ohio Business Gateway at <http://business.ohio.gov/reform>.

Based upon information gathered during the business-impact meeting, ODA will draft a rule proposal and a business-impact analysis statement related to that proposal. ODA will present the rule proposal and business-impact analysis statement to the public in a public-comment period.

Additionally, ODA must electronically file the statements with the CSI Office. ODA is prohibited from beginning the legislature's rule-review process until 16 days after it sends the business impact statement to the CSI Office. If the CSI Office makes recommendations to ODA in response to ODA's business-impact analysis statement, ODA must develop a memorandum of response to explain how the revised draft complies with the changes the CSI Office recommends. If ODA rejects the CSI Office's recommendations, ODA must explain why it rejected them in the memorandum.

PUBLIC-COMMENT PERIODS: When ODA proposes a new rule; proposes to amend or rescind an existing rule; or reviews an existing rule under section 119.032 of the Revised Code, which ODA must do at least once every five years; ODA generally conducts a public-comment period to obtain comments upon the rule proposal--especially if the rule proposal would have an adverse impact upon a business that the rule regulates. When doing so, ODA posts the rule proposal and related financial analyses on <http://aging.ohio.gov/information/rules/proposed.aspx> for public viewing. During the public-comment period, any person may submit comments through the "submit comments" feature on the above webpage. ODA generally allows the public-comment period to last two weeks.

Under certain circumstances, ODA will make a rule proposal on an emergency basis. In such a situation, ODA may not conduct a public-comment period.

Additionally, one may subscribe to ODA's email notification service if he or she wants free notification of opportunities to participate in public-comment periods on ODA's rule proposals. To subscribe, access <http://aging.ohio.gov/subscribe/>.

After considering the comments, ODA may revise the rule proposal, the fiscal analyses, and any business-impact analyses before filing those documents with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's rule-review process.

THE LEGISLATURE'S RULE-FILING PROCESS: Not only does the Ohio General Assembly grant ODA its authority to adopt rules, it also retains the right to invalidate ODA's rule proposals as part of its rule-review process.

The legislature's rule-review process begins the day ODA files a rule proposal with the Joint Committee on Agency Rule Review (JCARR). JCARR has jurisdiction over the rule proposal for 65 days, during which it may recommend that the General Assembly vote to invalidate the rule proposal.

ODA will conduct a public hearing on a rule proposal any time it files a rule proposal according to section 119.03 of the Revised Code. Section 119.03 requires ODA to do so during the 31st to the 40th day of JCARR's jurisdiction over the rules. ODA publishes the public hearing notices on <http://aging.ohio.gov/information/rules/notices> and also in the Register of Ohio at <http://www.registerofohio.state.oh.us/>. Any person may attend the public hearing to discuss the rule proposal. After considering the input received during the public hearing, ODA may revise (sometimes called "refile") the rule proposal before continuing the rule-review process.

In two situations, ODA may not conduct a public hearing:

- If ODA files a rule proposal according to section 111.15 of the Revised Code, ODA is not required to conduct a public hearing on the rule proposal.

- If the Governor issues an executive order authorizing ODA to file the rules on an emergency basis, the rules ODA files will immediately take effect. ODA does not conduct a public hearing for emergency rules. However, these emergency rules are temporary rules that only remain in effect for 90 days. If durable rules are necessary, before the emergency rules sunset, ODA will file a rule proposal to replace the emergency rules through the normal rule-filing process, which includes a public hearing.

During the 41st to the 65th day of JCARR's jurisdiction, JCARR will place ODA's rule proposal on its meeting agenda to give legislators an opportunity to question the rule proposal and to give the public another opportunity to comment on the proposal. At a JCARR meeting, however, the members of JCARR will only consider comments on a rule proposal as it relates to six criteria, commonly called "the 6 prongs of JCARR":

1. Does ODA have the authority to adopt the new rule or to amend or rescind the current rule?
2. Does the rule conflict with other rules?
3. Does the rule conflict with the intent of relevant legislation?
4. Does ODA's rule proposal include a complete and accurate rule summary and fiscal analysis?
5. Does the proposed rule reference other material that is not readily available to the public?
6. Does ODA demonstrate through a business-impact analysis, recommendations from the Common Sense Initiative Office, and the memorandum of response, that the regulatory intent of the rule proposal justifies any adverse impact upon Ohio businesses?

If a rule does not meet any one of the 6 criteria, JCARR may vote to recommend that the General Assembly vote to invalidate the rule proposal. If the majority of the legislators vote to invalidate the rule, ODA may not adopt the rule proposal. See division (l) of section 119.03 of the Revised Code for more information about invalidating a rule based upon the six criteria. Visit <http://codes.ohio.gov/orc/119.03>.

After the 65th day of JCARR's jurisdiction over a rule proposal, if the legislature did not invalidate the rule, ODA may adopt the rules into law with an effective date no earlier than 10 days into the future.

Visit <http://aging.ohio.gov/information/rules/jcarrproposed.aspx> to review information about ODA's rule proposals that are currently under JCARR's jurisdiction. As mentioned earlier, one may subscribe to ODA's email notification service if he or she wants free notification of when ODA files a rule with JCARR. To subscribe, access <http://aging.ohio.gov/subscribe/>.

EMAIL NOTIFICATIONS

ODA offers an email notification service to those who want to know when we post new rule proposals on our website or announce business-impact meetings for rules. If you want to subscribe to the notification service, please register on <http://aging.ohio.gov/subscribe/>. Generally, ODA sends one such notification each week which is usually on Thursday or Friday.

CONTACT INFORMATION

For any questions or comments regarding the rule-development process or regarding a specific rule, please email Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.
