

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

Agency Name

Division

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173-51-02

Rule Number

AMENDMENT

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? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB487**General Assembly: **129**Sponsor: **Amstutz (by request)**

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:

In 2011, H. B. No. 153 (129th General Assembly) established the maximum period of eligibility for the State-Funded Component of the Assisted Living Program as three months, which could be a period of time as short as 89 days (e.g., February, March, and April) or as long as 92 days (e.g., May, June, and July).

Recently, H. B. No. 487 (129th General Assembly) amended section 5111.89 of the Revised Code to replace "three months" with "ninety days." Once the amendment takes effect, it will establish equitable eligibility periods for all consumers of the program.

To implement H. B. No. 487's amendment to section 5111.89 of the Revised Code, ODA is now proposing to amend rules 173-51-02 and 173-51-03 of the Administrative Code to replace occurrences of "three months" with "ninety days." ODA proposes to adopt the amendments on the same day that H. B. No. 487's amendment takes effect.

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

In response to H.B. No. 487 (129th General Assembly), ODA is proposing to amend the rule to replace "three months" with "ninety days."

(See item #11 of this RSFA for more changes.)

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. If applicable, indicate each specific paragraph of the rule that has been modified:

On July 16, 2012, ODA revised the rule to:

1. Add language to the eligibility criteria that says an individual is only eligible for the program if he or she was not previously enrolled in the state-funded Assisted Living Program or the state-funded PASSPORT program. This clarification makes visible two "invisible" criteria in other rules. The post-disenrollment prohibitions in paragraph (C)(1) of rule 173-51-03 of the Administrative Code already prohibit a person who is disenrolled from the program from re-enrolling back into the program. The post-disenrollment prohibitions in paragraphs (A)(3)(c), (B)(3)(b), and (C)(4)(b) of rule 173-40-03 of the Administrative Code already prohibit a person who is disenrolled from the state-funded PASSPORT program from enrolling into the state-funded Assisted Living Program.
2. Clarify that an individual who enrolls into the state-funded component of the Assisted Living Program will automatically transfer to the Medicaid-funded component of the Assisted Living Program if the individual is, in fact, eligible for the Medicaid-funded component of the program. (See paragraphs (A)(3)(a) and (A)(3)(b) of the rule.)
3. Add language to say that an individual is only eligible for the state-funded component of the Assisted Living Program if he or she actively assists the CDJFS in determining whether or not he or she is eligible for the Medicaid-funded component of the program.
4. Replace occurrences of "ODA's designee" with "ODA (or ODA's designee)."
5. Add in paragraph (B) of the rule that a consumer is no longer eligible for the program if he or she no longer meets all the criteria listed in paragraph (A) of the rule, unless the only criterion that the consumer no longer meets is the patient-liability criterion. Before the revision, the consumer was no longer eligible even if the only criterion that he or she no longer met was the patient-liability criterion.
6. Make minor structural and grammatical changes (e.g., adding sub-headings, changing the order or paragraphs, changing the tense of sentences, replacing "under" with "which are listed in.")
7. Revise this RSFA.

On July 16, 2012, after receiving feedback from Ohio District 5 Area Agency on Aging, Inc., ODA revised the rule for a second time to:

1. Replace "assisted-living" in paragraph (A)(3)(c) of the rule with "assisted living."
2. Replace "thee" in paragraph (A)(3)(d) of the rule with "the."
3. Insert ", and ODA (or ODA's designee) has no reason to doubt that determination." This gives the rule language similar to its parallel paragraph for the state-funded component of the PASSPORT Program , which is in rule 173-40-02 of the Administrative Code.
4. Revise this RSFA.

12. 119.032 Rule Review Date: **6/11/2012**

(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 (129th General Assembly) 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 or that was reviewed by H.B. No. 487 (129th General Assembly).

Additionally, because the amendments to section 5111.89 of the Revised Code are

contained in the same legislation that authorizes the appropriations for program, ODA believes the Ohio General Assembly factored H.B. No. 487'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 a cost of compliance to a person who may have been eligible for up to a three-month period that may have lasted 92 days, but in response to H.B. No. 487, will now last 90 days. On the other hand, there is a benefit to a person who may have been eligible for up to a three-month period that may have lasted only 89 days, but in response to H.B. No. 487, will now last 90 days. As stated in item #6 of this RSFA, HB487's amendments established equitable eligibility periods for all consumers of the program. ODA's proposed amendment to this rule implements the equitable periods of eligibility.

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**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **No**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

This rule lists eligibility requirements for potential consumers of the state-funded component of the Assisted Living Program. It does not list requirements for any Ohio business.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

This rule lists eligibility requirements for potential consumers of the state-funded component of the Assisted Living Program. It does not list requirements for any Ohio business.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

This rule lists eligibility requirements for potential consumers of the state-funded component of the Assisted Living Program. It does not list requirements for any Ohio business.