

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

Agency Name

Division

Tom Simmons

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173-51-02

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Eligibility criteria for the state-funded assisted living program.**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, 5111.892**

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 presents the eligibility criteria for the state-funded component of the Assisted Living Program.

Please see the changes that ODA lists in item #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. Upload a revised public-hearing notice.

2. Revise this RSFA.

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

1. Upload a revised public-hearing notice.

2. Revise this RSFA.

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

1. Replace the content of paragraphs (A)(2) to (A)(8) of the rule with a new (A)(2) to (A)(6) of the rule, which involved reformatting the paragraphs and revising the content of each paragraphs. Before the replacement, paragraphs (A)(2) to (A)(8) said, "(2) The individual needs an intermediate level of care, as defined in rule 5101:3-3-06 of the Administrative Code, or a skilled level of care, as defined in rule 5101:3-3-05 of the Administrative Code; (3) The individual has applied for the medicaid-funded component of the assisted living program (or, if the medicaid-funded component is terminated under division (C)(2) of section 5111.89 of the Revised Code, the unified long-term services and support medicaid waiver component); (4) ODA's designee has determined that the individual meets the non-financial eligibility requirements of the medicaid-funded component of the

assisted living program in accordance with rule 5101:3-33-03 of the Administrative Code (or, if the medicaid-funded component is terminated under division (C)(2) of section 5111.89 of the Revised Code, the unified long-term services and support medicaid waiver component); (5) The individual cooperates with the CDJFS in determining medicaid financial eligibility; (6) ODA's designee has no reason to doubt that the individual meets the financial eligibility requirements of the medicaid-funded component of the assisted living program (or, if the medicaid-funded component is terminated under division (C)(2) of section 5111.89 of the Revised Code, the unified long-term services and support medicaid waiver component); (7) If ODA's designee established whether or not the individual pays any patient liability amount, the individual pays the amount required to the entity to which ODA's designee instructs the individual to pay; and, (8) While receiving assisted living services under the state-funded component of the assisted living program, the individual resides in a residential care facility that is authorized by a valid provider agreement to participate in the medicaid-funded component of the assisted living program, including both of the following: (a) A residential care facility that is owned or operated by a metropolitan housing authority that has a contract with the United States department of housing and urban development to receive an operating subsidy or rental assistance for residents of the facility; and, (b) A county or district home licensed as a residential care facility." New paragraphs (A)(2) to (A)(6) of the rule say: "(2) The individual completes and submits forms JFS07200 and JFS02399 to the CDJFS; (3) ODA's designee has determined that the individual meets the non-financial eligibility requirements of the medicaid-funded component of the assisted living program in accordance with rule 5101:3-33-03 of the Administrative Code; (4) ODA's designee completes the financial assessment and has no reason to doubt that the individual meets the financial eligibility criteria of the medicaid-funded component of the assisted living program under rules 5101:1-38-01.6 and 5101:1-38-01.8 of the Administrative Code; (5) After ODA's designee assesses the individual according to rule 5101:1-39-24.1 of the Administrative Code, the individual pays any patient liability amount that ODA's designee determines the individual is required to pay to the entity to which ODA's designee instructs the individual to pay; and, (6) While receiving assisted living services under the state-funded component of the assisted living program, the individual resides in an Ohio licensed residential care facility that is authorized by a valid provider agreement to participate in the medicaid-funded component of the assisted living program." The reformatting and revisions allow ODA to present the eligibility criteria for the similar state-funded component of the Assisted Living Program and the state-funded PASSPORT Program in the same order, which will make it easier for ODA's designees to assess eligibility. (See the subsequent refilings on August 18, 2011 and September 9, 2011.)

2. Remove the hyphen between "assisted" and "living" in paragraph (B) of the rule.

3. Replace "ninety days" in paragraph (C) of the rule with "three months," because H.B. No. 153 uses "three months," not "ninety days."

4. Revise this RSFA.

On August 18, 2011, ODA refiled the rule to:

1. Replace "requirements of" in paragraph (A)(3) of the rule with "criteria for" and to replace "in accordance with" in the same paragraph with "under."

2. Replace "criteria of" in paragraph (A)(4) of the rule with "criteria for."

3. Replace "is required to" in paragraph (A)(5) of the rule with "shall."

4. Revise this RSFA.

On August 18, 2011, ODA refiled the rule a second time to:

1. Replace "participates" in paragraph (A)(1) of the rule with "has participated."

2. Revise this RSFA.

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

1. Replace "participated in an in-person assessment with ODA's designee" in paragraph (A)(1) of the rule with "completed a long-term care consultation under section 173.42 of the Revised Code and Chapter 173.43 of the Administrative Code."

2. Insert a new paragraph as paragraph (A)(3) of the rule to add a new eligibility criterion that says, "ODA's designee and the individual complete form ODA1116, which indicates that the individual chooses to enroll in the state-funded component of the assisted living program, names the individual's representative (if any), and indicates the individual's authorization to release information."

3. Replace "the financial assessment and has no reason to doubt [that the individual meets the financial eligibility criteria]" in paragraph (A)(4) [now (A)(5)] of the rule with "form ODA1115 and the form indicates [that the individual meets the financial eligibility criteria]."

4. Upload a revised public-hearing notice to announce a second public hearing.

5. Revise this RSFA.

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

1. Schedule a public hearing. H.B. No. 153 authorizes ODA to adopt this 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 amendments to Chapter 173-40 of the Administrative Code.

2. Upload a public-hearing notice.
3. Revise this RSFA.

On July 26, 2011, ODA revise-filed the rule to:

1. Replace "plan of care" in paragraphs (A)(3)(e) and (A)(3)(f) of the rule and "care plan" in paragraph (A)(3)(f) of the rule with "service plan." ODA is making this revision in response to a comment that the Ohio Association of Area Agencies on Aging submitted on rule 173-40-01 of the Administrative Code during ODA's public-comment period. The comment called for consistent use of "plan of care" or "service plan." In CMS' "Application for a [1915(c)] Home and Community-Based Waiver [Version 3.5]: Instructions, Technical Guide and Review Criteria," CMS uses "service plan." Additionally, ODA uses "service plan" in other rules. Therefore, ODA is choosing to use "service plan" in this rule, too.
2. Remove ", and that is approved by ODA's designee" from the end of paragraph (A)(3)(e) of the rule because it is redundant.
3. Revise this RSFA.

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

1. Replace all occurrences of "medicaid-funded PASSPORT program" in paragraphs (A)(1)(b) and (A)(1)(c) of the rule with "medicaid-funded component of the PASSPORT program."
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

On August 1, 2011, ODA revise-filed the rule to:

1. Replace "Chapter 5101:1-39" in paragraph (A)(3)(d) of the rule with "rules 5101:1-38-01.6 and 5101:1-38-01.8." This change will make this rule match JFS' recent changes to rule 5101:3-31-03 of the Administrative Code.
2. Replace "nursing facility placement" in paragraph (A)(3)(h) of the rule with "admission to a nursing facility." This allows the language to match the language used in Chapter 173-43 of the Administrative Code regarding admission to nursing facilities.
3. Upload a revised public-hearing notice.
4. Revise this RSFA.

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

1. Replace "must have" in paragraph (A)(1)(c) of the rule with "has" and "not have"

in the same paragraph with "has no."

2. Replace paragraphs (A)(1)(e) and (A)(2)(c) of the rule, both of which said, "If ODA's designee established whether or not the individual is required to pay a patient liability amount, the individual pays the amount required to the entity to which ODA's designee instructs the individual to pay." The replacement language for both paragraphs says, "The individual pays the full amount of any patient liability that ODA's designee determines the individual is required to pay."

3. Replace "must have" in paragraph (A)(2)(a) of the rule with "has."

4. Replace "must have" in paragraph (A)(2)(b) of the rule with "has." In the same paragraph, replace "is transferred" with "transfers."

5. Replace "must allow" in paragraph (A)(2)(d) of the rule with "allows." In the same paragraph, replace "assist the individual in order to responsibly transfer the individual to" with "help the individual transfer to."

6. Replace "must have" in paragraph (A)(3)(a) of the rule with "has."

7. Upload a revised public-hearing notice.

8. Revise this RSFA.

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

1. Reformat the rule so that paragraphs (A)(1), (A)(2), and (A)(3) become (A), (B), and (C) of the rule. This also changes other paragraph numbers and citations.

2. Replace paragraphs (A)(1)(b) to (A)(1)(e) of the rule with new paragraphs (A)(1)(b) to (A)(1)(e) of the rule. ODA reformatted and revised the paragraphs. Before the replacement, the paragraphs said, "(b) The individual has a pending application for the medicaid-funded component of the PASSPORT program. (c) ODA's designee has determined that the individual meets the non-financial eligibility requirements of the medicaid-funded component of the PASSPORT program and has no reason to doubt that the individual meets the financial eligibility requirements of the medicaid-funded component of the PASSPORT program. (d) The individual cooperates with the CDJFS in determining medicaid financial eligibility. (e) The individual pays the full amount of any patient liability that ODA's designee determines the individual is required to pay." Afterwards, the paragraphs say, "(2) The individual completes and submits forms JFS07200 and JFS02399 to the CDJFS; (3) ODA's designee has determined that the individual meets the non-financial eligibility requirements of the medicaid-funded component of the PASSPORT program and has no reason to doubt that the individual meets the financial eligibility requirements of the medicaid-funded component of the PASSPORT program; (4) ODA's designee completes the financial assessment and has no reason to doubt that the individual meets the financial eligibility criteria of

the medicaid-funded component of the PASSPORT program under rules 5101:1-38-01.6 and 5101:1-38-01.8 of the Administrative Code; and, (5) After ODA's designee assesses the individual according to rule 5101:1-39-24 of the Administrative Code, the individual pays any patient liability amount that ODA's designee determines the individual is required to pay to the entity to which ODA's designee instructs the individual to pay." The reformatting and amendments allows ODA to present the eligibility criteria for the similar state-funded component of the Assisted Living Program and the state-funded PASSPORT Program in the same order, which will make it easier for ODA's designees to assess eligibility. (See the subsequent refilings on August 18, 2011 and September 9, 2011.)

3. Replace paragraph (A)(2)(c) [now (B)(3)] of the rule which said the individual pays the full amount of any patient liability that ODA's designee determines the individual is required to pay. The new language says, "After ODA's designee assesses the individual according to rule 5101:1-39-24 of the Administrative Code, the individual pays any patient liability amount that ODA's designee determines the individual is required to pay to the entity to which ODA's designee instructs the individual to pay."

3. Replace paragraph (B) of the rule which limited those who qualify for the state-funded component of the PASSPORT program on the bases of paragraphs (A)(1) [now (A)] or (A)(2) [now (B)] to "(F) An individual who is eligible for the state-funded component of the PASSPORT program because the individual meets all the criteria under paragraph (A) of this rule may not participate in the state-funded component of the PASSPORT program for more than three months. (G) An individual who is eligible for the state-funded component of the PASSPORT program because the individual meets all the criteria under paragraph (B) of this rule may not participate in the state-funded component of the PASSPORT program for more than thirty days." H.B. No. 153 establishes the enrollment period for those enrolled on the basis of presumptive eligibility at three months, not thirty days. H.B. No. 153 does not establish the enrollment period for those enrolled on the basis of loss of Medicaid financial eligibility. In the currently-effective rule 173-40-04 of the Administrative Code, ODA establishes the duration at sixty days. In the earlier version of this proposed rule, ODA proposed establishing the duration at ninety days. With this revision, ODA is proposing to establish the duration at thirty days.

4. Remove (A)(2)(d) of the rule, which said, "The individual allows ODA's designee to help the individual transfer to other community-based long-term care services or to a nursing facility."

5. Replace paragraph (C) of the rule, which said, "(C) If, at any time, a consumer enrolled in the state-funded component of the PASSPORT program no longer meets all the criteria under this rule, the consumer is no longer eligible for the state-funded component of the PASSPORT program," with paragraphs (D) and (E) of the rule, which say, "(D) If, at any time, a consumer enrolled in the state-funded

component of the PASSPORT program on the basis of presumptive eligibility no longer meets all the criteria under paragraph (A) of this rule, the consumer is no longer eligible for the state-funded component of the PASSPORT program. (E) If, at any time, a consumer enrolled in the state-funded component of the PASSPORT program on the basis of losing medicaid financial eligibility no longer meets all the criteria under paragraph (B) of this rule, the consumer is no longer eligible for the state-funded component of the PASSPORT program."

6. Modify punctuation in the rule (semicolons vs., periods).

7. Revise this RSFA.

On August 18, 2011, ODA refiled the rule to:

1. Replace "and has no reason to doubt that the individual meets the financial eligibility criteria for the medicaid-funded component of the PASSPORT program" in paragraph (A)(3) of the rule with "under rule 5101:3-31-03 of the Administrative Code."

2. Replace "criteria of" in paragraph (A)(4) of the rule with "criteria for."

3. Replace "is required to" in paragraphs (A)(5) and (B)(3) of the rule with "shall."

4. Revise this RSFA.

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

1. Replace "participated in an in-person assessment with ODA's designee" in paragraph (A)(1) of the rule with "completed a long-term care consultation under section 173.42 of the Revised Code and Chapter 173.43 of the Administrative Code."

2. Insert a new paragraph as paragraph (A)(3) of the rule to add a new eligibility criterion that says, "ODA's designee and the individual complete form ODA1116, which indicates that the individual chooses to enroll in the state-funded component of the PASSPORT program, names the individual's representative (if any), and indicates the individual's authorization to release information."

3. Replace "the financial assessment and has no reason to doubt [that the individual meets the financial eligibility criteria]" in paragraph (A)(4) [now (A)(5)] of the rule with "form ODA1115 and the form indicates [that the individual meets the financial eligibility criteria]."

4. Upload a revised public-hearing notice to announce a second public hearing.

5. Revise this RSFA.

On September 29, 2011, ODA refiled the rule to:

1. Replace "completed" in paragraph (A)(1) of the rule with "participated in." ODA made this change after contemplating testimony provided at ODA's second public hearing on September 15, 2011. At the hearing, the Midwest Care Alliance asked ODA to replace "completed" with "received." ODA did, in fact, make a change, but decided that, to promote person-centered care, ODA wanted to indicate that the individual has a role in his or her consultation. Thus ODA refiled the rule so that it says the individual must participate in a long-term care consultation in order to be eligible for the state-funded component of the PASSPORT Program on the basis of presumptive eligibility.

2. 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

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 the adoption of this proposed 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**