

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

Agency Name

Division

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173-39-02.17

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Community transition service.**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? **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: **173.02, 173.391**

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

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

ODA is proposing to replace the current rule with this new rule.

THE PRIMARY CHANGE: Currently, consumers who are enrolled in the assisted living program may qualify to receive a community transition service to help them transition from the nursing facility to a residential care facility under the assisted living program. The proposed new rule expands the pool of those eligible for the service so that consumers who are enrolled in the PASSPORT program may also qualify for help with the transition from a nursing facility to a home or apartment. The change will enable more consumers who reside in nursing facilities under the Medicaid program to return to a home or apartment setting where the PASSPORT

program may provide long-term care service in a more cost-effective and less-restrictive manner.

OTHER CHANGES:

1. In response to a comment submitted to ODA during a public comment period for the rule, ODA added language in paragraph (B)(2) to show that a landlord is an example of an individual who may have a legal or contractual responsibility to cover the expenses in lieu of the assisted living program or the PASSPORT program.

2. In response to a comment submitted to ODA during the public comment period for the rule, ODA added language in paragraph (C)(2)(c) to show that the consumer's authorized representative may be involved in the selection of items for the consumer in lieu of the consumer.

3. In response to a comment submitted to ODA during the public comment period for the rule, ODA added language in paragraphs (B)(2), (C)(2)(a), and (D)(1) to indicate that a case manager may authorize the service for a consumer in a service plan, not just a care plan.

4. ODA cross-referenced rules 5101:3-1-06.1 and 5101:3-1-06.5 so that readers of the rule may more easily find the rules of the Administrative Code that establish the maximum rate allowable for the service.

5. ODA revised the language of the rule so that its intention is unmistakable. This was accomplished by plainly stating each mandate with as few words as possible, by replacing jargon with common words, and by organizing the rule by labeled topics: Paragraph (A) defines the service, paragraph (B) shows who is eligible for the service, paragraph (C) lists what is required of a provider of the service, and paragraph (D) shows how reimbursement rates for the service are calculated.

The adoption of this rule is subject to the approval of a proposed amendment in the PASSPORT Medicaid waiver by the Centers for Medicare and Medicaid Services.

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:

The proposed new rule:

1. Defines a community transition service and provides examples of expenses that may comprise a community transition service.

2. Provides the eligibility criteria that a consumer must meet in order to qualify for the service.

3. Lists the requirements of providers who perform the service.
4. Explains that the rates are negotiable, but that they have a ceiling that is listed in rules 5101:3-1-06.1 and 5101:3-1-06.5 of the Administrative Code, which are rules that are adopted by ODJFS.

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 April 17, 2008, ODA revised this rule to:

1. Remove "wheelchair ramp" as an example of a community transition service expense in paragraph (A) of this proposed new rule. The building of a wheelchair ramp is considered a home modification that is coverable under rule 173-39-02.9 of the Administrative Code for those who qualify.
2. Change the language of paragraph (B)(1)(a) from "A consumer who is enrolled in the assisted living program and needs to transition from the nursing facility to a residential care facility" to "A consumer who is enrolled in the assisted living program and is in transition from a nursing facility to a residential care facility."

3. Change the language of paragraph (B)(1)(b) from "A consumer who is enrolled in the PASSPORT program and needs to transition from the nursing facility to a house or apartment" to "A consumer who is enrolled into the PASSPORT program and is in transition from a nursing facility to a house or apartment."

Additionally, during the April 17, 2008 revision, the RSFA was updated.

On May 2, 2008, ODA revised this rule to to insert words "(or service plan)" following the words "care plan" in paragraphs (B)(2), (C)(2)(a), and (D)(1) of the proposed new rule.

Additionally, during the May 2, 2008 revision, the RSFA was updated.

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

Although it is possible that the adoption of this proposed new rule will lead to an increase in funds being spent upon individual consumers in the PASSPORT program, the spending on the entire PASSPORT program is limited by the biennial budget established for ODA by the Ohio General Assembly. Therefore, ODA estimates that the adoption of this proposed new rule will have no impact upon the budget established for ODA by the Ohio General Assembly. (The projected cost for SFY 2009 is approximately \$3.3 million all funds with about \$1.3 million from GRF.)

14. Identify the appropriation (by line item etc.) that authorizes each expenditure

necessitated by the proposed rule:

GRF-490-403 PASSPORT

GRF-490-422 Assisted Living Waiver

3C4-490-607 PASSPORT

3C4-490-622 Assisted Living-Federal

4J4-490-610 PASSPORT/Residential State Supplement

4U9-490-602 PASSPORT Fund

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 will be no cost of compliance to any consumer as a result of the adoption of this proposed new rule because a consumer who receives this service does so free of charge.

ODA estimates that a provider who provides a community transition service may experience an initial cost in complying with this rule, but, in the end should experience no cost of compliance because the provider will be reimbursed by ODA. The amount that a provider is reimbursed for a service is negotiable since each community transition service is different and, as a result, should have a different cost than other community transition services. The maximum rate allowable for a community transition service is listed in rule 5101:3-1-06.1 of the Administrative Code for the PASSPORT program and in rule 5101:3-1-06.5 for the assisted living program.

Of course, no person is mandated to become a certified provider who performs the community transition service. A person must willingly agree to become a provider of this service. Therefore, providers who may provide a similar service, but have no intention of assisting consumers through this service, will not experience any cost of compliance as a result of the adoption of this proposed new 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**