

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

Agency Name

Division

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173-51-03

Rule Number

NEW

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? **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 details the disenrollment process 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. Delete the second occurrence of "a consumer" in paragraph (A) of the rule.

2. Delete "more than" before "ninety days" in paragraph (A)(2) of the rule.

3. Upload a revised public-hearing notice.

4. Revise this RSFA.

On August 17, 2011, ODA revised the rule to:

1. Replace paragraphs (A)(2) and (A)(3) of the rule, which said, "(2) The consumer has been enrolled in the state-funded component of the assisted living program for ninety days; or, (3) The CDJFS has determined that the consumer is eligible for the medicaid-funded component of the assisted living program," with paragraphs (A)(2), (A)(3), and (A)(4) of the rule, which say, "The CDJFS has determined that the consumer meets the medicaid financial eligibility requirements under rules 5101:1-38-01.6 and 5101:1-38-01.8 of the Administrative Code; The CDJFS has determined that the consumer does not meet the financial eligibility requirements

under rules 5101:1-38-01.6 and 5101:1-38-01.8 of the Administrative Code; or, The consumer has been enrolled in the state-funded component of the assisted living program for three months."

2. Replace paragraph (B) of the rule (and its sub-paragraphs), which said, "(B) Appeals: (1) There are no appeal rights for an individual who is denied enrollment into the state-funded component of the assisted-living program. (2) There are no appeal right for a consumer who is disenrolled from the state-funded assisted-living program," with a new paragraph that says, "Appeals: ODA shall provide notice and an opportunity for a hearing in accordance with Chapter 119. of the Revised Code to any individual whose application for the state-funded component of the assisted living program is denied, or whose participation in the state-funded component of the assisted living program is terminated before three months of enrollment has elapsed."

3. Replace "financial eligibility criteria and (and any other criteria)" in paragraph (C)(2) of the rule, with "financial eligibility criteria and non-financial eligibility criteria."

4. Replace the sub-heading "Re-enrollment" with "Post-disenrollment prohibitions."

5. 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**