

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

Agency Name

Division

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173-39-02.15

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Independent living assistance service.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
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, 173.52, 173.522.**
5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.431, 173.52, 173.522.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to amend the rule as part of its 5-year review of the rule.
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:

OVERVIEW

OAC173-39-02.15 regulates providers when they provide independent living assistance (ILA) to individuals enrolled in the PASSPORT Program. ILA consists of a variety of telephone-support activities, in-person support activities, and travel-attendant activities outlined by paragraph (A).

ODA has conducted a 5-year review of the rule. ODA's proposed amendments would add clarity to the rule and update its terminology, but not add any requirements for ODA-certified ILA providers.

SPECIFIC AMENDMENTS

ODA proposes to delete a part of the definition of ILA in (A) stating ILA consists of activities because it unnecessarily duplicates another sentence in the rule explaining there are three types of ILA, all of which are activities.

ODA proposes to delete part of the definition of ILA in (A) stating the purpose of ILA is to "avoid institutionalization due to the loss of shelter or other essential environmental services." That is a purpose for the PASSPORT Program and applies to every good or service provided to individuals enrolled in the program. Avoiding institutionalization does not need to be part of this definition or any definition of a good or service.

ODA proposes to delete a part of the definition of ILA in (A) allowing an aide to act as an individual's authorized representative. OAC173-39-02 prohibits this for any ODA-certified provider of any good or service. Likewise, ODA also proposes to delete language allowing in-person support activities to include applying for programs (i.e., on the individual's behalf) to assisting the individual with applications for programs. ODA also proposes inserting or other public programs to the list of programs.

The definition of ILA includes a list of in-person support activities. In that list, ODA proposes to say in (A)(2) that these activities are done for individuals, then remove specific references to individuals (or, consumers) in the sub-paragraphs. ODA proposes to combine all the in-person support activities on banking into 1 example of in-person support activities. ODA proposes deleting stock of as it appeared before needed groceries. ODA also proposes allowing assistance with personal correspondence via email to qualify as an example of in-person support activity.

ODA proposes to insert a paragraph that would function like a sub-heading to indicate where in the rule requirements for the provider begin. This merely adds clarity to the rule. All paragraphs occurring after this sub-heading would be indented underneath.

In (B) [now (C)(1)], ODA proposes to say a unit of service is 15 minutes of

telephone-support activities, in-person support activities, or travel-attendant activities, not 15 minutes of direct consumer service or completed phone call. To align this rule with the standard format for other rules regulating services in OAC Chapter 173-39, the language now appears at the end of the rule with 2 informational paragraphs on where to find rates and rate-setting methodologies. Without the informational paragraphs, readers may not know that the rates and rate-setting methodologies for ILA are determined by 2 different ODM rules.

ODA proposes to insert a general requirement to comply with the requirements for every ODA-certified provider in OAC173-39-02. Without this amendment, ODA-certified providers would still be required to comply, but may not be aware of the need to do so.

ODA proposes to delete requirements that duplicate requirements for all ODA-certified providers in OAC173-39-02.

For (C)(4) [now (B)(4)], ODA proposes to replace 1 paragraph functioning like a sub-heading, but without giving the topic of the paragraphs below, with a single-word subheading. In doing so, ODA does not create any new requirements. Instead, it should help providers by allowing them to thumb through the rule to find topics of concern (e.g., availability).

In (C)(5)(a)(v) [now (B)(5)(a)(v)], ODA proposes to replace a requirement to have the ability to access transportation services required as appropriate, which is confusing, to a requirement to have the ability to provide travel-attendant activities, which name of the activity defined in (A).

ODA proposes to update the language for the topics taught in orientation to indicate the provider must teach its expectations, ethical standards, personnel policies. For these topics, providers have flexibility to develop their own policies. ODA proposes to replace employee code of conduct with ethical standards to match language in OAC173-39-02. ODA also proposes to list incident reporting just before emergency procedures.

ODA proposes to move the requirement for continuing education from a location after personnel qualifications to a location after orientation.

ODA proposes to add subheadings to many paragraphs to enable providers to find topics more easily. Examples are Personnel requirements, Supervision, Orientation, and Continuing education.

ODA also proposes basic terminology amendments, including the following:

- * Adding "ODA provider certification" to the beginning of the rule's title.
- * Replacing uses of "consumers" with "individuals."
- * Consistently referring to individuals in the plural throughout the definition of ILA

and its activities.

* Consistently using "activities," not "services," to refer to ILA activities, because ILA is a service comprised of different activities.

* Removing the unnecessary occurrences of "and" in paragraph (A).

* Removing unnecessary occurrences of "that."

* Inserting "their" before "business and personal correspondence," "medical and other appointments," "errands and other activities," and "homes" to clarify that ILA staff help individuals, not others, in these matters.

* Replacing the run-on-sentence-format in paragraph (A) with a bullet-point-like-format (i.e., one or more of the following, replacing semicolons with periods in lists.)

* Replacing uses of "must" with "shall."

* Replacing "capacity" with "availability."

* Replacing uses of "deliver" with "provide."

* Replacing "prior to" with "before."

* Replacing "(heap)" with "(HEAP)."

* Replacing "long-term care agency providers" with "ODA-certified agency providers."

* Replacing "Consumer record contents" with "Records."

* Replacing "economics/nutrition or dietetics" with "economics, nutrition/dietetics."

* Replacing "experience in the provision of social services" with "providing social services."

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. If applicable, indicate each specific paragraph of the rule that has been modified:

On May 3, 2017, ODA made a revised filing to upload a revised public-hearing notice. In doing so, ODA made no changes to the rule.

On May 4, 2017, ODA made a revised filing to upload a CSI-related document to the Register of Ohio. In doing so, ODA made no changes to the rule.

On May 10, ODA made a revised filing to amend paragraph (B)(6) of the rule to replace 2 occurrences of "individual" occurring before "satisfaction" with "individual's," to insert a comma after the second occurrence of "satisfaction," and insert "at least every ninety days" to the end of the paragraph before the period. This makes it clear that a periodic evaluation is required ever 90 days for all 3 categories of ILA activities.

12. Five Year Review (FYR) Date: **5/3/2017**

(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 estimates that its proposed amendments to this rule would have no impact upon the biennial budget 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-651-525 Medicaid/Health Care Services.

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 there is no cost of compliance directly associated with amending this rule. For a detailed cost analysis, please review ODA's response to questions #14 and #15 on the BIA.

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**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

The rule requires providers to use staff who qualify, have been through orientation, and who meet annual continuing-education requirements. For detailed information, please review ODA's response to #14 on the BIA.