



Department of  
Aging

**John Kasich**, Governor  
**Bonnie Kantor-Burman**, Director

## NOTICE

As a measure to reduce Medicaid expenditures, Ohio is proposing to only pay the full rate for certain services a provider furnishes to a PASSPORT or Choices consumer if the consumer is receiving the service independent of other PASSPORT or Choices consumers. Beginning July 1, 2011, with the emergency filing of rule 5101:3-31-07 of the Administrative Code, the Ohio Department of Job and Family Services (JFS) began reimbursing providers at 75% the normal rate if the provider furnishes certain services to a PASSPORT consumer while the consumer is in a group of PASSPORT consumers. After the emergency rule expires on September 29, 2011, JFS will adopt regularly-filed, amended rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code to establish the group-rate methodology for the PASSPORT Program and also the Choices Program. (Before July 1, 2011, JFS' rules did not require the PASSPORT and Choices Programs to use group rates, although JFS' rules required other Medicaid programs to use group rates.)

To make ODA's rules correspond to the changes JFS made in rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code, ODA is proposing to incorporate JFS' group-rate language into rules 173-39-02.1, 173-39-02.11, 173-39-02.13, and 173-39-02.18 of the Administrative Code. ODA proposes to adopt the amendments to the rules on September 29, 2011, the same day that JFS' emergency-filed rules sunset.

As required by section 119.03 of the Revised Code, ODA will conduct a public hearing to obtain comments concerning ODA's proposed amendment of rules 173-39-02.1, 173-39-02.11, 173-39-02.13, and 173-39-02.18 of the Administrative Code to establish **group rates**. ODA will conduct the hearing on **August 15, 2011** in Conference Rooms **10A & 10B** of the ODA's offices at 50 W. Broad Street, **10th floor**; Columbus, OH 43215. The hearing will begin at **1:30PM** and will continue until all parties in attendance at that time have had an opportunity to provide comment.

ODA will consolidate this public hearing with seven other public hearings on August 15, 2011 to reduce the state's administrative expenses and to reduce the general public's costs associated with traveling to Columbus to participate in public hearings.

Any person may direct written comments or requests for information concerning the proposed amendments to Tom Simmons, ODA's rules manager, on or before the date of the hearing by writing to [rules@age.state.oh.us](mailto:rules@age.state.oh.us).

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## INTRODUCTION

ODA is proposing to amend rules 173-39-02.1, 173.39-02.11, 173.39-02.13, and 173-39-02.18 of the Administrative Code. In doing so, ODA has 4 basic goals:

1. To reduce Medicaid expenditures.
  - a. Ohio is proposing to only pay the full rate for certain services a provider furnishes to a PASSPORT or Choices consumer if the consumer is receiving the service independent of other PASSPORT or Choices consumers. Beginning July 1, 2011, with the emergency filing of rule 5101:3-31-07 of the Administrative Code, the Ohio Department of Job and Family Services (JFS) began reimbursing providers at 75% the normal rate if the provider furnishes certain services to a PASSPORT consumer while the consumer is in a group of PASSPORT consumers. After the emergency rule expires on September 29, 2011, JFS will adopt regularly-filed, amended rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code to establish the group-rate methodology for the PASSPORT Program and also the Choices Program. (Before July 1, 2011, JFS' rules did not require the PASSPORT and Choices Programs to use group rates, although JFS' rules required other Medicaid programs to use group rates.)
  - b. To make ODA's rules correspond to the changes JFS made in rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code, ODA is proposing to incorporate JFS' group-rate language into rules 173-39-02.1, 173-39-02.11, 173-39-02.13, and 173-39-02.18 of the Administrative Code. ODA proposes to adopt the amendments to the rules on September 29, 2011, the same day that JFS' emergency-filed rules sunset.
2. To correct errors in rule 173-39-02.1 of the Administrative Code.
3. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.
4. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129<sup>th</sup> G.A.) which require each state agency to eliminate unnecessary regulations and to write easier-to-read and easier-to-comprehend rules to promote transparency in the agency's regulations. In 2010, ODA adopted the most-recent versions of rules 173-39-02.13 and 173-39-02.18 of the Administrative Code after undergoing a similar process; and, in 2011, ODA adopted the most-recent versions of rules 173-39-02.1 and 173-39-02.11 of the Administrative Code, after undergoing a similar process. Therefore, ODA's primary concern in complying with the executive order and S.B. No. 2 is to consider how to implement the new budget-related language into the rules in a way that complies with the executive order and S.B. No. 2.

ODA is also proposing to amend the rules after providing interested parties and the general public an opportunity to provide input on the proposed amendments. 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.

### 173-39-02.1 Adult Day Service.

Specifically, ODA is proposing to amend the rule to:

1. Insert "structured activity programming, health assessments," in paragraph (B)(1)(a)(i) of the rule after "Enhanced ADS includes" for clarification. Paragraphs (B)(1)(f), (B)(1)(i), and (B)(3)(d) of the rule already presume that the provider furnishes structured activities. Paragraph (B)(1)(e) of the rule already require the provider to conduct health assessments.
2. Delete "health assessments" from paragraph (B)(1)(a)(ii) of the rule for clarification. Because intensive ADS includes all the components of the enhanced ADS, and because ODA is amending paragraph (B)(1)(a)(i) of the rule to clarify that enhanced ADS includes health assessments, there is no need to repeat the term in this paragraph.
3. Amend Table 1 to the rule so that it clarifies that both enhanced ADS and intensive ADS include structured activity programming and health assessments.

4. Remove the extra space in between “Hands” and “-on assistance with medication administration” in Table 1 to the rule.
5. Replace “administers” in paragraph (B)(2)(a)(iv) of the rule with “maintains,” because providers don’t administer the temperatures in their ADS centers, providers maintain the temperatures.
6. Amend paragraph (C)(2) to:
  - a. Clarify that a unit of ADS transportation can be a mile, not a mileage rate. (*cf.*, Appendix A to Rule 5101:3-3-06.1 of the Administrative Code.)
  - b. Clarify that the case manager makes a calculation of distance, not the distance itself.
  - c. Add to the paragraph, “If the provider furnishes the transportation simultaneously to more than one PASSPORT or Choices consumer in the same vehicle, the provider’s reimbursement rate for that trip is seventy-five per cent of the per-unit rate, in accordance with rules 5101:3-31-07 and 5101:3-32-07 of the Administrative Code.”
7. Add to the end of paragraph (C)(3) of the rule “for the PASSPORT program and rule 5101:3-1-06.4 of the Administrative Code for the choices program.” Because a case manager may authorize ADS for a consumer in either the PASSPORT or the Choices Programs, paragraph (C)(3) of the rules needs to reference the rate rules for each of the two programs.
8. Insert “173.01” into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.

#### **173-39-02.11 Personal care service.**

Specifically, ODA is proposing to amend the rule to:

1. Add new paragraph (E)(2) to the rule that says, “If the provider furnishes the service simultaneously to more than one PASSPORT consumer who resides in the same residence, the provider’s reimbursement rate for the service is seventy-five per cent of the per-unit rate in the provider’s contract with ODA’s designee, in accordance with rule 5101:3-31-07 of the Administrative Code. As used in this paragraph, ‘resides in the same residence’ does not refer to a PASSPORT consumer who resides alone in an apartment building where another PASSPORT consumer may reside alone in a separate apartment.”
2. Insert “173.01” into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.

#### **173-39-02.13 Medical non-emergency transportation service.**

Specifically, ODA is proposing to amend the rule to:

1. Replace “Units” in paragraph (D) of the rule with “Jobs,” because the PASSPORT Program reimburses providers for transportation services on a per-job, not per-unit, rate. (*cf.*, Rule 5101:3-31-07 of the Administrative Code.)
2. Add new paragraph (D)(3) to the rule that says, “If the provider furnishes the service simultaneously to more than one PASSPORT consumer in the same vehicle, the provider’s reimbursement rate for that trip is seventy-five per cent of the per-job rate in paragraph (D)( of this rule, in accordance with rule 5101:3-31-07 of the Administrative Code.” [Current paragraph (D)(3) of the rule becomes paragraph (D)(4) of the rule.]
3. Insert “173.01” into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.

#### **173-39-02.18 Non-medical transportation service.**

Specifically, ODA is proposing to amend the rule to:

1. Replace "Units" in paragraph (D) of the rule with "Jobs," because the PASSPORT Program reimburses providers for transportation services on a per-job, not per-unit, rate. (*cf.*, Rule 5101:3-31-07 of the Administrative Code.)
2. Add new paragraph (D)(3) to the rule that says, "If the provider furnishes the service simultaneously to more than one PASSPORT consumer in the same vehicle, the provider's reimbursement rate for that trip is seventy-five per cent of the per-job rate in paragraph (D)( of this rule, in accordance with rule 5101:3-31-07 of the Administrative Code." [Current paragraph (D)(3) of the rule becomes paragraph (D)(4) of the rule.]
3. Insert "173.01" into the statutory authority section because section 173.01 of the Revised Code gives ODA authority to adopt this rule.