

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

Agency Name

Division

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Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Emergency response service.**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? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.02, 173.391, 173.40**

5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to replace the current rule with this new rule. In doing so, ODA has three goals:

1. To comply with the five-year review required under section 119.032 of the Revised Code.

2. To adopt rule on the emergency response service that is substantially similar to the requirements for providing an emergency response service under the rules of Department of Job and Family Services (JFS) and the Department of Developmental Disabilities (DoDD), which are also under development or may

soon be under development.

a. The goal is to provide consistent requirements for providers among the three agencies' Medicaid waiver programs. The rule content was developed by a consolidation exploration team of the Executive Medicaid Management Agency (EMMA), which Governor Strickland created with Executive Order 2007-36S. ODA, JFS, and DoDD were part of that team.

b. Certainly, there are differences in the rules each agency will propose, but the content is substantially similar. One noticeable difference is that ODA's regulations on the service appear in a rule that regulates just one service and follows the format of other rules that ODA has proposed since Executive Order 2008-04S (see goal #3 below), while JFS' regulations on the service appear in a rule that regulates several services and follows the format of other JFS rules. (JFS adopted the comparable rule 5101:3-46-04 of the Administrative Code on October 25, 2010.)

3. To comply with Governor Strickland's Executive Order 2008-04S: "Implementing Common Sense Business Regulation," which requires all state agencies to write easier-to-read and easier-to-comprehend rules to promote transparency in state regulations.

a. ODA complies with the executive order by:

i. Complying with Chapter 5 of the Legislative Service Commission's "Rule Drafting Manual," as found on http://www.lsc.state.oh.us/rules/rdm06_06.pdf

ii. Incorporating recommendations from "Advanced Legal Drafting" by Bryan A. Garner (Dallas: LawProse, Inc. (c) 2007)

iii. Incorporating recommendations from "Plain English Writing Tips," as found on http://business.ohio.gov/docs/RegReform_PlainEnglishWritingTips.pdf.

b. The result is language that:

i. Generously uses descriptive sub-headings (e.g., "Set-up," "Emergency response center," "Units and rates") and divides topics in rules to fit under those sub-headings in order to enable readers to thumb through the rule

ii. Begins with general material that appeals to most rule readers (e.g., what a service does) and ends with specific material that appeals to fewer readers (e.g., provider qualifications, units of service)

iii. Uses the active voice in the present tense, not the passive voice (e.g., "shall be") and not the future tense (e.g., "will")

iv. Uses the singular, unless the plural is necessary

v. Replaces legalese with plain-English words

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:

This rule regulates the emergency response service.

This proposed new rule differs from the rule of the same number that ODA is simultaneously proposing to rescind in the following ways:

1. ODA will reimburse a provider for providing the service according to this rule, not standards established outside of ODA's control and to which ODA nor the public may not readily have access. Therefore, ODA no longer requires a provider to only use equipment that meets the standards of the Underwriters' Laboratories. If a provider can provide this service according to this rule, ODA does not want to make it impossible to comply with the rule in the future by requiring UL-listings, when some technologies can perform the service according to this rule, but are not UL-listed. Cellular products, for example, are regulated by FCC rules, not by the UL-listing for burglar alarms nor by the UL-listing for home healthcare signaling equipment. However, one item in the UL standards that ODA added to the rule was a requirement for the equipment to have an internal battery that provides at least 24 hours of power without recharging and that sends notification to the emergency response center if the battery's level is low. (When ODA refiled this proposed new rule on November 15, 2010, it added a "grandfather" clause to this. See the details in item #11 of this RSFA.)
2. ODA no longer requires a provider to only use remote activation devices that are wearable and waterproof, because some consumers may have situations that require other equipment. For example, a quadriplegic cannot wear his or her remote activation device.
3. ODA no longer separately reimburses a provider for smoke alarms connected to the emergency response system.
4. ODA no longer separately reimburses a provider for "alternative ERS devices."
5. Instead of requiring providers to replace ERS equipment that malfunctions, ODA now only requires the provider to replace ERS equipment that malfunctions so long as the malfunction is not due to confirmed misuse, abuse, or negligence.
6. ODA no longer requires the provider to "attempt" to secure two designated responders from the consumer. (The consumer designates designated responders to respond to the consumer's emergencies.)

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 August 19, 2010, ODA refiled this proposed new rule to:

1. Remove "in an emergency" from the last sentence of paragraph (A) of the rule, because an emergency response center intervenes when it receives an alarm signal from the ERS equipment regardless of whether the signal due to an emergency or non-emergency.
2. Replace "additional training" in paragraph (B)(1)(b)(ii) of the rule with "customer support," because upon-request training is more commonly called "customer support."
3. Clarify in paragraph (B)(1)(c)(i) of the rule that, in the process of developing a response plan, each consumer works with the provider and case manager to determine the protocol for responding to his or her alarm signals.
4. Add the exception ", other than emergency service personnel," after "The provider shall train every designated responder," in paragraph (B)(1)(c)(iv) of the rule because ODA does not expect the provider to train designated responders who are firefighters or EMTs.
5. Clarify in paragraph (B)(1)(c)(iv) of the rule that the upon-request training of the designated responder is customer support.

6. Combine the last sentence of paragraph (B)(1)(c)(iv) of the rule with paragraphs (B)(1)(c)(iv)(a) and (B)(1)(c)(iv)(b) of the rule because simply requiring "written instructions for responding to the consumer's alarm signals" should encompass how to handle a consumer's emergencies and non-emergencies.

7. Insert ", or sub-contract to provide staff," after "The provider shall employ staff" in paragraph (B)(2)(a) of the rule, because ODA does not intend to prohibit the practice of sub-contracting with another company for the provision of the emergency-response-center portion of the service.

8. Insert language in paragraph (B)(4)(b) of the rule to show that the training ODA expects of each staff member of an emergency response center is training "on responding to alarm signals."

9. Insert this sentence as a second sentence to paragraph (B)(4)(b) of the rule: "If a provider sub-contracts with another business to perform the emergency response center's duties, the provider shall obtain a record from that sub-contracted business that shows each staff member of the emergency response center has successfully completed training on responding to alarm signals."

10. Insert ", training, or customer support" after "incident" in paragraph (B)(6)(c)(iii) of the rule.

11. To update this RSFA.

12. To upload a revised public hearing notice into the Register of Ohio to announce a subsequent public hearing.

After ODA considered feedback received after the second public hearing for this proposed new rule, ODA refiled this proposed new rule on November 15, 2010 to:

1. Add "grandfathering" language to paragraph (B)(1)(a)(v) of the rule. This will allow a provider to continue to use ERS equipment that is currently in service even if the equipment does not have a back-up battery that lasts 24 hours. However, beginning January 1, 2011, the provider may not install any ERS equipment into a home (i.e., not install new equipment, not install replacement equipment, or not install used equipment into another consumer's home) unless the equipment has a back-up battery that lasts at least 24 hours. This should prevent any provider from facing the expense of replacing an entire line of ERS equipment at once. Instead, the provider could install equipment with a back-up battery that lasts at least 24 hours one new customer at a time (or one customer who needs replacement equipment at a time). This should strand any upgrade costs over a long period of time.

2. To revise this RSFA.

For quick reference, before ODA refiled the proposed new rule on November 15,

2010, paragraph (B)(1)(a)(v) of the rule said, The provider shall only offer equipment that has an internal battery that provides at least twenty-four hours of power without recharging and that sends notification to the emergency response center if the battery's level is low."

After ODA refiled the proposed new rule, the paragraph says, "For any equipment the provider installs on or after January 1, 2011, the shall only install equipment that has an internal battery that provides at least twenty-four hours of power without recharging and that sends notification to the emergency response center if the battery's level is low."

A second time on November 15, 2010, ODA refiled this proposed new rule to:

1. Replace a mistaken use of "November 15, 2011" on this RSFA with "November 15, 2010."
2. No longer state on this RSFA that JFS' rule 5101:3-46-04 of the Administrative Code is "proposed" because JFS adopted the rule on October 25, 2010.

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

ODA anticipates that the proposed adoption of this new rule will have no impact upon the biennial budget established for ODA by the Ohio General Assembly.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure

necessitated by the proposed rule:

GRF-490-423 Long-Term Care Budget - State.

3C40-490-623 Long-Term Care Budget.

4J40-490-610 PASSPORT/Residential State Supplement.

4U90-490-602 PASSPORT Fund.

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 new cost of compliance to any directly-affected person as a result of the proposed adoption of this new rule, unless: (1) The provider was providing a smoke alarm system connected to ERS equipment. ODA will no longer reimburse a provider for that service. (2) The provider has been using ERS equipment that does not have back-up batteries that last at least 24 hours. On November 15, 2010, ODA refiled this rule to add a grandfathering clause that allows a provider to continue to use its current ERS equipment that has a back-up battery that may not last 24 hours so long as the provider does not reinstall the equipment into another consumer's home. Instead, the provider must only install equipment that has a back-up battery that lasts at least 24 hours. This will allow a provider that needs to upgrade its line of ERS equipment to strand the costs to upgrade over a long period of time.

On the other hand, the proposed new rule may result in lower administrative costs for some providers. Some of the changes that may lead to lower administrative costs are:

1. ODA will reimburse a provider for providing the service according to this rule, not standards established outside of ODA's control and to which ODA nor the public may not readily have access. Therefore, ODA no longer requires a provider to only use equipment that meets the standards of the Underwriters' Laboratories. If a provider can provide this service according to this rule, ODA does not want to make it impossible to comply with the rule in the future by requiring UL-listings, when some technologies can perform the service according to this rule, but are not UL-listed. Cellular products, for example, are regulated by FCC rules, not by the UL-listing for burglar alarms nor by the UL-listing for home healthcare signaling equipment. However, one item in the UL standards that ODA added to the rule was a requirement for the equipment to have an internal battery that provides at least 24 hours of power without recharging and that sends notification to the emergency response center if the battery's level is low.

2. Instead of requiring providers to replace ERS equipment that malfunctions, ODA

now only requires the provider to replace ERS equipment that malfunctions so long as the malfunction is not due to confirmed misuse, abuse, or negligence.

3. ODA no longer requires the provider to "attempt" to secure two designated responders from the consumer. (The consumer designates designated responders to respond to the consumer's emergencies.)

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**