

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

Agency Name

Division

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**173-39-06**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Notice of denial of certification and proposed sanctions.****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: **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: **Chapter 119., 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 amend the 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 rules 173-39-06 and 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 amend Chapter 173-39 of the Administrative Code after providing interested parties and the general public an opportunity to provide input on the proposed amendments to Chapter 173-39 of the Administrative Code. From June 30, 2011 to July 11, 2011, ODA posted the proposed amended rule on <http://aging.ohio.gov/information/rules/proposed.aspx> for a public-comment period.

b. ODA reviewed the rules to eliminate unnecessary regulations and to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. In doing so, 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.

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:

The proposed amended rule regulates how ODA proceeds with notices for denial of certification and proposed sanctions.

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. No longer delete ""community-based long-term care service" from paragraph the unnumbered first paragraph of the rule.
2. No longer propose to amend unnumbered first paragraph of the rule with ", except as otherwise required by law."
3. Replace "At a minimum," in paragraph (A) of the rule with "Except as otherwise required by section 173.391 of the Revised Code."
4. Remove any proposed amendments to paragraph (A)(4) fo the rule.
5. Insert after "notice" in paragraph (C) of the rule the words, "upon the party at any time" and insert after "or" in the same sentence the word "may."
6. Replace "first class mail, a copy" in paragraph (C) of the rule with "ordinary mail, proof of publication, and a copy."
7. Delete paragraph (D) of the rule.
8. Revise this RSFA.

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

1. Revise this RSFA.

2. Upload a revised public-hearing notice.

12. 119.032 Rule Review Date: **7/13/2011**

(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 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 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 a provider associated with the proposed amendment of this rule because the rule regulates ODA, not a provider.

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**