

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

Agency Name

Division

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173-51-01

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Introduction and definitions.**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: **HB153**General Assembly: **129**Sponsor: **Amstutz**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **111.15**

4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 5111.89**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.89**

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 adopt new Chapter 173-51 of the Administrative Code. H.B. No. 153's amendments to section 5111.89 of the Revised Code take effect on September 29, 2011. The amendments will authorize ODA to create the state-funded component of the Assisted Living Program and require ODA to adopt rules to implement the new program. ODA must now create Chapter 173-51 of the Administrative Code to implement the new program. ODA proposes for the new

chapter of rules to take effect on September 29, 2011, the same day that H.B. No. 153's amendments take effect.

To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.), ODA is proposing to adopt the new rules after interested parties and the general public have had opportunities to provide input:

1. 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 section 5111.89 of the Administrative Code.

2. 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.

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 proposed new rule introduces the chapter and defines terms used throughout the chapter.

Please see the items that ODA lists in #11 of this RSFA.

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 July 14, 2011, ODA revise-filed the rule to:

1. Schedule a public hearing. H.B. No. 153 authorizes ODA to file the proposed new chapter according to section 111.15, not section 119.03, of the Revised Code. Filing proposed new rules under section 111.15 of the Revised Code does not require ODA to conduct a public hearing. Nevertheless, ODA will conduct a public hearing to obtain comments concerning ODA's proposed new chapter of the Administrative Code.

2. Upload a public-hearing notice.

3. Revise this RSFA.

On July 28, 2011, ODA revise-filed the rule to:

1. Insert "component of the" before both occurrences of "assisted living program" in paragraph (A) of the rule.

2. Add a space between "rule" and "173-39-02.16" in paragraph (B)(1) of the rule.

3. Replace "of the consumers" in paragraph (B)(1) of the rule with "if the consumers."

4. Replace "other wise" in paragraph (B)(1) of the rule with "otherwise."

5. Add a new definition for "authorized representative" that matches the one in rule 5101:3-31-02 of the Administrative Code and the ones that ODA and JFS are proposing to adopt in rules 173-38-01, 173-40-01, 173-42-01, and 5101:3-33-02 of the Administrative Code (and similar to the one that JFS is proposing to adopt in rule 5101:3-32-02 of the Administrative Code). The definition follows: "Authorized representative" means a person, eighteen years of age or older, acting on behalf of an individual who is applying for, or receiving, medical assistance. An authorized representative may be a family member, attorney, hospital social worker, or any other person the individual chooses to act on his or her behalf. In accordance with rule 5101:1-38-01.2 of the Administrative Code, the individual must provide a written statement naming the authorized representative and the duties that the named authorized representative may perform on the individual's behalf. ODA will also place this definition among the other definitions in alphabetical order. (See

subsequent revision on August 17, 2011.)

6. Upload a revised public-hearing notice.
7. Revise this RSFA.

On August 11, 2011, ODA revise-filed the rule to:

1. Replace "a provider furnishes to a consuemr" in paragraph (B)(7) [now (B)(9)] of the rule with "ODA's designee expects a provider to furnish."
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

On August 17, 2011, ODA revise-filed the rule to:

1. Revise the first sentence of the definition of "authorized representative" in response to comments the Midwest Care Alliance presented to ODA and JFS. Both ODA and JFS are amending currently-filed rules to (a) revise the first sentence of the definition so that it reads: "...means a person, eighteen years or older, who is chosen by, and acts on behalf of, an individual who is aplying for, or receiving, medical assistance," and to (b) delete the second sentence.
2. Add this definition: "Form JFS02399" means "form JFS02399 'Request for Medicaid Home and Community-Based Services (HCBS).'"
3. Add this definiton: "Form JFS07200" means "form JFS07200 'Request for Cash, Food and Medical Assistance.'"
4. Revise this RSFA.

On September 9, 2011, ODA refiled the rule to:

1. Define "Form ODA1115," which ODA makes readily available to the public on its website.
2. Define "Form ODA1116," which ODA makes readily available to the public on its website.
3. Upload a revised public-hearing notice to announce a second public hearing.
4. Revise this RSFA.

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

The proposed new rule only introduces Chapter 173-38 of the Administrative Code and defines terms used in the chapter that have no direct impact upon ODA's biennial budget.

Although ODA operates the state-funded component of the Assisted Living Program, H.B. No. 153 moved the Assisted Living Program's 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 section 5111.89 of the Revised Code into the impact upon line item GRF-600-525 and the state-funded component of the Assisted Living Program.

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-affect person associated with this proposed new rule, especially because the rule only introduces the chapter and defines terms used in the chapter that create no cost of compliance.

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**