

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

Agency Name

Division

**Tom Simmons**

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**173-42-01**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Enrollment process for PASSPORT home and  
community-based services medicaid waiver 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: **HB119**General Assembly: **127**Sponsor: **Dolan**

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, 173.40**

5. Statute(s) the rule, as filed, amplifies or implements: **173.40, 173.401**

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

ODA is proposing to amend rule 173-42-01 of the Administrative Code to comply with changes made by Am. Sub. H. B. No. 119 (127th G. A.) and Am. Sub. H. B. No. 1 (128th G. A.).

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:

As amended by Am. Sub. H. B. No. 1 (128th G. A.), section 173.40 of the Revised Code begins by saying, "As used in sections 173.40 to 173.402 of the Revised Code, "PASSPORT program" means the program created under this section."

Accordingly, ODA is proposing to reference the definition of "PASSPORT program" in rule 173-42-01 of the Administrative Code to that found in section 173.40 of the Revised Code and to consistently use "PASSPORT" throughout the rule, except, for introductory purposes, in the title and in paragraph (A) of the rule, so the reader can differentiate the waiver-funded PASSPORT program regulated by rule 173-42-01 of the Administrative Code from the non-waiver funded PASSPORT program of Chapter 173-40 of the Administrative Code.

As amended by Am. Sub. H. B. No. 1 (128th G. A.), division (A)(8) of section 173.42 of the Revised Code says, "'PASSPORT administrative agency' means an entity under contract with the department of aging to provide administrative services regarding the PASSPORT program."

Accordingly, ODA is proposing to replace the definition for "PASSPORT administrative agency" in rule 173-42-01 with a reference to the definition above.

Division (B) of section 206.66.64 of Am. Sub. H. B. No. 66 (126th G. A.), entitled "INDIVIDUALS MOVED FROM NURSING FACILITIES TO PASSPORT," is cited in the current version of paragraph (F)(2) of rule 173-42-01 of the Administrative Code. As enacted by section 206.66.64 of Am. Sub. H. B. No. 66 (126th G. A.), the "Home First" language of interest says, "[E]ach area agency on aging shall determine whether individuals who reside in the area that the area agency on aging serves and are on a waiting list for the PASSPORT program have been admitted to a nursing facility. If an area agency on aging determines that such an individual has been admitted to a nursing facility, the agency shall notify the Long-Term Care Consultation Program administrator serving the area in which the individual resides about the determination. The administrator shall determine whether the PASSPORT program is appropriate for the individual and whether the individual would rather participate in the PASSPORT program than continue residing in the nursing facility. If the administrator determines that the PASSPORT program is appropriate for the individual and the individual would rather participate in the PASSPORT program than continue residing in the nursing facility, the administrator shall so notify the Department of Aging. On receipt of the notice from the administrator, the Department of Aging shall approve the enrollment of the individual in the PASSPORT program regardless of whether other individuals who are not in a nursing facility are ahead of the individual on the PASSPORT program's waiting list."

Am. Sub. H. B. No. 119 (127th G. A.) replaced the temporary language above with division (B) of section 173.401 of the Revised Code. As enacted by Am. Sub. H. B.

No. 119 (127th G. A.), the "Home First" language in section 173.401 of the Revised Code says, "[E]ach area agency on aging shall determine whether individuals who reside in the area that the area agency on aging serves and are on a waiting list for the PASSPORT program have been admitted to a nursing facility. If an area agency on aging determines that such an individual has been admitted to a nursing facility, the agency shall notify the long-term care consultation program administrator serving the area in which the individual resides about the determination. The administrator shall determine whether the PASSPORT program is appropriate for the individual and whether the individual would rather participate in the PASSPORT program than continue residing in the nursing facility. If the administrator determines that the PASSPORT program is appropriate for the individual and the individual would rather participate in the PASSPORT program than continue residing in the nursing facility, the administrator shall so notify the department of aging. On receipt of the notice from the administrator, the department of aging shall approve the individual's enrollment in the PASSPORT program regardless of the PASSPORT program's waiting list and even though the enrollment causes enrollment in the program to exceed the limit that would otherwise apply."

Accordingly, ODA is proposing to remove the citation of the temporary mandate made in paragraph (F)(2) of rule 173-42-01 of the Administrative Code. In its place, ODA is proposing to cite section 173.401 of the Revised Code in the "Rule Amplifies" section at the end of the rule.

Additionally, ODA is proposing to make the following non-substantive amendments to the definitions portion of the rule:

1. After "Definitions" in paragraph (B) of the rule, ODA is adding "for this rule:"
2. In paragraph (B)(1) of this rule, ODA is deleting "the local" and placing "county department of job and family services" in quotation marks.
3. In paragraph (B)(2) of the rule, ODA is replacing "Facility" with "facility."
4. In paragraph (B)(3) of the rule, ODA is placing "the Ohio department of job and family services" in quotation marks.

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: **10/28/2009**

(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 adoption of this proposed amended rule will cause no impact upon the budget established for ODA by the Ohio General Assembly because the Ohio General Assembly mandated the changes in two state biennial

budgets when they enacted section 173.401 of the Revised Code as part of of Am. Sub. H. B. No. 119 (127th G. A) and amended sections 173.40 and 173.42 of the Revised Code in Am. Sub. H. B. No. 1 (128th G. A.).

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

GRF-490-423 Long-Term Care Budget-State

3C40-490-623 Long-Term Care Budget

4J40-490-610 PASSPORT/Residential State Supplement

4U90-490-602 PASSPORT Fund

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 will be no cost of compliance to any directly-affected person as a result of the proposed adoption 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**