

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

Agency Name

Division

Tom Simmons

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173-39-02.1

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Adult day 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, 173.403, 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. As a measure to reduce Medicaid expenditures, 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. 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 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 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 rules that were as easy to read as the subject matter allows. 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. For this rule filing, ODA reviewed the rules again. In doing so, ODA only made minor changes.

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. Insert "structured activity programming, health assessments," in paragraph (B)(1)(a)(i) of the rule after "Enhanced ADS includes" for clarification. Paragraphs (B)(1)(f), (B)(1)(i), and (B)(3)(d) of the rule already presume that the provider furnishes structured activities. Paragraph (B)(1)(e) of the rule already require the provider to conduct health assessments.

2. Delete "health assessments" from paragraph (B)(1)(a)(ii) of the rule for clarification. Because intensive ADS includes all the components of the enhanced ADS, and because ODA is amending paragraph (B)(1)(a)(i) of the rule to clarify that enhanced ADS includes health assessments, there is no need to repeat the term in this paragraph.

3. Amend Table 1 to the rule so that it clarifies that both enhanced ADS and intensive ADS include structured activity programming and health assessments.

4. Remove the extra space in between "Hands" and "-on assistance with medication administration" in Table 1 to the rule.

5. Replace "administers" in paragraph (B)(2)(a)(iv) of the rule with "maintains," because providers don't administer the temperatures in their ADS centers, providers maintain the temperatures.

6. Amend paragraph (C)(2) to:

a. Clarify that a unit of ADS transportation can be a mile, not a mileage rate. (cf., Appendix A to Rule 5101:3-3-06.1 of the Administrative Code.)

b. Clarify that the case manager makes a calculation of distance, not the distance itself.

c. Add to the paragraph, "If the provider furnishes the transportation simultaneously to more than one PASSPORT or Choices consumer who resides in the same household in the same vehicle to the same destination, the provider's reimbursement rate for that trip is seventy-five per cent of the per-unit rate, in accordance with rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code."

7. Add to the end of paragraph (C)(3) of the rule "for the PASSPORT program and rule 5101:3-1-06.4 of the Administrative Code for the choices program." Because a case manager may authorize ADS for a consumer in either the PASSPORT or the Choices Programs, paragraph (C)(3) of the rules needs to reference the rate rules for each of the two programs.

8. 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 that ODA lists in item #11 of this RSFA.

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. After "consumer," in paragraph (C)(2) of the rule, insert "who resides at the same address."
2. Revise this RSFA.
3. Upload a revised public-hearing notice.

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

1. Replace "at the same address" in paragraph (C)(2) of the rule with "in the same household."
2. Insert "to the same destination" after "in the same vehicle" in paragraph (C)(2) of the rule.
3. Revise this RSFA.

4. Upload a revised public-hearing notice.

On August 3, 2011, ODA revise-filed the rule to:

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

On August 11, 2011, ODA revise-filed the rule to:

1. Increase provider's options by revising paragraphs (B)(1)(e), (B)(1)(f), and (B)(1)(h)(ii) of the rule to allow physician assistants and advanced practice nurses to perform health assessments, create and revise an activity plan, and to participate in the interdisciplinary care conference. The Ohio Revised Code currently allows physician assistants and advanced practice nurses to perform such tasks, so ODA does not want to prohibit providers from using their services. At the same time, The Ohio Board of Nursing and the Ohio Nurses' Association have both confirmed that the Ohio Revised Code does not permit an LPN under the direction of an RN to perform those same duties. Thus, ODA needs to remove LPNs as an option because they are not a legal option. (See the subsequent refilings on August 18, 2011 and August 19, 2011.)

2. Revise this RSFA.

On August 18, 2011, ODA refiled the rule to:

1. Clarify in paragraphs (B)(1)(e), (B)(1)(f), and (B)(1)(h) and its sub-paragraphs, that an ADS provider may comply with the rule if the provider obtains a health assessment, approved activity plan, etc. from certain healthcare professional professionals who do not work for the ADS provider.

2. Reformat the sub-paragraphs of paragraph (B)(1)(h) of the rule and give them sub-headings.

3. Revise this RSFA.

On August 19, 2011, ODA refiled the rule to:

1. Replace "health assessment for each consumer" in paragraph (B)(1)(e) of the rule with "health assessment of each consumer."

2. Insert "consumer's" before "initial attendance" in paragraph (B)(1)(f) of the rule.

3. Delete the "e" in between "service" and "at" in paragraph (B)(1)(f) of the rule.

4. Delete the space between "consumer" and the period in paragraph (B)(1)(f) of the rule.

5. Replace "ADS staff" in paragraph (B)(1)(h)(i) of the rule with "the provider's

staff."

6. Replace "conference's participants" in paragraph (B)(1)(h)(iii) of the rule with "conference participants."

7. Replace "(B)(1)(f)" in paragraph (B)(4)(c) of the rule with "(B)(1)(e)."

8. Insert "(c)" after "(B)(4)" in paragraph (B)(4)(c)(iv) of the rule.

9. Replace "Choices" in paragraph (C)(2) of the rule with "choices," because the LSC Rule Drafting Manual prohibits the capitalization of many proper names.

10. 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 PASSPORT Program and the Choices Program, H.B. No. 153 moved the PASSPORT and Choices 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 an ADS transportation service that a provider furnishes to a PASSPORT or Choices consumer if the consumer is receiving the ADS transportation service independent of other PASSPORT or Choices 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 ADS transportation 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.)

To 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 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's proposed amendments to rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code, will save \$91,843.85 of GRF-600-525 funds in FY2012 (\$91,288.73 for PASSPORT and \$655.12 for Choices) and another \$91,843.85 of GRF-600-525 funds in FY2013 (\$91,288.73 for PASSPORT and \$655.12 for Choices).

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 will:

1. Vary from one provider to the next.
2. Cost providers of the ADS transportation service, in the aggregate, \$91,843.85 in FY2012 (\$91,288.73 for PASSPORT and \$655.12 for Choices) and another \$91,843.85 in FY2013 (\$91,288.73 for PASSPORT and \$655.12 for Choices).

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 that will:

1. Vary from one ADS provider (private and government-owned) to the next.
2. Cost providers of the ADS transportation service (private and government-owned), in the aggregate, \$91,843.85 in FY2012 (\$91,288.73 for PASSPORT and \$655.12 for Choices) and another \$91,843.85 in FY2013 (\$91,288.73 for PASSPORT and \$655.12 for Choices).

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 that will:

1. Vary from one ADS provider (private and government-owned) to the next.
2. Cost providers of the ADS transportation service (private and government-owned), in the aggregate, \$91,843.85 in FY2012 (\$91,288.73 for PASSPORT and \$655.12 for Choices) and another \$91,843.85 in FY2013 (\$91,288.73 for PASSPORT and \$655.12 for Choices).

(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 an adult day service center 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 adult day 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.