

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: **173.01, 173.02, 173.391, 173.40, 5111.89**

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:

H.B. 66 (126th G.A.) created the Assisted Living Program on July 1, 2006 to provide a setting that gives residents a home-like environment in a community living setting. The program helps people who need extra help or supervision in their day-to-day lives but who do not require the 24-hour care provided in a nursing facility. To be eligible for the program, a person must be age 21 or older, need hands-on assistance with certain activities of daily living such as dressing and

bathing, be able to pay room and board, and meet the financial criteria for Medicaid eligibility. Examples of assisted living services are: personal care, housekeeping, laundry, assistance with medication, coordination of meals, and non-medical transportation.

The Assisted Living Program also provides community transition services to help nursing-facility residents move into an assisted living facility. Additionally, the PASSPORT Program provides community transition services to help nursing-facility residents move into personal residences. Examples of community transition services are the purchase of essential household furnishings, window coverings, household supplies, food preparation items, bed linens, or bath linens; fees or deposits to initiate utility services; and moving expenses.

ODA is proposing to amend rule 173-39-02.16 of the Administrative Code to clarify that the assisted living service includes the coordination of meals, not the meals themselves. For a resident who is enrolled in the Assisted Living Program, assisted living expenses fall into two categories: (1) room-and-board fees that the resident pays to the facility and (2) service expenses that the Assisted Living Program reimburses. According to rules 5101:3-33-01 and 3701-17-60 of the Administrative Code, meals are room-and-board expenses. Therefore, ODA is proposing to make a technical correction to clarify that the assisted living service includes the coordination of meals, not the meals themselves.

Section 119.032 of the Revised Code requires ODA to review each rule no later than the rule's assigned review date. In order to complete that review for rule 173-39-02.17 of the Administrative Code, ODA is proposing to rescind the rule and to simultaneously adopt a new rule of the same number because, in doing so, ODA would be amending over 50% of the rule.

In proposed new rule 173-39-02.17 of the Administrative Code, ODA initially proposed to implement the uniform taxonomy for "community transition services" supplied by the U.S. Administration on Aging for Medicaid home and community-based services. (National Association of States United for Aging and Disabilities. "Medicaid Home and Community Based Services (HCBS) Taxonomy: Training Module." © 2012. Pg., 20.) When, ODA revised the rule on April 12, 2013, ODA replaced the uniform taxonomy with a definition that approximates the "core service definition" supplied by the Center for Medicare and Medicaid Services. (Centers for Medicare and Medicaid Services. "Instructions, Technical Guide and Review Criteria." © January, 2008. Pg., 166.) ODA chose to approximate the core service definition because its list of its superior list of expense examples. The core service definition also include some of the eligibility items that ODA had already lists in paragraph (B) of the rule. ODA does not anticipate that it is proposing new requirements for businesses by using the core service definition instead of the current definition or the previously-proposed uniform taxonomy. Furthermore, because the core service definition is so similar to the uniform taxonomy (minus the expense examples and eligibility criteria), it should serve still

offer the federal government the same uniform reporting effect as the uniform taxonomy.

Regarding the uniform taxonomy, NASUAD states that, "[b]y organizing a broad range of HCBS services into an orderly classification of services that is shared nationally, the HCBS Taxonomy will allow CMS and states to better understand what services are being provided within a state an in comparison to other states." (National Association of States United for Aging and Disabilities. "Medicaid Home and Community Based Services (HCBS) Taxonomy: Training Module." © 2012. Pg., 2.) NASUAD said the new taxonomy would "[p]rovide national data regarding service availability, utilization, and expenditures." (National Association of States United for Aging and Disabilities. "Online Training and HCBS Taxonomy." © March 31, 2012. Pg., 7.) NASUAD also said, "[i]f state services are called by a different name than what is in the HCBS Taxonomy, [the state] may need to change their service names and/or information to clarify where services fit into the taxonomy categories because if they do not match, national data will be skewed. States may choose to formally change the names or service description of long-time services provided to consumers." (National Association of States United for Aging and Disabilities. "Medicaid Home and Community Based Services (HCBS) Taxonomy: Training Module." © 2012. Pg., 2.)

In both of the above-mentioned rules, ODA is proposing to use format and terminology that correspond to more-recently adopted ODA rules. Doing so creates uniformity between ODA's regulations for various services and employs the use of sub-headings that make the rule easier to follow (e.g., "Deadline," "Consumer choice," "Limitations," and "Service verification").

Lastly, in proposed new rule 173-39-02.17 of the Administrative Code, ODA is proposing to explicitly state that providers are free to retain records electronically. This would give providers the flexibility to retain records in a manner that may be more suitable for 21st-century business operations. Additionally, using electronic records reduces the cost of records retention and the cost of delivering records to PASSPORT Administrative Agencies for monitoring purposes (i.e., email costs much less than the USPS).

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 proposed new rule 173-39-02.17 of the Administrative Code, ODA is proposing to:

1. Use the uniform taxonomy for "community transition services" supplied by the U.S. Administration on Aging for Medicaid home and community-based services. (National Association of States United for Aging and Disabilities. "Medicaid Home

and Community Based Services (HCBS) Taxonomy: Training Module." © 2012. Pg., 20.) On April 12, 2013, ODA revised this definition. Please see ODA's responses to #6 asnd #11 on this RSFA for more information.

2. Adopt use a format and terminology that corresponds to more-recently adopted ODA rules. For example, ODA has been adding sub-headings to the beginnings of rule paragraphs to allow the readers to thumb through the rule quickly. (e.g., "Consumer choice." Also, ODA has been replacing "document maintenance" language with "service verification" language that speaks of retaining records (which could be electronic), not maintaining documents.

3. Explicitly state that providers are free to retain records electronically. This would give providers the flexibility to retain records in a manner that may be more suitable for 21st-century business operations. Additionally, using electronic records reduces the cost of records retention and the cost of delivering records to PASSPORT Administrative Agencies for monitoring purposes (i.e., email costs much less than the United States Postal Service).

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 April 12, 2013, ODA revised the rule to:

1. Replace the proposed new definition in paragraph (A) of the rule. As stated in #6 (above) ODA had previously proposed to adopt this new rule with a new definition that was very similar to the definition that it replaced, but that better approximated the CMS-AoA uniform taxonomy. In this revised filing, ODA is replacing the definition that approximates the uniform taxonomy with another similar definition that approximates CMS' core service definition. The main difference is that the core-service-definition version has a superior list of expense examples. It also lists some of the eligibility criteria that ODA already mentions in paragraph (B) of the rule. ODA estimates that using the core service definition instead of the current definition or the uniform taxonomy would not change what ODA considers an expense for the service. Instead, ODA estimates that superior list of example expenses would add clarity.
2. Replace any use of "care plan" in the rule with "service plan" for consistency with other rules in Chapter 173-39 of the Administrative Code.
3. Reduce verbosity by adding "for the community transition service" in paragraph (B) of the rule, then the term with "expenses" in the sub-paragraphs to paragraph (B) of the rule.
4. Reword paragraph (B)(2) of the rule to eliminate redundancy. Previously, the rule mentioned person with a responsibility to provide the service and separately mentioned landlords with a responsibility to provide the service. In this revision, ODA has combined the two. This creates no new policy for this rule and no expense for providers.
5. Insert, in paragraph (C)(2) of the rule, "to be purchased" in between "items" and "on the consumer's behalf."
6. Reword paragraph (C)(3) of the rule so that it doesn't prohibit a provider from furnishing a service to a consumer that the case manager doesn't authorize, but that it prohibits a provider from seeking reimbursement for furnishing a service to a consumer that the case manager doesn't authorize. If a provider wants to offer to furnish a service at its own expense, ODA does not want to prohibit this. In the revision, we're not telling the provider what to do as much as we're telling them what the Assisted Living and PASSPORT Programs will reimburse. For consistency with the rest of the rule, ODA also replaced "items or costs" in the paragraph with "expenses."
7. Use "each expense" in paragraph (C)(5)(a)(iv) of the rule instead of "any item purchased." "Expense," not "item," is the term used throughout the rest of the rule. This revision will not make a policy change or new expense for a provider. It simply makes the terminology in the rule consistent.

8. Correct the spelling of "desingee" in paragraph (D)(2) of the rule so that it is "designee."

9. Revise this RSFA.

On April 12, 2013, ODA revise-filed the rule for a second time to:

1. Upload a revised memorandum of response to the Common-Sense Initiative Office into the Electronic Rule Filing (ERF) System.

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

Although ODA operates the Assisted Living and PASSPORT Programs, H.B.153 (129th G.A.) moved the funding for the programs to budget line item GRF-600-525, which is under JFS, not ODA. Therefore, ODA estimates that this proposed new rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153 or that was reviewed by H.B. No. 487 (129th G.A.). Additionally, ODA estimates that the proposed rescission of this rule will have no impact upon the biennial budget that the Ohio General Assembly established for JFS in the same bills.

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 there is no cost of compliance to any person associated with the adoption of this proposed new rule, whether as originally filed or as revised.

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? **Yes**

To be reimbursed for providing community transition services, a provider shall comply with the rule. One requirement of the rule is to be an ODA-certified provider.

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? **Yes**

The same section of statute that authorizes ODA to adopt this rule (section 173.391 of the Revised Code), also requires ODA to adopt a rule on disciplinary actions that ODA may take against any non-compliant provider, such as a provider who does not comply with rule 173-39-02.17 of the Administrative Code. In rule 173-39-05 of the Administrative Code, ODA adopted the possible disciplinary actions that ODA may take against a non-compliant provider.

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

The proposed new rule does not require specific expenditures, but does require reporting information as a condition of compliance. A provider shall retain records to verify how it provided the community transition service to each consumer. (e.g., consumer's name, date of service, accurate description of each expense, a receipt for the expenses, and the consumer's signature.) The proposed new rule explicitly states that the provider may retain such records electronically. This would give providers the flexibility to retain records in a manner that may be more suitable for 21st-century business operations. Additionally, using electronic records reduces the cost of records retention and the cost of delivering records to PASSPORT Administrative Agencies for monitoring purposes (i.e., email costs much less than the United States Postal Service).