

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

Agency Name

Division

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173-43-02

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Process and general standards.**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: **HB1**General Assembly: **128**Sponsor: **Sykes**

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, 173.42**

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:

ODA is proposing to adopt this new rule as part of a larger rule package.

ODA is proposing to amend chapter 173-43 of the Administrative Code which regulates the Long-Term Care Consultation Program. In doing so, ODA is proposing to rescind the current chapter and replace it with five new rules that implement the changes that H.B. No. 1 (128th G.A.) required for the rules of the program. The proposed new rules also include references to statutes that H.B. No. 153 (129th G.A.) updated.

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 will regulate the process for providing long-term care consultations and list general standards for long-term care consultations.

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 January 3, 2012, ODA revise-filed the proposed new rule to:

1. Change the title from "Process" to "Process and general standards."
2. Replace "guidelines" in the unnumbered paragraph with "standards."
3. Reorganize the rule so that all paragraphs with a process topic fall under paragraph (A) of the rule while all paragraphs with a general-standard topic fall under paragraph (B) of the rule.

4. Insert as paragraph (A)(3) of the rule process requirements that ODA is simultaneously removing from paragraph (C)(2) of proposed new rule 173-43-03 of the Administrative Code. The language says, "The nursing facility shall notify the program administrator of any individual who is a nursing facility resident that was admitted under a time-limited convalescent exemption or who was admitted under a categorical determination in accordance with rules 5101:3-3-15.1, 5122-21-03, or rule 5123:2-14-01 of the Administrative Code, but has since been found to require a stay in a nursing facility that will exceed the time limits specified in those rules. The nursing facility shall notify the program administrator no later than seventy-two hours after the expiration of the time limit, unless rule 173-43-03 of the Administrative Code exempts the individual. Upon being notified, the program administrator shall determine if a long-term care consultation is required."

5. Replace "perform the long-term care consultation" in paragraph (E) of the rule [now paragraph (A)(6) of the rule] with "provide a long-term care consultation." This will create consistency with verbiage in the Revised Code and most other occurrences in the proposed new rules of chapter 173-43 of the Administrative Code.

6. Replace "decision" in paragraph (G)(5) of the rule [now paragraph (B)(1)(e) of the rule] with "decisions."

7. Make paragraph (H) of the rule paragraph (A)(9) of the rule. Because the paragraph describes what a program administrator does to conclude the process, it should appear as the last paragraph in the rule that regulates the process.

8. Reorganize the material in paragraph (J) of the rule [now paragraph (A)(8) of the rule] and its sub-paragraphs.

9. Replace "ODJFS" in paragraph (K) of the rule [now paragraph (B)(3) of the rule] with "department of job and family services."

10. Replace the language in paragraph (K) of the rule [now paragraph (B)(3) of the rule] with, "A nursing facility...may only admit or retain an individual as a resident upon receipt of evidence that the nursing facility has complied with rules 173-43-02 and 173-43-03 of the Administrative Code and that the program administrator has provided a long-term care consultation to the individual, unless rule 173-43-03 of the Administrative Code exempts the individual."

11. Replace "to person attempting" in paragraph (L) of the rule [now paragraph (B)(2) of the rule] with "to any person who is attempting."

12. Upload a revised public-hearing notice.

13. Revise this RSFA.

On January 13, 2012, ODA refiled the rule to:

1. Delete "the" before "5123:2-14-01" in paragraph (A)(3) of the rule.
2. Replace paragraph (B)(1) of the rule. Previously, the paragraph said, "Each long-term care consultation shall focus on the individual's needs, circumstances, and values and provide the individual with information about options available to meet the his or her needs. At a minimum, every long-term care consultation shall provide each of the following components:" Now, the paragraph clearly identifies the party responsible for providing the long-term care consultation. It now says, "When providing a long-term care consultation, the program administrator shall focus on the individual's needs, circumstances, and values and provide the individual with information about options available to meet his or her needs. At a minimum, the program administrator shall include the following information in each long-term care consultation:"
3. Insert "the" before "department of job and family services" in paragraph (B)(3) of the rule.
4. Revise this RSFA.

On February 14, 2012, ODA refiled the rule to:

1. Keep the rule moving at the same pace as other rules in this rule package.
2. Insert a comma after "5101:3-3-15.1" in paragraph (A)(8)(b) of the rule.
3. Replace "their" in paragraph (B)(1)(e) of the rule with "his or her."
4. Replace "meet" in paragraph (B)(4) of the rule with "meets."
5. Upload a new public hearing notice that announces a second public hearing.
6. Revise this RSFA.

On June 25, 2012, after reviewing testimony made by the Ohio Academy of Senior Health Sciences, Inc. for our January 4, 2012 public hearing and also made at our June 21, 2012 public hearing for another rule of the same rule package, ODA refiled the rule to:

1. Remove "or retain" from paragraph (B)(3) of the rule because H.B.1 removed "or retain" from the corresponding statute in division (K) of section 173.42 of the Revised code.
2. Update this RSFA.

Because ODA is making this change in direct response to testimony made during two public hearings, ODA will not offer an additional public hearing on this rule.

(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

Although section 173.42 of the Revised Code requires ODA to develop and administer the Long-Term Care Consultation Program, H.B. No. 153 (129th G.A.) moved the program's funding to budget line item GRF-600-525, which is under JFS, not ODA. Therefore, ODA estimates that the proposed adoption of this new rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153.

Nevertheless, ODA estimates that the proposed adoption of this new rule will also have no impact upon the biennial budget that the Ohio General Assembly established for line item GRF-600-525. In FY11, area agencies on aging provided 53,035 long-term care consultations. So far in FY12, area agencies on aging are providing fewer long-term care consultations than at the same point in FY11.

Although it is possible that public awareness of the free long-term care consultations, the aging of Ohio's population, and other changes to the long-term service and support system could lead to an increasing number of long-term care consultations, ODA does not estimate that the adoption of this new rule will create an increase in the number of long-term care consultations for FY12 or subsequent years. Therefore, ODA estimates that the proposed adoption of this new rule will have no impact upon the biennial budget that the Ohio General Assembly established for GRF-600-525.

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

GRF-600-525 Health Care/Medicaid (State and 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 cost of compliance to any directly-affected person associated with the proposed adoption of this new rule.

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**