

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

Agency Name

Division

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**173-39-08**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Appeal hearings and adjudication orders.****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: **HB66**General Assembly: **126**Sponsor: **Calvert**

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: **Chapter 119., 173.39, 173.391**

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

This rule is being proposed in an effort to implement the provider certification requirements found in sections 173.39 and 173.39.1 of the Revised Code. (With only the one exception found in section 173.39.2 of the Revised Code, section 173.39 of the Revised Code prohibits the Department of Aging from paying any person or government entity for providing community-based long-term care services under a program the Department administers unless the person or government entity has been certified by the Department or its designee under

section 173.39.1 of the Revised Code.)

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 describes the process for the conduct of all appeal hearings resulting from a proposal to deny certification to, or sanction, a provider, as well as the issuance of the Department's adjudication order approving, modifying or disapproving any recommendation resulting from the conduct of the hearing in question.

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:

(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 increase expenditures.

0.00

The Department of Aging has never before certified providers of community-based long-term care services, but it can be expected that the certification of providers - which is required by state law - will necessitate that the Department conduct any number of appeal hearings for those providers that are either denied certification, or against whom sanctions have been proposed by the Department or its designee. The Department has no way of accurately estimating the ultimate impact of this rule upon its budget during the current biennium because it does not have any way to accurately predict the number of hearings it will need to conduct. However, hearings currently provided by the Department to its Older Americans Act providers cost approximately \$2,000 to \$3,000 each. In addition to the costs associated with the conduct of appeals hearings, it is possible under Chapter 119. of the Revised Code that the Department could, on occasion, be ordered to pay a provider's attorney's fees in the event that it is determined that the Department's position in initiating the matter in controversy was not substantially justified. Again, it is impossible to accurately estimate the possible impact of these costs upon the Department's budget in the current biennium.

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

The expenditures necessitated by this rule will be paid for with funds from the following line items: GRF 490-403, 3C4 490-607, 4J4 490-610, 4U9 490-602, GRF 490-422, 3C4 490-622.

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:

There are no costs of compliance mandated by this rule. Providers wishing to appeal an order by the Director of the Department relative to a denial of the provider's certification, or the application of sanctions, however, will incur court costs and perhaps costs related to the retention of legal counsel. These costs will necessarily vary from one provider to the next and cannot be accurately estimated by the Department at this time.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
<b>No</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

The Department cannot estimate in dollars the costs of compliance with this rule by local governments. Rule 173-39-08 describes the process for conducting all appeal hearings resulting from a proposal to deny certification to, or to sanction, a provider. The rule allows providers to determine whether or not to be represented by legal counsel, how it will present its case, and whether it will appeal the Department's order to a court of law. How a local government answers these questions will have a great impact upon the costs of compliance with this rule.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

*Not Applicable.*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please refer to the discussion presented above.

(a) Personnel Costs

Unknown

(b) New Equipment or Other Capital Costs

Unknown

(c) Operating Costs

Unknown

(d) Any Indirect Central Service Costs

Unknown

(e) Other Costs

Unknown

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

This rule provides local governments with options regarding how to proceed with their appeals of sanctions proposed by the Department. Local governments are able to decide for themselves, based upon available resources, how to challenge the Department's proposed sanctions. In addition, a provider's participation in the program is entirely voluntary. Local governments that cannot afford the burdens placed upon them by the Department are not required to become certified to provide services reimbursed by the Department.

7. Please provide a statement on the proposed rule's impact on economic development.

The Department is not aware of any impact the proposed rule might have on economic development.