



## ONLINE PUBLIC-COMMENT PERIOD

### NUTRITION RULES, ORDERS FROM LICENSED HEALTHCARE PROFESSIONALS

ODA is accepting public comments on ODA's proposed amendments to the following rules:

- 173-3-06.1 Older Americans Act: Adult Day Service.
- 173-39-02.1 ODA Provider Certification: Adult Day Service.
- 173-39-02.10 ODA Provider Certification: Nutritional Consultations.
- 173-39-02.14 ODA Provider Certification: Home-Delivered Meals.

A key feature of ODA's proposed amendments to these rules is new language on diet orders, authorizations for nutrition counseling/nutritional consultations, and plans of treatment. ODA proposes to make similar amendments to the rules in Chapter 173-4 of the Administrative Code, but those rules have already undergone an online public-comment period.

ODA is also accepting comments on the appendix on diet orders which will be attached to the business impact analysis for the aforementioned larger nutrition rule project.

After obtaining public comments, ODA will combine these rules and the appendix with a larger nutrition rule project that includes Chapter 173-4 of the Administrative Code. Those rules have already undergone an online public-comment period, but have not yet been filed for legislature's formal rule-review process with the Joint Committee on Agency Rule Review (JCARR).<sup>1</sup>

Any person may submit written comments on the proposed amendments by emailing ODA at [rules@age.ohio.gov](mailto:rules@age.ohio.gov) between Monday, October 19, 2015 and Sunday, November 1, 2015 at 11:59PM.

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<sup>1</sup> ODA is proposing similar amendments to rules 173-4-05 (formerly 173-4-05.2), 173-4-05.1 (formerly 173-4-05.4), and 173-4-06. However, ODA is not seeking comments on those rules at this time because the proposed new rules have already undergone an online public-comment period.





# APPENDIX THERAPEUTIC DIETS + DIET ORDERS

October 19, 2015

## Primarily-Affected Rules

- 173-4-05 Older Americans Act: Therapeutic Diets.<sup>1</sup>
- 173-4-05.1 Older Americans Act: Medical Food and Food for Special Dietary Use.<sup>2</sup>
- 173-39-02.14 ODA Provider Certification: Home-Delivered Meals.

## Defining “Therapeutic Diet”

ODA’s current rules do not define “therapeutic diet.” In the proposed new rules, ODA proposes to define the term. In doing so, ODA would be aligning the new definition with the Ohio Dept. of Health’s (ODH’s) definition for “complex therapeutic diet” for nursing facilities (NFs) and residential care facilities (RCFs). Diets that don’t fit into the definition would not be billable as therapeutic diets.

CURRENT RULES	PROPOSED NEW RULES
<b>Nursing Homes + Residential Care Facilities</b> <a href="#">3701-17-01</a> + <a href="#">3701-17-50</a>	<b>Older Americans Act + ODA Provider Certification</b> 173-4-05, 173-4-05.1, + 173-39-02.14
"Complex therapeutic diet" means a calculated nutritive regime including, but not limited to:	"Therapeutic diet" means a calculated nutritive regime including, the following regimens:
(1) Diabetic and other nutritive regimens requiring a daily specific kilocalorie level;	(1) Diabetic and other nutritive regimens requiring a daily specific calorie level.
(2) Renal nutritive regimens;	(2) Renal nutritive regimens.
(3) Dysphagia nutritive regimens excluding simple textural modifications; or	(3) Dysphagia nutritive regimens excluding simple textural modifications.
(4) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients.	(4) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients.

<sup>1</sup> This rule number would replace rule 173-3-05.2 (therapeutic diets).  
<sup>2</sup> This rule number would replace rule 173-3-05.4 (medical food and food for special dietary use).

Because the Ohio Department of Health's rules regulate nursing homes, including skilled nursing homes that would provide many therapeutic diets, there is wisdom in leaning towards their rule language when considering meal requirements.

Additionally, under the proposed new rules, diets that do not have diet orders would not be billable as therapeutic diets. Therefore, if a consumer requests a carbohydrate choice meal but has no diet order, the meal would not be billable as a therapeutic diet. Yet, if the consumer has a diet order for a diabetic diet or another nutritive regimen that would require a daily specific calorie level, the same carbohydrate meal could be billable as a therapeutic diet. Likewise, if a consumer requests a modified meal (e.g., puréed) but has no diet order, the meal would not be billable as a therapeutic diet. Yet, if the consumer has a diet order for a dysphagia meal, the same meal could be billable as a therapeutic diet.

ODA also proposes to no longer define, nor mention, modified diets in its rules. A request to modify a meal that did not come in the form of a diet order would be considered person direction.

### **How Many Diets are Therapeutic?**

A March, 2015 poll of AAAs revealed that very few providers use Older Americans Act funds to pay for therapeutic diets. AAA5, for example, reported that no providers in PSA5 used Older Americans Act funds to pay for therapeutic diets.

The PASSPORT Program sees a similar phenomenon. The therapeutic diets that it buys according to its provider-certification rules represent only 2/3 of 1% of the home-delivered meals delivered to individuals enrolled in the program.

### **Most-Common Therapeutic Diets**

Wesley Community Services in Cincinnati is a major provider of therapeutic diets and only 1 of 9 providers to furnish therapeutic diets through the PASSPORT Program. Wesley Community Services offers 5 types of therapeutic diets: (1) diabetic/carb-controlled, (2) cardiac/low-sodium, (3) renal, (4) mechanical soft, and (5) puréed. Wesley Community Services also offers therapeutic diets that are a combination of these five. The therapeutic diets do not meet 1/3 of the DRIs.<sup>3</sup>

Wesley Community Services provided this breakdown of their therapeutic diets:<sup>4</sup>

(1) Diabetic/Carb Controlled = 49.1%

(2) Cardiac/Low Sodium = 24.6%

(3) Renal = 20.9% (Currently 85% of Wesley Community Services renal meals to consumers who are on dialysis. The consumers' need for therapeutic renal diets is not going to change.<sup>5</sup>)

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<sup>3</sup> Jayne Haverkos. Email to Tom Simmons. Jul 8, 2015.

<sup>4</sup> Jayne Haverkos. Email to Tom Simmons. Jul 8, 2015.

<sup>5</sup> *Ibid.*

(4) Mechanical Soft = 2.0%.

(5) Puree = 2.3%

(Combinations)

- Diabetic/Mechanical Soft = 0.29%
- Diabetic/Puree = 0.29%
- Cardiac/Puree = 0.57%

Senior Resource Connection provided this breakdown of their therapeutic diets:<sup>6</sup>

(1) Renal = 65%

(2) Mechanical = 23%

(3) Ground Meat 6%

(4) 4 Puréed = 6%

Mobile Meals, Inc. in Akron offers only renal, cardiac, and puréed therapeutic diets.

### **From Whom Will ODA Accept a Diet Order?**

ODA's current rules do not define "diet order," but do require diet orders from certain healthcare professionals. However, different ODA rules allow honoring diet orders from different types of professionals.

ODA's current rule for ODA provider certification ([173-39-02.14](#)) contains the strictest of ODA's requirements. In 2010, the Executive Medicaid Management Agency (EMMA) convened a workgroup to align the requirements for several services. For home-delivered meals, the result was a requirement—in most cases—to only allow a physician to order therapeutic diets.

ODA's April 16, 2006 [rule](#) for certified providers of home-delivered meals only honored diet orders from physicians and dietitians, but no other licensed healthcare professionals. The January 1, 2011 rule that resulted from EMMA only honored diet orders from physicians.

The growing scopes of practice have not been equally represented in Ohio's rules for long-term care programs. The table below shows the variance between 10 different Ohio administrative rules.

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<sup>6</sup> Chuck Sousa. Email to Tom Simmons. Mar 13, 2015.

**APPENDIX: THERAPEUTIC DIETS + DIET ORDERS**

<b>CURRENT RULES</b>									
ODH Nursing Homes	ODH Residential Care Facilities	ODA Older Americans Act ADS	ODA Older Americans Act Therapeutic	ODA Older Americans Act Medical	ODA Provider Certification ADS	EMMA PROJECT			
						ODA Provider Certification HDM	ODODD HCBS Waivers HDM	ODM Ohio Home Care Waiver HDM	ODM Transitions Carve-Out Waiver HDM
<a href="#">3701-17-18</a>	<a href="#">3701-17-60</a>	<a href="#">173-3-06.1</a>	<a href="#">173-4-05.2</a>	<a href="#">173-4-05.4</a>	<a href="#">173-39-02.1</a>	<a href="#">173-39-02.14</a>	<a href="#">5123:2-9-53</a>	<a href="#">5160-46-04</a>	<a href="#">5160-50-04</a>
Physician	Physician	Physician	Physician	Physician	Physician	Physician	Physician	Physician	Physician
Dietitian	Dietitian								Dietitian
		Physician assistant			Physician assistant				
		Clinical nurse specialist			Clinical nurse specialist				
		Certified nurse practitioner			Certified nurse practitioner				
		Certified nurse midwife			Certified nurse midwife				
Other licensed health professional	Other licensed health professional		Other healthcare professional	Other healthcare professional			Other healthcare professional		
acting within the applicable scope of practice	acting within their scope of practice		with prescriptive authority	with prescriptive authority			with prescriptive authority		

Meanwhile, Ohio General Assembly passed a number of bills that modify the scopes of practice of physician assistants and advance practice registered nurses, the latest of which is [Sub. S.B. 110 \(131<sup>st</sup> G.A.\)](#).

Again, because the Ohio Department of Health’s (ODH’s) rules regulate nursing homes, including skilled nursing homes that would provide many therapeutic diets, there is wisdom in leaning towards the formula they use in their language, with the exceptions of using the word “applicable.” Using “applicable” in rules can subject a rule to interpretation. It would be better to use a possessive such as “acting within *their* scope of practice” or “*whose* scope of practice includes....”

ODA proposes, therefore, to replace its current language with language that follows the following formula:

a licensed healthcare professional whose scope of practice includes ordering therapeutic diets

In the July 16, 2015 Federal Register, CMS proposed rules changes that would honor the diet orders of registered nurses in long-term care facilities if state law also allowed this. This would

not directly affect ODA-administered programs, but it does reveal the trending in law towards allowing non-physician professionals to order therapeutic diets.

If ODA uses “or other licensed healthcare professional whose scope of practice includes ordering therapeutic diets,” there would be no need to amend the language in future years to include other licensed healthcare professionals if the Ohio General Assembly or a state licensing board subsequently included ordering therapeutic diets into another profession’s scope of practice.

There are benefits to accepting diet orders from licensed healthcare professionals who are not physicians. The practice would (1) increase the pool of professionals who could order therapeutic diets; and (2) prevent individuals from needing to make office visits to their physicians to obtain diet orders, which would increase costs to individuals and, if covered under Medicaid, to the Medicaid program.

## Honor Diet Orders for How Long?

### ODA’s Current Rules

ODA’s rule for certified providers (173-39-02.14) only honors a physician’s diet order for 90 days, which means that a consumer who needs a therapeutic diet for more than 90 days requires subsequent diet orders every 90 days. The rules for the Older Americans Act nutrition program require a diet order from a licensed healthcare professional with prescriptive authority and can last indefinitely, unless the order is for medical food or food for a special dietary use.

### Comparison to Rules of Other State Agencies

No rule in Chapter 3701-17 of the Administrative Code requires nursing homes or residential care facilities to obtain an order from a physician or other licensed healthcare practitioner after the initial order. However, rule [3701-17-10](#) of the Administrative Code and 42 C.F.R. 483.20 require a quarterly—roughly, every 90 days—assessment of each resident, which includes assessing each resident’s nutritional status. Additionally, rule [3701-17-58](#) of the Administrative Code requires an annual assessment of each resident, which includes assessing each resident’s nutritional status. The rules don’t require a new diet order for therapeutic diets for each assessment. Instead, the nursing home would determine if they believe a change is needed and either continue to serve a therapeutic diet under the current diet order or obtain a revised diet order from a physician or other licensed healthcare professional.

In cooperation with EMMA, ODA and the Ohio Departments of Developmental Disabilities (ODODD) and Medicaid (ODM) adopted similar rules, which may since have been amended. As a result, rules [5123:2-9-53](#), [5160-46-04](#), [5160-50-04](#) of the Administrative Code all require a new authorization every 90 days.

**Comparison to Federal Rules**

ODA looked towards federal regulations. ODA concluded that the PASSPORT Program’s rule is stricter than the CMS’ rules for Medicare coverage and stricter than other states’ requirements.<sup>7</sup>

For Medicare coverage, 42 C.F.R. 483.35 requires the attending physician to authorize therapeutic diets in skilled nursing facilities. The rule does not require a subsequent authorization—at 90 days or at any other period of time. Meals provided through the Older Americans Act and PASSPORT Programs are intended for lower levels of care than skilled nursing, but require subsequent authorizations.

In the [May 12, 2014 Federal Register](#), CMS reported on “Medicare regulations that CMS had identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers”<sup>8</sup> and that “[increased] the ability of health care professionals to devote resources to improving patient care, by eliminating or reducing requirements that impede quality patient care or that divert resources away from providing high quality patient care.”<sup>9</sup> On rule in this package was 42 C.F.R. 482.28, which regulated Medicare coverage of therapeutic diets in outpatient hospital settings. CMS amended the rule to allow qualified dietitians and clinically-qualified nutrition professionals to order therapeutic diets instead of only allowing medical practitioners who are “responsible for the care of the patient” to order therapeutic diets.<sup>10</sup> After the initial authorization, 42 C.F.R. 482.28 does not require a subsequent authorization—at 90 days or at any other period of time.

**Comparison to Rules of Other States**

ODA compared itself to other states. As indicated in the table below, other states honor diet orders for much longer periods of time.

Honor for 6 Months	Honor for Year	Honor Indefinitely	Dietitian Certification Instead of Diet Order
Washington <sup>11</sup>	Delaware <sup>12</sup> Pennsylvania <sup>13</sup> Wisconsin <sup>14</sup>	Iowa <sup>15</sup> Minnesota <sup>16</sup> Texas <sup>17</sup>	Connecticut <sup>18</sup>

<sup>7</sup> In the current rules, the Older Americans Act nutrition program in Ohio allows any healthcare professional with prescriptive authority to authorize therapeutic diets and only requires this authorization initially.

<sup>8</sup> Pg. 27106.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.* Pg., 27117.

<sup>11</sup> Washington State Dept. of Social and Health Services, aging and Disability Services Administration. Senior Nutrition Program Standards. 2004.

<sup>12</sup> Delaware Health and Social Services, Div. of Services for Aging and Adults with Physical Disabilities. [Title III: Home-Delivered Meals](#). Pg. 5.

<sup>13</sup> Pennsylvania Dept. of Aging. Aging Program Directive 15-03-02. Nov 18, 2014. Pg. 26.

<sup>14</sup> Wisconsin Dept. of Health Services, Div. of Long-Term Care, Bureau of Aging and Disability Resources. [A Manual of Policies, Procedures, and Technical Assistance for The Wisconsin Aging Network](#). P-232203. Jun 30, 2011.

<sup>15</sup> Iowa Department of Aging. [IAC rule 17.7.18](#)

<sup>16</sup> Minnesota Board on Aging. [Title III C Minimum Nutrition Standards/Definitions](#). Apr 16, 2010. Pg. 6.

<sup>17</sup> Texas Dept. of Aging and Disability Services. Program Instruction AAA-PI 314. Apr 1, 2011 and [40 T.A.C. 55.19](#), accessed Aug 3, 2015.

### Provider Feedback on Current 90-Day Limit

Since the EMMA project, providers have commented that the 90-day limit isn't reasonable. Chuck Sousa, Vice-President of Senior Resource Connection in Dayton, said the following after he and his staff reviewed rule 173-39-02.14 of the Administrative Code:<sup>19</sup>

[T]he prescription requirement for a therapeutic meal still baffles us. I can assure you that all of our meals are Over The Counter (OTC) and there are no controlled substances included in the nutritional analysis! We realize that the therapeutic meals are being treated under the same drug protocol as a regular prescription...but why? If at all possible it would help considerably if the 90 day time period could be changed to 180 days or longer. Once on a renal diet it is very likely that the same diet would still be needed a year later. Consuming a renal diet, if not actually needed, is not usually harmful to the customer. Even the physicians have asked us on many occasions why a prescription was required. I have always assumed that it was a cost containment method as renal meals may be higher in price. In any case it would be much easier on the Case/Care Managers and providers if the requirement was either eliminated or extended beyond the present 90 days.

Elise Cowie, the director of the University of Cincinnati's Coordinated Program in Dietetics informed ODA of the following:<sup>20</sup>

If the diet is ordered for a chronic condition, I feel that the order remains intact until the order is changed. If a client has an order for a carb controlled diet for treatment for diabetes, why does the diet need to be authorized every 90 days? Why won't the order remain intact until 1) the prescriber decides it is no longer required or 2) the client chooses to go off the diet? Do these clients actually visit their healthcare provider every 90 days? If so, that is a topic for another discussion, related to health care costs.

Examples of diets that could be ordered for non-chronic conditions would include a mechanical soft diet following dental surgery, a soft low fiber diet following a bout of diverticulitis, a low fat diet due to pain from gallstones.

Jane Haverkos of Wesley Community Services said the following:<sup>21</sup>

Given the current therapeutic diets we offer, I can think of no chronic condition that would require a prescription every 90 days. I believe the diet order should be equated to a non-controlled substance order and follow the current regulations for the non-controlled substances set by the state.

Based on the current population we are serving, the trend would be for the severity of the chronic condition to increase along with the possibility of complications from additional chronic conditions. As an example, it is not uncommon for a diabetic client to develop renal failure, therefore necessitating a change from a therapeutic diabetic diet to a therapeutic renal diet. In this case a new order will be written by the physician.

Where I see the greatest change in type of therapeutic diet required involves the mechanical soft and puree diets. It is common to see a change in texture requirement for the client. This request for change is usually initiated by the family or client himself. In all cases the request will be addressed with the attending physician and new orders written as needed. The Case Manager is always advised of the change in diet based on current physician orders.

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<sup>18</sup> Connecticut Department of Social Services. [Sec. 17b-423-5\(e\)\(1\)\(D\)](#)

<sup>19</sup> Email to Tom Simmons. June 26, 2015.

<sup>20</sup> Email to Tom Simmons. Jul 8, 2015.

<sup>21</sup> Email from Jayne Haverkos to Elise Cowie. Jul 1, 2015

I have checked with my husband (a registered pharmacist) and to the best of his knowledge, a non-controlled substance can be written for 90 days with three refills (good for one year) in the state of Ohio. He did confirm this with a pharmacist from the Cincinnati VA. He will attempt to find the current Ohio code regarding the issue.

Ms. Haverkos also said:<sup>22</sup>

When discussing the therapeutic diet regs for the state of Ohio, please ask Tom to consider including, not only can a physician write the order, but also anyone with legal authorization in the state of Ohio to write diet orders. This is especially important for our clients who receive their medical care from clinics. Frequently orders from a clinic are written by a CNP. In many cases the initiation of meal delivery to a client has been delayed while waiting for a MD to sign a diet order.

Ms. Cowie, further commented:<sup>23</sup>

I believe this proposal would save many case workers, meal providers, and physicians (or CNPs if approved) countless hours of unnecessary paperwork and phone calls. Actually RDs are being granted diet order writing privileges in some facilities. If those RDs who are providing nutritional assessment through the provider agency could write the orders, that would be huge.

Chuck Sousa of Senior Resource Connection also said the following:<sup>24</sup>

The Renal Meals are of course designed for patients with Renal failure and the other categories for different levels of mouth and throat issues such as dysphagia and other various swallowing patterns and dental issues. We do not serve therapeutic meals in our Congregate program as demand is low and logistic costs are high in a congregate setting. All present customers are Meals on Wheels participants. I would also note that some of the few mechanical/ground & puree meals are in fact requested as a result of recent surgery to the mouth and throat and are only needed until the healing process has taken place. Under the present process however the time it takes to receive the orders and renew the orders could very well slow down the actual delivery of the 1<sup>st</sup> and/or subsequent meals. In fact the meals could be placed on hold while we wait for a medical professional to approve a specific meal that we know they need and will continue to need as long as they are our customer (Renal). In my humble opinion Renal Meals should be regulated however annually not every 90 days. No customer would be harmed if they ate the renal meal and didn't need it. However if they needed it and couldn't get it that could be a problem. The other meals (Mechanical, Ground & Puree) should be regulated by choice and a Doctors order depending on the health circumstances. When it is taken out of our hands customers may go without meals that they desperately need.

As a general rule meals are not medicine/drugs and the regulation of them should entail, at the very least, a modicum of flexibility to ensure the intent of providing a balanced meal to those who might not be able to attain one is accomplished. There has to be a compromise that benefits both the consumer and the provider and finds a balance between information required for actual service and redundancy (which runs rampant in government programs).

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<sup>22</sup> *Ibid.*

<sup>23</sup> Email to Tom Simmons. Jul 1, 2015.

<sup>24</sup> Email to Tom Simmons. Mar 13, 2015.

**ODA’s Proposed New Rules**

After consulting with the Ohio State Medical Board and Ohio State Board of Nursing, ODA and the boards arrived at a consensus on new rule language that would eliminate any perceived preference in the current rules for physicians.

ODA also proposes to adopt new diet-order regulations, which would include a length of time in which ODA would honor a diet order.

ODA’s proposed new definition and regulations are presented in the table below.

<b>PROPOSED NEW RULE LANGUAGE</b>	
<b>Older Americans Act</b> 173-4-05	<b>ODA Provider Certification</b> 173-39-02.14
“Diet order” means a written order for a therapeutic diet from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets.	“Diet order” means a written order for a therapeutic diet from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets.
Diet orders:	Diet orders:
(a) The provider shall only provide a therapeutic diet to a consumer if the provider received a diet order for the consumer.	(a) The provider shall only provide a therapeutic diet to an individual if the provider received a diet order for the individual.
(b) The provider shall provide a therapeutic diet to the consumer identified in the diet order for the shorter of the following two durations:  (i) The length of time authorized by the diet order.  (ii) One year from the date the diet order indicates that the diet should begin.	(b) The provider shall provide a therapeutic diet to the individual identified in the diet order for the shorter of the following two durations:  (i) The length of time authorized by the diet order.  (ii) One year from the date the diet order indicates that the diet should begin.
(c) If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet according to the updated diet order.	(c) If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet according to the updated diet order.
(d) The provider shall assure that the therapeutic diet contains nutrients that are consistent with the diet order by either utilizing nutrient analysis or by using a meal-pattern plan that is approved by a dietitian. <sup>25</sup>	(d) The provider shall furnish the therapeutic diet according to the diet order instead of a diet that complies with paragraphs [the nutritional-adequacy requirements] of this rule.
(e) The provider shall only provide a therapeutic diet if the provider (or, if the consumer is in a care-coordination program, the AAA), retains a copy of the diet order.	(e) The provider shall only provide a therapeutic diet if the provider retains a copy of the diet order.

<sup>25</sup> Rule 173-4-01 would define “dietitian” as a licensed dietitian, so there is no need to insert “licensed” before any occurrence of “dietitian” in the chapter’s rules.

### **Secondarily-Affected Rules**

173-3-06.1 Older Americans Act: Adult Day Service.

173-4-06 Older Americans Act: Nutrition Counseling.

173-39-02.1 ODA Provider Certification: Adult Day Service.

173-39-02.10 ODA Provider Certification: Nutritional Consultations.

ODA proposes to use the same formula that it is proposing to use for diet orders for diet in its rules that regulate adult day services. ODA also proposes to use the same formula that it is proposing to use for diet orders for other matters that need authorization from licensed healthcare professionals in rules that regulate adult day services and nutrition counseling/nutritional consultation.

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**\*\*\* DRAFT - NOT YET FILED \*\*\***

173-3-06.1

**Older Americans Act: ~~Adult~~ adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an ADS center, which is a non-institutional, community-based setting. ADS includes recreational and educational programming to support a consumer's health and independence goals; at least one meal, but no more than two meals per day ~~that meet the consumer's dietary requirements~~; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the ADS center.

(B) Every contract or grant agreement for ADS that is paid, in part or in full, with Older Americans Act funds, shall comply with the ~~Requirements~~ requirements for ADS in addition to the mandatory clauses every contract or grant agreement under rule 173-3-06 of the Administrative Code and the following requirements:

(1) In general:

(a) Service levels: The required components of the three service levels are presented in this paragraph and in "Table 1" to this rule:

(i) Basic ADS shall include structured activity programming, health assessments, and the supervision of one or more ADL.

(ii) Enhanced ADS shall include the components of basic ADS, plus hands-on assistance with one or more ADL (bathing excluded), supervision of medication administration, assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status, and hands-on assistance with personal hygiene activities (bathing excluded).

(iii) Intensive ADS shall include the components of enhanced ADS, plus hands-on assistance with two or more ADLs, regular monitoring of health status, hands-on assistance with personal hygiene activities (bathing included, as needed), social work services, skilled nursing services (e.g., dressing changes), and rehabilitative services, including physical therapy, speech therapy, and occupational therapy.

Table 1: Levels and Components of ADS

	BASIC ADS	ENHANCED ADS	INTENSIVE ADS
Structured activity programming	Yes	Yes	Yes

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**\*\*\* DRAFT - NOT YET FILED \*\*\***

173-3-06.1

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Health assessments	Yes	Yes	Yes
Supervision of ADLs	One or more ADL	One or more ADL	All ADLs
Hands-on assistance with ADLs	No	Yes, one or more ADL (bathing excluded)	Yes, minimum of two ADLs (bathing included)
Hands-on assistance with medication administration	No	Yes	Yes
Comprehensive therapeutic activities	No	Yes	Yes
Monitoring of health status	No	Intermittent	Regular
Hands-on assistance with personal hygiene activities	No	Yes (bathing excluded)	Yes (bathing included, as needed)
Social work services	No	No	Yes
Skilled nursing services	No	No	Yes
Rehabilitative services	No	No	Yes

(b) Transportation: The provider shall transport each consumer to and from the ADS center by performing a transportation service that complies with rule 173-3-06.6 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-3-06.6 of the Administrative Code, or unless the caregiver provides or designates another person or non-provider, other than the ADS center provider, to transport the consumer to and from the ADS center.

(c) Case manager's assessment: If the consumer receives a case management service, as defined under section 102(a)(11) of the Older Americans Act, as part of care coordination:

(i) The case manager shall assess each consumer's needs and preferences then specify which service level will be approved for each consumer; and,

- (ii) The provider shall retain records to show that it furnishes the service at the level that the case manager authorized.
- (d) Provider's initial assessment:
- (i) The provider shall assess the consumer before the end of the consumer's second day of attendance at the center. If the consumer is enrolled in care coordination, the provider may substitute a copy of the case manager's assessment of the consumer if the case manager assessed the consumer no more than thirty days before the consumer's first day of attendance at the center.
  - (ii) The initial assessment shall include both of the following components:
    - (a) Functional and cognitive profiles that identify the ADLs and IADLs that require attention or assistance of ADS center staff; and,
    - (b) Social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.
- (e) Health assessment: No later than thirty days after the consumer's initial attendance at the ADS center or before the consumer receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain a health assessment of each consumer from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~, licensed healthcare professional whose scope of practice includes health assessments or require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional to perform a health assessment of each consumer. The health assessment shall include the consumer's psychosocial profile and shall identify the consumer's risk factors, diet, and medications. If a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional who is not a staff member of the provider performs the health assessment, the provider shall retain a record of the professional's name and phone number.

- (f) Activity plan: No later than thirty days after the consumer's initial attendance at the ADS center or before the consumer receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional whose scope of practice includes developing activity plans to draft an activity plan for each consumer or the provider shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse-midwife, or RN~~ licensed healthcare professional to draft an activity plan for each consumer. The plan shall identify the consumer's strengths, needs, problems or difficulties, goals, and objectives. The plan shall describe the consumer's:
- (i) Interests, preferences, and social rehabilitative needs;
  - (ii) Health needs;
  - (iii) Specific goals, objectives, and planned interventions of ADS that meet the goals;
  - (iv) Level of involvement in the drafting of the plan, and, if the consumer has a caregiver, the caregiver's level of involvement in the drafting of the plan; and,
  - (v) Ability to sign his or her signature versus alternate means for a consumer signature.
- (g) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition ~~consultation~~ counseling, physical therapy, or speech therapy, the provider shall obtain ~~an order~~ a plan of treatment from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife~~ licensed healthcare professional whose scope of practice includes making plans of treatment. The provider shall obtain the ~~order for the~~ plan of treatment at least every ninety days for each consumer that receives medication, ~~meals with a therapeutic diet~~, a nursing service, nutrition ~~consultation~~ counseling, physical therapy, or speech therapy. ~~The~~ For diet orders that may be part of a plan of treatment, a new diet order is not required every ninety days. Instead, the provider shall comply with the diet-order requirements for ~~meals with a~~ therapeutic ~~diet~~ diets under rule ~~173-4-05.2~~ 173-4-05 of the

Administrative Code.

(h) Interdisciplinary care conference:

(i) Frequency: The provider shall conduct an interdisciplinary care conference for each consumer at least once every six months.

(ii) Participants: The provider shall conduct the conference between the provider's staff members and invitees who choose to participate. If the consumer receives case management as part of care coordination, the provider shall invite the case manager to participate in the conference. The provider shall invite any ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse midwife, or RN~~ licensed healthcare professional who does not work for the provider, but who furnished the provider with a health assessment of the consumer or an activity plan for the consumer, to participate in the conference. If the consumer has a caregiver, the provider shall invite the caregiver to the conference. The provider may also invite the consumer to the conference. The provider shall invite the case manager, ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse midwife, RN,~~ licensed healthcare professional, caregiver, or consumer by furnishing the date and time to the case manager seven days before the conference begins.

(iii) Revise activity plan: If the conference participants identify changes in the consumer's health needs, condition, preferences, or responses to the service, the provider shall obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse midwife, RN~~ licensed healthcare professional to revise the activity plan accordingly or shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, certified nurse midwife, RN~~ licensed healthcare professional to revise the activity plan accordingly.

(iv) Records: The provider shall retain records on each conference's determinations.

(i) Activities: The provider shall post daily and monthly planned activities in prominent locations throughout the center.

(j) Lunch and snacks:

- (i) The provider shall provide lunch and snacks to each consumer who is present during lunchtime or snacktime.
- (ii) The provision of lunch shall comply with the meal service requirements of rule 173-4-05 of the Administrative Code.

(2) Center requirements:

(a) Specifications: The provider shall only perform ADS in a center with the following specifications:

- (i) If the center is housed in a building with services or programs other than ADS, the provider shall assure that a separate, identifiable space and staff are available for ADS activities during all hours in which the provider furnishes ADS in the center.
- (ii) The center shall comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R. Part 36 (July 1, ~~2012~~<sup>2015</sup> edition [2015](#)).
- (iii) The center shall have at least sixty square feet per individual that it serves, excluding hallways, offices, rest rooms, and storage areas.
- (iv) The provider shall store consumers' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.
- (v) The provider shall store toxic substances in an area that is inaccessible to consumers.
- (vi) The center shall have at least one toilet for every ten individuals present that it serves and at least one wheelchair-accessible toilet.
- (vii) If the center provides intensive ADS, the center shall have bathing facilities suitable to the needs of consumers who require intensive ADS.

(b) Emergency safety plan:

- (i) The provider shall develop and annually review a fire inspection and emergency safety plan.
- (ii) The provider shall post evacuation procedures in prominent locations throughout the center.

(c) Evacuation drills:

- (i) At least quarterly, the provider shall conduct an evacuation drill from the center while consumers are present.
- (ii) The provider shall retain records on the date and time it completes each evacuation drill.

(d) Fire extinguishers and smoke alarms:

- (i) The provider shall have fire extinguishers and smoke alarms in the center and shall provide routine maintenance to them.
- (ii) At least annually, the provider shall conduct an inspection of the fire extinguishers and smoke alarms and shall document the completion of each inspection.

(3) Staffing levels:

- (a) The provider shall have at least two staff members present whenever more than one consumer is present, including one who is a paid personal care staff member and one who is certified in CPR.
- (b) The provider shall maintain a staff-to-consumer ratio of at least one staff member to every six consumers at all times.
- (c) The provider shall have one RN, or LPN under the direction of an RN, present whenever a consumer who receives enhanced ADS or intensive ADS requires components of enhanced ADS or intensive ADS that fall within a nurse's scope of practice.
- (d) The provider shall employ an activity director to direct consumer activities.

(4) Provider qualification:

(a) Type of provider: A provider shall only furnish ADS if the provider is an agency provider.

(b) Staff qualifications:

(i) Every RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, dietitian, occupational therapist, or occupational therapy assistant planning to practice as a personal care staff member shall possess a current, and valid license to practice in their profession.

(ii) The activity director shall possess at least one of the following:

(a) A baccalaureate or associate degree in recreational therapy or a related degree;

(b) At least two years of experience as an activity director or activity assistant in a related position; or,

(c) Compliance with the qualifications required to direct consumer activities in a nursing facility under paragraph (G) of rule 3701-17-07 of the Administrative Code.

(iii) Each activity assistant shall possess at least one of the following:

(a) A high school diploma;

(b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code; or,

(c) At least two years of employment in a supervised position to furnish personal care, to furnish activities, or to assist with activities.

(iv) Each personal care aide shall possess at least one of the following:

(a) A high school diploma;



(iii) Continuing education: Each staff member shall complete at least eight hours of in-service or continuing education on appropriate topics each calendar year, unless the staff person holds a professional certification that requires at least eight hours in order to maintain the certification.

(iv) Records: The provider shall retain records showing that it complies with the training requirements under paragraph (B)(4)(c) of this rule. In doing so, the provider shall list the instructor's title, qualifications, and signature; date and time of instruction; content of the instruction; and name and signature of ADS personal care staff completing the training.

(d) Performance reviews:

(i) The provider shall complete a performance review of each staff member in relation to the staff member's job description.

(ii) The provider shall retain records to show that it complies with paragraph (B)(4)(d)(i) of this rule.

(5) Service verification:

(a) For each service furnished, the provider shall retain a record of all of the following:

(i) Consumer's name;

(ii) Date of service;

(iii) Consumer's arrival and departure times;

(iv) Consumer's mode of transportation;

(v) Name of each staff member having contact with the consumer;

(vi) The consumer's signature (The activity plan shall note if the consumer is unable to sign. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.); and,

(vii) ADS staff person's signature.

(b) The provider may use a daily attendance roster to retain the records required under paragraph (B)(5)(a) of this rule.

(c) The provider may use a technology-based system to collect or retain the records required under this rule.

~~(d) The provider shall retain records required under this rule and furnish access to those records for monitoring according to paragraph (A)(21) of rule 173-3-06 of the Administrative Code.~~

(C) Units of service:

(1) Units of ADS are calculated as follows:

(a) One-half unit is less than four hours of ADS per day.

(b) One unit is four to eight hours of ADS per day.

(c) A fifteen-minute unit is each fifteen-minute period of time over eight hours up to, and including, a maximum of twelve hours of ADS per day.

(2) A unit of ADS does not include a transportation service, as defined by rule 173-3-06.6 of the Administrative Code, even if the transportation service is provided to transport the consumer to or from the ADS center.



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**ODA provider certification: ~~Adult~~ adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an ADS center, which is a non-institutional, community-based setting. ADS includes recreational and educational programming to support ~~a consumer's~~ an individual's health and independence goals; at least one meal, but no more than two meals per day ~~that meet the consumer's dietary requirements~~; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the ADS center.

(B) Requirements for providers of ADS in addition to the ~~conditions of participation requirements for every ODA-certified provider~~ under rule 173-39-02 of the Administrative Code:

(1) In general:

(a) Service levels: The required components of the two services levels are presented in this paragraph and in "Table 1" to this rule:

(i) Enhanced ADS: Enhanced ADS includes structured activity programming, health assessments, supervision of all ADLs, supervision of medication administration, hands-on assistance with ADL activities (except bathing) and hands-on assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status; and, hands-on assistance with personal hygiene activities (except bathing).

(ii) Intensive ADS: Intensive ADS includes all the components of enhanced ADS plus hands-on assistance with two or more ADLs; hands-on assistance with bathing; regular monitoring of, and intervention with, health status; skilled nursing services (e.g., dressing changes and other treatments) and rehabilitative nursing procedures; rehabilitative and restorative services, including physical therapy, speech therapy, and occupational therapy; and, social work services.

Table 1: Levels and Components of ADS

	ENHANCED ADS	INTENSIVE ADS
Structured activity programming	Yes	Yes
Health assessments	Yes	Yes
Supervision of ADLs	All ADLs	All ADLs

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Hands-on assistance with ADLs	Yes, one or more ADL (bathing excluded)	Yes, minimum of two ADLs (bathing included)
Hands-on assistance with medication administration	Yes	Yes
Comprehensive therapeutic activities	Yes	Yes
Monitoring of health status	Intermittent	Regular, with intervention
Hands-on assistance with personal hygiene activities	Yes	Yes
Social work services	No	Yes
Skilled nursing services and rehabilitative nursing services	No	Yes
Rehabilitative and restorative services	No	Yes

(b) Transportation: The provider shall transport each ~~consumer~~ individual to and from the ADS center by performing a transportation service that complies with rule 173-39-02.13 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-39-02.13 of the Administrative Code, or unless the caregiver provides or designates another person or non-provider, other than the ADS center provider, to transport the ~~consumer~~ individual to and from the ADS center.

(c) Case manager's assessment:

(i) The case manager shall assess each ~~consumer's~~ consumer's needs and preferences then specify which service level will be approved for each ~~consumer~~ consumer.

(ii) The provider shall retain records to show that it furnishes the service at the level that the case manager authorized.

(d) Provider's initial assessment:

(i) The provider shall assess the ~~consumer~~ individual before the end of

the ~~consumer's~~ individual's second day of attendance at the center. The provider may substitute a copy of the case manager's assessment of the ~~consumer~~ individual if the case manager assessed the ~~consumer~~ individual no more than thirty days before the ~~consumer's~~ individual's first day of attendance at the center.

- (ii) The initial assessment shall include both of the following components:
  - (a) Functional and cognitive profiles that identify the ADLs and IADLs that require the attention or assistance of ADS center staff; and,
  - (b) A social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.
- (e) Health assessment: No later than thirty days after the ~~consumer's~~ individual's initial attendance at the ADS center or before the ~~consumer~~ individual receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain a health assessment of each ~~consumer~~ individual from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional whose scope of practice includes health assessments or shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional to perform a health assessment of each ~~consumer~~ individual. The health assessment shall include the ~~consumer's~~ individual's psychosocial profile and shall identify the ~~consumer's~~ individual's risk factors, diet, and medications. If a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ the licensed healthcare professional ~~who~~ is not a staff member of the provider performs the health assessment, the provider shall retain a record of the professional's name and phone number.
- (f) Activity plan: No later than thirty days after the ~~consumer's~~ individual's initial attendance at the ADS center or before the ~~consumer~~ individual receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional whose scope of practice includes developing activity plans to draft an

activity plan for each ~~consumer~~ individual or the provider shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional to draft an activity plan for each ~~consumer~~ individual. The plan shall identify the ~~consumer's~~ individual's strengths, needs, problems or difficulties, goals, and objectives. The plan shall describe the ~~consumer's~~ individual's:

- (i) Interests, preferences, and social rehabilitative needs;
  - (ii) Health needs;
  - (iii) Specific goals, objectives, and planned interventions of ADS services that meet the goals;
  - (iv) Level of involvement in the drafting of the plan, and, if the ~~consumer~~ individual has a caregiver, the caregiver's level of involvement in the drafting of the plan; and,
  - (v) Ability to sign his or her signature versus alternate means for the ~~consumer's~~ individual's signature.
- (g) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition consultation, physical therapy, or speech therapy, the provider shall obtain ~~an order~~ plan of treatment from a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife~~ licensed healthcare professional whose scope of practice includes making plans of treatment. The provider shall obtain the ~~order for the~~ plan of treatment at least every ninety days for each ~~consumer~~ individual that receives medication, ~~meals with a therapeutic diet,~~ a nursing service, nutrition consultation, physical therapy, or speech therapy. ~~The~~ For diet orders that may be part of a plan of treatment, a new diet order is not required every ninety days. Instead, the provider shall comply with the diet-order requirements for ~~meals with a~~ therapeutic ~~diet~~ diets under rule 173-39-02.14 of the Administrative Code.
- (h) Interdisciplinary care conference:
- (i) Frequency: The provider shall conduct an interdisciplinary care conference for each ~~consumer~~ individual at least once every six

months.

- (ii) Participants: The provider shall conduct the conference between the provider's staff members and invitees who choose to participate. The provider shall invite the case manager to participate in the conference. The provider shall invite any ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional who does not work for the provider, but who furnished the provider with a health assessment of the ~~consumer~~ individual or an activity plan for the ~~consumer~~ individual, to participate in the conference. If the ~~consumer~~ individual has a caregiver, the provider shall invite the caregiver to the conference. The provider may also invite the ~~consumer~~ individual to the conference. The provider shall invite the case manager, ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, RN,~~ licensed healthcare professional, caregiver, or ~~consumer~~ individual by furnishing the date and time to the case manager seven days before the conference begins.
  
- (iii) Revise activity plan: If the conference participants identify changes in the ~~consumer's~~ individual's health needs, condition, preferences, or responses to the service, the provider shall obtain the services of a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional to revise the activity plan accordingly or shall require a staff member who is such a ~~physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse midwife, or RN~~ licensed healthcare professional to revise the activity plan accordingly.
  
- (iv) Records: The provider shall retain records on each conference's determinations.
  
- (i) Activities: The provider shall post daily and monthly planned activities in prominent locations throughout the center.
  
- (j) Lunch and snacks:
  - (i) The provider shall furnish lunch and snacks to each ~~consumer~~ individual who is present during lunchtime or snacktime.
  
  - (ii) Each meal that the provider furnishes shall comply with all the

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requirements for the home-delivered meal service under rule 173-39-02.14 of the Administrative Code, except for the requirements in that rule that pertain to the delivery of the meal.

(2) Center requirements:

(a) Specifications: The provider shall only furnish an ADS in a center with the following specifications.

(i) If the center is housed in a building with other services or programs other than ADS, the provider shall assure that a separate, identifiable space and staff is available for ADS during all hours that the provider furnishes ADS in the center.

(ii) The center shall comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R., Part 36 (July 1, ~~2012 edition~~ [2015](#)).

(iii) The center shall have at least sixty square feet per individual that it serves (not just individuals who are enrolled in an ODA-administered program), excluding hallways, offices, rest rooms, and storage areas.

(iv) The provider shall store ~~consumers'~~ individuals' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.

(v) The provider shall store toxic substances in an area that is inaccessible to ~~consumers~~ individuals.

(vi) The center shall have at least one working toilet for every ten individuals present that it serves (not just individuals who are enrolled in an ODA-administered program) and at least one wheelchair-accessible toilet.

(vii) ODA shall only certify the provider to furnish intensive ADS if the center has bathing facilities suitable to the needs of ~~consumers~~ individuals who require intensive ADS.

(b) Emergency safety plan:

- (i) The provider shall develop and annually review a fire inspection and emergency safety plan.
- (ii) The provider shall post evacuation procedures in prominent areas throughout the center.

(c) Evacuation drills:

- (i) At least quarterly, the provider shall conduct an evacuation drill from the center while ~~consumers~~ individuals are present.
- (ii) The provider shall retain records on the date and time it completes each evacuation drill.

(d) Fire extinguishers and smoke alarms:

- (i) The provider shall have fire extinguishers and smoke alarms in the center and shall routinely maintain them.
- (ii) At least annually, the provider shall inspect the fire extinguishers and smoke alarms. The provider shall retain records on the date and time it completes each inspection.

(3) Staffing levels:

- (a) The provider shall have at least two staff members present whenever more than one ~~consumer~~ individual is present, including one who is a paid personal care staff member and one who is certified in CPR.
- (b) The provider shall maintain a ~~staff-to-consumer~~ staff-to-individual ratio of at least one staff member to six ~~consumers~~ individuals at all times.
- (c) The provider shall have a RN, or LPN under the direction of a RN, on site at the ADS center to provide nursing services that require the skills of a RN, or LPN under the direction of a RN, and that are within the nurse's scope of practice.
- (d) The provider shall employ an activity director to direct ~~consumer~~ activities.

(4) Provider qualifications:

(a) Type of provider:

- (i) A provider shall only furnish the service if ODA certifies the provider as an agency provider.
- (ii) For each provider that ODA certifies, ODA shall certify the provider as an enhanced or intensive provider. If ODA certifies a provider to furnish an intensive service level, the provider may also directly furnish, or arrange for, the enhanced service level.

(b) Staff qualifications:

- (i) Every RN, LPN under the direction of a RN, social worker, physical therapist, physical therapy assistant, speech therapist, licensed dietitian, occupational therapist, occupational therapy assistant, or other licensed professional acting as a personal care care staff member, shall possess a current, valid license to practice in their profession.
- (ii) Each activity director shall possess at least one of the following:
  - (a) A baccalaureate or associate degree in recreational therapy or a related degree;
  - (b) At least two years of experience as an activity director, activity coordinator, or a related position; or,
  - (c) A certification from the national certification council for activity professionals (NCCAP).
- (iii) Each activity assistant shall possess at least one of the following:
  - (a) A high school diploma;
  - (b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code; or,
  - (c) At least two years of employment in a supervised position to

furnish personal care, to furnish activities, or to assist with activities.

- (iv) Each personal care aide shall possess at least one of the following:
    - (a) A high school diploma;
    - (b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code;
    - (c) At least two years of employment in a supervised position to furnish personal care, to furnish activities, or to assist with activities; or,
    - (d) The successfully completion of a vocational program in a health or human services field.
  - (v) Each staff member who furnishes transportation to ~~e~~consumers individuals shall comply with all requirements under rule 173-39-02.13 of the Administrative Code.
  - (vi) The provider shall retain records to show that each staff member who has in-person interaction with ~~e~~consumers individuals complies with paragraph (B)(4)(b) of this rule.
- (c) Staff training:
- (i) Orientation: Before each new personal care staff member furnishes an ADS, the provider shall train the staff member on all of the following:
    - (a) The expectation of employees;
    - (b) The provider's ethical standards, as required under ~~paragraph (B)(1)(e) of~~ rule 173-39-02 of the Administrative Code;
    - (c) An overview of the provider's personnel policies;
    - (d) A description of the provider's organization and lines of communication;



(v) Name of each staff member having contact with the ~~consumer~~ individual;

(vi) The ~~consumer's~~ individual's signature (The activity plan shall note if the ~~consumer~~ individual is unable to sign. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.); and,

(vii) ADS staff person's signature.

(b) The provider may use a daily attendance roster to retain the records required under paragraph (B)(5)(a) of this rule.

(c) The provider may use a technology-based system to collect or retain the records required under this rule.

~~(d) The provider shall retain records required under this rule and furnish access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code.~~

(C) Units and rates:

(1) Attendance:

(a) Units of ADS attendance are calculated as follows:

(i) One-half unit is less than four hours ADS per day.

(ii) One unit is four through eight hours ADS per day.

(iii) A fifteen-minute unit is each fifteen-minute period of time over eight hours up to, and including, a maximum of twelve hours of ADS per day.

(b) A unit of ADS attendance does not include transportation time.

(2) Transportation: A unit of ADS transportation is a round trip, a one-way trip, or one mile with the trip cost based on a case manager's pre-determined calculation of distance between the ~~consumer's~~ individual's residence and the ADS center multiplied by an established ADS mileage rate. If the provider

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furnishes the transportation simultaneously to more than one PASSPORT ~~or choices consumer~~ individual who resides in the same household in the same vehicle to the same destination, the provider's ~~reimbursement~~ payment rate for that trip is seventy-five per cent of the per-unit rate, in accordance with ~~rules rule 5101:3-31-07 5160-31-07 and 5101:3-32-07~~ of the Administrative Code.

- (3) The maximum rates allowable for units of ADS attendance and ADS transportation are established in appendix A to ~~rule 5101:3-1-06.1 5160-1-06.1~~ of the Administrative Code ~~for the PASSPORT program and rule 5101:3-1-06.4 of the Administrative Code for the choices program.~~

- (4) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

173-39-02.10

**Nutritional consultation service.**

**FOR RESCISSION**

(A) "Nutritional consultation service" means a service that provides individualized guidance to a consumer who has special dietary needs. A nutritional consultation service takes into consideration the consumer's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions.

(B) Minimum requirements for a nutritional consultation service in addition to the conditions of participation under rule 173-39-02 of the Administrative Code:

(1) Physician's authorization:

(a) Initial: If the provider receives a signed and dated authorization from the consumer's treating physician indicating that the consumer needs a nutrition consultation service, the provider may begin to provide the nutrition consultation service, subject to the other requirements of this rule. The provider may continue to provide the nutrition consultation service for up to sixty days after the date of the physician's authorization.

(b) Subsequent: The provider may provide the nutrition consultation service for subsequent periods of up to sixty days only if the provider receives a subsequent signed and dated authorization from the physician indicating that the consumer continues to need a nutrition consultation service.

(2) Nutrition assessment:

(a) The provider shall conduct an initial, individualized assessment of the consumer's nutritional needs and, when necessary, subsequent nutrition assessments, using a tool that identifies whether the consumer is at nutritional risk or identifies a nutritional diagnosis that the dietitian will treat. The tool shall include:

(i) An assessment of height and weight history;

(ii) An assessment of the adequacy of nutrient intake;

(iii) A review of medications, medical diagnoses, and diagnostic test results;

(iv) An assessment of verbal, physical, and motor skills that may affect, or contribute to, nutrient needs;

- (v) An assessment of interactions with the caregiver during feeding; and,
    - (vi) An assessment of the need for adaptive equipment, other community resources, or other services.
  - (b) The provider shall furnish the case manager and the consumer with a copy of the nutrition assessment no later than seven business days after the provider completes the assessment.
- (3) Nutrition intervention plan:
  - (a) The provider shall develop, evaluate, and revise, as necessary, a nutrition intervention plan with the consumer's and case manager's assistance and, when applicable, the treating physician and other relevant service providers. In the plan, the provider shall outline the purposely-planned actions for changing nutrition-related behavior, risk factors, environmental conditions, or health status, which, at a minimum, shall include the consumer's:
    - (i) Food and diet modifications;
    - (ii) Specific nutrients to require or limit;
    - (iii) Feeding modality;
    - (iv) Nutrition education and counseling; and,
    - (v) Expected measurable indicators and outcomes related to the consumer's nutritional goals.
  - (b) The provider shall use the nutrition intervention plan to prioritize and address the identified nutrition problems.
  - (c) The provider shall furnish the case manager and the consumer with a copy of the nutrition intervention plan no later than seven business days after the provider develops or revises the plan.
- (4) Clinical record:

- (a) The provider shall develop and retain a clinical record for each consumer that includes the consumer's:
  - (i) Identifying information, including name, address, date of birth, sex, race, marital status, significant phone numbers, and health insurance identification numbers;
  - (ii) Medical history;
  - (iii) Treating physician's name;
  - (iv) Treating physician's authorization for a nutritional consultation service that is required under paragraph (B)(1) of this rule;
  - (v) Service plan (initial and revised versions);
  - (vi) Nutrition assessment (initial and revised versions);
  - (vii) Plan of care for nutrition consultation services (initial and revised versions), specifying the type, frequency, scope, and duration of the services to perform;
  - (viii) Nutrition intervention plan (initial and revised versions that were implemented);
  - (ix) Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions;
  - (x) Discharge summary, which the dietitian who provided the service shall sign and date at the point he or she is no longer going to provide the service to the consumer or the consumer no longer needs the service. The summary shall indicate what progress the consumer made towards achieving the measurable outcomes of the consumer's nutritional goals and any recommended follow-up consultations or referrals.
  
- (b) The provider may use a technology-based system to develop and retain the clinical record.

(5) Limitations:

- (a) The provider shall not provide the service to a consumer in excess of what the case manager authorizes in the consumer's service plan.
- (b) The provider shall only bill the PAA for the service provided under the PASSPORT program if the case manager identifies the provider in the service order for the consumer.
- (c) The provider shall not provide the service to a consumer if the consumer is receiving a similar service under Chapter 173-39 of the Administrative Code.

(6) Provider qualifications: An individual shall provide this service only if:

- (a) An agency that ODA certifies as an agency provider employs the individual, or ODA certifies the individual as a non-agency provider; and,
- (b) The individual is registered by the commission on dietetic registration and maintains a license in good standing with the Ohio board of dietetics.

(7) Service verification:

- (a) For each episode of service provided, the provider shall retain a record of the:
  - (i) Consumer's name;
  - (ii) Date of service;
  - (iii) Time of day that each service begins and ends;
  - (iv) Name and signature of individual providing the consultation; and,
  - (v) Consumer's signature. The case manager shall record the consumer's signature of choice in the consumer's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.
- (b) The provider may use a technology-based system to collect or retain the records required under this rule.

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- (c) The provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code.

(C) Unit and rate:

- (1) A unit of a nutritional consultation service is equal to fifteen minutes.
- (2) The maximum rate allowable for a unit of the service is listed in rule 5101:3-1-06.1 of the Administrative Code.



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**ODA provider certification: nutritional consultations.**

(A) Definitions for this rule:

(1) "Nutritional consultations" ("consultations") mean individualized guidance to an individual who has special dietary needs. Consultations take into consideration the individual's health; cultural, religious, ethnic, socio-economic background; and dietary preferences and restrictions. Consultations are also known as medical nutrition therapy.

(2) "Nutritional assessment" has the same meaning as in rule 4759-2-01 of the Administrative Code.

(B) Requirements for providers of nutritional consultations in addition to the requirements for every ODA-certified provider under rule 173-39-02 of the Administrative Code:

(1) Orders and limits: The PASSPORT program shall only pay for consultations under the following circumstances:

(a) Only a licensed dietitian ("dietitian") provides consultations to individuals.

(b) Before the dietitian provides consultations to an individual, the dietitian obtains an order for the individual's consultations from a licensed healthcare professional whose scope of practice includes ordering consultations.

(c) Before the dietitian provides consultations to an individual, the dietitian obtains an order for the individual's consultations from a licensed healthcare professional whose scope of practice includes ordering consultations.

(d) Before the dietitian consultations an individual, the dietitian obtains an order for the individual's consultations from a licensed healthcare professional whose scope of practice includes ordering consultations.

(e) The dietitian only provides consultations to the individual unless the licensed healthcare professional's order is to provide consultations to the consumer's authorized representative or caregiver to improve the consumer's well-being.

(f) The dietitian does not provide consultations to an individual in excess of what the case manager authorizes in the individual's service plan.

(g) The provider only bills ODA's designee for consultations if the case manager identifies the provider in the service order for the individual.

(h) The dietitian does not provide consultations to an individual if the individual is receiving a similar service under Chapter 173-39 of the Administrative Code.

(2) Face-to-face vs. telecommunications:

(a) For an initial consultation, the dietitian shall only provide a face-to-face consultation between the dietitian and the consumer (or between the dietitian and the individual's caregiver to improve caregiver's care to the individual).

(b) For subsequent consultations, the dietitian shall only provide the consultations if the consultations occur on a face-to-face basis or by a telecommunication system.

(3) Nutrition assessment:

(a) The provider shall conduct an initial, individualized assessment of the individual's nutritional needs and, when necessary, subsequent nutrition assessments, using a tool that identifies whether the individual is at nutritional risk or identifies a nutritional diagnosis that the dietitian will treat. The tool shall include the following:

(i) An assessment of height and weight history.

(ii) An assessment of the adequacy of nutrient intake.

(iii) A review of medications, medical diagnoses, and diagnostic test results.

(iv) An assessment of verbal, physical, and motor skills that may affect, or contribute to, nutrient needs.

(v) An assessment of interactions with the caregiver during feeding.

(vi) An assessment of the need for adaptive equipment, other community resources, or other services.

(b) The provider shall furnish the case manager and the individual with a copy of the nutrition assessment no later than seven business days after the provider completes the assessment.

(4) Nutrition intervention plan:

(a) The provider shall develop, evaluate, and revise, as necessary, a nutrition intervention plan with the individual's and case manager's assistance

and, when applicable, the assistance of the licensed healthcare professional who authorized the consultations. In the plan, the provider shall outline the purposely-planned actions for changing nutrition-related behavior, risk factors, environmental conditions, or health status, which, at a minimum, shall include the following information about the consumer:

(i) Food and diet modifications.

(ii) Specific nutrients to require or limit.

(iii) Feeding modality.

(iv) Nutrition education and counseling.

(v) Expected measurable indicators and outcomes related to the individual's nutritional goals.

(b) The provider shall use the nutrition intervention plan to prioritize and address the identified nutrition problems.

(c) The provider shall furnish the case manager, the individual, and the licensed healthcare professional who ordered the consultations with a copy of the nutrition intervention plan no later than seven business days after the provider develops or revises the plan.

(5) Clinical record:

(a) The provider shall develop and retain a clinical record for each individual that includes the consumer's individual's:

(i) Identifying information, including name, address, date of birth, sex, race, marital status, significant phone numbers, and health insurance identification numbers.

(ii) Medical history.

(iii) The name of the licensed healthcare professional who authorized consultations.

(iv) The authorization for consultations that is required under paragraph (B)(1) of this rule.

(v) Service plan (initial and revised versions).

(vi) Nutrition assessment (initial and revised versions).

(vii) Plan of care for consultations (initial and revised versions), specifying the type, frequency, scope, and duration of the consultations to perform.

(viii) Nutrition intervention plan (initial and revised versions that were implemented).

(ix) Food and drug interactions (e.g., "Don't take pills with milk."), allergies, and dietary restrictions.

(x) Discharge summary, which the dietitian who provided the consultations shall sign and date at the point he or she is no longer going to provide consultations to the individual or the individual no longer needs consultations. The summary shall indicate what progress the individual made towards achieving the measurable outcomes of the individual's nutritional goals and any recommended follow-up consultations or referrals.

(b) The provider may use a technology-based system to develop and retain the clinical record.

(6) Service verification:

(a) For each consultation provided, the provider shall retain a record of the following:

(i) Individual's name.

(ii) Date of service.

(iii) Time of day that each service begins and ends.

(iv) Name and signature of individual providing the consultation.

(v) Individual's signature. The case manager shall record the individual's signature of choice in the Individual's service plan. The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(b) The provider may use a technology-based system to collect or retain the records required under this rule.

(C) Unit and rate:

(1) A unit of a nutritional consultations is equal to fifteen minutes.

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(2) The maximum rate allowable for a unit of nutritional consultations is listed in rule 5160-1-06.1 of the Administrative Code.

(3) The rate is subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.



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ODA provider certification: ~~Home-delivered—meal service~~home-delivered meals.

(A) Definitions for this rule:

~~(A)(1)~~ "Home-delivered ~~meal-service~~ meals" means the service that provides up to two meals per day to ~~a consumer~~ an individual who has a need for a home-delivered meal based on a deficit in an ADL or IADL that a case manager identifies during the assessment process. The service includes ~~the~~ planning, preparation ~~safely preparing~~, packaging, and ~~delivery of~~ delivering safe and nutritious meals to the ~~consumer~~ individual at his or her home.

(2) "Therapeutic diet" means a calculated nutritive regimen including the following regimens:

(a) Diabetic and other nutritive regimens requiring a daily specific calorie level.

(b) Renal nutritive regimens.

(c) Dysphagia nutritive regimens, excluding simple textural modifications.

(d) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients.

(3) "Diet order" means a written order for a therapeutic diet a from a licensed healthcare professional whose scope of practice includes ordering therapeutic diets.

~~(B) Minimum requirements~~ Requirements for a home-delivered meal service in addition to the ~~conditions of participation~~ requirements for every provider under rule 173-39-02 of the Administrative Code:

(1) Planning:

(a) Menus:

(i) The provider shall furnish each individual with a menu of meal options that, as much as possible, consider the individual's medical restrictions; religious, cultural, and ethnic background; and dietary preferences.

~~(a)(ii)~~ Dietitian: The provider shall only utilize a menu that has received the written approval of a dietitian who is currently registered with the commission on dietetic registration and who is also a licensed

See appendix on therapeutic diets and diet orders for detailed information.

This language appears in the current rule. ODA proposes to move it to this earlier paragraph.

dietitian, if the state in which the provider is located licenses dietitians.

New

New. This is also required by the current Older Americans Act rules.

(iii) The provider shall publish its menus on its website or offer written menus to individuals.

(iv) The provider shall either publish ingredient information on its website or offer written ingredient information to individuals.

(v) Upon request, the provider shall furnish to ODA (or ODA's designee) copies of menus and ingredient information and other evidence that it complies with the requirements under paragraph (B)(2)(a) of this rule.

(b) Nutritional adequacy:

(i) The provider shall only provide a meal that meets one-third of the current dietary reference intakes that the food and nutrition board of the institute of medicine of the national academy of sciences establishes, unless the meal implements a therapeutic diet.

(ii) The provider shall only provide a meal that follows the current dietary guidelines for Americans, as published by the United States department of health and human services and the USDA, unless the meal implements a therapeutic diet.

~~(iii) The provider shall retain records to verify that each meal complies with paragraphs (B)(1)(b)(i) and (B)(1)(b)(ii) of this rule.~~ Upon request, the provider shall furnish evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(1)(b) of this rule.

~~(c) Therapeutic diet~~ **Diet orders:** ~~A provider shall only provide a home-delivered meal with a therapeutic diet to a consumer if:~~

See Appendix on therapeutic diets and diet orders for detailed information.

~~(i) A licensed physician has ordered the~~ The provider shall only provide a therapeutic diet to an individual if the provider received a diet order for the individual ~~because the consumer requires a daily amount of, or distribution of, one or more specific nutrients in order to treat the consumer's disease or clinical condition, or to eliminate, decrease, or increase certain substances in the consumer's diet;.~~

~~(ii) The provider provides the therapeutic diet the physician ordered~~

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~~instead of a diet that complies with paragraphs (B)(1)(b)(i) and (B)(1)(b)(ii) of this rule;~~

~~(iii)(ii) The provider shall only provides provide the a therapeutic diet to an individual for up to ninety days after the date of the physician's the duration established in the diet order, unless the provider receives a subsequent order from the physician for any subsequent ninety day period; and, If the diet order indicates a need to continuously provide the therapeutic diet until further notice, the provider shall continuously provide the therapeutic diet without a need for subsequent or periodic diet orders. If the provider receives an updated diet order, the provider shall furnish the therapeutic diet according to the updated diet order.~~

(iii) The provider shall furnish the therapeutic diet according to the diet order instead of a diet that complies with paragraphs (B)(1)(b)(i) and (B)(1)(b)(ii) of this rule.

(iv) The provider shall only provide a therapeutic diet if the provider retains a record copy of the physician's therapeutic diet order, and subsequent orders, in the consumer's individual's clinical record.

~~(d) Consumer choice: The provider shall provide each consumer with a menu of meal options that, as much as possible, consider the consumer's medical restrictions; religious, cultural, and ethnic background; and dietary preferences.~~

Moved to an earlier paragraph.

**(2) Preparation and safety:**

**(a) Packaging:**

The Ohio Department of Agriculture and local health districts have jurisdiction here, not ODA.

~~(i) Hot meals: The provider shall individually package each ready-to-eat, temperature-controlled, home-delivered meal. The provider shall label the meal with the month, day, and year that it prepared the meal and shall list the date immediately following the term "packing date" or "pack date."~~

~~(ii) Non-hot meals: The provider may individually package each component of a home-delivered meal that is a frozen meal, a vacuum-packed meal, a modified-atmosphere-packed meal, or a shelf-stable meal if the provider labels each individual package with the month, day, and year before which the consumer should consume the individual package, and shall list the date immediately following the term "use before." As used in this paragraph, "individual package" does not include a whole fruit (e.g., a fresh apple or banana) that is not packaged.~~

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~~(b) Temperature monitoring:~~

- ~~(i) The provider shall maintain a time and temperature monitoring system for food preparation, handling, and delivery.~~
- ~~(ii) The provider shall monitor meal temperatures delivered in a thermostatically controlled meal delivery vehicle at least monthly. The provider shall monitor meal temperatures delivered in any other meal delivery vehicle at least weekly.~~
- ~~(iii) The provider shall retain records to show that it complies with paragraphs (B)(2)(b)(i) and (B)(2)(b)(ii) of this rule.~~

~~(c) Delivery vehicles and containers: The provider shall ensure that all meal delivery vehicles and containers are safe and sanitary.~~

~~(d) "Uniform Food Safety Code": The provider shall comply with Chapters 918., 3715., and 3717. of the Revised Code and Chapter 3717-1 of the Administrative Code. For the purposes of this rule, heating and reheating an already prepared home-delivered meal is not the same as preparing a meal.~~

~~(e) State and federal inspections of Ohio-based providers:~~

- ~~(i) The provider shall retain records of all inspection reports from the Ohio department of agriculture and the USDA's food safety inspection service, as well as any resulting plans of correction or follow-up reports, according to the records retention requirements under paragraph (B)(5)(a) of rule 173-39-02 of the Administrative Code.~~
- ~~(ii) If the Ohio department of agriculture's division of food safety places the provider on priority status or notice status, the provider shall notify the PAA of the status no more than two business days after the department of agriculture issues a report of priority status findings or a notice under section 913.42 of the Revised Code. The provider shall send to the PAA a copy of any report and any notice the department of agriculture issues against the provider no more than five business days after the department of agriculture issues the report or notice. If the department of agriculture issues a notice requiring a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction and follow-up report in no more than five business days after the provider submits the plan of correction or follow-up report to the department of agriculture.~~

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~~(iii) If the Ohio department of agriculture's division of meat inspection or the USDA's food safety inspection service takes a withholding action against or suspends the provider under 9 C.F.R. 500.3 or 9 C.F.R. 500.4, the provider shall notify the PAA of the action or suspension no more than two business days after the department of agriculture acts or suspends. The provider shall send to the PAA a copy of the department of agriculture's action of suspension in no more than five days after the department of agriculture acts or suspends. If the department of agriculture requires a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction or follow-up report in no more than five business days after the provider submits the plan of correction or follow-up report to the department of agriculture.~~

~~(f) Federal inspections of non-Ohio-based providers:~~

~~(i) If a provider is located outside of Ohio, the provider shall retain records of all inspection reports from the USDA's food safety inspection service, as well as any plans of correction or follow-up reports, according to the records retention requirements under paragraph (B)(5)(a) of rule 173-39-02 of the Administrative Code.~~

~~(ii) If the USDA's food safety inspection service takes a withholding action against or suspension the provider under 9 C.F.R. 500.3 or 9 C.F.R. 500.4, the provider shall notify the PAA of the action or suspension no more than two business days after the USDA acts or suspends. The provider shall send to the PAA a copy of the USDA's action or suspension in no more than five business days after the USDA acts or suspends. If the USDA requires a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction or follow-up report in no more than five business days after the provider submits the plan or correction or follow-up report to the USDA.~~

~~(g) Local health department inspections of providers:~~

~~(i) The provider shall retain records of all inspection reports from the local health department, as well as any resulting plans of correction or follow-up reports, according to the records retention requirements under paragraph (B)(5)(a) of rule 173-39-02 of the Administrative Code.~~

~~(ii) If the local health department cites the provider for a critical~~

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~~violation, as the term "critical violation" is used in paragraph (B) of rule 3717-1-02.4 of the Administrative Code, the provider shall notify the PAA of the citation no more than forty-eight hours after the citation. The provider shall send to the PAA a copy of the inspection report in no more than forty-eight hours after the local department of health cites the provider. If the local health department requires a plan of correction or follow-up report, the provider shall send to the PAA a copy of the plan of correction and follow-up report no more than forty-eight hours after the provider submits the plan of correction or follow-up report to the local health department.~~

~~(h) Sanctions: Pursuant to section 173.391 of the Revised Code and to rule 173-39-05 of the Administrative Code, ODA may issue a level two or level three sanction to a provider if the provider is endangering the health, safety, or welfare of one or more consumers because it doesn't comply with one or more requirements in this rule. This may result in the suspension or termination of the provider.~~

(2) Food safety:

(a) If a state or federal departments of agriculture or a local health district prohibits the provider from manufacturing food or feeding the public, the provider shall not deliver meals to any individual.

(b) If a state or federal department of agriculture or a local health district sanctions a provider, the provider shall notify ODA (or ODA's designee) of the sanction no more than five business days after the state or federal department of agriculture or a local health district issues the sanction and shall notify ODA (or ODA's designee) of the provider's plan of correction no more than five business days after the provider furnishes the plan to the state or federal department of agriculture or local health district.

(c) Upon request, the provider shall furnish to ODA (or ODA's designee) a copy of the most recent food-safety inspection by a state or federal department of agriculture or a local health district.

(3) Delivery:

(a) The provider shall deliver ~~each meal~~ meals according to the ~~consumer's~~ individual's service plan.

(b) Delivery dates and times: The provider shall establish a routine delivery date and range of time with each ~~consumer~~ individual and record the

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established delivery date and time in the ~~consumer's~~ individual's clinical record.

(i) Per-meal delivery: The provider shall notify the ~~consumer~~ individual if it will deliver a single ready-to-eat ~~home-delivered~~ meal more than one hour ~~past~~ after the established delivery time.

(ii) Periodic delivery: The provider shall notify the ~~consumer~~ individual if it will , in one delivery, deliver multiple ~~home-delivered~~ meals that are ~~not ready-to-eat and temperature-controlled (e.g., deliver ten vacuum-packed meals in one package)~~ not hot meals, but frozen, vacuum-packed, modified-atmosphere-packed meal, or shelf-stable more than one day ~~past~~ after the established delivery date. The provider shall provide the consumer with clear instructions on how to safely heat or reheat a meal and, if the meal is delivered in components (e.g., a vacuum-packed meal), how to assemble the meal.

This information exists in the current rule in a later paragraph. ODA proposes to move it to this paragraph.

(iii) Per-meal delivery with periodic delivery of milk, bread, and butter: Because certain individuals may have difficulty opening small milk cartons or small butter packets (e.g., due to arthritis), if the individual's service plan authorizes the provider to do so, a provider may deliver a pint or half-gallon of milk; a loaf of sliced bread; and a stick of butter to an individual up to once per week if the milk, bread, and butter are components of home-delivered meals that the provider delivers throughout the week, so long the meals comply with this rule, regardless of whether the meals are ready-to-eat, frozen, vacuum-packed, modified-atmosphere-packed, or shelf-stable. (E.g., A provider may furnish a pint of milk for consumption as multiple servings of milk that are part of multiple meals, but not as an ingredient for the individual to use to prepare a meal.

This is a restatement of the current language on delivering milk, bread, and butter periodically for meals that are consumed daily. ODA wants to be clear that these items are part of meals, not bulk food deliver in addition to meals.

(c) Delivery instructions: The provider shall furnish written or electronic delivery instructions to its delivery persons.

(d) Upon request, the provider shall furnish evidence to ODA (or ODA's designee) hat it complies with the requirements under paragraph (B)(4) of this rule.

~~(d) Consumer instructions: The provider shall provide the consumer with clear instructions on how to safely heat or reheat a meal and, if the meal is delivered in components (e.g., a vacuum packed meal), how to assemble the meal. The provider shall retain records to show it complies with this paragraph.~~

ODA proposes to move this to an earlier paragraph of the rule.

(4) Provider qualifications:

(a) Type of provider: Only an agency that ODA certifies as an agency provider shall ~~provide this service~~ furnish meals. No individual shall ~~provide the service~~ furnish meals unless the individual is an employee or volunteer of an agency that ODA certifies as an agency provider.

(b) Licensure:

(i) Food service operator's license: The provider shall possess any current, valid license or certificate that the local health department requires the provider to possess.

(ii) Driver's license: The provider shall retain records to show that each of its ~~meal-delivery persons~~ drivers possesses a current, valid driver's license.

(c) Auto liability insurance: The provider shall retain records to show that the owner of each meal-delivery vehicle used ~~for this service~~ carries auto liability insurance on the vehicle.

(d) Training: The provider shall develop a training plan that includes orientation and annual continuing education.

(i) Orientation: The provider shall assure that each employee, including each volunteer, who participates in meal preparation, handling, or delivery receives orientation on any of the following topics that are relevant to the employee's job duties:

(a) Sensitivity to the needs of older adults and people with physical disabilities or cognitive impairments~~;~~.

(b) Handling emergencies~~;~~.

(c) Food storage, preparation, and handling~~;~~.

(d) Food safety and sanitation~~;~~.

(e) Meal delivery~~;~~ ~~and~~.

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(f) Handling hazardous materials.

(ii) Continuing education: The provider shall assure that each employee, including a volunteer, who participates in meal preparation, handling, or delivery completes four hours of continuing education each year on the topics under paragraph ~~(B)(4)(d)(i)~~ (B)(5)(d)(i) of this rule that are relevant to the employee's job duties.

~~(iii)(c) The provider shall retain records to show that it complies with paragraphs (B)(4)(d), (B)(4)(d)(i), and (B)(4)(d)(ii) of this rule. Upon request, the provider shall furnish evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(5) of this rule.~~

(5) Limitations:

(a) The provider shall not ~~provide the service~~ furnish meals to ~~a consumer an individual~~ in excess of what the case manager orders ~~in the service order~~ for the ~~consumer individual~~.

(b) The provider shall only bill ~~the PAA~~ ODA's designee for ~~the service meals~~ under the PASSPORT program if the case manager identifies the provider in the individual's service plan, ~~order for the consumer~~

(c) The provider shall not ~~provide the service~~ furnish meals as a supplement or replacement to the purchase of food or groceries.

(d) The provider shall not provide bulk ingredients, liquids, or other food to ~~a consumer an individual~~, whether or not the ~~consumer individual~~ would prepare a meal independently or with assistance. As used in this paragraph, "bulk ingredients, liquids, and other food" includes food that one portions, prepares, or cooks to eat, but does not include a fully-prepared meal that one heats or reheats to eat. ~~Because certain consumers may have difficulty opening small milk cartons or small butter packets (e.g., due to arthritis), if the service plan authorizes the provider to do so, a provider may deliver a pint or half-gallon of milk; a loaf of sliced bread; and a stick of butter to a consumer up to once per week if the milk, bread, and butter are components of fully-prepared meals that the provider delivers throughout the week. (e.g., A provider may provide a pint of milk for consumption as multiple servings of milk that are part of multiple meals, but not as an ingredient for the~~

ODA proposes to restate this information in an earlier paragraph of the rule where it should cause less confusion.

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~~consumer to use to prepare a meal.)~~

(e) The provider shall not ~~provide the service~~ furnish meals to ~~a consumer~~ an individual who is hospitalized or is residing in an institutional setting.

(6) Service verification:

(a) The provider shall retain a record of the case manager's service order.

(b) For each meal delivery, the provider shall retain a record of the:

(i) ~~Consumer's~~ Individual's name;

(ii) Delivery date;

(iii) Delivery time;

(iv) Number of meals in the delivery;

(v) Delivery person's signature or initials; and,

(vi) ~~Consumer's~~ Individual's signature. ~~The case manager shall record the consumer's signature of choice in the consumer's service plan.~~  
The signature of choice may include a handwritten signature; initials; stamp or mark; or electronic signature.

(c) The provider may use a technology-based system to collect or retain the records required under this rule.

(d) ~~The provider shall retain records required under this rule and provide access to those records for monitoring according to paragraph (B)(5) of rule 173-39-02 of the Administrative Code. Upon request, the provider shall furnish evidence to ODA (or ODA's designee) that the provider complies with the requirements under paragraph (B)(7) of this rule.~~

(C) Unit and rates:

(1) A unit of ~~a~~ regular home-delivered ~~meal-service~~ meals is one home-delivered meal that is planned, safely prepared, packaged, and delivered, ~~and recorded~~ by qualified employees of an agency provider according to this rule. The

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maximum rate allowable for one regular home-delivered meal is listed in rule ~~5101:3-1-06.1~~ [5160-1-06.1](#) of the Administrative Code.

- (2) A unit of ~~a~~ home-delivered ~~meal-service~~ [meals](#) with a therapeutic diet is one home-delivered meal with a therapeutic diet that is planned, [safely](#) prepared, [packaged, and](#) delivered, ~~and recorded~~ by qualified employees of any agency provider according to this rule. The maximum rate allowable for ~~one unit of a home-delivered~~ [a](#) meal with a therapeutic diet is listed in rule ~~5101:3-1-06.1~~ [5160-1-06.1](#) of the Administrative Code.

- (3) The rates are subject to the rate-setting methodology in rule 5160-31-07 of the Administrative Code.

~~(D) Definition: "USDA" means "United States department of agriculture."~~