

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-50-05

Rule Type: New

Rule Title/Tagline: PACE: involuntary disenrollment.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
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, 173.50
5. **What statute(s) does the rule implement or amplify?** 173.50; 42 C.F.R. 460.164, 460.166, 460.172, 460.210
6. **What are the reasons for proposing the rule?**

This rule package updates ODA's PACE rules to comply with recent changes to federal PACE rules in 42 CFR Part 460. For more information, please review the business impact analysis (BIA).
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This proposed new rule would establish the process for involuntary disenrollment from PACE. ODA proposes to adopt this new rule to replace a rule of the same number that ODA proposes to simultaneously rescind.

This proposed new rule would differ from the current rule because ODA would reword and reorganize it to comply with the June 3, 2019 amendments to 42 CFR 460.164, 460.166, 460.172. For more information, please review the BIA.

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

- 10. 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 revised filing of this rule to reschedule the public hearing and to upload a new public hearing notice into the Register of Ohio. In doing so, ODA did not make any revisions to this proposed new rule.

II. Fiscal Analysis

- 11. 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 adoption of this new rule would not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 166 (133rd G.A.).

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

This proposed new rule would establish the process for involuntary disenrollment from PACE.

It may affect PACE participants who no longer qualify for PACE.

It may affect the income the PACE organization makes from premiums by processing disenrollments from the program for participants who no longer qualify for PACE.

For more information, please review the BIA.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
15. **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

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **Does this rule have an adverse impact on business? Yes**
 - 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? Yes**

This proposed new rule would require the PACE organization to (1) submit documentation to ODA regarding a participant slated for involuntary disenrollment, (2) notify the to-be discharged participant, (3) develop a discharge plan, and (4) provide medical records of a disenrolling participant to the participant's new providers.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. 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? 2

(A)(3)(a) [in new rule] When a participant with decision making-capacity fails to comply with his or her plan of care (e.g., repeated non-compliance with medical advice or repeated failure to keep appointments), the PACE organization SHALL document at least two attempts it made in the past six months to educate the participant on the importance of following the care plan, the negative health consequences of not doing so, and a warning that not doing so may result in disenrollment.

(A)(3)(c) [in new rule] The PACE organization SHALL only involuntarily disenroll a participant for the participant's or caregiver's disruptive or threatening behavior if the PACE organization retains the following in the participant's medical record

B. How many existing regulatory restrictions do you propose removing? 11

(A)(1) [in rule to rescind] Failure to pay: The PACE organization SHALL involuntarily disenroll a participant after a thirty-day grace period for not paying (or satisfactorily arranging to pay) any premium or patient-liability costs owed to the PACE organization...

(A)(2) [in rule to rescind] Fraud: The PACE organization SHALL involuntarily disenroll a participant who commits medicaid fraud or medicaid eligibility fraud, as described in....

(A)(3) [in rule to rescind] Abusive behavior: The PACE organization SHALL involuntarily disenroll a participant who engages in abusive behavior (e.g., threats with a weapon, physical abuse, or recurrent verbal abuse) jeopardizing the participant's safety, other participant's safety, or the safety of employees of the PACE organization, an affiliate, or a subcontractor....

(A)(4)(a) [in rule to rescind] The PACE organization SHALL involuntarily disenroll a participant whose permanent residence is n longer located in the service area.

(A)(4)(b) [in rule to rescind] The PACE organization SHALL involuntarily disenroll a participant for remaining outside the service area for a period for more than thirty consecutive days,....

(A)(5) [in rule to rescind] Incarceration: The PACE organization SHALL involuntarily disenroll a participant for being incarcerated for a period of more than thirty consecutive days.

(A)(6) [in rule to rescind] Physician-patient relationship: The PACE organization SHALL involuntarily disenroll a participant for not maintaining a satisfactory physician-patient relationship (e.g., repeated non-compliance with medical advice or repeated failure to keep appointments).

(A)(7) [in rule to rescind] Care plan: The PACE organization SHALL involuntarily disenroll a participant for not complying with the interdisciplinary team's care plan....

(A)(8) [in rule to rescind] Level of care: The PACE organization SHALL involuntarily disenroll a participant who no longer meets the level-of-care requirements....

(A)(9) [in rule to rescind] Providers: The PACE organization SHALL involuntarily disenroll a participant if the PACE organization is unable to offer healthcare services because of a loss of state licenses or contracts with outside providers.

(A)(10) [in rule to rescind] PACE agreement: The PACE organization SHALL involuntarily disenroll a participant if the agreement between the PACE organization, ODA, and CMS is not renewed or is terminated.