

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

Agency Name

Division

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**173-35-02**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Eligibility criteria.****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: **HB1**General Assembly: **128**Sponsor: **Sykes**

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: **173.02, 173.35, Section 1616(b)(2) of the Social Security Act**

5. Statute(s) the rule, as filed, amplifies or implements: **173.35**

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

ODA is proposing to adopt this proposed new rule as a replacement for a rule of the same number. This rule proposal is part of a larger package of rule proposals for the RSS program. As stated in greater detail in the public hearing notice, ODA is proposing to rescind rules 173-35-04 and 173-35-05 of the Administrative Code, and to replace the remaining rules of Chapter 173-35 of the Administrative Code with new rules. In doing so, ODA's goals are to:

1. Comply with the review required under section 119.032 of the Revised Code.
2. Comply with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires all state agencies to write easier-to-read and easier-to-comprehend rules to promote transparency in state regulations.
3. Present a more complete list of eligibility criteria in rule 173-35-02 of the Administrative Code.
4. Comply with Am. Sub. H. B. No. 1 (128th G. A.), which now uses money-follows-the-person language and sets the current rates for the program.
5. Eliminate the rule that regulates case managers.

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:

In comparison to the rule that ODA is proposing to replace with this rule, ODA is proposing to:

1. Replace the current title of the rule ("Eligibility") with "Eligibility criteria." This makes the proposed new rule consistent with other ODA rules that present eligibility criteria.
2. Add, in paragraph (A)(1) of the proposed new rule, the federal eligibility criterion that requires the individual live in Ohio. Although this criterion does not appear in the current rule, it is not a new criterion. Federal law already requires Ohio residency.
3. Arrange the living arrangements under paragraph (A)(2) of the proposed new rule in alphabetical order.
4. Add, in paragraph (A)(3) of the proposed new rule, an eligibility criterion that requires the individual to cooperate in the enrollment process, including requiring the individual to apply for Medicaid and to select a living arrangement that ODA's designee determines meets the individual's needs.
5. Specifically cite JFS' rule on financial eligibility criteria in paragraph (A)(4) of the proposed new rule.
6. Add a reference to paragraph (A)(5) of the proposed new rule that says in what rule the Ohio Department of Job and Family Services defines a protective level of care. In making this amendment, ODA also made this criterion similar to the wording of a corresponding criterion in rule 5101:1-17-02 of the Administrative Code, thereby harmonizing ODA's RSS rules with JFS' RSS rules.

7. Replace the second use of "the individual" in paragraph (A)(6) of the proposed new rule with "he or she."

8. Replace "in accordance with" in paragraph (A)(6) of the proposed new rule with "under."

9. Add, in paragraph (A)(6) of the proposed new rule, a reference to the section of the Ohio Revised Code defines "skilled nursing care." This is the only use of "skilled nursing care" in the rules of Chapter 173-35 of the Administrative Code, so placing this definition here eliminates any need to define the term in rule 173-35-01 of the Administrative Code.

10. Replace, in paragraph (A)(8) of the proposed new rule, "granted by the United States secretary of health and human services and under Section 1915(c) of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 1396n, as amended" with the word, "program."

11. Add, in paragraph (A)(10) of the rule, the eligibility criterion that requires the individual to be an adult. This harmonizes ODA's rules with division (B) of section 173.35 of the Revised Code, which says the person needs to be an adult.

12. Add language to paragraph (B) of the proposed new rule that incorporates the exception of division (G) of section 173.35 of the Revised Code into the rule and cites the legislation that authorized this exception.

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:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

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:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

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:

On November 10, 2010, ODA revise filed this rule to:

1. Switch paragraphs (A)(2)(a) and (A)(2)(b) of the rule to maintain alphabetical order.
2. Revise this RSFA.

On November 16, 2010, ODA revise filed this rule to:

1. Replace the period at the end of paragraph (A)(2)(a) of this rule with a period.
2. Revise this RSFA.

12. 119.032 Rule Review Date:

(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 does not anticipate that the proposed adoption of this new rule will have any impact upon the biennial budget that the Ohio General Assembly established for ODA.

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

GRF-490-412 Residential State Supplement.

4J40-490-610 PASSPORT/Residential State Supplement.

3C40-490-623 Long-Term Care Budget.

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 person associated with the proposed adoption of this new rule, especially because the only amendments that ODA adds to the eligibility criteria are eligibility that are already in force, but not cited in the current 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**