Rule Summary and Fiscal Analysis (Part A)

Department of Aging
Agency Name

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Division	Contact

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173-40-02
Rule Number

AMENDMENT
TYPE of rule filing

Rule Title/Tag Line   **Eligibility for the PASSPORT grandparented home care program.**

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 codifies ODA's authority to create the

state-funded component of the PASSPORT Program and requires ODA to adopt rules to implement the program, including a rule on 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. Reduced the use of the active voice so the majority of the language 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 presents the three categories of eligibility for the state-funded component of the PASSPORT Program.
>
> Please note the revisions ODA lists in #11 of 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 (A)(3)(e) and (A)(3)(f) of the rule and "care plan" in paragraph (A)(3)(f) 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 on rule 173-40-01 of the Administrative Code 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. Remove ", and that is approved by ODA's designee" from the end of paragraph (A)(3)(e) of the rule because it is redundant.

3. Revise this RSFA.

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

1. Replace all occurrences of "medicaid-funded PASSPORT program" in paragraphs (A)(1)(b) ad (A)(1)(c) of the rule with "medicaid-funded component of the PASSPORT program."

2. Upload a revised public-hearing notice.

3. Revise this RSFA.

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

1. Replace "Chapter 5101:1-39" in paragraph (A)(3)(d) of the rule with "rules 5101:1-38-01.6 and 5101:1-38-01.8." This change will make this rule match JFS' recent changes to rule 5101:3-31-03 of the Administrative Code.

2. Replace "nursing facility placement" in paragraph (A)(3)(h) of the rule with "admission to a nursing facility." This allows the language to match the language used in Chapter 173-43 of the Administrative Code regarding admission to nursing facilities.

3. Upload a revised public-hearing notice.

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

> 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-affected person associated with the proposed amendment of this rule.

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**