

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

Agency Name

Division

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173-39-05

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Sanctions for non-compliance.**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: **173.01, 173.02, 173.391, 5111.89**

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

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

ODA proposing to adopt new rule 173-39-02.21 of the Administrative Code and to amend rule 173-39-05 of the Administrative Code. In doing so, ODA has 4 primary goals:

1. To keep consumers who receive a personal care service safe [a] from an overworked consumer-directed personal care provider who may, without the proposed scheduling limitations, seek employment from more than five consumer-employers per week, try to work more than 40 hours per week for one consumer, or try to work for 2-5 consumer-employers for more than 56 hours per

week; or [b] from an agency provider that may, without the proposed scheduling limitations, accept a referral to provide a consumer with a personal care service, but not have the staff capacity to furnish the total number of hours the consumer's case manager requests for the consumer.

2. To keep consumers who direct a consumer-directed personal care provider from paying overtime, because the proposed rule prohibits a consumer-directed provider from working for more than forty hours per week for any individual consumer who employs them.

3. To make certain that the rule on sanctions, rule 173-39-05 of the Administrative Code, references proposed new rule 173-39-02.21 so that ODA may sanction a provider that does not comply with the new rule. ODA is amending this rule in response to a question raised by the Ohio Council for Homecare and Hospice during the public-comment period for this rule.

4. To draft, to the degree that the subject matter permits, a common-sense, plain-English rule that complies with Executive Order 2011-01K "Establishing the Common Sense Initiative."

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 proposing to amend rule 173-39-05 of the Administrative Code to make certain that it references proposed new rule 173-39-02.21 of the Administrative Code so that ODA may sanction a provider that does not comply with the proposed new rule.

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: **4/14/2011**

(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 that the General Assembly establishes for ODA.

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:

Although the proposed amendment to this rule would sanction providers who do not comply with proposed new rule 173-39-02.21 of the Administrative Code, ODA estimates that there is no cost of compliance to any directly-affected person that will result from the adoption of proposed new rule 173-39-02.21 of the Administrative Code for the following reasons:

1. Currently, ODA's PASSPORT Program has no consumer-directed personal care providers who are employed by more than five consumer-employers, nor for more than 40 hours per week per consumer, nor for more than 56 hours per week, so limiting a provider to this many employers and hours does not create a new cost for the consumer-directed personal care provider.
2. ODA's programs reimburse agency providers for the services they provide, not the referrals they accept, so prohibiting an agency provider from accepting referrals for services it cannot provide does not create a new cost for the agency provider.

If the adoption of proposed new rule 173-39-02.21 of the Administrative Code has no cost of compliance to any directly-affected person, then the adoption of the proposed amendment to rule 173-39-05 of the Administrative Code has no cost of compliance to any directly-affected person.

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**