

DRAFT for ONLINE PUBLIC-COMMENT PERIOD

*** DRAFT - NOT YET

Throughout rule, ODA proposes to replace "appeal hearing" with "administrative hearing."

173-3-09

Older Americans Act: Appeals administrative hearings for adversely-affected providers.

ODA is systematically adding "Older Americans Act" to the beginning of each rule title in Chapters 173-3 and 173-4. This will be reflected in the proposed new rule.

(A) Introduction: ~~Each AAA and ODA, subject to the conditions specified in the procedures below, shall honor all written requests for appeal hearings that are submitted by providers against whom an AAA has taken an adverse action. (An appeal hearing under this rule is not an adjudication hearing under Chapter 119 of the Revised Code.)~~

(1) A provider may request an administrative hearing ("hearing") to appeal any adverse action that an AAA has taken against the provider.

(2) AAAs and ODA shall honor all written hearing requests subject to the conditions in this rule.

(3) A hearing under this rule is not an adjudication hearing under Chapter 119 of the Revised Code.

(B) ~~Appeal to the AAA~~AAA-level hearings:

(1) Written process: Each AAA shall maintain in writing a process that allows a provider to appeal an adverse action related to ~~a provider an AAA-provider~~ agreement ("agreement") ~~funded paid, in whole or in part,~~ with Older Americans Act funds.

(2) Final AAA decision: An AAA that conducts an ~~appeal~~ administrative hearing shall forward a copy of the provider's written request for the ~~appeal~~ hearing and a copy of the AAA's final decision on the matter to ODA no later than five days after the date the AAA renders its final decision. 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 ~~business day that immediately follows following~~ the fifth day that is not on a weekend or legal holiday.

Without being anchored in anything concrete, a business day could mean a day that a person is not on vacation.

(C) ~~Appeal to ODA~~ODA-level hearings:

(1) AAA first: ODA shall only honor a request for an ~~appeal~~ administrative hearing before ODA if the provider has fully complied with the written process for appealing an adverse action by the AAA that committed the adverse action and if that AAA has rendered its final decision on the appeal.

(2) Request a hearing: To request a hearing before ODA, the provider shall submit a written request to ODA's director no later than fifteen days after the date the AAA renders its final decision. In the request, the provider shall describe the adverse action the provider is appealing and why the provider believes the

AAA's decision on the matter was inappropriate. If the fifteenth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the business day ~~that~~ immediately follows following the fifteenth day that is not on a weekend or legal holiday.

- (3) Scheduling a hearing: After ODA receives the request for an appeal administrative hearing, ODA shall, in a timely manner, schedule a hearing and select a hearing officer to preside over the hearing. ~~ODA shall schedule the hearing no later than thirty days after the date that ODA receives the provider's request for a hearing. If the thirtieth day falls on a weekend or holiday, the deadline is extended to the business day that immediately follows the thirtieth day. ODA shall notify the provider and the AAA whose final decision the provider is appealing of the date, time, and location of ODA's appeal hearing.~~

(4) Hearing process:

- (a) The hearing officer shall afford an adequate opportunity for both the provider and the AAA to present their positions and provide evidence, but may limit or terminate the discussion/testimony ~~if~~ under any one or more of the following conditions:

(i) The provider or the AAA is unruly or combative~~;~~.

(ii) The provider's or AAA's discussion/testimony is unnecessarily redundant~~;~~.

(iii) The provider or the AAA negotiate a written agreement that resolves the ~~issue(s)~~ adverse action(s) that prompted the hearing~~;~~
~~or,~~

(iv) The provider, in a written statement, withdraws its request for the hearing.

- (b) The hearing officer shall make an audio recording of the hearing or ODA shall pay a court reporter to record the hearing.

- (5) Final ODA decision: The hearing officer shall review the testimony or evidence collected at the hearing and shall make a written recommendation to ODA regarding whether the AAA's action was appropriate. ODA shall render its final decision on the appeal no later than thirty days after the date of the

hearing and shall send a copy of the decision, and the rationale for the decision, to the provider and the AAA. If the thirtieth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the **business** day ~~that~~ immediately ~~follows~~ following the thirtieth day that is not on a weekend or legal holiday.

New

(D) Hearings vs. court cases:

- (1) A provider may seek redress from a court without waiting for the final decision of an AAA-level hearing or ODA-level hearing.
- (2) If a provider enters a lawsuit against the AAA or ODA, the AAA or ODA may cease continuing with any in-progress hearing that the provider requested.

~~(D)~~(E) As used in this rule, "adverse action" means an AAA's action concerning a particular provider to not award ~~a provider an~~ agreement ~~to that provider~~; to not renew a renewable agreement; to prematurely terminate ~~a provider an~~ agreement ~~with that provider~~; or to ~~not renew~~ terminate a multi-year provider agreement ~~with that provider~~ for the agreement's second, third, or fourth year ~~of the provider agreement~~.

The proposed new paragraph now covers both *renewable* and *multi-year* AAA-provider agreements.