

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

Agency Name

Division

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173-42-01

Rule Number

NEW

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? **No**

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: **119.03**

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 adopt this new rule as part of a larger rule package.

ODA is proposing to rescind rule 173-42-01 of the Administrative Code and replace it by adopting new rules 173-42-01 and 173-42-03 of the Administrative Code. In doing so, ODA has 3 basic goals:

1. To incorporate H.B. No. 153's amendments to sections 173.401 and 173.404 of the Revised Code into Chapter 173-42 of the Administrative Code. H.B. No. 153's amendments take effect on September 29, 2011. The amendments will change the

Unified Waiting List and the Home First component of the Medicaid-Funded Component of the PASSPORT Program by allowing ODA's designee to immediately enroll an eligible individual into the program any time a slot is available in the program without the formality of adding and removing the individual from the Unified Waiting List. H.B. No. 153's amendments also change in nomenclature for the program and now calls the program the "Medicaid-Funded Component of the PASSPORT Program." ODA must now incorporate the changes into Chapter 173-42 of the Administrative Code. To do this, ODA proposes to replace rule 173-42-01 of the Administrative Code with new rules 173-42-01 and 173-42-03 of the Administrative Code. ODA proposes to rescind the current rule and adopt the new rules on September 29, 2011, the same day that H.B. No. 153's rules 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.):

a. ODA is proposing to adopt the new 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 sections 173.401 and 173.404 of the Revised 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. Earlier in 2011, ODA adopted the most-recent versions of rule 173-42-01 of the Administrative Code after undergoing a similar review process. After reviewing this rule again, ODA has determined that:

i. The rule and the proposed amendment to the rule do not burden any Ohio business. The only businesses subject to the rule are ODA's designees and the rule proposals eliminate an unnecessary process that current rules require of ODA's designees.

ii. ODA wrote the rule and the proposed amendment to the rule in a manner that is as easy to understand as the subject matter permits, including adding a helpful cross-reference, and aligning topics under standard rule titles for uniformity between chapters of the Administrative Code and between programs.

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:

Specifically, ODA is proposing to:

1. Change the title from "Enrollment process for PASSPORT home and community-based services medicaid waiver program" to "Introduction and definitions." "Introduction and definitions" is a standard rule title that ODA assigns to the first rule of each chapter of rules it adopts into the Ohio Administrative Code.
2. Add an introductory paragraph that explains the chapter is about the Medicaid-funded component of the PASSPORT program.
3. Add a cross-reference to Chapter 173-40 of the Administrative Code to the introductory paragraph. In the interest of making ODA's rules as easy to understand as the subject matter permits, ODA wants to help readers of ODA's rules easily located the chapter on the state-funded component of the PASSPORT program.
4. Remove all enrollment language. The language now appears in proposed new rule 173-42-03 of the Administrative Code. ODA's standard is to assign rule numbers that end in "-03" to rules on the enrollment process. This provides uniformity to ODA's rules that make comparing one chapter of rules to the next as easy to understand as the subject matter permits.
5. Continue to define "CDJFS," "Nursing facility," "ODA's designee," and "ODJFS" as ODA did in the to-be-rescinded version of the rule.
6. Remove the definitions for "authorized representative" and for the enrollment forms. Because the terms are specific to enrollment and will soon only appear in one rule of Chapter 173-42 of the Administrative Code (proposed new rule 173-42-03 of the Administrative Code), ODA now defines the terms in the definitions at the end of proposed new rule 173-42-03 of the Administrative Code so that the definition of the term is as close as possible to the single usage of the terms.
7. Change the definition for "PASSPORT Program" to reflect H.B. No. 153's change in nomenclature for the program, which it now calls the "Medicaid-funded component of the PASSPORT program."
8. Insert "173.01" into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.

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 29, 2011, ODA revise-filed the rule to:

1. Add a definition for "authroized representative" that matches the same definition in other ODA and JFS rules. (See the revised filing on August 17, 2011.)
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

On August 10, 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 aplying for, or receiving, medical assistance," and to (b) delete the second sentence.

2. Revise this RSFA.

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 have no impact on revenues or expenditures.

\$0.00

The proposed new rule only introduces Chapter 173-42 of the Administrative Code and defines terms used in the chapter that do not have a direct impact upon ODA's biennial budget.

Although ODA operates the Medicaid-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 sections 173.401 and 173.404 of the Revised Code into the impact upon line item GRF-600-525 and the Medicaid-funded component of the PASSPORT Program. Therefore, the savings H.B. No. 153's amendments generate are part of H.B. No. 153'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 adoption of this new rule to replace the definitions portion of current rule 173-42-01 of the Administrative Code.

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**