

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

Agency Name

Division

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**173-40-01**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Introduction and definitions.****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: **111.15**

4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.40**

5. Statute(s) the rule, as filed, amplifies or implements: **173.40**

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

ODA is proposing to amend this rule as part of a larger rule package.

ODA is proposing to amend Chapter 173-40 of the Administrative Code. In doing so, ODA has 3 basic goals:

1. To incorporate H.B. No. 153's amendments to section 173.40 of the Revised Code into Chapter 173-40 of the Administrative Code. H.B. No. 153's amendments to section 173.40 of the Revised Code codify ODA's authority to create the state-funded component of the PASSPORT Program and require ODA to adopt

rules to implement the program, including a rule that establishes the three categories of eligibility criteria. The amendments also change the nomenclature for the same program. The effective date of H.B. No. 153's amendments is July 1, 2011. ODA must now amend Chapter 173-40 of the Administrative Code to bring the rules into compliance with the new statute. ODA's proposes to adopt the amendments to the chapter on September 29, 2011.

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 the 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 173.40 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. ODA reviewed the rules to eliminate unnecessary regulations and to write rules that were as easy to read as the subject matter allows. In doing so, ODA:

i. Used 1-topic rules to allow the title of each rule to give away the content of the rule. This allows any person to thumb through the rule titles of the Ohio Administrative Code to easily find a particular rule.

ii. Incorporated sub-headings into the rules to allow any person to thumb through the sub-headings to easily find a particular sub-topic. Subheadings particularly help in two rules that outline the eligibility criteria or the disenrollment of three categories of eligibility: presumptive, loss of medicaid, and grandfathered.

iii. Made the terminology more homogenous from one rule to the next, from one program to the next, and between the Ohio Administrative Code and the Ohio Revised Code.

iv. Increased the use of natural use of terms to avoid unnatural definitions, jargon, and legalese.

v. Replaced much of the passive voice with the active voice to increase language that clearly states 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:

The proposed amended rule introduces Chapter 173-40 of the Administrative Code and defines terms used in the chapter.

Please note the revisions that ODA lists in #11 on this RSFA.

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. Schedule a public hearing. H.B. No. 153 authorizes ODA to adopt this chapter according to section 111.15, not section 119.03, of the Revised Code. Filing proposed new rules under section 111.15 of the Revised Code does not require ODA to conduct a public hearing. Nevertheless, ODA will conduct a public hearing to obtain comments concerning ODA's proposed amendments to Chapter 173-40 of

the Administrative Code.

2. Upload a public-hearing notice.
3. Revise this RSFA.

On July 26, 2011, ODA revise-filed the rule to:

1. Replace "plan of care" in paragraphs (B)(5) [now (B)(7)] and (B)(6) [now deleted] of the rule with "service plan." ODA is making this revision in response to a comment that the Ohio Association of Area Agencies on Aging submitted during ODA's public-comment period. The comment called for consistent use of "plan of care" or "service plan." In CMS' "Application for a [1915(c)] Home and Community-Based Waiver [Version 3.5]: Instructions, Technical Guide and Review Criteria," CMS uses "service plan." Additionally, ODA uses "service plan" in other rules. Therefore, ODA is choosing to use "service plan" in this rule, too.
2. Revise this RSFA.

On July 28, 2011, ODA revise-filed the rule to:

1. Replace "establishes the eligibility criteria and disenrollment procedures for individual presently enrolled in" in paragraph (A) of the rule with "regulates." This revision brings symmetry between this rule and the proposed new/amended rules 173-38-01, 173-42-01, and 173-51-01 of the Administrative Code. This revision also eliminates the words "presently enrolled," which does not accurately describe this chapter. The chapter also regards those who are eligible on the bases of presumptive eligibility and loss of Medicaid.
2. Replace "this chapter" in paragraph (B) of the rule with "Chapter 173-40 of the Administrative Code" to create symmetry between this rule and the proposed new/amended rules 173-38-01, 173-42-01, and 173-51-01 of the Administrative Code.
3. Insert a definition for "nursing facility" that is identical to the one found in new/amended rules 173-38-01, 173-42-01, and 173-51-01 of the Administrative Code.
4. Insert a comma after "but not limited to" in paragraph (B)(5) [now (B)(7)] of the rule.
5. Replace "consumer's" in paragraph (B)(6) [now deleted] of the rule with "individual's."
6. Replace "enrollee" in paragraph (B)(6) [now deleted] of the rule with "individual."
7. Upload a revised public-hearing notice.

8. Revise this RSFA.

On July 28, 2011, for a second time, ODA revise-filed the rule to:

1. Add a new definition for "authorized representative" that matches the one in rule 5101:3-31-02 of the Administrative Code and the ones that ODA and JFS are proposing to adopt in rules 173-38-01, 173-42-01, 173-51-01, and 5101:3-33-02 of the Administrative Code (and similar to the one that JFS is proposing to adopt in rule 5101:3-32-02 of the Administrative Code). The definition follows: "Authorized representative" means a person, eighteen years of age or older, acting on behalf of an individual who is applying for, or receiving, medical assistance. An authorized representative may be a family member, attorney, hospital social worker, or any other person the individual chooses to act on his or her behalf. In accordance with rule 5101:1-38-01.2 of the Administrative Code, the individual must provide a written statement naming the authorized representative and the duties that the named authorized representative may perform on the individual's behalf. ODA will also place this definition among the other definitions in alphabetical order. (See the revised filing on August 17, 2011.)

2. Revise this RSFA.

On August 1, 2011, ODA revise-filed the rule to:

1. Upload a revised public-hearing notice.

2. Revise this RSFA.

On August 11, 2011, ODA revise-filed the rule to:

1. Upload a revised public-hearing notice.

2. Revise this RSFA.

On August 17, 2011, ODA revise-filed the rule to:

1. Revise the first sentence of the definition of "authorized representative" in response to comments the Midwest Care Alliance presented to ODA and JFS. Both ODA and JFS are amending currently-filed rules to (a) revise the first sentence of the definition so that it reads: "...means a person, eighteen years or older, who is chosen by, and acts on behalf of, an individual who is applying for, or receiving, medical assistance," and to (b) delete the second sentence.

2. Add this definition: "Form JFS02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS).'"

3. Add this definition: "Form JFS07200" means "form JFS07200 'Request for Cash, Food and Medical Assistance.'"

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

The proposed amended rule only introduces Chapter 173-40 of the Administrative Code and defines terms used in the chapter that have no direct impact upon ODA's biennial budget.

Although ODA operates the state-funded component of the PASSPORT Program, H.B. No. 153 moved the PASSPORT Program's funding 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 173.40 of the Revised Code into the impact upon line item GRF-600-525 and the state-funded component of the PASSPORT Program.

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 directly-affect person associated with this proposed amended rule, especially because the amended rule only introduces the chapter and defines terms used in the chapter that do not create a cost of compliance.

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**