

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

Agency Name

Division

Tom Simmons

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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**

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:

ODA is proposing to amend this rule primarily because ODA is proposing to rescind the rule regarding criminal records checks which is cited in this rule and replace it with proposed new rule 173-9-01 of the Administrative Code. Therefore, ODA wants to correct the citation.

ODA also wants to take this opportunity to update the name "criminal background check" to "criminal records check," to reference "173-39-02.1 to 173-39-02.17" to "173-39-02.1 to 173-39-02.18" to reflect the recent adoption of rule 173-39-02.18 of the Administrative Code, to remove extra spaces in the text in between words, to improve punctuation and conjunctions (e.g., "or"), to make "agencies" in paragraph

(C) of the rule singular, and to change "42 C.F.R. 421.300 through 306" to "42 C.F.R. 421.300 to 421.306" in paragraph (D)(11) of the rule.

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 implements the conditions of participation in ODA's Medicaid waiver programs required under section 173.391 of the Revised Code.

The changes include the following:

1. References to the "criminal background check" were changed to "criminal records check" and references to rule 173-41-01 of the Administrative Code were changed to rule 173-9-01 of the Administrative Code.
2. Throughout this proposed rule, ODA deleted extra spaces in the text in between words.
3. Throughout the rule, ODA improved the punctuation and conjunctions (e.g., "or").
4. In paragraph (C) of the rule, ODA made "agencies" singular.
5. In paragraph (D)(11) of the rule, ODA changed "42 C.F.R. 421.300 through 306" to "42 C.F.R. 421.300 to 421.306."
6. In multiple paragraphs, ODA updated the reference "173-39-02.1 to 173-39-02.17" to "173-39-02.1 to 173-39-02.18" to reflect the recent adoption of rule 173-39-02.18 of the Administrative Code.

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 November 28, 2008, ODA revised this proposed amended rule to make the following changes:

1. Stating in paragraphs (B)(3)(a) and (E)(4)(a) that the provider shall submit supporting documentation of services rendered not only when requested by ODA but also when requested by a designee of ODA. Also, for clarity, in the same paragraphs, language was added to state the reason ODA requires such documentation: for evidence that the provider is in compliance with all requirements before receiving payment for the services.
2. State in paragraphs (B)(3)(b) and (E)(4)(b) that the provider shall give ODA (or ODA's designee) access to the provider's fiscal and consumer records. The current version of the rule only says the provider shall give access to ODA, although ODA's designee is implied. These changes make that matter clear. The current version of the rule only says that the provider shall give access to fiscal records, which implies consumer records. These changes make that matter clear. The current rule says "must agree to give" which is a wordy way of saying "shall give," which these changes make. Also, for consistency, the words "at any time" found in paragraph (B)(3)(b) of the rule now also appear in paragraph (E)(4)(b) of the proposed amended rule; and, the words "that are related to the provision of the authorized service" that appeared in paragraph (E)(4)(b) of the rule now also appear in paragraph (B)(3)(b) of the proposed amended rule.
3. Clarify that the requirement to maintain records in paragraphs (B)(10) and (E)(1)(f) of the proposed amended rule is intended for three years or until an audit is concluded, whichever occurs later. The words, "whichever occurs later" are implied, but this revision should make them obvious. The words "for three years" in the current version of paragraph (E)(1)(f) of the Administrative Code were moved to a location in the paragraph that matched that of paragraphs (B)(10) and (E)(1)(f) of the proposed amended rule. Additionally, in both paragraphs, commas were added where needed.

4. Clarify that the exception from the requirement that the provider notify the consumer and ODA's designee no fewer than 30 days in advance of an anticipated last day of service that is based upon the serious health risk of the consumer means the a "serious, imminent risk." The inclusion of "imminent" was made to paragraphs (B)(14)(b), (D)(14)(c) and (E)(3)(d)(i) of the proposed amended rule.
5. Replace "to whom" in paragraph (D)(16) of the rule with "for whom."
6. Replace "meet the service specifications outlined in" in paragraphs (B)(1), (D)(5), and (E)(2) of the proposed new rule with "comply with any service specification under" and replace "for each of the services for which the provider wishes to be certified" in paragraphs (B)(1) and (D)(5) with "any service under those rules the provider provides." This revision makes it clear that a provider is not required to comply with all the service-specification rules for each service, but only comply with a service-specification rule for which the provider actually provides.
7. Replace "must" with "shall" throughout the proposed amended rule rule in compliance with section 5.8.3 of the Legislative Service Commission's "Rule Drafting Manual" (4th Ed., May, 2006). Also, "may not" was replaced by "shall not."
8. Affirmatively state in paragraph (D)(15) of the proposed amended rule that a consumer-directed provider shall provide services in a professional, respectful, and legal manner, which makes the paragraph much more similar to paragraph (B)(17) of the proposed new rule.
9. Replace "the information may not be used or disclosed" in paragraph (D)(11) of the proposed amended rule with "the provider shall not use or disclose the information" in compliance with section 5.8.6 of the "Rule Drafting Manual" which requires rule drafters to use the active voice.
10. Replace "agreed upon arrangements" with "agreed-upon arrangements" in paragraph (D)(10) of the proposed amended rule; replace "formally organized business" with "formally-organized business" in paragraph (C)(1) of the proposed amended rule; replace "consumer directed individual provider" with "consumer-directed individual provider" in paragraph (D)(2) of the proposed new rule.
11. Replace "policies and directives, or bylaws, or articles of incorporation" in paragraphs (C)(1)(c) and (E)(1)(a) of the proposed amended rule with "policies and directives, and bylaws or articles of incorporation."
12. Separate paragraph (B)(3) of the proposed amended rule, a two-topic paragraph, into two one-topic paragraphs. The revised paragraph (B)(3) of the proposed new rule regards only providing services specified in a consumer's care plan. The revised paragraph (B)(4) of the proposed amended rule regards only billing for services for which there is adequate documentation under the service-specification

rules of Chapter 173-39 of the Administrative Code. The same was done for paragraph (E)(4) of the proposed amended rule.

13. Insert commas throughout the rule as necessary.

14. Replace "Disclose all entities with a five per cent or more ownership" in paragraph (C)(1)(a) of the proposed amended rule with "Disclose all entities that own at least five per cent of the business."

15. Remove the legalese term "prior to" in paragraph (D)(6) of the proposed new rule by replacing "prior to service initiation" with "before initiating any service." Also, "prior to" was replaced with "before" in other paragraphs.

12. 119.032 Rule Review Date: **11/14/2008**

(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 estimates that the proposed amendment of this rule will have no 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-490-403 PASSPORT.

GRF-490-422 Assisted Living Waiver.

3C4-490-607 PASSPORT.

3C4-490-622 Assisted Living-Federal.

4J4-490-610 PASSPORT/Residential State Supplement.

4U9-490-602 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 the proposed amendment of this rule will cause no cost of compliance to any directly affected person because the rule will be substantially similar after it is amended.

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**