



Department of  
Aging

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

# PARTICIPATING IN ODA'S RULE DEVELOPMENT

April 16, 2014

50 West Broad Street / 9<sup>th</sup> Floor  
Columbus, OH 43215-3363 U.S.A.  
[www.aging.ohio.gov](http://www.aging.ohio.gov)

Main: (614) 466-5500  
Fax: (614) 466-5741  
TTY: Dial 711

## 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, 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 recently reorganized to better position itself 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. ODA is now organized into 9 divisions that each contribute to ODA's regulatory mission. The divisions are:

1. Communications and Government Outreach Division. (This division involves legislation and rules.)
2. Division for Community Living.
3. Elder Rights Division.
4. Executive Division.
5. Fiscal Division.
6. Information Systems Division.
7. Performance Center.
8. Strategic Partnership Division.
9. Workforce Services 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 United States Congress, the Code of Federal Regulations, and the Ohio General Assembly authorize it to do so, as follows:

- Sections 305 (a)(1)(C) and 712 (a)(5)(D) of the Older Americans Act of 1965, as amended in 2006, and 45 C.F.R. 1321.11 (October 1, 2012 edition) grant ODA, as the state's unit on aging, federal authority to adopt rules.
- Section 121.36 of the Revised Code requires ODA to adopt rules to require providers of home care services to home-care dependent adults to have a system in place that effectively monitors the employees who deliver those services.
- Sections 173.01 and 173.02 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.
- Section 173.011 of the Revised Code requires ODA to adopt rules to establish the criteria used for designating an area agency on aging and the procedures for withdrawing that designation.
- Section 173.04 of the Revised Code authorizes ODA to adopt rules to govern respite care programs and other supportive services, the distribution of funds, and the purpose for which funds may be used under this section. Section 209.30 of H.B.59 (130<sup>th</sup> G.A.) limits the funds to use for the Alzheimer's Respite Program. Alzheimer's Respite Program funds are generally used as a state match for federal Older Americans Act funds, which include the National Family Caregiver Support Program.
- Section 173.06 of the Revised Code requires ODA to adopt rules to establish the Golden Buckeye Program.
- Section 173.11 of the Revised Code requires ODA to adopt rules to establish procedures for receiving grants from the Senior Facilities Program.
- Section 173.14 of the Revised Code requires ODA to adopt rules regarding the designation of regional long-term care ombudsman programs.
- Section 173.19 of the Revised Code requires ODA to adopt rules regarding the handling of complaints received by the office of the state long-term care ombudsman.
- Section 173.20 of the Revised Code requires ODA to adopt rules the referral of complaints to other state agencies.
- Section 173.26 of the Revised Code requires ODA to adopt rules to establish deadlines for nursing facilities, residential care facilities, and homes for the aging to pay bed fees to the State Long-Term Care Ombudsman Program.
- Sections 173.27 and 173.38 of the Revised Code grant ODA authority to adopt rules to implement the requirements for criminal records checks in the state long-term care ombudsman program and in all other programs that involve employees in direct-care positions.

- Section 173.28 of the Revised Code authorizes ODA to adopt rules to establish fines for nursing facilities or other long-term care providers
- Sections 173.391 and 173.392 of the Revised Code grant ODA general authority to regulate providers who conduct business in programs that ODA administers, according to the process under section 119.03 of the Revised Code.
- Sections 173.42 and 173.422 of the Revised Code require ODA to adopt rules to implement the Long-Term Care Consultation Program, including rules that establish a process by which one may become certified to conduct long-term care consultations.
- Section 173.434 authorizes ODA to adopt rules regarding the unified long-term care budget.
- Sections 173.46 and 173.49 of the Revised Code authorize ODA to adopt rules to implement the Ohio Long-Term Care Consumer Guide, including rules that specify the information to be included in the Guide.
- Sections 173.50, 173.52, 173.53, and 173.54 of the Revised Code grant ODA specific authority to adopt rules according to the process under section 1119.03 of the Revised Code for the Medicaid-funded components of the following programs: PACE, PASSPORT, Choices, and Assisted Living Programs.
- Sections 173.522, 173.543, 173.55, and 173.56 of the Revised Code grant ODA specific authority to adopt rules according to the process under section 111.15 of the Revised Code for the state-funded components of the PASSPORT and Assisted Living Programs.
- Section 173.55 of the Revised Code requires ODA to adopt rules to implement the Unified Long-Term Care Waiting List.
- Section 173.60 of the Revised Code authorizes ODA to adopt rules to implement the Nursing Home Quality Initiative Program.
- Section 1347.15 of the Revised Code requires each state agency, including ODA, to adopt rules regulating access to the confidential personal information that the agency keeps.
- Section 5160.481 of the Revised Code requires ODA to adopt rules that are consistent with sections 5160.45 to 5160.481 of the Revised Code to prevent the publication or disclosure of names, lists, or other information regarding Medicaid recipients.

ODA also has the authority to review certain rules of other state agencies:

- 45 C.F.R. 1321.7(a) (October 1, 2012 edition) says, "The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible."

- 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 3923.50 of the Revised Code requires the Ohio Department of Insurance to consult with ODA on rule proposals that it files with JCARR regarding the Ohio Long-Term Care Insurance Program.
- Section 5162.66 of the Revised Code requires the Ohio Department of Medicaid 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, 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.ohio.gov](mailto:rules@age.ohio.gov). However, the best time to comment upon a rule is during the public-comment period. (See below.)

**ADVERSE IMPACT:** Before ODA publishes a rule proposal on our website for a public-comment period, we assess the adverse impact a proposal could have upon a business. Section 107.52 of the Revised Code defines a rule that has an adverse impact to include an ODA rule that (1) requires certification or a provider agreement to operate in a line of business, (2) imposes penalties for failure to comply, or (3) requires expenditures or the report of information as a condition of compliance. Ohio's home and community-based service providers are businesses that ODA's rules adversely affect.

In most cases, ODA will contact a selection of businesses that a rule proposal would affect to obtain facts that would lead to the calculation of an adverse impact. Based upon information gathered during the assessment of the adverse impact, ODA will draft a rule proposal and a business-impact analysis (BIA) of that proposal. ODA will present the rule proposal and BIA to the public in a public-comment period.

Additionally, ODA must electronically file the statements with the CSI Office. The CSI Office has 16 *business* days to review the statements. If the CSI Office makes recommendations to ODA in response to ODA's BIA, 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.

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://www.governor.ohio.gov/PrioritiesandInitiatives/CommonSenseInitiative.aspx>.

**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 (BIAs) 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 31<sup>st</sup> to the 40<sup>th</sup> 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 41<sup>st</sup> to the 65<sup>th</sup> 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 (RSFA)?
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 (BIA), 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 (I) 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 65<sup>th</sup> 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.ohio.gov](mailto:rules@age.ohio.gov).