

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

Agency Name

Division

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**173-39-02.20**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Enhanced community living 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? **Yes**

Bill Number: **HB1**General Assembly: **128**Sponsor: **Sykes**

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, 173.431**

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

ODA is proposing this new rule to comply with section 173.431 of the Revised Code as enacted by Am. Sub. H. B. No. 1 (128th G. A.) and to implement a new PASSPORT service called the "enhanced community living service" for eligible consumers in approved multi-family affordable housing sites. In July, 2010, the Centers for Medicare and Medicaid Services (CMS) approved the state's request to add the service to the PASSPORT waiver effective September 1, 2010.

ODA drafted this proposed new rule in a manner that complies with former

Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation." (Because the process of adopting this proposed new rule spans two gubernatorial administrations, it is also ODA's goal to comply with Governor Kasich's new Executive Order 2011-01K "Establishing the Common Sense Initiative.") As a result, ODA's proposed new language:

1. Complies with the Legislative Service Commission's "Rule Drafting Manual" as found on [http://www.lsc.state.oh.us/rules/rdm06\\_06.pdf](http://www.lsc.state.oh.us/rules/rdm06_06.pdf)
2. Follows the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007)
3. Follows the recommendations of "Plain English Writing Tips" as found on [http://business.ohio.gov/docs/RegReform\\_PlainEnglishWritingTips.pdf](http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf).

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 defines "enhanced community living service," lists the requirements for a provider of an enhanced community living service, and provides the unit of enhanced community living service and a link to another rule that establishes the maximum rates allowable.

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 20, 2010, ODA revised this rule to:

1. Replace "and the consumer's case manager" in paragraph (B)(1)(c)(ii) of the rule with "the consumer's case manager, and the housing site's service coordinator (if the housing site has a service coordinator)."
2. Revise this RSFA.

On August 18, 2010, ODA refiled this rule to:

1. Replace paragraph (B)(4)(b)(ii) of the rule, which said, "(ii) Direct-service staff: The provider shall only employ a person to provide face-to-face services to consumers if the provide has received evidence and retains evidence that the person: (a) Is listed as active on the Ohio state tested nurse aide registry maintained by the Ohio department of health; (b) Has successfully completed an apprenticeship program in home health, health, or a related subject approved by the United States department of labor; or, (c) Has successfully completed an ODA-approved home health aide training program." with the following language: "Direct-service staff: The provider shall only employ a person to provide face-to-face services to consumers if the provider has received evidence, and retains evidence, that the person has successfully completed an ODA-approved home health aide training program listed on <http://aging.ohio.gov/services/homehealthtraining>." (The web page to which the new language refers is currently under construction and ODA hopes to make it readily available to the public in time for the adoption of this new rule.)
2. Revise this RSFA.
3. Upload a revised public hearing notice into the Register of Ohio to announce a second public hearing.

On February 4, 2011, ODA refiled this rule to:

1. Replace "minimum requirements" in paragraph (B) of the rule with "Requirements."
2. Replace "Facilitate a quarterly in-person review of the person-centered service plan with the consumer, the primary team, the consumer's case manager, and the housing site's service coordinator (if the housing site has a service coordinator)..." in paragraph (B)(1)(c)(ii) of the rule with "Facilitate an in-person review of the person-centered service plan with the consumer, the primary team, the consumer's

case manager, and the housing site's service coordinator (if the housing site has a service coordinator) every sixty days...". Doing so does not diminish the intent of the in-person review, but allows the provider's required frequency of reviews to be the same for both Medicare and ODA's PASSPORT program. Otherwise, the rule would have required a review every 90 days for the PASSPORT program, but every 60 days for Medicare, which would lead to performing some reviews only 30 days apart. This proposed revision to require PASSPORT and Medicare reviews at the same frequency will reduce the cost of compliance on the provider compared to the earlier proposal.

3. Replace "The quarterly review" in paragraph (B)(1)(d)(ii) of the rule with "The in-person review." This corresponds to the change explained in item #2 (above).

4. Replace "the PAA" in paragraph (B)(5)(b) of the rule with "ODA's designee" which is the term ODA is using in newer rules and that ODA is defining in proposed new rule 173-39-01 of the Administrative Code as follows: "ODA's designee' has the same meaning as 'PASSPORT administrative agency' in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging listed in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."

5. Replace both occurrences of "provide" in paragraphs (B)(1)(a) and (B)(4)(b)(iii) of the rule and the single occurrences of "provide" in paragraphs (B)(2), (B)(3)(b), (B)(3)(d), (B)(3)(e), (B)(4)(a), (B)(4)(b)(ii), (B)(4)(c)(i)(b), (B)(5)(a), (B)(5)(c), and (B)(6)(c) of the rule with "furnish"; replace "provides" in paragraphs (B)(1)(b) and (B)(2)(b) of the rule with "furnishes"; replace "providing" in paragraph (B)(3)(c) of the rule with "furnishing"; and replace "provided" in paragraphs (B)(5)(b), (B)(6)(a)(iii), (B)(6)(a)(iv), (B)(6)(a)(vi), (B)(6)(a)(vii), and (D)(3) of the rule with "furnished." In more-recently filed rules, ODA now uses "to furnish" and its conjugates in place of "to provide" to describe a provider's general action. In the same manner, replace the noun "provision" in paragraphs (A), (A)(3), (A)(5), and (B)(6)(a)(v) of the rule with "furnishing."

6. Replace "RN" in paragraph (B)(3)(e) with "registered nurse" and replace "An RN" in paragraph (B)(4)(c)(i)(b) of the rule with "A registered nurse" to keep the terminology as jargon-free as possible. ODA defines the term "registered nurse" in rule 173-39-01 of the Administrative Code.

7. Replace "the service" in paragraph (B)(5)(b) with "a service."

8. Replace "directed by the informed choices made by the consumer" in paragraph (D)(3) of the rule with "directed by the consumer's informed choices," which is less wordy.

9. 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

ODA anticipates that the proposed adoption of this new rule will have no impact upon the biennial budget established for ODA by the Ohio General Assembly, because the Ohio General Assembly authorized the new service under section 173.431 of the Revised Code as part of the state's operating budget, Am. Sub. H. B. No. 1 (128th G. A).

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-423 Long-Term Care Budget - State.

3C40-490-623 Long-Term Care Budget.

4J40-490-610 PASSPORT/Residential State Supplement.

4U90-490-602 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 is no cost of compliance to any directly-affected person as a result of the proposed adoption of this new rule. Consumers do not pay to

receive the service. The service does not yet exist, so this rule does not impose any new cost to a provider and, once the service is available, it is a provider's option whether or not to pursue certification for this service. Additionally, the Department of Job and Family Services establishes the rate for this service and the rate they establish is an all-inclusive rate designed to cover all the costs a provider incurs in providing the service according to these rules, thereby leaving the provider with no financial cost. (According to <http://www.odjfs.state.oh.us/clearances/public/TransDocVIEW.aspx?tdid=554253>, the Department of Job and Family Services plans to establish the rate in rule 5101:3-1-06.1 of the Administrative Code.)

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**