

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

Agency Name

Division

Tom Simmons

Contact

**50 West Broad Street 9th floor Columbus OH
43215-3363**

Agency Mailing Address (Plus Zip)

614-728-2548

Phone

Fax

173-39-08

Rule Number

AMENDMENT

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? **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: **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 adopt this 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 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.) which require each state agency to eliminate unnecessary regulations and to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations.

ODA is also 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.

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 regulates appeal hearings and adjudication orders.

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 propose to add ", except as otherwise required by law" of paragraph (A) of the rule.
2. Insert before "before" in Paragraph (A)(2) of the rule, "of the hearing's date, time, and place."
3. Replace "In fewer than five days after the hearing's completion, ODA will send by certified mail, return receipt requested, to the appellant or the appellant's attorney, a copy of the hearing examiner's report" in paragraph (B)(1) of the rule with "ODA shall send a copy of the hearing examiner's report and recommendations by certified mail, return receipt requested, to the appellant or the appellant's attorney within five days of receiving the report and recommendations."
4. Revise this RSFA.

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 associated with the proposed amendment of this rule for any provider who complies with the rules of Chapter 173-39 of the Administrative Code.

For a provider who does not comply with Chapter 173-39 of the Administrative Code, Section 173.391 of the Revised Code gives ODA the authority to take disciplinary actions against the providers, which will incur a cost to the non-compliant provider.

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
No	Yes	Yes	Yes

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.

ODA estimates that there is no cost of compliance associated with the proposed amendment of this rule for any provider that is operated by a political subdivision if the provider complies with the rules of Chapter 173-39 of the Administrative Code.

For a government-operated provider that does not comply with Chapter 173-39 of the Administrative Code, Section 173.391 of the Revised Code gives ODA the authority to take disciplinary actions against the providers, which will incur a cost to the non-compliant provider.

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.

ODA estimates that there is no cost of compliance associated with the proposed

amendment of this rule for any provider that is operated by a political subdivision if the provider complies with the rules of Chapter 173-39 of the Administrative Code.

For a government-operated provider that does not comply with Chapter 173-39 of the Administrative Code, Section 173.391 of the Revised Code gives ODA the authority to take disciplinary actions against the providers, which will incur a cost to the non-compliant provider.

(a) Personnel Costs

Not applicable.

(b) New Equipment or Other Capital Costs

Not applicable.

(c) Operating Costs

Not applicable.

(d) Any Indirect Central Service Costs

Not applicable.

(e) Other Costs

ODA estimates that there is no cost of compliance associated with the proposed amendment of this rule for any provider that is operated by a political subdivision if the provider complies with the rules of Chapter 173-39 of the Administrative Code.

For a government-operated provider that does not comply with Chapter 173-39 of the Administrative Code, Section 173.391 of the Revised Code gives ODA the authority to take disciplinary actions against the providers, which will incur a cost to the non-compliant provider.

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.

Beginning on September 29, 2011, each political subdivision that operates a provider agency is subject to H.B. No. 153's amendments to section 173.391 of the

Revised Code and this proposed amended rule. If a political subdivision is not compliant with Chapter 173-39 of the Administrative Code, the political subdivision will need to pay for or absorb the disciplinary actions that ODA or ODA's designee gives the provider and do so by the standard means by which it pays for or absorbs penalties it pays for non-compliance with any statute or regulation (e.g., revenue the political subdivision generates from its provider agency, property taxes, local income taxes, local sales taxes).

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

ODa estimates that the proposed amendment of this rule will have a negligible impact upon economic development.