

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

Agency Name

Division

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**173-44-04**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Unified waiting list.****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: **HB153**General Assembly: **129**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, 173.40, 173.404, 173.50, 5111.89**

5. Statute(s) the rule, as filed, amplifies or implements: **173.401, 173.404, 173.501, 5111.894**

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

ODA is proposing to amend rule 173-44-04 of the Administrative Code. In doing so, ODA has 3 basic goals:

1. To incorporate H.B. No. 153's amendments into the rule. H.B. No. 153's amendments to sections 173.401, 173.404, 173.501, and 5111.894 of the Revised Code take effect on September 29, 2011. The amendments will change the Unified

Waiting List and the Home First component of the Medicaid-Funded Component of the PASSPORT Program, the Medicaid-Funded Component of the Assisted Living Program and PACE, by allowing ODA's designee or a PACE organization to immediately enroll an eligible individual into the program any time a slot is available in the program without the formality of adding and removing the individual from the waiting list. ODA must now amend rule 173-44-04 of the Administrative Code to incorporate this same change into the Administrative Code. ODA proposes to adopt the amendments to the rule on September 29, 2011, the same day that H.B. No. 153's amendments take effect.

2. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.

3. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.):

a. ODA is proposing to adopt the new rules after interested parties and the general public have had opportunities to provide input:

i. Interested parties and the general public had the opportunity to testify to the finance committees of the Ohio House of Representatives and the Ohio Senate as those legislative bodies considered public testimony on the amendments that H.B. No. 153 proposed to make to sections 173.401, 173.404, 173.501, and 5111.894 of the Revised Code.

ii. From June 30, 2011 to July 11, 2011, ODA posted the proposed amended rules on <http://aging.ohio.gov/information.rules/proposed.aspx> for a public-comment period.

b. In 2011, ODA adopted rule 173-44-04 of the Administrative Code after undergoing a similar review process. After reviewing this rule again, ODA has determined that:

i. The rule and the proposed amendment to the rule do not burden any Ohio business. The only businesses subject to the rule are ODA's designees and PACE organizations and the rule proposals eliminate an unnecessary process that current rules require of ODA's designees and PACE organizations.

ii. ODA wrote the rule and the proposed amendment to the rule in a manner that is as easy to understand as the subject matter permits.

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:

Specifically, ODA is proposing to amend this rule to:

1. Add similarity to the enrollment rule for the Medicaid-funded component of the PASSPORT Program and the enrollment rule for the Medicaid-funded component of the Assisted Living Program by using "individual" instead of "applicant" throughout the rule to refer to the person who applies for the program.
2. Replace "for serving PACE applicants" in paragraph (A) of the rule with "in PACE."
3. Add language to paragraph (A) of the rule to indicate that the Unified Waiting List is for the Medicaid-funded components of the PASSPORT and Assisted Living Programs, not the state-funded components of the PASSPORT and Assisted Living Programs.
4. Replace "the CDJFS" in paragraph (B)(1) of the rule with "ODA's designee."
5. Replace "exceptions" in paragraph (B)(2) of the rule with "exception."
6. Delete "or (B)(3)" from paragraph (B)(2) of the rule.
7. Provide references to ODA's enrollment-process rules in paragraph (B)(2)(b) of the rule for each program.
8. Remove the Home First language from paragraph (B)(3) of the rules. The language now appears in rules 173-38-03, 173-42-03, and 173-50-03 of the Administrative Code.
9. Add "unified" before "waiting list" in two instances in paragraph (B)(3) of the rule.
10. Add paragraph (B)(5) to the rule, which says, "If a slot is available in the program to which an eligible individual has applied, ODA's designee or the PACE organization shall not place the individual on the unified waiting list."
11. Indicate in paragraph (C)(1) of the rule that "assisted living program," as used in this rule, does not refer to the "state-funded component of the Assisted Living Program."
12. Delete the definition of "CDJFS," because ODA does not use the term in this rule.
13. Insert "medicaid-funded" before "program" in paragraph (C)(2) of the rule.
14. Indicate in paragraph (C)(9) of the rule that "assisted living program," as used in this rule, does not refer to the "state-funded component of the PASSPORT Program."
15. Insert "173.01" into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.

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 August 10, 2011, ODA revise-filed the rule to:

1. Replace "applicant" in paragraph (B)(4) of the rule with "individual."
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

12. 119.032 Rule Review Date: **7/13/2011**

(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 ODA operates the Medicaid-funded component of the Assisted Living Program, the Choices Program, PACE, and the Medicaid-funded component of the PASSPORT Program, H.B. No. 153 moved these programs' funding to budget line item GRF-600-525, which is under JFS, not ODA. Therefore, ODA estimates that the proposed amendment of this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153.

Additionally, the Ohio General Assembly factored H.B. No. 153's amendments to sections 173.401, 173.404, 173.501, and 5111.894 of the Revised Code into the impact upon line item GRF-600-525 and the Assisted Living Program, the Choices Program, PACE, and the PASSPORT Program. Therefore, the savings H.B. No. 153's amendments generate are part of H.B. No. 153's biennial budget.

Nevertheless, it is helpful to explain that ODA estimates that H.B. No. 153's amendments may lower the administrative costs for the Medicaid-component of the Assisted Living Program, the Choices Program, and the Medicaid-funded component of the PASSPORT Program which corresponds to a proposed 5% reduction in payments to PASSPORT administrative agencies in connection with H.B. No. 153. The amendments may lower administrative costs because they will change the Unified Waiting List and the Home First component of the Medicaid-Funded Component of the PASSPORT Program by preventing ODA's designee (i.e., the PASSPORT administrative agency) from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow ODA's designee to immediately enroll an eligible individual into the program any time a slot is available in the program without the formality of adding and removing the individual from the waiting list.

H.B. No. 153's amendments may lower the administrative costs for the PACE, too. The amendments may lower administrative costs because they will change the Unified Waiting List and the Home First component of PACE by preventing a PACE organization from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow the PACE organization to immediately enroll an eligible individual into the program any time a slot is

available in the program without the formality of adding and removing the individual from the waiting list.

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 the proposed amendment of this rule will have no cost of compliance upon any directly-affected person.

A person who applies for the Medicaid-component of the Assisted Living Program, the Choices Program, PACE, or the Medicaid-funded component of the PASSPORT Program incurs no cost of compliance.

The organizations that ODA designates to administrate Medicaid-component of the Assisted Living Program, the Choices Program, PACE, and the Medicaid-funded component of the PASSPORT Programs should not experience a new cost of compliance. Instead, they should experience a drop in administrative costs because H.B. No. 153's amendments to sections 173.401, 173.404, 173.501, and 5111.894 of the Revised Code will change the Unified Waiting List and the Home First component of the Medicaid-component of the Assisted Living Program, the Choices Program, PACE, and the Medicaid-funded component of the PASSPORT Program, by preventing ODA's designee (i.e., the PASSPORT administrative agency) or a PACE organization from adding an individual to the Unified Waiting List only to immediately remove the individual from the list because he or she qualifies for Home First component of the program. This will allow ODA's designee or a PACE organization to immediately enroll an eligible individual into the program any time a slot is available in the program without the formality of adding and removing the individual from the waiting list.

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**