Rule Summary and Fiscal Analysis (Part A)

Department of Aging
Agency Name

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173-38-03 | **AMENDMENT**
Rule Number | TYPE of rule filing

Rule Title/Tag Line **Enrollment process.**

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: **HB398** General Assembly: **128** Sponsor: **Newcomb and Lehner**

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: **173.02, 173.404, 5111.89**

5. Statute(s) the rule, as filed, amplifies or implements: **173.404, 5111.89, 5111.894**

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

ODA is proposing to adopt new rule 173-44-04 of the Administrative Code, to replace rules 173-37-01 and 173-42-01 of the Administrative Code with new rules of the same number, and to amend rules 173-38-03 and 173-50-03 of the Administrative Code. In doing so, ODA has four basic goals:

1. To implement House Bill No. 398 (128th G. A.) which involves creating a

unified waiting list in proposed new rule 173-44-04 of the Administrative Code that is compliant with section 173.404 of the Revised Code and removing pre-House Bill No. 398 (128th G.A.) waiting-list language from rules 173-37-01, 173-38-03, 173-42-01, and 173-50-03 of the Administrative Code.

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 Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires each state agency to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. As a result, ODA's proposed new or amended language:

a. Complies with the Legislative Service Commission's "Rule Drafting Manual" as found on http://www.lsc.state.oh.us/rules/rdm06_06.pdf

b. Incorporates the recommendations of "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007)

c. Incorporates the recommendations of "Plain English Writing Tips" as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.

4. Add section 173.404 of the Revised Code to both the "Statutory Authority" and the "Rule Amplifies" sections of the rules.

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:

This rule presents the enrollment process for the Assisted Living Program.

In addition to the goals stated above, in this proposed amended rule, ODA is proposing to:

1. Replace all occurrences of "the PAA" with "ODA's designee."

2. Replace "paragraph" with "rule" in paragraph (C)(1) of the rule.

3. Insert "for this rule" after "Definitions" in paragraph (E) of the 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:

Not Applicable.

12. 119.032 Rule Review Date: **11/18/2010**

(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

ODA anticipates that the total rule project that involves creating a unified waiting list in proposed new rule 173-44-04 of the Administrative Code and removing pre-House Bill No. 398 (128th G.A.) waiting-list language from rules 173-37-01, 173-38-03, 173-42-01, and 173-50-03 of the Administrative Code will have the same budgetary impact highlighted inder "State Fiscal Impacts" in the fiscal note and local impact statement for H. B. No. 398 (128th G.A.), which are listed as follows:

"Expenditures for nursing facility care would likely decrease while expenditures for PASSPORT, PACE, and Assisted Living services would likely increase. The net effect would be a decrease in expenditures, as on average, care provided under PASSPORT, PACE, and Assisted Living is less costly than nursing facility care. The amount of the net decrease would depend upon the number of individuals enrolled onto one of the programs through the new Home First provisions in the bill. However, estimates provided through the Ohio Association of Area Agencies on Aging maintain that between 163 and 328 individuals per month could be impacted by the bill. If this is the case, the savings could be in the tens of millions of dollars in each fiscal year."

"For FY 2010 and FY 2011, the bill allows the Director of Budget and Management, in consultation with the directors of Aging and Job and Family Services, to: transfer cash between funds for the Home First Program from the Ohio Department of Job and Family Services to the Ohio Department of Aging; and authorize expenditures from line items used for Home First in amounts exceeding the appropriated amounts if receipts credited to the funds supporting those line items exceed the amounts appropriated due to individuals transitioning to PASSPORT, PACE, or Assisted Living under Home First. For FY 2012 and FY 2013, the transfers are required. In addition, the directors of Aging and Job and Family Services are required to request the Director of Budget and Management to authorize expenditures in amounts exceeding the appropriated amounts if receipts credited exceed appropriated amounts."

"Expenditures for community transition services provided through PASSPORT and Assisted Living would likely decrease."

"Revenue recovered for unresolved debt from long-term care providers could increase."

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-423 Long-Term Care Budget - State.

3C40-490-623 Long-Term Care Budget.

4J40-490-610 PASSPORT/Residential State Supplement.

4U90-490-602 PASSPORT Fund.

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 anticipates that the total rule project that involves creating a unified waiting list in proposed new rule 173-44-04 of the Administrative Code and removing pre-House Bill No. 398 (128th G.A.) waiting-list language from rules 173-37-01, 173-38-03, 173-42-01, and 173-50-03 of the Administrative Code will have the same cost of compliance highlighted inder "Local Fiscal Highlights" in the fiscal note and local impact statement for H. B. No. 398 (128th G.A.), "The Ohio Association on Area Agencies on Aging has stated that the bill will not impose new requirements on either area agencies on aging or county departments of job and family services. However, if either area agencies on aging or county departments of job and family services experience any increased administrative duties associated with the bill, the increased costs would likely be paid for with state and federal dollars." Additionally, no indiviual seeking to participate in the Assisted Living Program, Choices Program, PACE, or PASSPORT Program faces a cost of compliance associated with the total rule project.

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**