

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

Agency Name

Division

Tom Simmons

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173-39-05.1

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Non-disciplinary action resulting in certification revocation.**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: **HB153**General Assembly: **129**Sponsor: **Amstutz**

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, 173.391, 5111.89**

5. Statute(s) the rule, as filed, amplifies or implements: **173.391, 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 adopt the new rule as part of a larger rule package.

ODA is proposing to amend Chapter 173-39 of the Administrative Code. In doing so, ODA has 3 basic goals:

1. To implement H.B. No. 153's changes to section 173.391 of the Revised Code into Chapter 173-39 of the Administrative Code. H.B. No. 153's amendments to

section 173.391 of the Revised Code take effect on September 29, 2011. The amendments will change the disciplinary actions against non-compliant certified providers. ODA must now incorporate the changes into the Administrative Code. ODA proposes to do so by replacing rule 173-39-05 of the Administrative Code with a new rule, adopting new rule 173-39-05.1 of the Administrative Code, and amending rule 173-39-06 of the Administrative Code. (At the same time, ODA is also proposing to amend rule 173-39-08 of the Administrative Code.) ODA proposes to adopt these rule proposals on September 29, 2011, the same day that H.B. No. 153's amendments take effect.

2. 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.

3. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.):

a. ODA is proposing to adopt the new rules after interested parties and the general public have had opportunities to provide input:

i. Interested parties and the general public had the opportunity to testify to the finance committees of the Ohio House of Representatives and the Ohio Senate as those legislative bodies considered public testimony on the amendments that H.B. No. 153 proposed to make to section 173.391 of the Administrative Code.

ii. From June 30, 2011 to July 11, 2011, ODA posted the proposed amended rules on <http://aging.ohio.gov/information.rules/proposed.aspx> for a public-comment period.

b. After reviewing and proposing amendments to the rule, ODA has determined that:

i. The proposed amendments to Chapter 173-39 of the Administrative Code regarding disciplinary measures do not burden any Ohio business that complies with Chapter 173-39 of the Administrative Code. They also do not burden an Ohio business that does not comply with Chapter 173-39 of the Administrative Code beyond the disciplinary actions prescribed by section 173.391 of the Revised Code, as amended by H.B. No. 153.

ii. ODA made the rules as easy to read as the subject matter allowed, gave non-disciplinary actions a rule of their own so that the each rule remained a one-topic rule, added numerous sub-headings to the rules to make thumbing through the rules easy, wrote in the active voice so the language clearly identified who is responsible for what action.

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 outlines non-disciplinary actions ODA or ODA's designee may take against providers who aren't engaged in business with ODA's programs.

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 14, 2011, ODA revise-filed the rule to:

1. Insert after "provider" in paragraph (A)(1) of the rule the words, "has accepted referrals from ODA's designee, but."

2. Revise this RSFA.

On July 18, 2011, ODA revise-filed the rule to:

1. Upload a revised public-hearing notice.

2. Revise this RSFA.

On August 10, 2011, ODA revise-filed the rule to:

1. Delete "hold a hearing to" from paragraph (B) of the rule.
2. Upload a revised public-hearing notice.
3. 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 estimates that the proposed adoption of this new rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153.

Although ODA operates the Medicaid-funded component of the Assisted Living Program, the Choices Program, PACE, and the Medicaid-funded component of the PASSPORT Program, including matters involving disciplinary (and non-disciplinary) actions against non-compliant providers, H.B. No. 153 moved the funding for these programs to budget line item GRF-600-525, which is under JFS, not ODA. Therefore, ODA estimates that the proposed amendment of this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153.

Additionally, the Ohio General Assembly factored H.B. No. 153's amendments to section 173.391 of the Revised Code into the impact upon GRF-600-525 and ODA's biennial budget.

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

GRF-600-525 Health Care/Medicaid (State and Federal).

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 provider in association with the proposed adoption of this new rule. Any provider who fits the situations of this rule is not engaged in business with ODA in order to incur a cost by the non-disciplinary actions proposed in this new 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**