

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

Agency Name

Division

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173-39-02

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Conditions of participation.**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: **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, 5111.89**

5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.402, 173.403, 173.431, 5111.89**

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

ODA is proposing one new rule and amending five other rules in Chapter 173-39 of the Administrative Code. In doing so, ODA has three basic goals:

1. To adopt a new rule that establishes the regulations for providing the enhanced community living service, which section 173.431 of the Revised Code, as enacted on October 16, 2009 by Am. Sub. H. B. No. 1 (128th G. A.). That section states that, if the Centers for Medicare and Medicaid Services (CMS) authorizes an

amendment to the PASSPORT program to offer an enhanced community living service to eligible consumers in approved facilities, ODA will do so.

2. To amend rules 173-39-01, 173-39-02, 173-39-03, 173-39-04, and 173-39-05 of the Administrative Code so they reference the proposed new service, and to make other changes in the rules.

3. To write proposed new rule 173-39-02.20 of the Administrative Code in a manner that complies with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation." As a result, ODA's proposed new language:

a. Complies with the Legislative Service Commission's "Rule Drafting Manual" as found on http://www.lsc.state.oh.us/rules/rdm06_06.pdf

b. Follows the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. ?? 2007)

c. Follows the recommendations of "Plain English Writing Tips" as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.

ODA may conduct a subsequent review, including the five-year rule review, of rules 173-39-03, 173-39-04, and 173-39-05 in the near future.

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:

ODA is proposing to amend this rule to comply with section 173.431, as enacted by Am. Sub. H. B. No. 1 (128th G. A.). ODA is also proposing to correct incorrect references in the rule.

Specifically, ODA is proposing to amend this rule to:

1. Delete "and" as it appears before "rule 173-39-02.19" in paragraph (B)(1)(a) of the rule and add "; and rule 173-39-02.20, if providing an enhanced community living service" before the last period in paragraph (B)(1)(a) of the rule.

2. Replace "1946" in paragraphs (B)(4)(l), (C)(4)(e), and (C)(4)(h) of the rule with "1964."

3. Reword paragraphs (B)(5), (C)(5), and (E)(5), to:

a. Replace the "document monitoring" language with "records retention" language

b. Make it clear when the three-year period starts

- c. Clarify that ODA reviews, while other organizations audit
 - 4. Replace "document" language with "service-verification" language in paragraphs (B)(6)(a), (C)(6)(a), and (E)(6)(a).
 - 5. Replace uses of "ODA's designee" with "the PAA."
 - 6. Add under "Statutory Authority:" "5111.89"
 - 7. Add under "Rule Amplifies:" "173.403, 173.431, 5111.89"
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:

Not Applicable.

12. 119.032 Rule Review Date: **6/15/2010**

(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 does not anticipate that the adoption of this proposed amended rule will have any impact upon the biennial budget established for ODA by the Ohio General Assembly.

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 will be no cost of compliance to any directly-affected person associated with the adoption of this proposed amended rule.

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**