

**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? **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, 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 to amend rules 173-39-01, 173-39-02, 173-39-02.11, 173-39-03, and 173-39-04 of the Administrative Code and to adopt new rule 173-42-06 of the Administrative Code. In doing so, ODA has 5 basic goals:

1. To increase consumer choice by allowing consumers to hire consumer-directed individual providers for the personal care service through the PASSPORT program on a statewide basis. In doing so, the proposed new rules give PASSPORT consumers a new right to choose a method by which to receive their personal care: either from an agency-provider method or a consumer-directed method.

2. To implement a rule on the choices and responsibilities bestowed upon a consumer who directs a consumer-directed individual provider under the PASSPORT program.
  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 Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires each state agency to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. As a result, ODA's proposed new or amended language:
    - a. Complies with Chapter 5 of 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)
    - b. Incorporates recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007)
    - c. Incorporates recommendations from "Plain English Writing Tips," as found on [http://business.ohio.gov/docs/RegReform\\_PlainEnglishWritingTips.pdf](http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf).
  5. To format the new language in ODA's rules in the same way, rule after rule, in a manner that corresponds with the cooperative effort of other agencies that participate that also participate in the consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S.
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 rule presents the conditions of participation for each of the four types of ODA-certified long-term care providers: agency providers, non-agency providers, consumer-directed individual providers, and assisted living providers.

ODA is proposing to amend this rule. Specifically, ODA is proposing to:

1. Replace "PAA" with "ODA's designee" throughout the rule.
2. Replace the verbs "provide" and "deliver" (and their inflections) with "furnish"(and its inflections) throughout the rule.
3. Replace "he/she" with "he or she" throughout the rule.
4. Add "of the Administrative Code" after "173-39-02.20" in paragraph (B)(1)(a) of

the rule.

5. Move paragraph (B)(1)(c) of the rule underneath paragraph (B)(1)(d) [i.e., now "(B)(1)(c)"] of the rule, paragraph (C)(1)(c) of the rule underneath paragraph (C)(1)(d) ["(C)(1)(c)"] of the rule, paragraph (D)(1)(c) of the rule underneath paragraph (D)(1)(d) ["(D)(1)(c)"] of the rule, and paragraph (E)(1)(e) of the rule underneath paragraph (E)(1)(f) ["(E)(1)(e)"] of the rule.

6. Remove the redundant use of "the following unprofessional, disrespectful, or illegal behavior" in paragraphs (B)(1)(e), (C)(1)(e), and (D)(1)(e) of the rule.

7. Add a comma after "mental" in paragraphs (B)(1)(e)(xii) and (C)(1)(e)(xii) of the rule.

8. Add two commas to paragraph (B)(1)(e)(xvi) of the rule.

9. State in paragraphs (B)(1)(e)(xiv), (C)(1)(e)(xiv), and (D)(1)(e)(ix) of a rule that a provider may not also be the consumer's authorized representative.

10. Insert "no later than one business day after the provider is aware of the incident" at the end of paragraphs (B)(2)(a), (C)(2)(a), and (D)(2)(a) of the rule.

11. State in paragraph (B)(4)(f) of the rule that a provider shall not allow a staff person to furnish a service to a consumer if the person is a the consumer's power of attorney and state in paragraphs (C)(4)(a) and (D)(4)(g) of the rule that a provider shall not provide a service to a consumer if he or she is the consumer's power of attorney. Additionally, state in paragraph (D)(4)(g) of the rule that a provider shall not provide a service to a consumer if he or she is the consumer's legal guardian or power of attorney. Also, state in paragraph (E)(4)(d) of the rule that a provider shall not allow a staff person to furnish a service if the person is the consumer's power of attorney. Also, combine paragraphs (D)(1)(e)(viii) and (D)(1)(e)(vix) of the rule.

12. Insert "retaining" before "consumer records" in paragraph (B)(4)(h)(ii) of the rule.

13. Replace the comma after "provision of services" in paragraph (C)(1)(e)(x) of the rule with the words, "without notifying."

14. Replace both uses of "place of work" with "workplace" in paragraph (C)(5)(b) of the rule.

15. Replace "rules" with "rule" in paragraph (C)(6)(a) of the rule.

16. Insert "of the Administrative Code" after "173-39-02.18" in paragraph (C)(6)(a) of the rule.

17. State in paragraph (D)(1)(b) of the rule that a consumer-directed individual provider may provide a personal care service (i.e., the service under rule

173-39-02.11 of the Administrative Code).

18. Delete paragraph (D)(1)(c) of the rule.

19. Insert a requirement under paragraph (D)(1)(c) of the rule for the provider to notify ODA's designee if the consumer is admitted to a hospital or has visited an emergency room.

20. Replace "consume medicine, drugs, or other chemical substance" in paragraph (D)(1)(e)(ii) of the rule with "Consuming medicine, drugs, or other chemical substances."

21. Delete paragraph (D)(2)(c) of the rule because not all providers furnish a service that requires driving. (a home care attendant service vs., a personal care service)

22. Insert paragraph (D)(4)(b) which requires Medicaid agreements.

23. In paragraph (D)(4)(c) of the rule, replace "is" with "shall be."

24. Require, in paragraph (D)(4)(d) of the rule, each provider to have both a valid social security number and one of three photo IDs.

25. Require in paragraph (D)(4)(e) of the rule that each provider to read, write, and understand English.

26. State in paragraph (D)(4)(f) of the rule that each provider shall be able to effectively communicate with the consumer.

27. State in paragraph (D)(4)(h) of the rule that the provider shall maintain a telephone service.

28. State in paragraph (D)(4)(i) of the rule that the provider shall maintain a secure place for retaining consumer records.

29. Require the provider, in paragraph (D)(4)(j) of the rule, to comply with all applicable federal, state, and local laws.

30. Require the provider, in paragraph (D)(4)(l) of the rule to participate in mandatory training sessions.

31. Restructure paragraph (D)(6) of the rule so that it is clear that providers in the Choices Program enter into agreements with the consumer that include rates negotiated with the consumer while providers in the PASSPORT program enter into agreements with ODA's designee that include set rates.

32. Add "of any type" after "provider" in paragraph (F) of the rule to clarify that the paragraph applies to any provider type.

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: **11/18/2010**

(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 is no cost of compliance to any directly-affected person as a result of the proposed amendment of this rule. However, because the proposed amendment of rules 173-39-01, 173-39-02, 173-39-02.11, 173-39-03, and 173-39-04 of the Administrative Code, and the proposed adoption of rule 173-42-06 of the Administrative Code, give PASSPORT consumers the right to choose a new method by which to receive the personal care service, consumers may use their new freedom to choose the proposed consumer-directed method. This creates a possible cost of compliance associated with consumers' new free-market option. Every time a PASSPORT consumer receiving a personal care service chooses the consumer-directed method over an agency method, an agency provider loses the income for providing the service to that consumer, while a consumer-directed individual provider will gain a new income for providing the service to the consumer. Consumers do not pay to receive this service, so there is no cost of compliance to the consumer.

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**