

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

Agency Name

Division

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173-38-01

Rule Number

AMENDMENT

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? **Yes**

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, 5111.89**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.89**

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

ODA is proposing to amend this rule as part of a larger rule package.

ODA is proposing to amend Chapter 173-38 of the Administrative Code. In doing so, ODA has 4 basic goals:

1. To incorporate H.B. No. 153's amendments to the Assisted Living Program into Chapter 173-38 of the Administrative Code. H.B. No. 153's amendments to sections 173.404 and 5111.894 of the Revised Code 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 Assisted Living 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 the nomenclature for the program and now name the program the "Medicaid-Funded Component of the Assisted Living Program." ODA must now incorporate the changes into Chapter 173-38 of the Administrative Code. ODA proposes to adopt amendments to the chapter on September 29, 2011, the same day that H.B. No. 153's amendments take effect.

2. To correct an incorrect citation in rule 173-38-04 of the Administrative Code.

3. 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.

4. 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 section 5111.89 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. In 2009, ODA adopted the most-recent versions of Chapter 173-38 of the Administrative Code after undergoing a similar process. After reviewing this chapter 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 amend the rule to:

1. Indicate in paragraph (A) of the rule that Chapter 173-38 of the Administrative Code regulates the Medicaid-funded component of the Assisted Living Program.
2. Provide a helpful cross-reference to Chapter 173-51 of the Administrative Code for the state-funded component of the Assisted Living Program.
3. Revise the definition for "service plan" by removing the passive-voice language. ODA replaced "are provided" with "provider furnishes." Additionally, ODA inserted "the" before "services" to make it clear that the provider furnishes services to a consumer, not the written outline of services.
4. Add section 173.01 of the Revised Code to the list of sections that give ODA statutory authority to adopt this rule.

Please also note ODA's list of revisions in item #11 of this RSFA.

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 standard definition for "authorized representative" that is found in other ODA and JFS rules. This replaces the definition in rule 173-38-03 of the Administrative Code. (See the revised filing on August 17, 2011.)
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

On August 11, 2011, ODA revise-filed the rule to:

1. Replace the definition of "service plan" from, "'Service plan' (aka, 'careplan') means the written outline of the services that a provider furnishes to a consumer" to "'Service plan' (aka, 'careplan') means the written outline of the services that ODA's designee expects a provider to furnish to a consumer."
2. Upload a revised public-hearing notice.
3. 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 applying for, or receiving, medical assistance," and to (b) delete the second sentence.
2. Revise this RSFA.

12. 119.032 Rule Review Date: 7/13/2011

(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 amended rule only introduces Chapter 173-38 of the Administrative Code and defines terms used in the chapter that have no direct impact upon ODA's biennial budget.

Although ODA operates the Medicaid-funded component of the Assisted Living Program, H.B. No. 153 moved the Assisted Living 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 173.404 and 5111.894 of the Revised Code into the impact upon line item GRF-600-525 and the Medicaid-funded component of the Assisted Living 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 amendment of this rule to any directly-affected person, especially because the proposed amended rule only introduces Chapter 173-38 of the Administrative Code and defines terms used in the chapter that do not create a cost of compliance.

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**

