

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

Agency Name

Division

**Tom Simmons**

Contact

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**173-51-03**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Disenrollment from 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**

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.

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

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 enrollment process 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 additional 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. State, in paragraph (A)(1) of the rule, that ODA will not disenroll a consumer who no longer meets all the criteria for the program if the only criterion the consumer no longer meets is the patient-liability criterion.
2. Clarify that ODA is not required to provide notice and an opportunity for a hearing in accordance with Chapter 119 of the Revised Code if a consumer voluntarily separates himself or herself from the program. (See subsequent refiling on July 25, 2012.)
3. Replace the occurrences of "ODA's designee" with "ODA (or ODA's designee)."
4. Make other minor, clarifying changes.
5. Revise this RSFA.

On July 25, 2012, ODA refiled the rule to:

1. Replace the previous proposal to replace "three months" in paragraph (A)(4) of the rule with "ninety days." Now, ODA proposes to replace "three months" with "the maximum enrollment period of ninety days."
2. Insert a new paragraph (A)(5) of the rule that requires ODA (or ODA's designee) to disenroll a consumer who voluntarily disenrolls from the state-funded component of the Assisted Living Program.
3. Insert a new paragraph (B) (with sub-paragraphs) that explains that ODA (or ODA's designee) shall not provide a consumer for an opportunity for a hearing if ODA (or ODA's designee) disenrolls the consumer because the consumer reached his or her maximum enrollment period of ninety days or the consumer voluntarily disenrolled from the program.
4. Replace the (old) paragraph (B) with a new paragraph (D) and its sub-paragraphs. The paragraphs explain when ODA (or ODA's designee) shall send a notice of proposed adverse action to an individual, how the individual may request a hearing against the proposed adverse action, and what ODA (or ODA's designee)

may do if the individual does not request a hearing before the 30-day deadline.

5. Replace "cosumer" in paragraph (C)(2) of the rule with "consumer."

6. Change the title of the rule from "Disenrollment from the state-funded assisted living program" to "Disenrollment and other adverse actions regarding the state-funded assisted living program."

7. Upload a copy of form ODA1117 into the electronic rule filing system (ERF) so the public can view the document in the Register of Ohio.

8. Upload a public hearing notice for an additional public hearing.

9. Revise this RSFA, especially item #15 in direct costs.

#### 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 no cost of compliance to any directly-affected person associated with the proposed amendment of this rule.

The rule regulates the enrollment of individuals into the state-funded component of the Assisted Living Program and not residential care facilities (RCFs) that may participate in that program. Nevertheless, ODA wanted to note an indirect cost to RCFs that is associated with a revision that ODA made to the rule on July 16, 2012. The revision said that ODA would no longer disenroll a consumer of the state-funded Assisted Living Program if the only eligibility criterion for the program that the resident no longer meets is the patient-liability criterion. (Background: Similar to how a patient pays a co-pay for a doctor's visit, an RCF resident may have a patient-liability amount to directly pay the RCF that reflects a percentage of the total rate the state-funded Assisted Living Program allows for the RCF's services.)

ODA staff discussed the indirect costs with the Ohio Assisted Living Association in a July 24, 2012 teleconference regarding the indirect costs. Our conclusions were as follows:

1. ODA cannot guarantee that a resident will comply with his or her responsibility to pay patient-liability amounts. That issue is between the resident and the RCF. The RCF retains the option of describing in the resident agreement the potential consequences of not paying patient-liability amounts, including discharge from the RCF.

2. If a resident meets all the eligibility criteria for the state-funded component of the Assisted Living Program except the criterion to pay his or her patient-liability amounts, the state will continue to pay its portion for the duration of the 90-day enrollment period. If the RCF discharges the non-paying resident before the 90th day (cf., #3 below), ODA will continue to pay its portion until the day of discharge.

3. Division (A)(30)(e) of section 3721.13 of the Revised Code and rule 3701-61-02 of the Administrative Code give every RCF the option to discharge a resident, after giving the resident reasonable and appropriate notice, if the resident does not pay his or her patient-liability amounts. Division(A)(1) of section 3721.16 of the Revised Code and rule 3701-61-03 of the Administrative Code require the RCF to give a 30-day notice to the resident before doing so. This is a matter that the Ohio Dept. of Health enforces.

4. Division (A)(30)(e) of section 3721.13 of the Revised Code and paragraph (A)(3) of rule 3701-61-02 of the Administrative Code prohibit the RCF from discharging a non-paying resident who currently has a pending application for Medicaid with a county department of job and family services. This is also a matter that the Ohio Dept. of Health enforces.

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 regulates the enrollment process for consumers of the state-funded component of the Assisted Living Program. It does not regulate 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 regulates the enrollment process for consumers of the state-funded component of the Assisted Living Program. It does not regulate any Ohio business.

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

This rule regulates the enrollment process for consumers of the state-funded component of the Assisted Living Program. It does not regulate any Ohio business.

Ohio Department of Aging

**Notice of Proposed Action and Opportunity for Hearing**

Name:		
Street Address:	Client Identification Number:	Program:
City, State, and Zip Code:	County:	Mailing Date:

The Department of Aging (ODA) is proposing to take the following action(s) with regard to your application for, or continued enrollment in the state-funded program identified below:

- ☐ The Department of Aging is proposing to deny your application for enrollment into the state-funded \_\_\_\_\_ program under section(s) \_\_\_\_\_ of the Revised Code.
- ☐ As a condition to your continued enrollment in the state-funded \_\_\_\_\_ program, the Department is proposing that you will have to pay a monthly patient liability amount of \$ \_\_\_\_\_. This monthly payment is due on \_\_\_\_\_. The payment must be made to \_\_\_\_\_.
- ☐ Effective on \_\_\_\_\_, the Department is proposing the following changes to the services that you receive through the state-funded \_\_\_\_\_ program: \_\_\_\_\_
- ☐ The Department is proposing to terminate your enrollment in the state-funded \_\_\_\_\_ program, effective on \_\_\_\_\_. Your last day of service will be: \_\_\_\_\_.

The Department of Aging's reasons for the proposed action are:

The state statutes and regulations supporting the Department of Aging's proposed action(s) are:

**If you disagree with the action(s) being proposed by the Department**, you must sign this form below and return the form to: *Director, Ohio Department of Aging, 50 W. Broad Street, 9<sup>th</sup> Floor, Columbus, Ohio 43215.* **Your signature on this form must be received by the Department of Aging within 30 days of the date on which the PASSPORT Administrative Agency mailed this form to you. DO NOT SEND THIS FORM TO YOUR LOCAL PASSPORT ADMINISTRATIVE AGENCY OR CASE MANAGER.** If this form is not received within 30 days of the date the PASSPORT Administrative Agency mailed this notice to you, your request for a hearing **will** be denied.

Signature:	Telephone Number:
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*Please Continue Reading the Back/Next Page of this Document*



**You Have a Right to be Notified of the Proposed Action(s):**

The purpose of this notice is to inform you about the action the Ohio Department of Aging (“ODA”) is proposing to take with regard to your application for services under, or enrollment in, a state-funded program. If you do not understand this proposed action, you may contact your case manager. After discussing this matter with your case manager, it is possible that that you will agree with the proposed action(s), or that ODA will decide against taking the proposed action(s).

Your Case Manager or Assessor Is:	Your Case Manager's or Assessor's Telephone Number Is:
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**You Have an Opportunity to Challenge the Proposed Action at a State Hearing:**

Whether or not you contact your case manager, you have an opportunity to challenge the proposed action(s) at a state hearing in Columbus, Ohio - but only if you submit your written request for a hearing in a timely manner. (A written request for an administrative hearing is submitted in a timely manner by you if it is received by the Director of the Ohio Department of Aging within 30 days of the date on which the notice of proposed action was mailed to you by your PASSPORT Administrative Agency.)

If your request for a hearing is filed in a timely manner, the Department will postpone taking the proposed action(s) against you, and will instead schedule a hearing to take place in Columbus, Ohio. You may appear at the hearing in person, and/or be represented at the hearing by an attorney licensed to practiced law in Ohio. At the hearing, you or your attorney may present evidence and examine any witnesses appearing for or against you. If you do not wish to appear at the hearing in person, you or your attorney may submit your position, arguments, or contentions in writing prior to the start of the hearing.

A representative of ODA will also attend the hearing, and will present ODA's reasons for the proposed action. An independent hearing officer retained by ODA will prepare a report and recommendation to the Director of ODA in accordance with Chapter 119. of the Revised Code. The Director of ODA will issue a final decision, called a “Final Order,” in the matter. If the Director's final order adversely affects your enrollment in the state-funded program, you may be required to pay back any benefits that you were given, but were not eligible to receive.

**To Request an Administrative Hearing:**

If you wish to request a state hearing to challenge the proposed action, ODA must receive your signature on this form within 30 days of the mailing date of this notice. **DO NOT SEND THIS FORM TO YOUR PASSPORT ADMINISTRATIVE AGENCY OR CASE MANAGER.**

**Further Information:**

If you wish information about your eligibility for free legal services, you may contact your local legal aid office. The telephone number to your local legal aid office can be obtained by calling Ohio State Legal Services at 1-800-589-5888. If you wish information about your rights as a recipient of state-funded long-term care services, you may contact your local ombudsman program by calling 1-800-282-1206.

Certified Mail Number:
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