

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

Agency Name

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Division

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**173-39-02.25**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**ODA provider certification: shared living.****RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **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, 173.52, 173.522, 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:

The Ohio Dept. of Aging (ODA) in cooperation with the Ohio Dept. of Medicaid (ODM) has applied to the Centers for Medicare and Medicaid Services (CMS) in the U.S. Dept. of Health and Human Services to amend the Medicaid waiver authorizing Ohio to operate the PASSPORT Program. If CMS approves the amended waiver application, on January 1, 2017 [Revised: now July 1, 2017] Ohio will be authorized to offer the service to individuals enrolled in the PASSPORT Program.

ODA is filing the rule at this time in order to adopt the rule on a date as close to January 1 as possible. If CMS does not approve the amended waiver application, ODA won't adopt the rule.

This rule package corresponds to rules filed by ODM on October 14, 2016 involving OAC5160-1-6.1 (payment rates for the PASSPORT Program in Appendix A) and OAC5160-1-31-05 (covered services for the PASSPORT Program)

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 rule lists the requirements a provider of shared living must meet in order to become (and to remain) an ODA-certified provider of shared living.

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 November 22, 2016, the Ohio Dept. of Aging (ODA) temporarily halted (i.e., TBR'd) the development of the rule to offer the Joint Medicaid Oversight Committee (JMOC) an opportunity to consider the impact of offering shared living to the Medicaid system before more progress is made on developing the rule.

On March 20, 2017, ODA refiled the rule to resume its progress through JCARR. As refiled, the proposed new rule contains changes addressing concerns raised in testimony offered at ODA's public hearing on November 21, 2016:

1. ODA proposes to amend definitions to correctly delineate between "continuous" and "occasional." Accordingly, ODA made the following changes:

A. ODA replaced the definition of "continuous" with "continuous presence of another person," and defined the latter as "continuous access to formal or informal services and

supports necessary to assure the individual's health and safety as identified through the person-centered planning process.

B. ODA replaced the definition of "occasional" with "occasional presence of another person," and defined the latter as "occasional access to formal and informal services and supports necessary to assure the individual's health and safety as identified through the person-centered planning process."

C. ODA replaced "continuous" with "occasional" in the definition of "Level I."

D. ODA replaced "occasional" with "continuous" in the definition of "Level II."

2. In (C)(2)(c)(ii)(b), ODA now proposes basing continuing-education requirements for Level II shared-living caregivers on anniversary dates on which the caregiver began providing shared living to the individual instead of on anniversary dates of hire. This corresponds with language previously incorporated into the rule for Level I shared-living caregivers and makes the basis for continuing education uniform for Level I and Level II.

ODA also proposes to make the following technical amendments:

1. In the definition of "assessment instrument" in (A)(1), ODA proposes to replace "needs twenty-four hour support, as defined in rule 5160-3-05 of the Administrative Code" with "qualifies for level II shared living."

2. In the definition of "caregiver coach," ODA proposes to replace "ensuring" with "assuring."

3. In the definition of "home," ODA proposes to delete "who" as it occurred between "individual" and "enrolled."

4. ODA proposes to add a period to the end of the definition of "Occasional presence of another person."

5. ODA proposes to delete (C)(2)(e) because OAC173-39-02 already covers records-retention requirements and there is no sufficient reason to duplicate the requirement in this rule.

## 12. Five Year Review (FYR) 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's proposed adoption of this new rule would have no impact upon the biennial budget the Ohio General Assembly established for ODA because ODA has no authority to exceed its appropriations.

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

GRF-651-525 Medicaid/Health Care Services.

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:

Adopting this rule provides a new business opportunity for long-term care providers. It also provides new jobs for person interested in becoming shared-living caregivers. For providers who want to become certified by ODA to provide shared living to individuals in the PASSPORT Program, the providers must meet the requirements for providers in the rule. For detailed information on the impacts including issues raised by providers and ODA's responses to those issues, please review the BIA.

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**

The rule requires every shared-living provider wanting to be paid for providing shared living to individuals enrolled in the PASSPORT Program to be certified by ODA. (cf., ORC §§173.39, 173.391)

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**

If the provider fails to comply with the rule, the provider may receive disciplinary actions, which could lead to losing its certification with ODA. (Cf., ORC§173.391)

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

The rule requires providers to retain records on shared-living caregiver training and on service verification. The rule allows this to be kept electronically. ODA or its designees may request the records as part of its routine (or non-routine) monitoring of the provider's compliance.