

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-42-06

**Rule Type:** Amendment

**Rule Title/Tagline:** PASSPORT program (medicaid-funded component): individuals' choices and responsibilities.

**Agency Name:** Department of Aging

**Division:**

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#### **I. Rule Summary**

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 3/20/2023
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 9 - 134 - McColley, Roegner
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 173.01, 173.02, 173.52
5. **What statute(s) does the rule implement or amplify?** 173.52; 42 C.F.R. 441.352
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
  - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

This rule exists to establish the choices and responsibilities for individuals who enroll into the Medicaid-funded component of the PASSPORT Program, including those choices and responsibilities regarding employing a participant-directed provider.

**8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule establishes the choices and responsibilities for individuals who enroll into the Medicaid-funded component of the PASSPORT Program, including those choices and responsibilities regarding employing a participant-directed provider. ODA proposes to amend this rule to achieve the following:

1. Reduce the use of unnecessary regulatory restrictions (e.g., shall) in every rule in this package to comply with R.C. §§ 106.03 and 121.951.1 This proposal includes some substantive changes noted below. This proposal also includes numerous non-substantive changes, which account for a majority of the changes being proposed for this rule.
2. Refer to the requirements for person-centered planning in rule 5160-44-02 of the Administrative Code rather than establishing person-centered planning requirements in this rule. [¶¶ (A)(1) and (A)(2)]
3. Refer to the requirements for reporting incidents in rule 5160-44-05 of the Administrative Code rather than establishing requirements for reporting incidents in this rule. [¶(B)(4)]
4. Eliminate requirements for reporting significant changes that are now considered incidents under rule 5160-44-05 of the Administrative Code. [¶(A)(3)(c)(iv)]
5. Add the following as new significant changes that an individual must report to ODA's designee: (1) The provider does not provide as service as authorized and (2) the individual repeatedly refused an authorized service. [¶(A)(3)(c)(iv)]
6. No longer require form ODA1041. [¶(C)(1)(a)]
7. No longer require the individual, as the employer of record, to work with the provider to decide what, if any, continuing education to require. [¶(D)(2)(d)]
8. Require individuals to develop an activity plan with the provider. [¶(D)(3)(a)] ODA is moving this requirement from rule 173-39-02.11 of the Administrative Code to this rule and is transferring the regulatory restriction to this rule rather than adding a new regulatory restriction to this rule.

9. Prohibit the individual from verifying blank time sheets or time sheets that the provider completes before providing a service. [¶(D)(3)(c)]

10. Add a definition for EVV. [¶(F)]

11. Delete an obsolete definition for "incident." [¶(F)]

12. Make additional non-substantive changes to improve this rule.

13. See also ODA's notes on the revised filing.

ODA proposes for all amendments to take effect on July 1, 2023, which is the anticipated effective date for the renewal application to the Centers for Medicare and Medicaid Services (CMS) for the PASSPORT Program to be a Medicaid-waiver program.

**9. Does the rule incorporate material by reference? No**

**10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

**11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

ODA made a refiled filing of this rule to merge paragraphs (D)(2)(c) and (D)(2)(d) of this rule and for the resulting paragraph to read as follows: "The individual shall consult with ODA's designee to determine what, if any, skills the provider needs to meet the individual's specific needs, training the provider needs to obtain those skills, deadline to impose on the provider to complete the training, and means for the provider to access the training. The individual may participate in the training." This involves moving a standards for the individual in proposed new rule 173-39-02.4 of the Administrative Code (as originally filed) to this rule, since the former rule is a rule that regulates providers. This also adds a new requirement for the individual to establish a deadline for the provider to complete the training.

*03/20/2023 ODA made a revised filing of this rule to account for additional removed regulatory restriction words in this rule.*

## **II. Fiscal Analysis**

- 12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

The proposed amendments will have no impact on the biennial budget that the Ohio General Assembly established for ODA.

- 13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

This rule lists requirements for individuals who enroll in the Medicaid-funded component of the PASSPORT Program. For an individual who chooses to employ a participant-directed provider and is assessed to be able to perform the duties of an employer, this rule includes requirements for the individual as the employer of record for a participant-directed provider.

- 14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
- 15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
- 16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

### **III. Common Sense Initiative (CSI) Questions**

- 17. Was this rule filed with the Common Sense Initiative Office? No**
- 18. Does this rule have an adverse impact on business? No**
- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**
- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? No
- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

**IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**

**19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

- A. How many new regulatory restrictions do you propose adding to this rule? 0
- B. How many existing regulatory restrictions do you propose removing from this rule? 31

1. (A)(1) The individual and ODA's designee SHALL meet by telephone, video conference, or in person to develop the individual's person-centered services plan (plan) according to rule 5160-44-02 of the Administrative Code.

2. (A)(2)(b) To assure the individual's health and safety, ODA's designee SHALL help the individual make choices....

3. (A)(2)(b) ...that ODA's designee SHALL record into the plan.

4. (A)(2)(b) In doing so, ODA's designee SHALL acknowledge that the individual may make choices that negatively impact his or her life.

5. (A)(2)(c) In the plan, ODA's designee SHALL record the following:

6. (A)(2)(d) After the plan is developed, ODA's designee SHALL give electronic or paper copies of the plan to the individual, the individual's team, and the providers authorized in the plan.

7. (B)(1) The individual SHALL treat providers with respect.

8. (B)(2) The individual SHALL allow ODA's designee to exchange information....

9. (B)(3) The individual SHALL neither request nor offer assistance to....

10. (B)(4) The individual SHALL report any incident involving the provider to ODA's designee.
11. (B)(5) The individual SHALL notify ODA's designee if the provider...misses a scheduled service episode.
12. (B)(6) The individual SHALL notify the provider if the individual is going to miss a scheduled service episode,....
13. (B)(7) Immediately following the conclusion of each episode of service by a participant-directed provider, the individual SHALL provide the provider....with the individual's unique identifier...
14. (B)(8) The individual SHALL verify when each episode of service begins and ends....
15. (B)(9) The individual shall work with ODA's designee to resolve problems and concerns.
16. (C)(1) ODA's designee SHALL authorize a participant-directed provider for the individual if all of the following are met:
  17. (C)(1)(d) ODA's designee SHALL base this determination on an assessment of the individual's strengths and weaknesses related to his or her ability to direct a provider.
  18. (C)(1)(d) The assessment SHALL evaluate whether the individual demonstrates an understanding of all of the following:
  19. (D)(1)(a) In a manner that is most effective for the individual, ODA's designee SHALL provide the individual with the following information:
  20. (D)(1)(b) ODA's designee SHALL review the information listed under....
  21. (D)(1)(c) ODA's designee SHALL help the individual recruit hire, retain, and fire his or her participant-directed provider.
  22. (D)(1)(d) ODA's designee SHALL communicate with the individual in a manner that protects the individuals confidentiality.
  23. (D)(1)(e) ODA's designee SHALL help the individual identify the method...

24. (D)(1)(e) ...by which the individual SHALL verify that the provider provides each episode of service.....
25. (D)(1)(f) ODA's designee may revise the person-centered services plan to REQUIRE the individual to receive services from only agency or non-agency providers if the individual fails to comply with the requirements under....
26. (D)(1)(f) ..., ODA's designee SHALL give the individual a notice to this effect....
27. (D)(2)(a) ...the individual with the assistance of ODA's designee SHALL review databases and check criminal records....
28. (D)(2)(c) The individual and ODA's designee SHALL work with the provider to secure the educational opportunity.
29. (D)(2)(d) The individual and ODA's designee SHALL work with the provider to secure the educational opportunity.
30. (B)(4) In turn, ODA's designee SHALL investigate....
31. (B)(7) The individual SHALL never verify blank time sheets or time sheets....
- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**
- Not Applicable