

**Rule Summary and Fiscal Analysis (Part A)****Department of Job and Family Services**

Agency Name

**Division of Medical Assistance**

Division

**Nancy Van Kirk**

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**5101:3-1-09**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Medicaid co-payment program [except for medicaid consumers enrolled in the medicaid managed health care program].****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB1**General Assembly: **128**Sponsor: **Sykes**

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: **5111.02, 5111.0112**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.01, 5111.02, 5111.0112, Section 309.10 of Am. Sub. H.B. 1, 128th G.A.**

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

This rule is being amended for five-year rule review and to clarify that all Medicaid consumers may have a co-payment for pharmacy services, whether enrolled in the Medicaid fee-for-service program or a Medicaid managed care plan. This change is being made to support carving the pharmacy benefit out of the Medicaid managed

care program. Carving pharmacy out of the managed care benefit was assumed in Am. Sub. HB 1 of the 128th General Assembly, because the funds appropriated to JFS in the 600525 account, found in section 309.10 of Am. Sub. HB 1, assume the fiscal impact associated with these changes.

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 sets forth policy on co-payments for the Ohio Medicaid program. This rule is being amended to change the title of the rule and the opening paragraph that will require consumers enrolled in a Medicaid managed care plan to pay co-payments on prescription drugs received through the Medicaid pharmacy benefit. Other amendments include deleting references to the Disability Medical Assistance program and to billing instructions located on Ohio Department of Job and Family Services website.

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 rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(3).

This rule incorporates one or more references to the Code of Federal Regulations (CFR). This question is not applicable to those references in this rule because such references are exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(B)(2).

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:

Not applicable

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:

*Not Applicable.*

12. 119.032 Rule Review Date: **11/17/2009**

(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

This change in the rule will have no financial impact for the agency in the current biennium because savings associated with co-payments were assumed in the managed care capitation rate calculations, whether or not the managed care plan charged co-payments.

This rule is being proposed to support carving pharmacy and certain medical supplies out of the managed care benefit. Overall, the carve out is expected to decrease the agency's expenditures by an estimated \$240.7 million during the current biennium. This decrease has been reported in the rule summary and fiscal analysis submitted with the amendment to OAC 5101:3-26-03. This decrease will be achieved by carving out from the Medicaid Managed Care Program certain medical supplies provided at pharmacies and drugs covered under the Ohio Medicaid pharmacy benefit. Medicaid managed care consumers will receive drugs and certain medical supplies through the Medicaid fee-for-service delivery system.

This will allow the agency to receive rebates for the purchase of pharmaceuticals leading to a decrease in the cost of providing pharmacy services for Medicaid consumers.

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

Not applicable.

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:

There may be a cost of compliance to Medicaid consumers who are enrolled in a Medicaid managed care plan (MCP) and to Medicaid pharmacy providers. Medicaid consumers, both those enrolled in a Medicaid MCP and in the fee-for-service program, may have a cost of compliance if they choose to fill a prescription that is subject to co-payment. Current Medicaid fee-for-service consumers are already subject to co-payments. Carving pharmacy out of the Medicaid managed care benefit will move Medicaid MCP members to the fee-for-service pharmacy benefit that includes co-payments. Only one of the seven Medicaid MCPs has charged co-payments to its members. The cost of compliance is \$2.00 for most brand-name drugs and \$3.00 for drugs requiring prior authorization. The cost of compliance for a Medicaid consumer can be eliminated or minimized if a consumer uses generic drugs and drugs that do not require prior authorization. The pharmacy may still need to provide a prescription to a consumer even if the co-payment is not collected. To the extent that any reduction in reimbursement is a cost of compliance, providers may be subject to a cost of compliance if the services they bill for have a lower reimbursement than they have received from a Medicaid managed care plan. ODJFS cannot provide an estimate of the impact in reimbursement, because the amount of the increase or decrease will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. The pharmacy may also have a cost of compliance if they choose to bill a Medicaid consumer for co-payments that have not been paid. ODJFS cannot provide an estimate of the impact because the amount of the administrative cost and the frequency at which a provider will choose to pursue payment for unpaid co-payments will vary from provider to provider, depending on their business model and the frequency at which they bill for pharmacy services.

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**