

Rule Summary and Fiscal Analysis (Part A)**Department of Aging**

Agency Name

Division

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173-14-01

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Definitions.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB59**General Assembly: **130**Sponsor: **Amstutz**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.01; 173.02; Section 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October 1, 2013 edition)**

5. Statute(s) the rule, as filed, amplifies or implements: **173.14, Section 711 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006.**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is filing this rule as part of a larger rule package that involves amending the rules in the package in 5 different ways:

1. H.B.59 renumbered many sections of the Ohio Revised Code. The changes took effect on September 30. Therefore, ODA is proposing to amend rules to make corresponding updates to the Ohio Administrative Code.
2. H.B.59 transformed the Dept. of Job and Family Services' Office of Medical Assistance into the Ohio Dept. of Medicaid. On October 1, the Legislative Service Commission assigned new rule numbers to the related Medicaid rules. As a result, ODA must make corresponding amendments to use the new rule numbers.
3. Section 121.72 of the Revised Code requires ODA to indicate the edition of any C.F.R. that we cite in a rule and the latest date of any amendment to a federal act that we cite in a rule. Therefore, ODA is proposing to amend the rules to add edition and amendment dates. (Please see ODA's response to item #11 of this RSFA.)
4. Beginning on October 1, new rule 173-3-07 of the Administrative Code no longer referred to consumer cost-sharing policies. The rule now speaks of voluntary contributions and cost sharing apart from such policies. Therefore, ODA is proposing to update paragraphs (A)(10) and (C) in rule 173-3-06 of the Administrative Code to merely require providers to comply with rule 173-3-07 of the Administrative Code.
5. ODA is also proposing to clean up the rules, including [A] naming the programs that are regulated by the rule 173-3-06 of the Administrative Code; [B] starting the list under paragraph (A)(2) of rule 173-43-05 of the Administrative Code with "the following four criteria" and ending the paragraphs under paragraph (A)(2) of the rule with periods; [C] eliminating a defining clause in paragraph (A)(3) of rule 173-43-03 that is redundant of a definition in rule 173-43-01 of the Administrative Code; and [D] explaining that any person that ODA wants to certify to give Long-Term Care Consultations is subject to the criminal records check rules; [E] replace the pre-H.B. 153 (129th G.A.) language for "Assisted Living, Choices, and PASSPORT Medicaid-funded waiver programs" with "Medicaid-Funded Components of the Assisted Living, Choices and PASSPORT programs"; and [F] replace "he/she" in paragraph (A)(14) of rule 173-3-06 of the Administrative Code with "he or she."

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

ODA is proposing to amend the rule to:

1. Update the citations to editions of federal laws and the C.F.R. in paragraphs (R)(1)(b), (R)(1)(e), and (JJ) of the rule.

2. Replace "5119.22" and "adults who are recipients under the residential state supplement program" in paragraph (R)(1)(d) of the rule with "5119.34" "adults who are receiving residential state supplements" to incorporate the change H.B.59 made on September 29.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

ODA does not need to attach the federal statutes or regulations to the rules because the U.S. Government Printing Office (GPO) publishes the federal statutes and regulations on the GPO website. On the GPO's website, statutes and rules are generally available to any person who reasonably can be expected to be affected by the rule.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

ODA does not need to attach the federal statutes or regulations to the rules because the U.S. Government Printing Office (GPO) publishes the federal statutes and regulations on the GPO website. On the GPO's website, statutes and rules are generally available to any person who reasonably can be expected to be affected by the rule.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

On October 30, 2013, after a JCARR rules analyst recommended that ODA delete

occurrences of "as amended (until the effective date of this rule)" from ODA's rules when referring to certain federal acts--which would still allow ODA to comply with section 121.75 of the Revised Code--ODA deleted the phrase from paragraph (A) of rule 173-13-04 of the Administrative Code and paragraphs (R)(1)(b), (R)(1)(e), and (JJ) of rule 173-14-01 of the Administrative Code.

12. 119.032 Rule Review Date: **9/26/2016**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA anticipates that the proposed amendments to this rule will have no effect upon the biennial budget that the Ohio General Assembly established for ODA in H.B.59 (130th G.A.)

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-410 Long-Term Care Ombudsman.

3220-490-618 Federal Aging Grants.

3M40-490-612 Federal Independence Services.

4C40-490-609 Regional Long-Term Care Ombudsman Program.

5BA0-490-620 Ombudsman Support.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

ODA estimates that there is no cost of compliance to any directly-affected persons that would result from the adoption of the proposed amendments to the rule.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

However, the State Long-Term Care Ombudsman program does investigate matters in nursing facilities and residential care facilities. The definition of "long-term care facility" in paragraph (R) of the rule outlines the types of facilities in which representatives of the program may investigate.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**