

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

Agency Name

Division

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173-42-03

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Enrollment process for the medicaid-funded PASSPORT program.**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, 173.404**

5. Statute(s) the rule, as filed, amplifies or implements: **173.40, 173.401, 173.404**

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 adopt this new rule to:

1. Incorporate the enrollment language from rules 173-42-01 into this rule.
2. Incorporate the language from rule 173-44-04 of the Administrative Code concerning the Home First Component of the PASSPORT Program into this rule.
3. Describe the unified waiting list as one of two options ODA's designee shall take when enrolling an eligible individual into the PASSPORT Program when no slot is available. The other option is now the home-first component of the PASSPORT Program.
4. Use the new nomenclature for the program throughout the rule (i.e., "Medicaid-funded component of the PASSPORT program.")
5. Organize the rule in a format as similar to rule 173-38-03 of the Administrative Code as possible to make comparing the rules as easy as possible. This will make the ODA's rules as easy to comprehend as the subject matter allows. This will also allow the public to easily compare the enrollment processes between the Medicaid-funded component of the PASSPORT Program and the Medicaid-funded component of the Assisted Living Program, which will be of more importance as the State of Ohio considers the consolidation of its Medicaid waiver programs, as authorized to do under H.B. No. 153.
6. 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. Remove the definition of "authorized representative." Please see ODA's proposed new definition in rule 173-42-01 of the Administrative Code.
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

On August 4, 2011, ODA revise-filed the rule to:

1. Replace "10/09/2009" in the prior effective dates with "10/03/2009."
2. Revise this RSFA.

On August 10, 2011, ODA revise-filed the rule to:

1. Replace "f" in paragraph (A)(1) of the rule with "of."
2. Replace "the individual is ineligible to enroll in the program" in paragraph (B) of the rule with "ODA's designee shall not enroll the individual."
3. Replace "the individual of the approval for enrollment for an individual determined to meet" in paragraph (C)(1) of the rule with "any individual who meets." Then, insert "that he or she meets all PASSPORT eligibility ceriteria."
4. Remove "because the current number of enrolled individuals has reached the maximum number of waiver slots the United States secretary of health and human services allows for the program" from paragraph (C)(3) of the rule.
5. Insert "component of the" after "medicaid-funded" as the term occurs in paragraphs (A), (C)(2), (C)(3), (C)(3)(b)(i), (C)(3)(b)(ii), and (C)(3)(b)(ii)(b)(2) of the rule.
6. Replace the first occurrence of "to adult protective services" in paragraph

(C)(3)(b)(ii)(b)(iv)(A) of the rule with "to the CDJFS" and replace the second occurrence in the same paragraph with "for adult protective services."

7. Replace the apostrophe in paragraph (E)(1) of the rule with quotation marks.
8. Upload a revised public-hearing notice.
9. 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

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.

Nevertheless, it is helpful to explain that ODA estimates that H.B. No. 153's amendments may lower the administrative costs for the PASSPORT program which corresponds to a proposed 5% reduction in payments to PASSPORT

administrative agencies in connection with H.B. No. 153. The amendments may lower administrative costs because they will change the Unified Waiting List and the Home First component of the Medicaid-Funded Component of the PASSPORT Program by preventing ODA's designee (i.e., the PASSPORT administrative agency) from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow 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 waiting list.

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 the proposed adoption of this new rule will have no cost of compliance upon any directly-affected person.

A person who applies for the PASSPORT Program incurs no cost of compliance.

The organizations that ODA designates to administrate the PASSPORT Program should not experience a new cost of compliance. Instead, they should experience a drop in administrative costs because H.B. No. 153's amendments to sections 173.401 and 173.404 of the Revised Code will change the Unified Waiting List and the Home First component of the Medicaid-Funded Component of the PASSPORT Program, by preventing ODA's designee (i.e., the PASSPORT administrative agency) from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow 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 waiting list.

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**