

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

Agency Name

Division

**Tom Simmons**

Contact

**50 West Broad Street 9th floor Columbus OH  
43215-3363**

Agency Mailing Address (Plus Zip)

**614-728-2548**

Phone

Fax

**tsimmons@age.ohio.gov**

Email

**173-42-06**

Rule Number

**RESCISSION**

TYPE of rule filing

Rule Title/Tag Line

**Consumer choices and responsibilities.****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: **HB59**General Assembly: **130**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, 173.52**

5. Statute(s) the rule, as filed, amplifies or implements: **173.52, 42 C.F.R. 431.51 (10-01-2013 edition)**

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

In H.B.59's amendments to Section 173.403 of the Revised Code [which it renumbered as "173.53"], the General Assembly authorized ODA and ODM to "collaborate to determine whether the Choices Program should continue to operate as a separate Medicaid waiver component or be terminated." The result is that the

Choices program is now set to expire on June 30, 2014 and ODA and ODM will not request authorization from CMS to continue the program.

The other side of this decision is allowing consumer-directed providers in the Medicaid-funded PASSPORT Program. (Consumers who are presently enrolled in the Choices Program may enroll in other Medicaid waiver programs that offer consumer direction such as the Medicaid-funded component of the PASSPORT Program or MyCare Ohio.)

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 that ODA is proposing to rescind regulates consumers, case managers, and PASSPORT Administrative Agencies (ODA's designees) regarding a consumer who has enrolled into the Medicaid-funded component of the PASSPORT Program.

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 text of the federal code that ODA cites is readily available on the U.S. Government Printing Office website.

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

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:

There is no need to attach the text of the federal rule to this state rule that is being proposed for rescission because the text of the federal code that ODA cites is readily available on the U.S. Government Printing Office website.

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

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:

The text of the federal code that ODA cites is readily available on the U.S. Government Printing Office website.

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

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:

*Not Applicable.*

12. 119.032 Rule Review Date: **11/29/2013**

(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 proposed rescission of this rule will have no effect upon the biennial budget that the Ohio General Assembly established for ODA in H.B.59 (130th G.A.). Additionally, ODA anticipates that the proposed amendments to this rule will have no effect upon line items GRF-651-525 or 3C40-656-623. This is especially the case because ODA is simultaneously proposing to adopt a new rule of the same number to replace this rule.

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

GRF-651-525 Medicaid/Health Care Services.

## 3C40-656-623 Long-Term Care Program Support-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 monetary cost of compliance to any directly-affected person that would result from ODA's proposed rescission of this rule.

For any individual who wants to enroll into the Medicaid-funded component of the PASSPORT Program, the following non-monetary costs are associated with this rule:

1. The consumer must meet with the PASSPORT Administrative Agency's (PAA's, ODA's designee's) case manager for an assessment. Case managers conduct these assessments in the consumer's place of residence, so the consumer does not have travel expenses associated with this assessment.
2. The consumer must meet with the PAA's case manager to develop a service plan.
3. The consumer must notify providers if he or she will miss a scheduled service episode.
4. The consumer shall notify a provider if he or she misses a scheduled service episode or if the provider's staff misses a scheduled service episode.
5. The consumer must report any provider incidents to the case manager.
6. The consumer must sign timesheets to document completion of service episodes.
7. The consumer must notify the PAA's case manager of significant changes that may affect his or her service needs.

For a consumer who chooses to direct his or her consumer-directed provider, the "cost" of administration is inherent in the decision the consumer makes to want to "direct" his or her provider. However, these costs are minimized because of the following:

1. Certain administrative duties(e.g., payroll, employment laws, tax forms, paying taxes) are covered by a financial management agency that ODA supplies for the consumer.
2. Certain administrative duties are solely the responsibility of the case manager. They are the duties involved in assessing if the consumer has the understanding and ability to direct his or her own services.

3. Other administrative duties are done with the assistance of the PASSPORT Administrative Agency's (ODA's designee's) case managers, as follows:

A. The consumer shall recruit, select, and dismiss his or her consumer-directed providers. (Most often, this provider is a relative or close association of the consumer.)

B. The consumer shall review databases and check criminal records to determine if any person the consumer has under final consideration for hiring as his or her consumer-directed provider has a disqualifying offense on record that would prohibit the consumer from hiring the person into a direct-care position as a consumer-directed provider. The costs of the criminal records checks are paid by the would-be consumer-directed providers.

C. The consumer and the case manager shall develop a back-up plan for furnishing a service if the provider cannot, or does not, meet his or her obligation to furnish a service.

D. The consumer and the case manager shall decide what training is necessary for a consumer-directed provider depending on the consumer's needs.

E. The consumer and ODA's designee (which includes the case manager and PAA monitoring staff) shall monitor the consumer-directed provider's performance.

The consumer must allow the provider a place in the home to store records related to providing services to the consumer.

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**

This rule that ODA is proposing to rescind regulates consumers and case managers

regarding a consumer who has enrolled into the Medicaid-funded component of the PASSPORT Program. The rule doesn't regulate providers. Concerning consumer-directed providers, this rule contains no requirements for providers. Instead, it only regulates the consumers who direct them. Please see rules 173-39-02, 173-39-02.4, 173.39-02.11, 173-39-03, and 173-39-04 of the Administrative Code for rules that regulate those providers.

**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**

This rule that ODA is proposing to rescind regulates consumers and case managers regarding a consumer who has enrolled into the Medicaid-funded component of the PASSPORT Program. The rule doesn't regulate providers. Concerning consumer-directed providers, this rule contains no requirements for providers. Instead, it only regulates the consumers who direct them. Please see rules 173-39-02, 173-39-02.4, 173.39-02.11, 173-39-03, and 173-39-04 of the Administrative Code for rules that regulate those providers.

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

This rule that ODA is proposing to rescind regulates consumers and case managers regarding a consumer who has enrolled into the Medicaid-funded component of the PASSPORT Program. The rule doesn't regulate providers. Concerning consumer-directed providers, this rule contains no requirements for providers. Instead, it only regulates the consumers who direct them. Please see rules 173-39-02, 173-39-02.4, 173.39-02.11, 173-39-03, and 173-39-04 of the Administrative Code for rules that regulate those providers.