

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

Agency Name

Division

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**173-39-02.18**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Non-medical transportation 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:

Currently, the PASSPORT program only provides consumers with a non-emergency medical transportation service (cf., rule 173-39-02.13 of the Administrative Code). The non-emergency medical transportation service transports consumers between their homes and destinations such as a doctor's office or a pharmacy.

ODA is proposing this new rule to create the non-medical transportation service for PASSPORT consumers. The new service will transport consumers between their homes and destinations such as a grocery store, a senior center, or a government office. The new service will be an essential element in ODA's effort to decrease the

number of consumers who, without this service, may end up in Medicaid-funded institutionalized care that is more expensive and more restrictive than the long-term care services provided by PASSPORT.

**BACKGROUND:** The Centers for Medicare and Medicaid Services (CMS) requires each state to obtain public input regarding the design of each existing Medicaid waiver prior to the renewal of that waiver. As a result, ODA held public forums across the state and obtained input through a survey on ODA's web site. In those forums, the issue of transportation for non-medical purposes kept coming up as an unmet need. Therefore, ODA (through ODJFS) asked CMS to consider allowing PASSPORT consumers to have a non-medical transportation service as a new service for the PASSPORT program when it renews the PASSPORT Medicaid waiver.

**INTER-AGENCY COOPERATION:** This proposed new rule is being filed in conjunction with a corresponding rule filing by ODJFS on April 15, 2008.

The adoption of this rule is subject to the renewal of the PASSPORT Medicaid waiver by CMS.

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:

This proposed new rule:

1. Defines a non-medical transportation service and provides examples of the service.
2. Provides criteria that determines if a consumer qualifies for the service. (e.g., enrolled in the PASSPORT program, written into the consumer's care plan (or service plan) by the case manager)
3. Lists the requirements of providers who perform the service, which may be broken down into three categories: general requirements (e.g., documentation, service back-up plans), requirements of vehicles used for the service (e.g., routine inspections), and qualifications of drivers (e.g., driver's license, drug testing, and training courses).
4. Explains that the rates are negotiable, but that ODJFS is adopting rule 5101:3-1-06.1 of the Administrative Code to establish a ceiling for the rates payable for the service.
6. Refers to forms ODA0004, ODA0005, and ODA0006. The forms list the components of the three routine vehicle inspections prescribed by the rule. Each form is readily available on <http://www.goldenbuckeye.com/providers/forms.html>

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 18, 2008, ODA revised the rule to:

1. Clarify in paragraph (C)(1)(c) that ODA wants a provider to document the information listed in paragraphs (C)(1)(c)(i) to (C)(1)(c)(v) for each service provided.

2. Revise the language formerly located at paragraph (C)(2)(b) to require a provider to possess a back-up plan for providing the service with a driver or vehicle is unavailable. Previously, the paragraph required a back-up plan only when a vehicle is unavailable. That paragraph is now numbered as paragraph (C)(1)(d) of this rule. The format of paragraph (C)(2) was modified to reflect the absence of the back-up plan language from that paragraph, but the change was technical in nature and not a substantial change to the rule.

3. Clarify language in paragraphs (C)(3)(a), (C)(3)(b), and (C)(3)(c), and (C)(3)(d) concerning a non-agency provider so that the language mentions a non-agency provider in a way that reflects that, as a self-employed individual, a non-agency

provider is also the driver of the vehicle. This was a technical revision, not a substantial change to the rule.

4. Correct references in paragraph (C)(3)(a)(vi). This was a technical revision, not a substantial change to the rule.

5. Delete the words "that each driver" as they appeared between "documentation" and "on the compliance" in paragraph (C)(3)(d), because the words did not contribute to the clarity of the sentence. This was a technical revision, not a substantial change to the rule.

Additionally, ODA revised the RSFA.

On May 2, 2008, ODA revised paragraph (C)(3)(a)(iii) of the rule to clarify that ODA wants the driver to pass a drug test that shows that the driver has a blood-alcohol content that is lower than Ohio's maximum blood-alcohol content and that the driver is free of any controlled drug, unless a prescription authorizes the driver to consume the drug. Before this revision, the paragraph simply required the driver to pass a drug test, but did not specify what levels of blood-alcohol or what drugs (e.g., controlled drugs consumed without a prescription) would negate passing a drug test.

Additionally, ODA revised the RSFA.

On May 9, 2008, in response to comments submitted to ODA during the public comment period, ODA replaced paragraph (C)(3)(a)(iii) with a paragraph that lists the five categories of drugs checked by the most common drug testing requirements, such as the federal requirements for commercial vehicle drivers and the Drug-Free Workplace Program. Beforehand, the paragraph said,

"Pass tests conducted by a hospital (or another entity that is approved by the Ohio department of health to conduct the tests) that screen blood, breath, or urine to determine if the driver's blood-alcohol content is less than Ohio's maximum blood-alcohol content and if the driver is free of any controlled drug unless a prescription authorizes the driver to consume the controlled drug;"

The replacement paragraph says,

"Pass drug and alcohol tests. The drug tests check for the use or abuse of amphetamines, cannabinoids (THC), cocaine (including crack), opiates, and phencyclidine (PCP). The driver receives a passing score if the drug tests do not find the drugs in his/her blood, breath, or urine. The alcohol tests check blood-alcohol content. The driver receives a passing score if the alcohol tests do not find a blood-alcohol content in the driver's blood that is higher than Ohio's maximum blood-alcohol content. The driver shall obtain the drug and alcohol tests from a hospital or another entity that the Ohio department of health permits to conduct the tests;"

Additionally, ODA revised the RSFA.

On May 20, 2008, ODA revised the rule to:

1. Add the words "non-emergency medical" before "transportation service defined in rule 173-39-02.13 of the Administrative Code" in paragraph (A).
2. Replace "On vehicles" with "Vehicles" in paragraph (C)(2).
3. Create paragraph (C)(2)(b), thereby making the previous paragraph (C)(2)(b) "(C)(2)(c)" and so on. The paragraph says, "Annually, the provider shall submit each vehicle to the "Annual Vehicle Inspection" on form ODA0004 (<http://www.goldenbuckeye.com/providers/forms.html>)." The effect of the paragraph is that some of the items that were previously required to be checked on form ODA0006, the "Daily Vehicle Inspection" form, were removed and placed on form ODA0007, the "Monthly Vehicle Inspection" form. This will relieve each driver of the burden of checking brake fluid, coolant, power-steering fluid, transmission fluid, fan belt, alternator belt, heater hose, and radiator on the vehicle each day.
4. Replace "daily," with "On each day that a vehicle equipped with a wheelchair lift is used for the service" in what is now numbered paragraph (C)(2)(c) and delete "on each vehicle with a wheelchair lift" as it occurred at the end of the sentence.
5. Replace "daily" with "on each day that the vehicle is used for the service" in what is now numbered paragraph (C)(2)(b).
6. Replace "On drivers qualifications" with "Driver qualifications" in paragraph (C)(3).
7. Remove "(including crack)" from the words "cocaine (including crack)" in paragraph (C)(3)(c)(iii), since crack is a form of cocaine.

Additionally, ODA revised the 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 it is possible that more funds will be spent upon individual consumers, 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

3C4-490-607 PASSPORT

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.

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ODA estimates that a provider who provides a non-medical transportation service may experience up-front costs as the result of complying with this rule. However, in the long run, the provider should not experience any costs because he/she will be reimbursed for providing the service.

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The amount that a provider is reimbursed for a service is negotiable since each trip is different than every other trip. For example, one consumer may need a round trip to a grocery store that is only one mile away while another consumer living in the

Appalachian region may require a lengthy trip to a grocery store that is ten miles away. The maximum rates allowable for a one-way trip or a round trip are listed in rule 5101:3-1-06.1 of the Administrative Code.

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It is expected that the reimbursement given to a provider of this service covers the entire cost of performing the service, including gasoline, vehicle maintenance, vehicle inspection, employment of non-drivers (e.g., a dispatcher), and employment of drivers, which includes the cost of performing a criminal records check on each driver under section 173.394 of the Revised Code and rules 173-41-01 and 173-39-02 of the Administrative Code, the cost of performing a drug test or tests on each driver, and the cost of training each driver.

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By way of comparison, the PASSPORT program currently reimburses providers who provide a non-emergency medical transportation service under rule 173-39-02.13 of the Administrative Code. The non-emergency medical transportation service provides a service that is substantially similar to the non-medical transportation service being proposed by this new rule. The expenditure data for the non-emergency transportation service for FY07 shows that the average one-way trip cost \$42.23 and the average round trip cost \$70.12. Since this proposed new rule has substantially similar requirements (e.g., vehicle inspections, driver requirements) and because the transportation of a consumer for a non-emergency medical purpose is substantially similar to the transportation of a consumer for a non-medical purpose, ODA estimates that the cost to provide this proposed new service will be similar to \$42.23 for a one-way trip and \$70.12 for a round trip with an increase to account for the higher costs of gasoline.

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Of course, no person is mandated to become a certified provider who performs the non-medical transportation service. A person must willingly agree to become a provider of this service. Therefore, providers who may provide a transportation service, but have no intention of transporting consumers through this service, will not incur 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? **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 a county, municipality, or township that provides a non-medical transportation service may experience up-front costs as the result of complying with this rule. However, in the long run, the county, municipality, or township that provides this service should not experience any costs because it will be reimbursed for providing the service.

The amount that a county, municipality, or township is reimbursed for a service is negotiable since each trip is different than every other trip. For example, one consumer may need a round trip to a grocery store that is only one mile away while another consumer living in the Appalachian region may require a lengthy trip to a grocery store that is ten miles away. The maximum rates allowable for a one-way trip or a round trip are listed in rule 5101:3-1-06.1 of the Administrative Code.

It is expected that the reimbursement given to a county, municipality, or township that provides the service covers the entire cost of performing the service, including gasoline, vehicle maintenance, vehicle inspection, employment of non-drivers (e.g., a dispatcher), and employment of drivers, which includes the cost of performing a criminal records check on each driver under section 173.394 of the Revised Code and rules 173-41-01 and 173-39-02 of the Administrative Code, the cost of performing a drug test or tests on each driver, and the cost of training each driver.

By way of comparison, the PASSPORT program currently reimburses counties, municipalities, and townships who provide a non-emergency medical transportation service under rule 173-39-02.13 of the Administrative Code. The non-emergency medical transportation service provides a service that is substantially similar to the non-medical transportation service being proposed by this new rule. The expenditure data for the non-emergency transportation service for FY07 shows that the average one-way trip cost \$42.23 and the average round trip cost \$70.12. Since this proposed new rule has substantially similar requirements (e.g., vehicle inspections, driver requirements) and because the transportation of a consumer for a



non-emergency medical purpose is substantially similar to the transportation of a consumer for a non-medical purpose, ODA estimates that the cost to provide this proposed new service will be similar to \$42.23 for a one-way trip and \$70.12 for a round trip with an increase to account for the higher costs of gasoline.

Of course, no county, municipality, or township is mandated to become a certified provider of a non-medical transportation service. A county, municipality, or township must willingly agree to become a provider. Therefore, counties, municipalities, or townships who may provide a non-medical transportation service, but have no intention of transporting consumers through this proposed new PASSPORT service, will not incur any cost of compliance with this rule.

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.

Please see the above remarks.

(a) Personnel Costs

Please see the above remarks.

(b) New Equipment or Other Capital Costs

Please see the above remarks.

(c) Operating Costs

Please see the above remarks.

(d) Any Indirect Central Service Costs

Please see the above remarks.

(e) Other Costs

Please see the above remarks.

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.

Because a county, municipality, or township would be reimbursed for the costs incurred for providing this service, there should be no need to acquire new revenue to comply with this proposed new rule.

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

This rule should have a slightly-positive impact upon economic development, because it does no harm to economic development; yet, it promotes continued home ownership and is, in comparison to institutionalization (e.g., a Medicaid-funded nursing home), a cost-effective use of taxpayer dollars that lessens the need to divert more funds from economic development to increase funding for Medicaid-funded institutionalization programs in the future.