

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

173-43-02

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

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: **HB66**General Assembly: **126**Sponsor: **Calvert**

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, 173.42**

5. Statute(s) the rule, as filed, amplifies or implements: **173.42**

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

In response to Am. Sub. H. B. No. 66 (126th G. A.), this proposed new rule is being filed to implement and administrate the process of the long-term care consultation ("consultation") service.

The universal pre-admission review (UPAR) service began in 1995 as a way to inform individuals about alternatives to institutionalization known as home and community-based services (HCBS). The most popular HCBS program is known as the "Pre-Admission Screening System Providing Options and Resources Today"

("PASSPORT"). UPAR has sometimes been called an "assessment" service (the term formerly used by the Ohio Revised Code), a "universal pre-admission screening" service, and "Care Choice Ohio."

UPAR has been regulated by rule 5101:3-3-14 of the Administrative Code. Although that rule was adopted by ODJFS, it was ODA that has been performing the UPAR service (through the PASSPORT administrative agencies (PAAs) that it designated) in accordance with an inter-agency agreement between ODJFS and ODA.

Effective September, 29, 2005, the Ohio General Assembly, through Am. Sub. H. B. No. 66, replaced the term "assessment" with "long-term care consultation," amended the language regarding the service, and renumbered sections 5101.75 and 5101.752 of the Revised Code as sections 173.42 and 173.43 of the Revised Code, thereby transferring the authority to adopt rules from the director of ODJFS to the director of ODA.

Beginning in the fall of 2005, ODA began the process of drafting this proposed new rule and discussing the rule language with interested parties.

In January, 2007, ODA posted a draft of this proposed rule on the ODA web site for a two-week public comment period. After considering the comments filed during that period, ODA revised the proposed rule. Then, it posted that revision on the ODA web site for a second two-week public comment period in February, 2007.

On February 21, 2007, as part of the second public comment period, ODA met with various stakeholders to facilitate more input on the drafting of this proposed new rule. These stakeholders included the American Association of Retired Persons (AARP), the Association of Association of Philanthropic Homes and Housing for the Aging (AOPHA), the Central Ohio Area Agency on Aging (COAAA), the Ohio Academy of Nursing Homes (OANH), the Ohio Association of Area Agencies on Aging (OAAAA), the Ohio Association of Regional Long-Term Care Ombudsmen (OARLTCO), the Ohio Department of Job and Family Services (ODJFS), the Ohio Health Care Association (OHCA), and the State Long-Term Care Ombudsman (SLTCO).

After considering the input received from the second public comment period, ODA revised the draft of this proposed new rule. Then, on March 8, 2007, ODA distributed an electronic version of a draft of this rule to the stakeholders who attended the stakeholders' meeting in February and asked for further comments by March 13, 2007. Because no comments were received in response to that opportunity for feedback, minus one question that sought clarification on the language of this proposed new rule, ODA is now proceeding with the filing of this proposed new rule.

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 would:

[1] Establish a process for each nursing facility (NF) and PASSPORT administrative agency (PAA) to follow when determining whether or not there is a requirement for the PAA to provide a consultation to an individual in accordance with criteria outlined in proposed new rule 173-43-03 of the Administrative Code;

[2] Establish a process for determining whether a consultation should be performed before or after admission to a NF;

[3] Establish that only a person who is certified in accordance with proposed new rule 173-43-05 of the Administrative Code may perform a consultation;

[4] Outline the minimum components to be included in every consultation; and,

[5] Mandate that the PAA shall provide a written summary of options and resources available to meet the needs of the individual after each consultation.

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:

(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 anticipate an increase or decrease in expenditures appropriated through this line-item as a result of this proposed new rule.

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

GRF-490-403 PASSPORT

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:

COST TO AN INDIVIDUAL WHO RECEIVES A CONSULTATION: No matter who the individual is that receives the consultation, the consultation will be offered at no cost to the individual.

BENEFIT TO AN INDIVIDUAL WHO RECEIVES A CONSULTATION: Once

an individual is presented with information, the individual will be knowledgeable about options available, enabling him/her to make an informed choice while having an understanding of the consequences of that choice.

ESTIMATED COST TO A NURSING FACILITY (NF): The consultation service will provide knowledge of HCBS to individuals who may reside in a NF or may be contemplating residence in a NF. Once an individual is presented with the knowledge necessary to make an informed choice among options, the individual has the freedom to choose HCBS instead of institutionalization.

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Once this proposed new rule is adopted, ODA anticipates that the percentage of Ohioans opting for HCBS may continue to increase while the number of Ohioans who opt for institutionalization is likely to remain somewhat stable. This would be a continuation of the recent trend in which the average daily number of occupied NF beds increased by 2.6% from 2003 to 2005. (Scripps Gerontology Center. "The Changing Face of Long-Term Care: Ohio's Experience 1993-2005." April, 2007.) In other words, from the eighth to the tenth year since a UPAR service has been offered, the percentage of Ohioans opting for HCBS increased; yet, the number of occupied NF beds has also increased.

.....

One part of the explanation for this trend is the growing number of Ohioans under the sixty years of age who are occupying NF beds. The proportion of those under sixty occupying NF beds increased by 10% from 2004 to 2005. (Scripps. 2007.) Another part of the explanation for this trend is the growing population of Ohioans sixty years of age and over--a population that will increase another 44% by 2020. (Scripps. 2007.) Even though a growing percentage of Ohioans sixty and over are opting for HCBS while a smaller percentage are opting for institutionalization, a smaller percentage of the population surge means that the actual numbers of Ohioans sixty and over who will opt for institutionalization may remain somewhat stable. In fact, from 2003 to 2005, the average daily number of NF beds occupied by those sixty and over only dropped by 1.7%. (Scripps. 2007.)

.....

For comparison, the trend experienced in Ohio since the inception of the UPAR service is similar to the experience had by the State of Minnesota after it began to offer similar consultations. (Rutgers Center for State Health Policy. "Minnesota Long-Term Care Consultation Services." September, 2005.)

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Again, once this proposed new rule is adopted, ODA anticipates that the percentage of Ohioans opting for HCBS may continue to increase while the number of Ohioans who opt for institutionalization is likely to remain somewhat stable.

.....

Furthermore, even though Ohio will continue to inform individuals of alternatives to NFs, most of Ohio's long-term care funds may still finance NFs, not HCBS. For perspective, in 2002, the year that marked the seventh year that Ohio provided a UPAR service, 77% of Ohio's non-MRDD (i.e., non-ICF-MR) long-term care

funding was still being used to pay for the costs of choosing NFs. (Research Triangle Institute. "Redesigning Long-Term Care Systems Through Integrated Access and Services: Final Report." July, 2004.) In 2005, the tenth year of UPAR, the state spent \$2.8 billion on NFs, which ranked Ohio as the state with the ninth-highest per-capita spending on NFs. (Scripps. 2007.) Additionally, the ratio of institutional expenditures to HCBS in Ohio is greater than all but three states. (Scripps. 2007.) Thus, it seems that, even with the continuation of a UPAR/consultation service, the majority of long-term care funding in Ohio is likely to continue to be spent on NFs, even if the percentage of the population that chooses HCBS is greater.

REDUCED ADMINISTRATIVE COST FOR A NURSING FACILITY (NF): In comparison to the UPAR service, the increased number of exceptions in the consultation service reduces the volume of referrals that a NF must make to a PAA on behalf of non-exempt individuals. ODA estimates that, whenever an individual applies for residence in a NF, it should generally take the administrative staff of a NF less than ten minutes to see if the individual is exempt according to the nine criteria outlined in paragraph (B) of rule 173-43-03. The NF will be responsible for maintaining documentation of these decisions. In cases where the individual chooses the NF to be his/her authorized representative and where the individual is found to require a consultation, the NF must report this information to a PAA by phone, in writing, or electronically, which ODA estimates would generally take the administrative staff of the NF less than ten minutes.

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 Additionally, in comparison to its responsibilities under the UPAR service, the NF is no longer required to make a report to the PAA within twenty-four hours in the common scenario in which a hospital identifies that an individual is exempt before the individual transfers to the NF.

ESTIMATED COST TO A PASSPORT ADMINISTRATIVE AGENCY (PAA): The Central Ohio Area Agency on Aging, a PAA for the geographic region of Central Ohio, estimates that it generally takes from thirty to ninety minutes to provide a UPAR, depending upon the depth of information that the individual requests of the PAA during the screening. Because ODA estimates that a consultation detailed in this proposed new rule will take no longer to perform than a UPAR, ODA estimates that there will be no increased cost of compliance in association with the length of time required to perform the long-term care consultation in comparison to a UPAR.

ESTIMATED BENEFIT TO A PASSPORT ADMINISTRATIVE AGENCY (PAA): Due to the increased number of exemptions in comparison to the UPAR service, a PAA may not need to provide as many of the consultations as it had to provide UPARs, thereby reducing its operational costs.

ESTIMATED BENEFIT TO THE STATE OF OHIO: Because HCBS programs

like PASSPORT offer care that may not cost more than 60% of the cost of institutionalization, and, because, on average, PASSPORT has been costing just under 30% of the price of institutionalization at \$48 per day compared to \$164 per day for a NF (Scripps. 2007.), there is a significant savings to the state for each person who opts for HCBS. This savings may help in the effort to make Medicaid financially sustainable for the future.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	Yes	No	No

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

ODA anticipates that the cost of compliance for the 2.3% of Ohio's NFs that are county-owned (Scripps, 2007.) should be identical to the information listed for the rest of the NFs in Part A of this RSFA.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

See below:

(a) Personnel Costs

In comparison to the UPAR service, the increased number of exceptions in the consultation service reduces the volume of referrals that a NF, including a

county-owned NF, must make to a PAA on behalf of non-exempt individuals. ODA estimates that, whenever an individual applies for residence in a NF, including a county-owned NF, it should generally take the administrative staff of that NF less than ten minutes to see if the individual is exempt according to the nine criteria outlined in paragraph (B) of rule 173-43-03. The NF will be responsible for maintaining documentation of these decisions. In cases where the individual chooses an NF, including a county-owned NF, to be his/her authorized representative and where the individual is found to require a consultation, that NF must report this information to a PAA by phone, in writing, or electronically, which ODA estimates would generally take the administrative staff of the NF less than ten minutes.

Additionally, in comparison to its responsibilities under the UPAR service, a NF, including a county-owned NF, is no longer required to make a report to the PAA within twenty-four hours in the common scenario in which a hospital identifies that an individual is exempt before the individual transfers to the NF.

(b) New Equipment or Other Capital Costs

NA

(c) Operating Costs

NA

(d) Any Indirect Central Service Costs

The consultation service will provide knowledge of HCBS to individuals who may reside in a NF, including a county-owned NF, or may be contemplating residence in a NF, including a county-owned NF. Once an individual is presented with the knowledge necessary to make an informed choice among options, the individual has the freedom to choose HCBS instead of institutionalization.

Once this proposed new rule is adopted, ODA anticipates that the percentage of Ohioans opting for HCBS may continue to increase while the number of Ohioans who opt for institutionalization is likely to remain somewhat stable. This would be a continuation of the recent trend in which the average daily number of occupied NF beds increased by 2.6% from 2003 to 2005. (Scripps Gerontology Center. "The Changing Face of Long-Term Care: Ohio's Experience 1993-2005." April, 2007.) In other words, from the eighth to the tenth year since a UPAR service has been offered, the percentage of Ohioans

opting for HCBS increased; yet, the number of occupied NF beds has also increased.

One part of the explanation for this trend is the growing number of Ohioans under the sixty years of age who are occupying NF beds. The proportion of those under sixty occupying NF beds increased by 10% from 2004 to 2005. (Scripps. 2007.) Another part of the explanation for this trend is the growing population of Ohioans sixty years of age and over--a population that will increase another 44% by 2020. (Scripps. 2007.) Even though a growing percentage of Ohioans sixty and over are opting for HCBS while a smaller percentage are opting for institutionalization, a smaller percentage of the population surge means that the actual numbers of Ohioans sixty and over who will opt for institutionalization may remain somewhat stable. In fact, from 2003 to 2005, the average daily number of NF beds occupied by those sixty and over only dropped by 1.7%. (Scripps. 2007.)

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(e) Other Costs

NA

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

Because the regulatory burden upon county-owned NFs to comply with this proposed new rule that would implement the process for the long-term care consultation service is lesser than the regulatory burden the county-owned NFs faced under the UPAR rule, ODA anticipates that a county should not need to direct any additional tax revenue towards its NFs to comply with the requirements of this program.

However, should expenses rise that could not be met as a result of this proposed new rule that could not be met through the fee charged for a NF stay, as a taxing authority, a county has the ability to raise taxes, to ask voters to approve a levy, or to pursue the cost-neutral route of re-appropriating funds from other budget line items in order to finance the costs of a NF that it operates.

7. Please provide a statement on the proposed rule's impact on economic development.

Because HCBS programs like PASSPORT offer care that may not cost more than 60% of the cost of institutionalization, and, because, on average, PASSPORT has been costing just under 30% of the price of institutionalization at \$48 per day compared to \$164 per day for a NF (Scripps. 2007.), there is a significant savings to the state for each person who opts for HCBS. This savings may help in the effort to make Medicaid financially sustainable for the future.