

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

Agency Name

Division

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**173-38-03**

Rule Number

**NEW**

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? **No**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB420**General Assembly: **127**Sponsor: **Brinkman**

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, 5111.89**

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

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

TRANSPARENCY and EASE of COMPREHENSION: Currently, the rules that regulate the Assisted Living Program appear in various chapters of the Administrative Code under the authority of multiple agencies. It would be difficult for a person looking at ODA's rules in the online version of the Administrative Code to know that the rule that regulate the assisted living service is rule 173-39-02.16 of the Administrative Code, which is a rule that is in a different chapter than the rule on the enrollment process, which is rule 173-38-01, and which is in a different chapter than the rules on the eligibility criteria. Therefore, in order

to draft rules in such a way that the general public readily has access to the rules that affect the Assisted Living Program, ODA is proposing to replace rule 173-38-01 of the Administrative Code with a small chapter of rules that reveals the location of these topics.

The proposed new rules of Chapter 173-38 of the Administrative Code are: 173-38-01, which introduces the program and defines terms used in the chapter; 173-38-02, which cross-references the rules on eligibility criteria; 173-38-03, which regulates the enrollment process; 173-38-04, which cross-references the rule on provider certification; and 173-38-05, which cross-references the rules on the services that are covered by the program.

In the proposed new rules, ODA uses language that complies with the Legislative Service Commission's "Rule Drafting Manual" ([http://www.lsc.state.oh.us/rules/rdm06\\_06.pdf](http://www.lsc.state.oh.us/rules/rdm06_06.pdf)) and that follows the recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007). This results in language that uses the active, not passive (i.e., "shall be") voice; uses the singular, unless the plural is necessary; is less verbose; and uses less legalese.

These actions make the proposed new assisted living rules easier to comprehend than the current rules and promotes transparency regarding regulations, in compliance with Governor Strickland's Executive Order 2008-04S: Implementing Common Sense Business Regulation.

**PROGRAMMATIC CHANGES:** In this proposed new rule, ODA is proposing some changes in comparison to rule 173-38-01, which ODA is simultaneously proposing to rescind:

1. ODA has inserted language indicating it is the PASSPORT administrative agency (PAA), not a county department of job and family services (CDJFS) that determines the date of eligibility to enroll in the program. (See also paragraph (E) of ODJFS' proposed rule 5101:3-33-04.)
2. ODA incorporates the "home first" language of section 5111.894 of the Revised Code (as enacted by House Bill No. 420 (127th G. A.)) by indicating that, if a slot in the program becomes available, the PAA shall remove the applicant from the waiting list so the PAA may enroll the applicant into the program. In doing so, the PAA shall select an applicant from the waiting list in the following order: (i) First: an applicant who resides in a nursing facility. (ii) Second: any other applicant.

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 proposed new rule regulates the enrollment process for the assisted living

program, including the regulations for the waiting list established under section 5111.894 of the Revised Code by House Bill No. 420 (127th G.A.).

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 June 29, 2009, ODA revise-filed this proposed new rule to update the RSFA.

On July 28, 2009, ODA revise-filed this proposed new rule to:

1. Replace paragraph (A) of the rule, which read, "(A) Initial contact: A person may contact either the CDJFS or the PAA to begin the enrollment process:", with "(A) Initial contact: To determine if an applicant for the assisted living program meets eligibility criteria for the program under rule 5101:3-33-03 of the Administrative Code, the CDJFS shall determine if the applicant meets the medicaid financial eligibility criteria required by that rule and the PAA shall determine if the applicant meets the non-financial eligibility required by that rule. An applicant may initially contact either the CDJFS or the PAA to begin the enrollment process:"

2. Replace paragraph (A)(1) of the rule, which read, "(1) The person who makes

initial contact with the CDJFS shall complete forms JFS07200 and JFS02399. The CDJFS shall determine if the applicant meets the program's financial eligibility criteria under Chapters 5101:1-37 to 5101:1-39 of the Administrative Code and shall notify the PAA of the person's application. In response, the PAA shall initiate contact with the applicant to perform an in-person assessment to determine if he/she meets the non-financial eligibility criteria under rule 5101:3-33-03 of the Administrative Code.", with "(1) CDJFS: The applicant who makes initial contact with the CDJFS shall complete forms JFS07200 and JFS02399. The CDJFS shall determine if the applicant meets the program's financial eligibility criteria and shall notify the PAA of the applicant's application. In response, the PAA shall initiate contact with the applicant to perform an in-person assessment to determine if the applicant meets the non-financial eligibility criteria."

3. Replace paragraph (A)(2) of the rule, which read, "(2) For the person who makes initial contact with the PAA, the PAA shall perform an in-person assessment to determine if the applicant meets the non-financial eligibility criteria under rule 5101:3-33-03 of the Administrative Code. The PAA may help him/her complete forms JFS07200 and JFS02399 and may submit the forms to the CDJFS so the CDJFS may determine if he/she meets the program's financial eligibility criteria under Chapters 5101:1-37 to 5101:1-39 of the Administrative Code.", with "(2) PAA: The applicant who makes initial contact with the PAA shall complete forms JFS07200 and JFS02399 and submit the forms to the CDJFS. The PAA may help the applicant complete the forms and may forward the completed forms to the CDJFS on behalf of the applicant. The PAA shall perform an in-person assessment to determine if the applicant meets the non-financial eligibility criteria."

4. Replace paragraph (B) of the rule, which read, "(B) If ineligible: If the CDJFS determines that the applicant does not meet the program's financial eligibility criteria, it shall send a notice of denial and hearing rights to him/her and also notify the PAA. If the PAA determines that the applicant does not meet the non-financial eligibility criteria, it shall notify him/her and also notify the CDJFS.", with the following paragraphs: "(B) If determined ineligible: If the CDJFS or the PAA determine that the applicant does not meet the eligibility criteria for the program under rule 5101:3-33-03 of the Administrative Code, the applicant is ineligible to enroll in the program. (1) If the CDJFS determines that the applicant does not meet the financial eligibility criteria, it shall send a notice of denial and hearing rights to the applicant and also notify the PAA. (2) If the PAA determines that the applicant does not meet the non-financial eligibility criteria, it shall notify the applicant and also notify the CDJFS. In turn, the CDJFS shall send a notice of denial and hearing rights to the applicant."

5. Replace paragraph (C)(1) of the rule, which read, "(1) Date of determination of eligibility to enroll: If the CDJFS determines that the applicant meets the program's financial eligibility criteria and the PAA determines that the applicant meets the non-financial eligibility criteria, the PAA shall establish the date the applicant is eligible to enroll in the program. The CDJFS shall not establish this date. Only the

PAA shall establish this date, and it shall do so accordingly:" with the following:  
"(1) Waiver program enrollment date: Pursuant to paragraph 5101:1-38-01.6 of the Administrative Code, the PAA shall establish the waiver program enrollment date in the following manner:"

6. Replace paragraph (C)(1)(a) of the rule, which read, "(a) If the applicant currently receives medicaid services, either as a consumer of the PASSPORT program, the choices program, the Ohio home care program, or the transitions program, or as a nursing facility resident, the PAA shall establish the date the applicant is eligible to enroll as the latter of:" with "(a) If the applicant currently receives medicaid services, either as a consumer of the PASSPORT program, the choices program, the Ohio home care program, or the transitions program, or as a nursing facility resident, the PAA shall establish the waiver program enrollment date as the latter of:"

7. Replace paragraph (C)(1)(a)(i) of the rule, which read, "(i) The date the applicant met all non-financial eligibility criteria; or,", with "(i) The date the PAA determined that the applicant met all non-financial eligibility criteria under rule 5101:3-33-03 of the Administrative Code; or,"

8. Replace paragraph (C)(1)(a)(ii) of the rule, which read, "(ii) The date the applicant becomes a resident of an assisted living facility.", with "(ii) The date the applicant becomes a resident of a residential care facility that is licensed by the department of health and certified by ODA as an assisted living provider."

9. Replace paragraph (C)(1)(b) of the rule, which read, "(b) If the applicant does not currently receive medicaid services, the PAA shall establish the date the applicant is eligible to enroll as the latter of:", with "(b) If the applicant does not currently receive medicaid services, the PAA shall establish the waiver program enrollment date the applicant is eligible to enroll as the latter of:"

10. Replace paragraph (C)(1)(b)(i) of the rule, which read, "(i) The date the applicant met all non-financial eligibility criteria; or,", with "(i) The date the PAA determined that the applicant met all non-financial eligibility criteria under rule 5101:3-33-03 of the Administrative Code; or,"

11. Replace paragraph (C)(1)(b)(ii) of the rule, which read, "(ii) The date the CDJFS issued a determination of medicaid financial eligibility for the program, regardless of the date the CDJFS establishes as the effective date of medicaid financial eligibility for the program.", with "(ii) The date the CDJFS notified the PAA that the applicant met all medicaid financial eligibility criteria required by rule 5101:3-33-03 of the Administrative Code."

12. Insert paragraph (C)(1)(c) of the rule, which reads, "(c) Pursuant to paragraph (E)(6)(d) of rule 173-39-02 of the Administrative Code, the assisted living program shall not pay for any service provided to an applicant before the PAA enrolls the applicant into the program and before the case manager authorizes the service in the

consumer's service plan."

13. Insert paragraph (C)(1)(d) of the rule, which reads, "(d) The applicant's waiver program enrollment date for the assisted living waiver program may differ from the date the CDJFS determines that the applicant is eligible for medicaid coverage, which is established according to Chapters 5101:1-37 and 5101:1-39 of the Administrative Code."

14. Replace paragraph (C)(2) of the rule, which reads, "(2) No waiting list: If the PAA establishes a date of eligibility to enroll, and if a slot in the program is available, the PAA may enroll the applicant into the program.", with "(2) No waiting list: If a slot in the program is available, and the PAA has established the applicant's waiver program enrollment date, the PAA may enroll the applicant into the program."

15. Replace paragraph (C)(3)(a) of the rule, which reads, "(a) If the PAA establishes a date of eligibility to enroll, but a slot in the program is not available, the PAA shall place the applicant on a waiting list according to the date that he/she signed form JFS02399.", with "(a) If a slot in the program is not available for an eligible applicant, the PAA shall place the applicant on a waiting list according to the date the applicant signed form JFS02399."

16. Replace paragraph (C)(3)(b) of the rule, which reads, "(b) If a slot in the program becomes available, the PAA shall remove the applicant from the waiting list so the PAA may enroll the applicant into the program. In doing so, the PAA shall select an applicant from the waiting list in the following order: (i) First: an applicant who resides in a nursing facility. (ii) Second: any other applicant. (c) If more than one applicant is waiting in a category described in paragraphs (C)(3)(b)(i) to (C)(3)(b)(ii) of this rule, the PAA shall remove the applicant with the earliest date the PAA determined that he/she was eligible to enroll in the program.", with the following paragraphs: "(b) Once a slot in the program becomes available: (i) The PAA shall offer enrollment to the applicant from the waiting list so the PAA may enroll the applicant into the program. In doing so, the PAA shall select an applicant from the waiting list in the following order: (a) First: an applicant who resides in a nursing facility. (b) Second: any other applicant. (ii) If more than one applicant is waiting in a category described in paragraphs (C)(3)(b)(i)(a) to (C)(3)(b)(i)(b) of this rule, the PAA shall offer enrollment to applicants according to the date each applicant signed form JFS02399. (iii) If the PAA offers enrollment to an applicant from the waiting list, but the applicant declines enrollment, as permitted under section 5111.894 of the Revised Code, the applicant may remain on the waiting list and the PAA shall offer enrollment to the next applicant on the list according to the order established by paragraphs (C)(3)(b)(i)(a) to (C)(3)(b)(i)(b) of this rule."

17. Update 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

ODA does not estimate that the proposed adoption of this new rule will have any impact upon the biennial budget established for ODA by the Ohio General Assembly

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

GRF-490-422 Assisted Living Waiver

3C4-490-622 Assisted Living-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 does not estimate there the proposed adoption of this new rule on the enrollment process creates any cost of compliance to any directly-affected person because the change in this rule reflects a change that was made by House Bill No. 420 (127th G.A.), not by ODA through this rule proposal.

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**