

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

Agency Name

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Division

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173-39-02.7

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Home medical equipment and supplies.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
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: **173.01, 173.02, 173.391, 173.52, 173.522.**
5. Statute(s) the rule, as filed, amplifies or implements: **173.39, 173.391, 173.431, 173.52, 173.522; 42 C.F.R. 441.352**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to amend the rule as part of its 5-year review of the rule.

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:

OVERVIEW

OAC173-39-02.7 regulates providers when they provide home medical equipment and supplies to individuals enrolled in the PASSPORT Program.

ODA conducted a 5-year review of the rule. ODA's proposed amendments would add clarity to the rule and update its terminology, but not add any requirements for ODA-certified providers of home medical equipment and supplies.

SPECIFIC AMENDMENTS

ODA proposes to insert a paragraph that would function like a sub-heading to indicate where in the rule requirements for the provider begin. This merely adds clarity to the rule. All paragraphs occurring after this sub-heading would be indented underneath.

ODA proposes to insert a general requirement to comply with the requirements for every ODA-certified provider in OAC173-39-02. Without this amendment, ODA-certified providers would still be required to comply, but may not be aware of the need to do so.

ODA proposes to delete requirements unnecessarily duplicating requirements in OAC173-39-02.

ODA proposes to move the unit language to the end of the rule to become (C). Additionally, ODA proposes to add the standard unit and rate paragraphs informing readers that ODM established the maximum-possible rates in OAC5160-1-06.1 and rate-setting methodology in OAC5160-31-07. Without adding these paragraphs, readers may not know that ODM rules, not ODA rules, regulate this topic.

ODA also proposes to make basic terminology amendments, including the following:

- * Adding "ODA provider certification" to the beginning of the rule's title.
- * Using a simplified definition.
- * Replacing uses of "consumers" with "individuals."
- * Consistently referring to individuals in the plural throughout the definition of home medical equipment
- * Consistently using "equipment and supplies," not "products," etc.
- * Replacing uses of "must" and "will" with "shall" and uses of "may not" with "shall not."
- * Replacing uses of "furnish" with "provide."
- * Replacing "reimburse" with "pay."
- * Replacing "prior to" with "before."
- * Replacing "preauthorized amount" with "item rate authorized by the case manager."

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 March 5, 2018, ODA refiled this rule.

In response to public hearing testimony submitted by OAMES, ODA collaborated with ODM to develop new language to be used in Medicaid state plan rules, ODM Medicaid waiver rules, and this ODA rule. The new language is a favorable response to the request from OAMES to align rule language between programs and for that language to allow providers who deliver by common carriers to verify the success of deliveries with tracking records produced by common carriers.

At a meeting with OAMES after the public hearing, ODA expressed its concern that packages can be stolen from porches before individuals bring them into their homes. ODA proposed requiring providers who use common carriers to deliver to replace any items not received by the individual if stolen from the porch. Members of OAMES said this would not be a problematic requirement. Therefore, ODA proposes to require it.

Adding the new language mentioned above increased the percentage of amended text in this rule. To comply with the 50% guideline in Â§4.3.1 of the Legislative Service Commission's Rule Drafting Manual, ODA is taking the option mentioned in the guideline, which says, "amended rules that consist solely or primarily of stricken language, or solely or primarily of new language being added, usually would not invoke the fifty per cent guideline, because they do not pose substantial challenges to readers and publishers." This involved deleting paragraphs with amendments and

replacing them with new paragraphs containing the same language as if amended. This leaves the rule with entirely stricken paragraphs and entirely new paragraphs.

Additionally, ODA added subheadings to the beginning of some paragraphs to make it easier to thumb through the rule. ODA used "ongoing assistance" as the subheading to paragraph (B)(2) of the rule. OA used "repairs and replacements" as the subheading for paragraph (B)(3) of the rule. Under paragraph (B)(4) of the rule, to which ODA used "billing" as the subheading, under which ODA grouped together 3 paragraphs, which correlate to paragraphs (B), (F), and (G) of the current rule.

12. Five Year Review (FYR) Date: **5/31/2017**

(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 estimates that its proposed amendments to this rule would have no impact upon the biennial budget the Ohio General Assembly established for ODA.

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

GRF-651-525 Medicaid/Health Care Services.

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:

Please review ODA's response to questions #14 and #15 on the BIA for detailed information.

With the refileing of this rule on March 5, 2018, the rule would also have the following effects:

1. Providers may use a common carrier to deliver equipment and supplies.
2. Providers may use a common carrier's tracking system to verify successful deliveries.
3. Providers who use a common carrier must replace any items delivered to, but not received by, the individual (e.g., stolen from the porch).

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? **Yes**

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**

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**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

For detailed information, please review ODA's response to #14 on the BIA.