

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

Agency Name

Division

**Tom Simmons**

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**173-39-02.11**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Personal care service.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

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

Bill Number: **HB153**General Assembly: **129**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, 173.391, 173.40**

5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.431**

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

ODA is proposing to amend this rule as part of a larger rule package.

ODA is proposing to amend rules 173-39-02.1, 173.39-02.11, 173.39-02.13, and 173-39-02.18 of the Administrative Code. In doing so, ODA has 4 basic goals:

1. To reduce Medicaid expenditures.

a. Ohio is proposing to only pay the full rate for certain services a provider

furnishes to a PASSPORT or Choices consumer if the consumer is receiving the service independent of other PASSPORT or Choices consumers who reside at the same address. Beginning July 1, 2011, with the emergency filing of rule 5101:3-31-07 of the Administrative Code, the Ohio Department of Job and Family Services (JFS) began reimbursing providers at 75% the normal rate if the provider simultaneously furnishes certain services to a PASSPORT consumer while the consumer is in a group of PASSPORT consumers. JFS' emergency-filed rules sunset on September 29, 2011. JFS plans to propose regularly-filed, amended rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code to establish the group-rate methodology for the PASSPORT Program and also the Choices Program that will take effect on October 1, 2011. (Before July 1, 2011, JFS' rules did not require the PASSPORT and Choices Programs to use group rates, although JFS' rules required other Medicaid programs to use group rates.)

b. To make ODA's rules correspond to the changes JFS made in rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code, ODA is proposing to incorporate JFS' group-rate language into rules 173-39-02.1, 173-39-02.11, 173-39-02.13, and 173-39-02.18 of the Administrative Code. ODA proposes to adopt the amendments to the rules on October 1, 2011, the same day that JFS adopts its regularly-filed rules.

2. To correct errors in rule 173-39-02.1 of the Administrative Code.

3. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.

4. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.):

a. ODA is also proposing to amend the rules after providing interested parties and the general public an opportunity to provide input on the proposed amendments. From June 30, 2011 to July 11, 2011, ODA posted the proposed amended rules on <http://aging.ohio.gov/information.rules/proposed.aspx> for a public-comment period.

b. ODA reviewed the rules to eliminate unnecessary regulations and to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. In 2010, ODA adopted the most-recent versions of rules 173-39-02.13 and 173-39-02.18 of the Administrative Code after undergoing a similar process; and, in 2011, ODA adopted the most-recent versions of rules 173-39-02.1 and 173-39-02.11 of the Administrative Code, after undergoing a similar process.

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:

Specifically, ODA is proposing to amend the rule to:

1. Add new paragraph (E)(2) to the rule that says, "If the provider furnishes the service simultaneously to more than one PASSPORT consumer who resides in the same residence, the provider's reimbursement rate for the service is seventy-five per cent of the per-unit rate in the provider's contract with ODA's designee, in accordance with rule 5101:3-31-07 of the Administrative Code. As used in this paragraph, "resides in the same residence" does not refer to a PASSPORT consumer who resides alone in an apartment building where another PASSPORT consumer may reside alone in a separate apartment."
2. Insert "173.01" into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.

Please also see the revisions listed in item #11 below.

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 July 14, 2011, ODA revise-filed the rule to:

1. Revise this RSFA.
2. Upload a revised public-hearing notice.

On July 18, 2011, ODA revise-filed the rule to:

1. Revise this RSFA.
2. Upload a revised public-hearing notice.

On July 26, 2011, ODA revise-filed the rule to:

1. Replace "care plan" in paragraph (A)(4) of the rule with "service plan" and to replace "care furnished" in the same paragraph with "services furnished." ODA is making this revision in response to a comment that the Ohio Association of Area Agencies on Aging submitted on the proposed amendments to rule 173-40-01 of the Administrative Code during ODA's public-comment period on that rule. The comment called for consistent use of "plan of care" or "service plan." In CMS' "Application for a [1915(c)] Home and Community-Based Waiver [Version 3.5]: Instructions, Technical Guide and Review Criteria," CMS uses "service plan." Additionally, ODA uses "service plan" in other rules. Therefore, ODA is choosing to use "service plan" in this rule, too.

2. Revise this RSFA.

#### 12. 119.032 Rule Review Date: 7/13/2011

(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

Although ODA operates the Medicaid-funded component of the PASSPORT Program, H.B. No. 153 moved the PASSPORT funding to budget line item GRF-600-525, which is under JFS, not ODA. Therefore, ODA estimates that the proposed amendment of this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153.

Additionally, the Ohio General Assembly factored the proposed group rates into the impact upon line item GRF-600-525.

Nevertheless, it is helpful to explain that ODA estimates that the proposed amendments to this rule will reduce Medicaid expenditures. Ohio is proposing to only pay the full rate for a personal care service that a provider furnishes to a PASSPORT consumer if the consumer is receiving the service independent of other PASSPORT consumers. Beginning July 1, 2011, with the emergency filing of rule 5101:3-31-07 of the Administrative Code, the Ohio Department of Job and Family Services (JFS) began reimbursing providers at 75% the normal rate if the provider furnishes the personal care service to a PASSPORT consumer while the consumer is in a group of PASSPORT consumers. JFS' emergency-filed rules sunset on September 29, 2011. JFS plans to propose regularly-filed, amended rule 5101:3-31-07 of the Administrative Code to establish the group-rate methodology for the PASSPORT Program that will take effect on October 1, 2011. (Before July 1, 2011, JFS' rules did not require the PASSPORT Program to use group rates, although JFS' rules required other Medicaid programs to use group rates.)

To correspond to the changes JFS made in rule 5101:3-31-07 of the Administrative Code, ODA is proposing to incorporate JFS' group-rate language into this rule. ODA proposes to adopt the amendments to the rule on October 1, 2011, the same day that JFS proposes to adopt its regularly-filed rules.

ODA estimates that the proposed amendments to this rule, combined with the companion language in JFS' proposed amendments to rule 5101:3-31-07 of the Administrative Code, will save \$1,842,202.87 of GRF-600-525 funds in FY2012 and another \$1,842,202.87 in FY2013.

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

GRF-600-525 Health Care/Medicaid (State and Federal).

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 ODA's proposed amendments to this rule, combined with the companion language in JFS' proposed amendments to rule 5101:3-31-07 of the

Administrative Code, will create a cost of compliance that:

1. Will from one provider to the next.
2. In the aggregate, will cost providers of the personal care service \$1,842,202.87 in FY2012 and another \$1,842,202.87 in FY2013.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

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

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

ODA estimates that ODA's proposed amendments to this rule, combined with the companion language in JFS' proposed amendments to rule 5101:3-31-07 of the Administrative Code, will create a cost of compliance to government-owned providers that:

1. Will from one provider to the next.

2. In the aggregate (private and government-owned), will cost providers of the personal care service \$1,842,202.87 in FY2012 and another \$1,842,202.87 in FY2013.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

*Not Applicable.*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Not applicable.

(a) Personnel Costs

Not applicable.

(b) New Equipment or Other Capital Costs

Not applicable.

(c) Operating Costs

ODA estimates that ODA's proposed amendments to this rule, combined with the companion language in JFS' proposed amendments to rule 5101:3-31-07 of the Administrative Code, will create a cost of compliance to government-owned providers that:

1. Will from one provider to the next.
2. In the aggregate (private and government-owned), will cost providers of the personal care service \$1,842,202.87 in FY2012 and another \$1,842,202.87 in FY2013.

(d) Any Indirect Central Service Costs

Not applicable.

(e) Other Costs

Not applicable.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

A political subdivision that operates a personal care service must operate with reduced reimbursement rates by employing the standard means by which it absorbs the other cost-reductions affiliated with H.B. No. 153 (e.g., revenue the political subdivision generates from its personal care service income, property taxes, county sales taxes).



7. Please provide a statement on the proposed rule's impact on economic development.

The proposed amendments to this rule should have a negligible impact upon a political subdivision's economic development.