

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

Agency Name

Division

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173-40-03

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Disenrollment and other adverse actions regarding the state-funded PASSPORT program.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **Yes**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB64**General Assembly: **130**Sponsor: **Rep. Ryan Smith**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, 173.522**5. Statute(s) the rule, as filed, amplifies or implements: **173.522**

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

ODA is filing the rule as part of an end-of-the-year rule package for making miscellaneous updates. ODA proposes to align terminology in the rules with standard terminology. For more information on terminology, please review the attachment to this RSFA entitled "Appendix A: Terminology Background & Other Composition Standards."

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:

The rule determines the process for enrolling, disenrolling, and other actions related to enrolling or disenrolling into the state-funded component of the PASSPORT Program. ODA proposes to amend the rule to (1) align terminology in the rule with "Appendix A: Terminology Background & Other Composition Standards," (2) update the ODA's address in the rule, and (3) remove references to eligibility based upon losing Medicaid coverage because, effective September 29, 2015, Am. Sub. H. B. No. 64 (131st G. A.) deleted eligibility based upon loss of Medicaid from ORC§173.522.

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:

The rule references forms readily available to the general public, free of charge, on state agency websites. The definition for each form in OAC173-40-01 includes the URL where a person may access such a websites to find the form.

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:

The rule references forms readily available to the general public, free of charge, on state agency websites. The definition for each form in OAC173-40-01 includes the URL where a person may access such a websites to find the form.

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. If applicable, indicate each specific paragraph of the rule that has been modified:

On November 14, 2016, ODA made a revised filing to [1] delete "any" from paragraph (A)(2) of the rule, [3] replace "consumer" with "individual" in paragraphs (A)(3)(b), (B)(1)(a), (B)(1)(d), and (B)(3) of the rule, and [3] replace "must receive" and "will" with "shall have received" and "shall" (respectively) in paragraphs (A)(4)(d) and (B)(5)(d) of the rule. These updates are associated with the attachment to this RSFA entitled "Appendix A: Terminology Background & Other Composition Standards." ODA also revised this RSFA.

On November 30, 2016, ODA made a revised filing to remove the proposed new paragraphs (A)(1)(a), (A)(1)(b), and (A)(1)(c) of the rule and restore paragraph (A)(1) to its current form, but continue to make terminology updates to paragraph (A)(1) to "(or ODA's designee)," "consumer," "criteria," and "criterion."

12. Five Year Review (FYR) Date: 11/10/2016

(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

Adopting the amendments ODA proposes for the rule would not impact the biennial budget the Ohio General Assembly established for ODA.

The elimination of one of the bases for being eligible for the program was first enacted by Am. Sub. H.B. 64, effective September 29, 2015, not this rule filing in 2016. The General Assembly factored in the change because both the eligibility amendment and the appropriations were in H.B. 64.

Additionally, the amendments would not impact ODA's biennial budget because the General Assembly appropriated the budget line item associated with this rule to ODM. Although ODA operates the state-funded component of the PASSPORT

Program, H.B. No. 153 (129th G. A.) moved the program's funding to budget line items for the program to ODJFS. Subsequent legislation created ODM out of the Office of Medicaid in ODJFS.

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

GRF-651-525 Medicaid/Health Care Services.

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:

The adoption of the ODA's proposed amendments to the rule would not create a cost of compliance to any directly-affected person. The elimination of means to enroll a person who lost Medicaid eligibility was enacted by Am. Sub. H.B. 64 on September 29, 2015, not this rule filing in 2016.

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**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **No**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

The rule does not regulate Ohio businesses. Instead, it addresses the enrollment process for individuals seeking enrollment into the state-funded component of the PASSPORT Program.

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**

The rule does not regulate Ohio businesses. Instead, it addresses the enrollment process for individuals seeking enrollment into the state-funded component of the PASSPORT Program.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

The rule does not regulate Ohio businesses. Instead, it addresses the enrollment process for individuals seeking enrollment into the state-funded component of the PASSPORT Program.



Department of
Aging

John Kasich, Governor
Stephanie M. Loucka, Director

APPENDIX A TERMINOLOGY BACKGROUND & OTHER COMPOSITION STANDARDS

November 10, 2016

DISCLAIMER

This appendix does not define terms used in ODA's rules. Instead, it provides background on why ODA is systematically incorporating uniform terminology and other composition standards into new and amended rules. For definitions, please see the definitions in ODA's rules.

BACKGROUND FOR TERMINOLOGY

AAA-provider agreement: ODA proposes to use "AAA-provider agreement" instead of "provider agreement" to represent agreements between an AAA and the provider. The term is used much in OAC Chapter 173-3, which regulates AAA-provider agreements that pay providers, in whole or in part, with Older Americans Act funds. For now, OAC Chapter 173-4 may use "contract" in place of "AAA-provider agreement." *Compare to "certification agreement" and "Medicaid-provider agreement."*

Applicable and Appropriate: ODA proposes to not use "applicable" or "appropriate" in a rule. Adopting those words into law allows the *reader*, not the *author*, of the law to determine what he or she believes is the law.

Before: See "Legalisms."

Certification Agreement: ODA proposes to use "certification agreement" instead of "provider agreement" or "contract" to represent agreements between ODA's designee and the provider. *Compare to "AAA-provider agreement" and "Medicaid-provider agreement."*

CDJFS: See "ODM's administrative agency."

Certified Provider: Because "certified provider" and "certified long-term care provider" have the same meaning in ODA's rules, ODA proposes to delete the unnecessary use of "long-term care."

Certified Service: ODA does not certify services; it certifies providers to provide goods and services. Therefore, ODA proposes to replace all occurrences of “certified services” with “goods or services ODA certified the provider to provide.”

Choices: ODA proposes to delete all references to the now-defunct Choices Program.

Compliance Reviews: ODA proposes to use “compliance reviews” refer to the reviews in OAC173-39-04. The term would have the same meaning as “audit or structural compliance review” in ORC§173.391 and “provider structural compliance review” in the current version of OAC173-39-04. Using a general term minimizes the potential for interpreting that OAC173-39-04 only applies to specific types of compliance reviews.

Days + Deadlines: Unless the context indicates otherwise, ODA proposes to consider a day to be a 24-hour period that begins and ends at Midnight.¹ The term would not require the modifier “calendar” to differentiate a day from a *business day*.

Additionally, ODA proposes to refrain from using “business day” because the term could be interpreted to mean weekdays, weekdays-minus weekday holidays, days not on vacations (*i.e.*, “holidays”), *etc.* Additionally, “holidays” could be interpreted to mean major holidays, government holidays, vacations, *etc.*

ODA proposes to use the following terminology because (1) it accounts for deadlines that would occur on a day other than a business day, (2) would not be prone to misinterpretation by adversarial interests, and (3) would create a statewide standard within ODA-administered programs:

...no later than five days after X. If the fifth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day that immediately follows the fifth day that is not on a weekend or a legal holiday.

ODA proposes to denote deadlines with terms that would not allow 2 directions of days. For example, “within five days of X” could mean 5 days before *or* after X, or an 11-day period, while “no later than 5 days after X” only means 5 days after X.

Designed to: ODA proposes to no longer use “designed to” in definitions defining services. This eliminates a loophole by which a non-compliant provider could argue its service provision was sufficient for payment because it was *designed to* meet the rule, although it turned out to be inadequate.

Disciplinary Actions: Although people sometimes refer to “sanctions,” ODA proposes to continue using “disciplinary actions” in its rules. “Disciplinary actions” is used in ORC§173.391 where it refers to the actions taken by ODA that involve hearings. Disciplinary actions are regulated by OAC173-39-05. “Non-disciplinary actions” refers to the actions taken by ODA in ORC§173.391 that do not involve hearings. Non-disciplinary actions are regulated by OAC173-39-05.1.

Expired: ODA proposes to no longer use “expired” to refer to individuals who are deceased. Instead, ODA proposes to use “deceased.”

¹ If a rule would refer to a 24-hour period that would begin and end at a time other than Midnight, the term would be “twenty-four hour period.”

Goods + Services: Meals and home medical equipment include service components (e.g., delivery) but are traditionally considered goods, not services. Therefore, ODA proposes to generally use “goods and services” when referring to goods and services but to use “services” when referring to only services.

It is also verbose and unnecessary to insert “service” after the name of goods. It’s also verbose and unnecessary to insert “service” after the name of certain services (e.g., assisted living, chores, and personal care). The same goes for inserting the word “service” before “requirements.” The requirements stand without the word “service.”

Together, ODA’s proposal to use “*goods and services*” and to eliminate “*service requirements*” would prevent potential misconceptions that certain requirements would not apply to providers of goods without changing the meaning of any rule.

For rules that only regulate a service, ODA would continue to use the word “service.”

Hard copy: ODA proposes to use “paper copy” instead of “hard copy” to remove information technology jargon from non-information-technology regulations.

In Accordance With: See “Legalisms.”

Includes: ODA proposes to continue using “includes” but not “includes, but is not limited to.” Both have the same meaning, but the latter is redundant.

Individual: ODA proposes to replace “consumer” with “individual” in OAC Chapter 173-39 and for rules that regulate the state and Medicaid-funded components of the Assisted Living and PASSPORT Programs. These would be the exceptions:

1. When referring to consumer-directed providers, ODA proposes to replace “consumer” with “participant.”
2. When referring to person-centered planning, ODA proposes to use “person” where “consumer” would have been used if the term “consumer-centered planning” existed in the current rules.

Legalisms: ODA proposes to minimize unnecessary legalisms in rule language, such as replacing “in accordance with” with “according to” and replacing “prior to” with “before.”

Medicaid-Provider Agreement: ODA proposes to use “Medicaid-provider agreement” to represent agreements between ODM and the provider. *Compare to “AAA-provider agreement” and “certification agreement.”*

Minimum requirements: ODA proposes to continue replacing occurrences of “minimum requirements” with “requirements” because ODA is not authorized to adopt a rule that, in turn, authorizes extra-rule requirements not incorporated into the rule by reference and readily available to the general public free of charge. (See ORC §§ 119.02, 121.71 to 121.76.)

Must: See “shall.”

ODA's designee: In 2015, ODA adopted a new version of OAC173-39-01 that included a new definition for "ODA's designee." In the BIA for the rule project,² ODA explained the following:

In rule 173-39-01 of the Administrative Code, ODA proposes to redefine the term "ODA's designee" in a way that would allow the 13 current PASSPORT administrative agencies to continue to be designees, but that also allows ODA to designate another entity if necessary. The current definition says the following:

"ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."

ODA proposes for the new definition to say the following:

"ODA's designee" is an entity to which ODA delegates one or more of its administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and "Catholic Social Services of the Miami Valley."

In the same BIA, ODA also explained the following:³

If ODA wanted to designate another entity to perform administrative duties, the adverse impact would be the entity that ODA didn't designate for to perform these duties. If ODA uses free and open competition to choose the "designee," the adverse impact would be the result of submitting a bid that was not the winning bid.

ODA proposes to continue using "ODA's designee" in this manner.

Instead of using the phrase "ODA (or ODA's designee)," ODA may use "ODA (or its designee)."

ODM's Administrative Agency: ODA proposes to use "ODM's administrative agency" instead of "CDJFS" to align with similar changes in ODM rules.

Ohio Administrative Code + Ohio Revised Code Citations: §5.2.1 of the Legislative Service Commission's (LSC's) Rule Drafting Manual requires state agencies to make citations to these bodies of law use the following formulas: "rule 123-4-56 of the Administrative Code" and "section 123.45 of the Revised Code."⁴ However, to make the BIA and related documents shorter and easier to read, ODA proposes to use the following unofficial citation formulas in the BIA and related non-rule documents: "OAC123-4-56" and "ORC§123.45."

Paper copy: See "hard copy."

Participant-directed: ODA proposes to use "participant-directed" instead of "consumer-directed." This would be an exception to the ODA's proposal to change occurrences "consumer" to "individual." Otherwise, "consumer-directed individual provider" would become "individual-directed individual provider." The latter term could be mistaken for a self-employed (*i.e.*, non-agency) provider.

Pay: ODA proposes to use forms of "pay" (*e.g.*, "payment") instead of forms of "reimburse" (*e.g.*, "reimbursement"). ODA⁵ and ODM⁶ have proposed or made similar changes to other rules.

² Ohio Dept. of Aging. *ODA Provider Certification: Terminology*. Business Impact Analysis. Revised, Sept 10, 2015. Pg. 2.

³ *Id.* Pg. 10.

⁴ ORC§1.01 allows LSC to draft legislation using "R.C."

⁵ Ohio Dept. of Aging. *Nutrition Rules*. Business Impact Analysis. Revised, Dec 31, 2015.

Policies and Procedures: ODA proposes to consistently use “policies” and not “policies and procedures,” because a required procedure would be a policy. Therefore, “and procedures” is redundant.

Prior to: See “legalisms.”

Provide: ODA proposes to use the verb “provide” instead of “furnish,” “deliver,” “serve,” *etc.*

Provider: Because all of OAC Chapter 173-39 is about ODA provider certification and because each rule begins by requiring ODA-certified providers to comply, there is no need to use “certified” or “ODA-certified” before “provider” in the rest of each rule’s text. This reduces verbosity.

When describing the relationship between a provider and a government authority, ODA proposes to consistently use the following terms throughout OAC Chapter 173-39:

- Licensure is a matter between (1) a provider/provider’s employee who requires a license to practice a profession in Ohio and the state’s licensing board or agency or (2) a facility (*e.g.*, a residential care facility) that requires a license to operate in Ohio and the state’s licensing board or agency. Although ODA is not a licensing board or agency, to obtain ODA’s certification, a provider shall have all licenses required by state law.
- “ODA provider certification” and “certification” refer to ODA’s certification of providers. This is the primary topic of OAC Chapter 173-39.
- “Current, valid Ohio Medicaid provider agreement” or “agreement” is an agreement between a provider and the Ohio Dept. of Medicaid to obtain a Medicaid provider number. The number is necessary for billing for the goods and services provided to individuals enrolled in the Assisted Living or PASSPORT Programs.
- “Contract” is an agreement between a provider and ODA’s designee that establishes the rates of payment for each job, item (*i.e.*, “good”), or unit of service.⁷

Pursuant to: See “Legalisms.”

Reimburse: See “Pay.”

Requirements: ODA proposes to use “requirements” instead of “criteria” because the singular form of “criteria” is “criterion.” Most readers would not know the meaning of “criterion.” Fortunately, the single form of “requirements” is simply “requirement.”

ODA proposes to use “requirements” instead of “conditions” because “conditions” is a term more associated with weather (*e.g.*, *weather conditions*) than provider qualifications. Thus, references to “conditions of participation” in OAC173-39-02 become references to the “requirements” in OAC173-39-02.

⁶ Ohio Dept. of Medicaid. *Modifications to Administrative Rules 5160-4-12 and 5160-4-13.* (MHTL 3334-14-XX) Undated.

⁷ See OAC5160-31-07.

Together, using “requirements” instead of “criteria” or “conditions” would offer consistent terminology for readers of ODA’s rules.

Service plan: ODA proposes to amend the definitions of “service plan” to say that the term includes “person-centered planning” conducted according to OAC5160-44-02.

Shall: §5.8.3 of the LSC’s Rule Drafting Manual requires state agencies to make requirements of providers with the term “shall,” not “must.”

Waiver Services: ODA proposes to eliminate “waiver” as it appears before “services” in rules. ODA requires providers to comply with OAC Chapter 173-39 when they are providing goods and services to individuals enrolled in both the *State-funded* and *Medicaid-funded* components of the PASSPORT and Assisted Living Programs. Thus not all services are authorized by Medicaid waivers.

Within X days of: See “Days + Deadlines.”

Composition Standards

Rule Titles: Chapters of the Ohio Administrative Code do not have official titles. Publishers assign their own titles to chapters. Over the years, ODA has inserted helpful cross-references in its rules when it seemed helpful to let the reader know that they may want to be reading another chapter of rules. Now, ODA is proposing to delete many of those cross references because it is systematically adding “Chapter title” language to each rule’s title. For example, ODA has 2 adult day service rules, each of which regulate on a different basis. Because ODA is proposing (in another rule project) to insert “Older Americans Act” in front of “Adult day service,” there is no need to refer any readers of the provider certification chapter (OAC Chapter 173-39) that a similar regulation exists.

General First: ODA proposes to generally raise general topics before specific ones.

- Bad example: Except as set forth in paragraph (B)(2) of the rule, the provider shall not X.
- Good example: The provider shall not X, unless the provider is Y.

Multi-Paragraph Run-On Sentences: ODA proposes to continue converting multi-paragraph run-on sentences into paragraphs that end in periods.

References: ODA proposes to make as few references as possible within each rule and between rules.

Paragraph Outline: For rules that regulate the provision of goods and services, ODA proposes to generally place paragraphs in the following order:

- (A) Definition of the good or service.
- (B) Eligibility of individual.
- (C) Requirements for providing the good or service.
 - (1) General requirements.
 - (2) Facility requirements.
 - (3) Staffing levels.
 - (4) Provider (staff) qualifications, including training.
 - (5) Service verification.

(D) Payment/Unit and Rates

(E) Definitions specific to rule (*i.e.*, a glossary).

Most rules contain the text above in black. Rules that do not contain one or more of the blue paragraphs would be renumbered accordingly.

Active Voice: ODA proposes to use the active voice (*vs.*, the passive voice) whenever reasonable.

- Passive example: The consumer shall be provided X. (Who is the responsible party?)
- Active example: The provider shall provide X to the consumer. (The language clearly identifies the responsible party.)