



Department of Aging

Empowering Elders. Strengthening Communities.

Mike DeWine, Governor | Ursel J. McElroy, Director

Participating in the Ohio Department of Aging's Rule Development

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Introduction

R.C. §119.0311 requires every state agency to adopt a guide to its rule-making process that explains its mission, structure, rule-making authority, rule-making process, and opportunities for the public to participate in that process.

The Ohio Department of Aging encourages older Ohioans, caregivers, businesses, advocates and members of the general public to participate in our rule-development process.

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About the Ohio Department of Aging

As the federally designated State Unit on Aging, the Ohio Department of Aging serves as the sole state agency to coordinate Older Americans Act programs and services, as well as other services to meet the needs of Ohio's elders. We are a cabinet-level state agency with a director appointed by the governor. The structure of the Department is tied directly to its funding sources. We receive \$65 million in federal funding, primarily from the U.S. Department of Health and Human Services, which supports services for older Ohioans as well as the administration of Medicaid funded services. We also apply for and use grants from federal and state sources to support and expand our work.

The Department of Aging is organized into eight divisions, each of which performs or supports a critical function of the agency or the aging network:

- Executive Division
- Communications Division
- Division for Community Living
- Elder Connections Division
- Fiscal Division
- Information Services Division
- Office of the State Long-term Care Ombudsman
- Performance Center Division

In addition, the department houses and supports the work of the Board of Executives of Long-Term Services and Supports.

Learn more about the department's history and structure on [our website](#).

The executive division is primarily responsible for rule development. We do not align our chapters of rules with the department's organizational structure. Instead, our rules belong to a unified set of chapters under Agency 173 of the Administrative Code. Thus, our rule numbers begin with the number "173-" instead of "173:1-" or "173:2-" as you may see with other agencies' rules.

Our Mission: To deliver practical, person-centered strategies and services that will strengthen and support Ohio's elders and their communities.

Core Values:

- *Promote Independence* - Provide resources that foster independence and autonomy throughout the lifespan.
- *Empower Communities* - Deliver sustainable, relevant solutions that empower communities to act within the best interest of their elders.
- *Challenge Ageism* - Promote new perspectives of aging that challenge the traditional declinist narrative.
- *Advocate for Excellence* - Advocate with and for Ohio's elders to ensure their voices are heard and their needs are met.
- *Engage in Innovation* - Engage the aging network by staying innovative, flexible and attentive to the evolving needs of our partners and stakeholders.

The Ohio Department of Aging’s Rule Making Authority

The U.S. Congress, Code of Federal Regulations, and Ohio General Assembly have given the Ohio Department of Aging authority to adopt rules through the following federal statutes, federal rules and state statutes:

- 42 U.S.C. 3025 and 3058g,¹ 45 CFR 1321.11, 45 CFR 1324.11(e), and 45 CFR 1324.15(b) authorize the department, as Ohio’s state unit on aging, to adopt rules to govern the aging network², reporting, and administering Older Americans Act programs in Ohio. The programs include:

TITLE III-B	Supportive Services
TITLE III-C	Older Americans Act Nutrition Program
TITLE III-D	Evidence-Based Disease Prevention and Health Promotion Services Program
TITLE III-E	Caregiver Support
TITLE IV	Activities for Health, Independence, and Longevity
TITLE V	Community Service Senior Opportunities Act
TITLE VII	Elder Rights

- R.C. §121.22 requires the department to adopt a rule to establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings.
- R.C. §121.36 requires the department to adopt rules to require providers of home care services to home-care dependent adults to have a system in place that effectively monitors the employees.
- R.C. §§ 173.01 and 173.02 authorize the department to regulate programs that the department administers as well as providers who conduct business in programs that the department administers.
- R.C. §173.011 requires the department to adopt rules to establish requirements for designating an area agency on aging and the procedures for withdrawing that designation.
- R.C. §173.04 authorizes the department to adopt rules to govern respite care programs and other supportive services, the distribution of funds, and the purpose for which funds may be used. §209.30 of HB59 (130th G.A.) limits the funds to use for the Alzheimer’s Respite Program. Alzheimer’s Respite Program funds are generally used as a state match for federal Older Americans Act funds, which include the National Family Caregiver Support Program.
- R.C. §173.06 requires the department to adopt rules to establish the Golden Buckeye Program.

¹ 42 U.S.C. 3025 and 3058g corresponds to §§ 305 and 712 of the Older Americans Act of 1965 as amended by the Older Americans Act Reauthorization Act of 2016.

² This includes designating Ohio’s planning and service areas and designating an area agency on aging for each.

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- R.C. §173.11 requires the department to adopt rules to establish procedures for receiving grants from the Senior Facilities Program.³
- R.C. §173.14 requires the department to adopt rules regarding the designation of regional long-term care ombudsman programs.
- R.C. §173.19 requires the department to adopt rules regarding the handling of complaints received by the Office of the State Long-Term Care Ombudsman.
- R.C. §173.20 requires the department to adopt rules regarding the referral of complaints to other state agencies.
- R.C. §173.26 requires the department to adopt rules to establish deadlines for nursing facilities, residential care facilities, and homes for the aging to pay bed fees to the Office of the State Long-Term Care Ombudsman.
- R.C. §173.27 authorizes the department to adopt rules to implement the requirements for reviewing databases and checking criminal records for paid ombudsman positions.
- R.C. §173.28 authorizes the department to adopt rules to establish fines for nursing facilities or other long-term care providers
- R.C. §§ 173.38 and 173.381 authorize the department to adopt rules to implement the requirements for reviewing databases and checking criminal records for paid direct-care positions.
- R.C. §173.391 requires the department to adopt rules to establish certification standards for all types of providers of home and community-based services. Additionally, 42 CFR 441.352(a)(1) requires the state to assure the federal government that the department has adopted these standards and enforces them.
- R.C. §173.392 requires the department to adopt rules to govern contracts and grant agreements between area agencies on aging and providers⁴ and to govern the payment for community-based long-term care services paid through those contracts and grant agreements.
- R.C. §§ 173.42 and 173.422 require the department to adopt rules to implement the Long-Term Care Consultation program, including rules that establish a process by which one may become certified to conduct long-term care consultations.

³ The program is also called the "Multi-Purpose Senior Center Program." In 1978, H.B. 1084 (112th G.A.) established the Senior Facilities Program and, in 1980 and 1984, H.B. 827 (113th G.A.) and H.B. 660 (115th G.A.) respectively modified the program. However, since 2001, the program has been dormant due to a lack of adequate funding. The General Assembly discontinued funding the program and no person or organization has awarded a grant or gift to the program. Although the program is dormant, R.C. §173.11 continues to establish the program, which leaves the potential for an adequate funding source to resuscitate it. Part of the requirement in R.C. §173.11 is for the department to adopt rules under which counties, townships, municipal corporations, or local non-profit organizations may apply to participate in the program if future funding restores the program from its dormancy. The department has adopted a rule that applies if future funding resuscitates the program from its dormancy.

⁴ The term used in rules is "AAA-provider agreements."

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- R.C. §173.434 authorizes the department to adopt rules regarding the unified long-term care budget.
- R.C. §§ 173.46 and 173.49 authorize the department to adopt rules to implement the Ohio Long-Term Care Consumer Guide, including rules that specify the information to be included in the guide.
- R.C. §§ 173.50, 173.52, 173.53, and 173.54 authorize the department to adopt rules for the Medicaid-funded components of the PACE, PASSPORT, Choices⁵, and Assisted Living Waiver programs.
- R.C. §§ 173.522, 173.543, 173.55, and 173.56 authorize the department to adopt rules for the state-funded components of the PASSPORT and Assisted Living Waiver programs.
- R.C. §173.548 requires the department to adopt rules to establish a process for choosing multiple-occupancy rooms over single-occupancy rooms in an assisted living facility that that participates in the Medicaid-funded component of the Assisted Living Waiver program.
- R.C. §173.55 requires the department to adopt rules to implement the Unified Long-Term Care Waiting List.
- R.C. §173.60 authorizes the department to adopt rules to implement the Nursing Home Quality Initiative Program.
- R.C. §1347.15 requires each state agency, including the Ohio Department of Aging, to adopt rules regulating access to the confidential personal information that they keep.
- R.C. §4766.14 requires the department to administer and enforce the driver qualifications for ambulette providers working in a department-administered program. The qualifications appear in R.C. §§ 4766.14 and 4766.15.
- R.C. §5160.481 requires the department to adopt rules that are consistent with R.C. §§ 5160.45 to 5160.481 to prevent the publication or disclosure of names, lists, or other information regarding Medicaid recipients.
- R.C. §5903.03 requires the department to adopt rules to consider military training and experience when evaluating qualifications to provide services.
- R.C. §5903.04 requires the department to adopt rules to implement a process for veterans applying to become department-certified non-agency providers for obtaining their veteran's status, tracking their applications, prioritizing and expediting the certification process, and making any special accommodations for veterans facing imminent deployment.

⁵ HB59 (130th G.A.) authorized the Ohio Department of Aging and the Ohio Department of Medicaid to "collaborate to determine whether the Choices Program should continue to operate as a separate Medicaid waiver component or be terminated." The result was that the program was terminated and all individuals who were enrolled in the program were transferred to the PASSPORT Program, effective June 30, 2014.

Participating in the Ohio Department of Aging's Rule Development

The Ohio Department of Aging also has authority to review certain rules of other state agencies:

- 45 CFR 1321.7(a) says, "The Older Americans Act intends that the state agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the state. This means that the state agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to led to the development or enhancement of comprehensive and coordinated community-based systems in, or serving, communities throughout the state. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible."
- R.C. §173.01 requires state agencies to notify the department of any rule proposal they file with the Joint Committee on Agency Rule Review (JCARR) that would primarily affect older Ohioans. After the state agency notifies the department, the department has 30 days to provide the state agency with written suggestions for improving their proposal. If the state agency does not intend to comply with the department's suggestions, the state agency must send the department a written explanation of its non-compliance at least 30 days before it adopts the rule proposal into law.
- R.C. §3923.50 requires the Ohio Department of Insurance to consult with the Ohio Department of Aging on rule proposals for the Ohio Long-Term Care Insurance Program.
- R.C. §5162.66 requires the Ohio Department of Medicaid to consult with the Ohio Department of Aging on rule proposals for the Resident Protection Fund.

The Ohio Department of Aging's Rule Development Process: Official Opportunities to Participate

STAGE I: THE COMMON-SENSE INITIATIVE

Assessment Phase

In this early phase of development, the department assesses the adverse impact that a rule proposal could have upon the businesses it would affect.

R.C. §107.52 defines a rule that has an adverse impact to include a department rule that (1) requires certification or a provider agreement to operate in a line of business, (2) imposes penalties for failure to comply, or (3) requires expenditures or the report of information as a condition of compliance. Ohio's home and community-based service providers are businesses that the department's rules could adversely affect.

To assess the adverse impact of a rule proposal, the department generally contacts a selection of businesses that a rule proposal would affect to obtain facts to evaluate possible adverse impacts.

Based upon information gathered during the assessment phase, the department will draft the rule proposal and a business-impact analysis of that proposal. Each analysis lists the businesses that the department contacted, their input, and the department's responses to their input.

Comment & Review Phase

In this development phase, the department generally initiates an online public-comment period. Under certain circumstances, the department may not conduct a public-comment period. For example, the department may need to file a rule on an emergency basis or legislation may require adopting language from a statute verbatim into a rule.

The department facilitates the online public-comment period by publishing its rule proposals and business impact analyses in the [Administrative Rules section on its website](#). After the department publishes these documents, the department announces the opportunity to comment by sending an email notice to all subscribers⁶ of its rules listserv. Any person may submit comments through the "submit comments" feature on the public-comments page. The department generally allows the comment period to last two weeks.

If the rule proposal has an adverse impact, the Common-Sense Initiative Office reviews the proposals, business impact analysis, and any comments the department received through its website. This occurs simultaneous to the public-comment period. The Common-Sense Initiative Office has a minimum of 16 business days to review the statements. The office then issues recommendations to the department, which must develop a memorandum of response to explain how it implemented or rejected the office's recommendations.

⁶ For subscription information, please see the section of this document entitled, "Notices of Official Opportunities to Participate."

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After considering the public's comments and CSIO's comments, the department may revise its rule proposals and business impact analyses.

STAGE II: THE LEGISLATURE'S RULE-REVIEW PROCESS

Introduction

Not only does the Ohio General Assembly grant the department its authority to adopt rules, it also retains the right to reject and invalidate the department's rule proposals as part of its rule-review process. If the department proposes to amend or rescind a rule or adopt a new rule, JCARR's jurisdiction over such typical rule proposals lasts 65 days. If the department proposes to make no changes to a rule as part of a five-year rule review, JCARR's jurisdiction over the rule proposal lasts 90 days.

Initial Review Phase

On the [Administrative Rules section on its website](#), the department publishes links to every rule that it has filed with JCARR. The links lead to the [Register of Ohio](#), which is an electronic depository of all rule proposals under JCARR's jurisdiction.

In the register, the department must also upload rules proposals, public-hearing notices, business impact analyses, Common Sense Initiative Office recommendations, the department's memorandum of response, and rule summaries and fiscal analyses.

During the first 35 days of JCARR's jurisdiction over typical rule proposals: (1) the public may review the rule documents in the Register of Ohio and (2) the department may revise the rules.

Public Hearing Phase

Any time the department files a rule proposal according to R.C. §119.03, the department must conduct a public hearing during the 31st to the 40th day of JCARR's jurisdiction over the rules.

In three situations, the department may not conduct a public hearing:

- If the Ohio General Assembly allows the department to file a rule proposal according to R.C. §111.15, the department is not required to conduct a public hearing on the proposal.
- If the department's rule proposal is to make no changes to a rule, the department is not required to conduct a public hearing on the proposal.
- If the Governor issues an executive order authorizing the department to file the rules on an emergency basis, the rules the department files will immediately take effect. The department does not conduct a public hearing for emergency rules. However, these emergency rules are temporary rules that remain in effect only for 90 days. If durable rules are necessary, before the emergency rules expire, the department will file a rule proposal to replace the emergency rules through the normal rule-filing process, which includes a public hearing.

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Any person may attend the public hearing to testify on a rule proposal. After considering the testimonies received during a public hearing, the department compiles a hearing summary report and files it with JCARR.

JCARR Meeting Phase

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

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

If the department does not include a complete and accurate rules summary and fiscal analysis, JCARR may issue a finding and order to complete it.

If JCARR disagrees with the department’s assessment of the adverse impact, JCARR can reject the rule filing and require the department to return to the Common-Sense Initiative stage of development.

If a rule does not meet any one of the six criteria, JCARR may recommend that the Ohio General Assembly vote to invalidate the rule proposal. If most of the legislators vote to invalidate the rule, the department may not adopt the rule proposal.

Final Filing Phase

If JCARR does not reject a rule proposal, and if the Ohio General Assembly does not invalidate the proposal, the department may make the final filing to adopt the rule into law. The final filing action occurs no earlier than the day after JCARR’s 65th day of jurisdiction over a typical proposal or 90th day of jurisdiction over a no-change proposal.

During the final filing, the department establishes the rule’s new effective date which may occur no sooner than 10 days into the future.

The department posts all final-filed rules in the [Administrative Rules section on its website](#).

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NOTICES OF OFFICIAL OPPORTUNITIES TO PARTICIPATE

The department offers a service to those who want [electronic notifications](#) of opportunities to participate in the department’s rule development. By subscribing to receive emails on rule proposals, a person has a reasonable opportunity to participate in public-comment periods and public hearings. Additionally, the email notifications will alert the public to final-filed rules that are soon to take effect.

On average, the department emails subscribers less than once per week.

One may additionally subscribe to JCARR’s [Rule Watch Ohio](#) service.⁷

The Ohio Department of Aging’s Rule Development Process: Anytime Opportunities to Participate

The opportunity to participate in the department’s rule development does not need to wait until the department makes a rule proposal. The public may also initiate a proposal to amend or rescind a rule or adopt a new rule at any time through one or both of the following avenues:

- Any person (i.e., an older Ohioan, caregiver, business, advocate, or member of the general public) may contact the department any time he or she believes the department needs to adopt a new rule, amend a current rule, or rescind a current rule. Even if the department is not currently proposing a new rule or proposing to amend or rescind an existing rule, any person may comment on a rule by sending an email to Tom Simmons, the department’s policy development manager, at rules@age.ohio.gov.
- Ohio businesses that believe the department’s rules have an adverse impact upon business may, at any time, send comments about the adverse impact of the department’s rules directly to the Common Sense Initiative Office through [their website](#).

Contact Information

For any questions or comments regarding the rule-development process or regarding a specific rule, please email Tom Simmons, the department’s policy development manager, at rules@age.ohio.gov.

⁷ Rule Watch Ohio does not notify subscribers of online public-comment periods.