

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

Agency Name

Division

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173-39-02.6

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Emergency response system 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: **173.391**

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

The Department of Aging is proposing a rescission of current rule 173-39-02.6 of the Administrative Code and proposing that it be replaced by this new rule. After the current rule became effective on March 31, 2006, the Department received feedback indicating that the rule needed to be updated. As a result, the Department drafted a proposed new rule to replace the current rule. On September 25, 2006, the Department held a meeting for any provider, PASSPORT Administrative Agency (PAA), or other interested party to discuss a draft of the proposed new rule. After considering that feedback, on October 12, 2006, another draft of the proposed new rule was posted on the rules clearance web page of the Department (<http://www.goldenbuckeye.com/rules/draft.html>) for two weeks to allow for

further feedback. After considering that input, the draft of the proposed new rule was further revised, then posted for a second two-week comment period on November 8, 2006. After considering that input, the draft of the proposed new rule was further revised, then filed with JCARR. After that time, the Department was again contacted. After considering that input, the draft of the original filing was revised on December 22, 2006.

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 governs the requirements for providers of emergency response system (ERS) services provided to consumers enrolled in the PASSPORT Medicaid waiver program or the Choices Medicaid waiver program. The proposed new rule contains content that differs from the rule that it is proposed to replace. This content is listed as follows: [1] In paragraphs (A)(1), (D)(1), (D)(9), and (D)(10), "ERS" is described in ways that no longer require telephone technology to be the only technology that is authorized for this service. These paragraphs authorize any form of technology capable of performing the service. [2] Because the emergency response center responds to emergencies only once signaled by the consumer, the words "monitor" and "monitoring" are removed from paragraphs (A), (D)(10), (F)(2), and (F)(3) without changing the intent of those paragraphs. [3] Paragraph (A)(1)(b) clarifies that boundary alarms and medication dispensers are not considered ERS, but considered home medical equipment, which is regulated by rule 173-39-02.7 of the Administrative Code. [4] Language concerning consumer eligibility limitation (located in paragraph (A) of the current rule) is removed from this provider mandate rule. Case managers will determine which consumers are in need of this service. [5] Several clarifying definitions were added to paragraph (A). [6] Paragraph (B) expands the types of units of service to three. One of the additional types of units will allow a provider to be reimbursed for a unit of ERS installation, which will include the delivery, installation, and initial consumer education related to the ERS equipment. The other additional unit will allow a provider to be reimbursed for a qualifying device that is part of an ERS, but not, in itself, an ERS. For example, billing under this unit of service will allow a provider to be reimbursed for a second pendant (versus an entire set of ERS equipment) in a home where another person already has an ERS installed. [7] Paragraph (D)(2) now states that when ERS equipment that a provider rents to a consumer malfunctions, the provider must replace it free of charge. [8] The concept behind paragraph (D)(3) of the current rule was moved to become part of paragraph (D)(6). [9] As with the current rule, paragraph (D)(3) requires providers to provide evidence that their ERS equipment meets the standards for home health signaling equipment established by the Underwriters Laboratories, but does not require that providers have their equipment tested by Underwriters Laboratories. Because some products are not tested by UL, paragraph (D)(4) was created as an alternative form of compliance to safety standards. [10] The proposed rule does not contain a

requirement for line seizure circuitry that is present in paragraph (D)(10) of the current rule. [11] Paragraph (D)(12) from the current rule was deleted because it was a duplicate mandate. The requirements are still present in paragraph (D)(5) of the new rule. [12] Paragraph (E) of the proposed rule outlines how a provider should identify emergency responders for the consumer. This paragraph was inspired by the recently adopted Sections 52.301 and 52.303 of the Texas Administrative Code. [13] It deletes paragraph (G)(5) in the current rule because it is a duplicate mandate of paragraph (F) of that same current rule. That requirement can be found in paragraph (G)(1) of the new rule. [14] In paragraph (G)(1), the proposed rule requires providers to document the time of consumer-related contact, not just the day. [15] In paragraph (G)(1), it clarifies that false alarms are delivered services that should be documented. This way, it may become clear if some consumers abuse the ERS. [16] Paragraph (G)(2)(b) requires the provider to obtain a signature from the consumer verifying receipt of initial education on the ERS and the ERS equipment. [17] In paragraph (G)(2)(d) clarifies that the requirement to update contact information about emergency responders should be performed at least once every six months. [18] In paragraph (H)(1), it states that the provider must provide initial education to the consumer about ERS and the ERS equipment in a face-to-face encounter. However, it does not require a face-to-face encounter with emergency responders. [19] Paragraph (H)(2) requires the provider to provide written procedures that explain ERS and the proper use of the ERS equipment to the emergency responders. [20] The proposed rule makes other changes that bring the language of the rule into compliance with the Rule Drafting Manual ("Rule Drafting Manual." Ohio Legislative Service Commission. 4th Ed. May, 2006) and that provide clarity.

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:

In the original filing, paragraph (G)(2)(c) required a monthly check of the ERS equipment and a monthly updating of responder contacts. In the revised filing, this paragraph was delineated. Paragraph (G)(2)(c) now only requires a monthly check of the ERS equipment while paragraph (G)(2)(d) requires an updating of responder contacts. Additionally, the required frequency by which a provider shall update responder contacts was reduced from every month to once every six months.

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

The Department of Aging does not anticipate any increase nor decrease in expenditures appropriated to the Department in the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-403, 3C4-490-607, 4J4-490-610, 4U9-490-602

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:

Because the PASSPORT program and the Choices program are Medicaid waiver programs, consumers on PASSPORT and Choices do not pay for any portion of expenses for approved emergency response system (ERS) service they receive through PASSPORT and Choices. This proposed new rule has cost savings for providers who choose to participate in these programs, which includes the following: [1] The proposed new rule does allow PAAs to reimburse providers for a one-time "installation" costs incurred in delivery, installation, and consumer education regarding the ERS and the proper use of the ERS equipment. [2] The language in the proposed rule that is different from the current rule establishes a restriction on providing more than one replacement remote activation device (aka "pendant") to a consumer within a twelve month period without the authorization of a PAA. [3] Providers also informed the Department that the requirement in the current rule for line seizure circuitry made providing the service cost-ineffective. Therefore, the language of the new rule no longer requires such circuitry. [4] The new rule also allows providers to be reimbursed for a qualifying device that is part of an ERS, but not itself an ERS. For example, billing under this unit of service will allow a provider to be reimbursed for a second pendant (versus an entire ERS service) in a home where another person already has an ERS installed. This should allow the provider to charge the PAA much less for the monthly service of the second consumer. [5] Because the current rule requires that all equipment be UL-listed, the changes in the proposed new rule to allow alternative technology will allow for cellular technology to be used although such devices are not UL-listed, but regulated by the FCC. This proposed new rule may also increase costs for a limited number of providers in the following circumstances: [1] In accordance with the new language in paragraph (D)(6) that requires ERS services for the deaf to include a visual indication of alarm at not additional cost and ERS services for the blind to include an audible indication of alarm at no additional cost, some providers who may have been charging additional costs for providing service to the blind or deaf will no longer be able to charge those additional amounts. Providers who did not charge additional costs for services to these consumers will see no change resulting for the new language in paragraph (D)(6). [2] The current rule requires providers to have their ERS equipment tested to meet the Underwriters Laboratories standard for home health care signaling equipment. The new rule continues to make this requirement, but also requires providers to: [A] Provide evidence that their ERS equipment meets these standards upon request by ODA or a PAA and [B] have alternative devices tested to meet published industry standards for safety. [3] The proposed new rule clarifies that the lists of emergency responders must be updated once every six months. This will only increase costs for providers who have been updating the list of emergency responders less often

than every six months. For providers who do not perform this task on at least a bi-annual basis, the requirement is only expected to nominally increase the cost of doing business. That is because each provider is required to test the equipment each month, which creates a personal point of contact with the consumer during that test during which the emergency response center can ask the consumer if the emergency responders that are on the emergency responder list continue to be the people to contact in case of an emergency and ask if the contact information is correct.

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**