

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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5101:3-10-03

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

"Medicaid Supply List".**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**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.01, 5111.02, 5111.021, 5111.262, 5111.20**

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

This rule is being proposed for amendment as a result of Amended Substitute House Bill 1 (amended section 5111.20, new section 5111.262, repealed section 5111.263) of the 128th General Assembly that changed how Medicaid will reimburse some services provided to nursing facility (NF) residents and also five year rule review. These services were previously provided by, and reimbursed to, fee-for-service providers. Amended Substitute House Bill 1 changed this arrangement by making NFs responsible for providing these services to Medicaid

NF residents and by reimbursing NFs for the services through the facility per diem. Payments for these services will be included in the nursing facility per diem.

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 entitled Medicaid Supply List, sets forth a listing of medical/surgical supplies, durable medical equipment and supplier services covered by the Ohio Medicaid program. Appendix A to this rule is being amended to clarify that the coverage of oxygen and wheelchairs under this rule applies only to residents of Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) and consumers who live in their personal residences, and not to residents of NFs.

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 ORC 121.71 to 121.74 pursuant OAC 121.76 (A) (3).

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the ORC because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(1).

This rule incorporates one or more dated references to the Code of Federal Regulations (CFR). This question is not applicable to any dated incorporation by reference to the CFR because such reference is exempt from compliance with ORC 121.71 to 121.74 in accordance with ORC 121.75(D).

This rule incorporates one or more references to federal laws or 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:

This rule incorporates one or more dated references to an ODJFS form or forms. Each cited ODJFS form is dated and is generally available to persons affected by this rule via the "Info Center" link on the ODJFS web site (<http://jfs.ohio.gov/>) in accordance with ORC 121.75 (E).

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:

This appendix to this rule was modified to provide additional information to affected stakeholders by adding an additional statement to the section of this supply list pertaining to wheelchairs.

12. 119.032 Rule Review Date: **8/13/2009**

(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

Any fiscal impact of this rule is reflected in rules 5101:3-10-13.1 and 5101:3-10-16 of the Administrative Code.

Amended Substitute House Bill 1 of the 128th General Assembly increases nursing facility (NF) rates for SFYs 2010 and 2011 by a consolidated services per diem of approximately \$3.91. This increased payment to NFs is in lieu of direct payment to fee-for-service (FFS) providers for certain Medicaid services rendered to Medicaid consumers living in NFs.

The consolidated services per diem reimburses NF providers for the provision of oxygen, custom wheelchairs and repairs, skilled therapies (physical, occupational and speech-language pathology/audiology), medical transportation (ambulance and ambulette) and some over-the-counter drugs to Medicaid consumers living in NFs. The consolidated services per diem includes any cost sharing amounts related to the provision of these services to Medicaid consumers.

Including payment for these services in the NF per diem will increase expenditures to NFs by approximately \$144 million over the biennium. Reimbursement of these services to FFS providers will decrease by at least \$151.2 million.

Based on the best available data, the net reduction of expenditures by the department is \$7.2 million. \$2.5 million in savings is attributable to oxygen, \$3.8 million in savings is attributable to custom wheelchairs and \$3.4 million in savings is attributable to over-the-counter drugs. An increase in expenditures of \$2.5 million is attributable to medical transportation. No savings are attributable to including the skilled therapies costs in the nursing facility per diem.

The consolidated services per diem was calculated by considering historic utilization in

the nursing facility population, historic Medicaid cost data and market trends that impact purchasing strategies.

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:

Fee-for-service providers of oxygen, custom wheelchairs and repairs, skilled therapies (physical, occupational and speech-language pathology/audiology), medical transportation (ambulance and ambulette) and some over-the-counter drugs will no longer receive payments directly from Medicaid when these services are delivered to Medicaid consumers who reside in NFs. Instead, these providers will be paid for these services by the NFs where the consumers reside. The fiscal impact

will be provider specific. It will be based on each provider's current business model for the delivery of these services, and on the agreement reached by the provider for payment by the NF. Nursing facility providers as a whole will experience an increase in their Medicaid per diem as a result of Amended Substitute House Bill 1. However, this increase in per diem revenue will be offset by their duty to pay providers of oxygen, custom wheelchairs and repairs, skilled therapies (physical, occupational and speech-language pathology/audiology), medical transportation (ambulance and ambulette) and some over-the-counter drugs when those services are delivered to Medicaid consumers who reside in NFs. In addition to the changes in Medicaid revenue, both fee-for-service providers and nursing facility providers may incur a cost of compliance if they incur additional costs as a result of the need to negotiate the amount of payment for these services when they are delivered to Medicaid consumers who reside in NFs. Medicaid consumers who reside in NFs should not incur any costs as a result of these amendments unless they want to keep their existing providers of oxygen, custom wheelchairs and repairs, skilled therapies (physical, occupational and speech-language pathology/audiology), medical transportation (ambulance and ambulette) and some over-the-counter drugs, and their existing providers do not contract with the NFs in which they reside.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

As a result of this rule filing, the department is unable to determine the fiscal impact on county, township or a municipal corporation that is also a durable medical equipment (DME) provider. The fiscal impact of the proposed reimbursement plan for services affected by this rule will be provider-specific and based on each provider's current business model for the delivery of DME services, thus the fiscal impact cannot be quantified by the department.

In addition to the changes in Medicaid revenue, both fee-for-service providers and nursing facility providers may incur a cost of compliance if they incur additional costs as a result of the need to negotiate the amount of payment for these services when they are delivered to Medicaid consumers who reside in NFs.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any

indirect central service costs.

In response to provisions in Ohio Amended Substitute House Bill 1 that require skilled nursing facilities to provide custom wheelchairs, therapies, medical transportation, oxygen, and some over the counter pharmacy as part of their overall package of skilled nursing facility services, the rates for these services are included in the skilled nursing facility per diem, and are based on utilization and appropriate rate structures for services currently offered to nursing facility residents through the Medicaid program.

(a) Personnel Costs

The department is unable to determine the impact on personnel costs as a result of this rule filing. However, to the extent that a county, township or municipal corporation is also a DME provider chooses to reduce the portion of their business associated with the provision of DME services to Medicaid consumers, there could be a corresponding reduction in the amount of staffing required which, other things being equal, would translate into reduced personnel costs for the enterprise. Conversely, given that the demand for DME services is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to attempt to increase their Medicaid DME business in reaction to other providers choosing to decrease their Medicaid market share, there could be an actual increase in required staffing and personnel costs. The actual amount of any such reductions or increases in personnel costs would be provider specific and cannot be quantified by the department.

(b) New Equipment or Other Capital Costs

The department is unable to determine the direct impact on equipment/capital costs as a result of this rule filing. However, to the extent that a county, township or municipal corporation is also a DME provider chooses to reduce the portion of their business associated with the provision of DME services to Medicaid consumers, there could be a corresponding reduction in the amount of equipment purchased which, other things being equal, would translate into reduced equipment/capital costs for the enterprise. Conversely, given that the demand for DME services is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to attempt to increase their Medicaid DME business in reaction to other providers choosing to decrease their Medicaid market share, there could be an actual increase in equipment/capital costs. The actual amount of any such reductions or increases in personnel costs would be provider specific and cannot be quantified by the department.

(c) Operating Costs

The department is unable to determine the direct impact on operating costs as a result of this rule filing. However, to the extent that a county, township or municipal corporation is also a DME provider chooses to reduce the portion of their business associated with the provision of DME services to Medicaid consumers, there could be a corresponding reduction in the amount of operating costs which, other things being equal, would translate into reduced operating costs for the enterprise. Conversely, given that the demand for DME services is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to attempt to increase their Medicaid DME business in reaction to other providers choosing to decrease their Medicaid market share, there could be an actual increase in operating costs. The actual amount of any such reductions or increases in personnel costs would be provider specific and cannot be quantified by the department.

(d) Any Indirect Central Service Costs

The department is unable to determine the direct impact on indirect costs as a result of this rule filing. However, to the extent that a county, township or municipal corporation is also a DME provider chooses to reduce the portion of their business associated with the provision of DME services to Medicaid consumers, there could be a corresponding reduction in the amount of operating costs which, other things being equal, would translate into reduced operating costs for the enterprise. Conversely, given that the demand for DME services is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to attempt to increase their Medicaid DME business in reaction to other providers choosing to decrease their Medicaid market share, there could be an actual increase in operating costs. The actual amount of any such reductions or increases in personnel costs would be provider specific and cannot be quantified by the department.

(e) Other Costs

The department is unable to determine the direct impact on other costs as a result of this rule filing. However, to the extent that a county, township or municipal corporation is also a DME provider chooses to reduce the portion of their business associated with the provision of DME services to Medicaid consumers, there could be a corresponding reduction in the amount of other costs which, other things being equal, would translate into reduced indirect costs for the enterprise. Conversely, given that the demand for DME services

is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to attempt to increase their Medicaid DME business in reaction to other providers choosing to decrease their Medicaid market share, there could be an actual increase in other costs. The actual amount of any such reductions or increases in personnel costs would be provider specific and cannot be quantified by the department.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

There are no new requirements imposed on counties, townships or municipal corporations. To the extent that a county, township or municipal corporation that is also a DME provider chooses to decrease their Medicaid market share, there could be a corresponding change in their revenues and expenses. Conversely, given that the demand for DME services is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to attempt to increase their Medicaid DME business in reaction to other providers choosing to decrease their Medicaid market share, there could be an actual offsetting change in revenues and expenses. The actual amount of any such reductions or increases in revenues or expenses would be provider specific and cannot be quantified by the department.

7. Please provide a statement on the proposed rule's impact on economic development.

To the extent that a county, township or municipal corporation that is also a DME provider chooses to reduce the portion of their business associated with the provision of DME services to Medicaid consumers, there could be a corresponding detrimental impact on economic development in that county, township or municipality. Conversely, given that the demand for DME services is anticipated to remain constant, and to the extent that a county, township or municipal corporation which is also a DME provider chooses to increase their Medicaid DME business in reaction to other providers exiting the market, there could be an actual increase in economic development in that county, township or municipality as a result of the proposed rules. The actual amount of any such increase or decrease in economic development which might occur as a result of the proposed rule change is specific to individual counties, townships and municipalities and cannot be quantified by the department.