Rule Summary and Fiscal Analysis (Part A)

Department of Job and Family Services
Agency Name

Division of Medical Assistance	**Nancy Van Kirk**	
Division	Contact	
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5101:3-10-03	**AMENDMENT**
Rule Number	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, Section 309.30.75 of Am. Sub. H.B. 1, 128th G. A.**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.01, 5111.02, 5111.021, 5111.262, 5111.20, Sections 309.10 and 309.30.75 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 proposed for five year rule review and for amendment to remove obsolete references to the Disability Medical Assistance (DMA) program, to support implementation of an incontinence garment supply limit reduction, and to support implementation of the pharmacy carve out policy.

Reducing the allowable monthly quantity of incontinence garments from 300 to 200 per month for consumers age twenty-one and older is being done in accordance with section 309.30.75 of Am. Sub. H.B. 1 of the 128th General Assembly, which requires the Department to reduce reimbursement rates for specified Medicaid providers to result in an amount that is at least three percent lower in the aggregate than the rates in effect on December 31, 2009. 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 the list of durable medical equipment and supplies covered by the Medicaid program. Changes include removing from the supply list certain supplies that will no longer be part of the Durable Medical Equipment (DME) benefit, but will instead be part of the pharmacy benefit, for dates of service beginning February 1, 2010; reducing the allowable monthly quantity of incontinence garments from 300 to 200 per month for consumers age twenty-one and older; and removing obsolete references to the Disability Medical Assistance (DMA) program.

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 to ORC 121.76(A)(3).

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

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).

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 rule is being revised to add an emergency file date of 2/1/10 to the prior effective date span of this rule. There are no changes to the body of the rule or appendix to the rule.

12. 119.032 Rule Review Date: **1/12/2010**

(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 decrease expenditures.

$3,150,000

The Department estimates that it will experience a reduction during the balance of the biennium in expenditures related to the incontinence garment supply limit reduction in the amount of approximately $3.15 million. Overall, the pharmacy carve out is expected to decrease the agency's expenditures 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, original filed on November 17, 2009.

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 associated with supporting implementation of the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. Medicaid consumers, both those enrolled in a Medicaid managed care plan (MCP) and in the fee-for-service program, may experience a cost of compliance if the Medicaid or MCP provider that has been providing supplies once included in the DME benefit but now included in the pharmacy benefit is not a pharmacy that contracts with the Medicaid program. The consumer may need to move his or her prescriptions to a pharmacy contracted with Medicaid to continue receiving supplies. The cost of compliance cannot be estimated because the costs associated with changing providers will vary from consumer to consumer, depending on the prescriptions he or she has, the location of the provider, and the types of services the providers provide. Medicaid pharmacy providers may experience a cost of compliance because they may need to update their pharmacy billing systems to be able to bill the supplies listed in Appendix A under the pharmacy benefit rather than the DME benefit. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. Medicaid DME providers may experience a cost of compliance due to decreased revenue because they are no longer able to bill Medicaid for the supplies listed in Appendix A. In calendar year 2008, Medicaid DME providers billed approximately $965,000 for the supplies listed in Appendix A for Medicaid fee-for-service consumers. To the extent that they may have also billed for these supplies for members of Medicaid managed care plans, the total cost of compliance for Medicaid-participating DME

providers is something more than $965,000 per year. The actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected supplies. Medicaid MCPs may experience a cost of compliance to the extent that they will no longer receive funds in their capitation rate to provide these services. However, they are no longer required to provide the supplies listed in Appendix A to their members. The cost of compliance cannot be estimated because the capitation rate will vary from MCP to MCP, depending on the regions they serve and the number and mix of members enrolled. There may be a cost of compliance associated with supporting implementation of the incontinence garment supply limit reduction. Medicaid consumers may experience a cost of compliance because the maximum number of incontinence garments they can receive without prior authorization per month will be reduced from 300 to 200. The cost of compliance cannot be estimated because the impact of the supply limit reduction will vary from consumer to consumer. Medicaid DME providers may experience a cost of compliance due to decreased revenue because they are no longer able to bill Medicaid without prior authorization for 300 incontinence garments per consumer per month; the supply will be limited to 200 per consumer per month. Providers may realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. The actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected supplies.

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.

To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be a cost of compliance associated with implementation of the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. The changes in this rule may impact Medicaid reimbursement to durable medical equipment (DME) providers because DME providers will not be able to bill Medicaid for certain medical supplies usually obtained at the pharmacy. To the extent that any reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships, or municipal corporations, providers will be subject to a cost of compliance because they can no longer bill for the affected services. In calendar year 2008, Medicaid DME providers billed for approximately $965,000 for the supplies listed in Appendix A for Medicaid fee-for-service consumers. To the extent that they may have also billed for these supplies for members of Medicaid managed care plans, the total cost of compliance for Medicaid-participating DME providers is something more than $965,000 per year. The actual cost for each provider cannotbe estimated, because the cost will vary from provider to provider depending on their business model and the frequency at which they bill for the affected supplies. Medicaid pharmacy providers that are counties, townships, or municipal corporations may have a cost of compliance because they may need to update their billing systems to be able to bill the supplies listed in Appendix A under the pharmacy benefit rather than the DME benefit. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. There may be a cost of compliance associated with supporting implementation of the incontinence garment supply limit reduction. Medicaid DME providers may experience a cost of compliance due to decreased revenue because they are no longer able to bill Medicaid without prior authorization for 300 incontinence garments per consumer per month; the supply will be limited to 200 per consumer per month. Providers

may realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. The actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected services.

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.

   There may be costs of compliance associated with the policy changes discussed above. The comprehensive cost estimates are addressed below.

   (a) Personnel Costs

   To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be an impact on personnel costs related to the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover personnel costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in

reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected supplies .There may also be an impact on personnel costs for Medicaid pharmacy providers. To the extent that Medicaid pharmacy providers are counties, townships, or municipal corporations and will be required to update their billing systems to bill for supplies listed in Appendix A under the pharmacy benefit rather than the DME benefit, they may experience increased personnel costs. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. There may be an impact on personnel costs related to the incontinence garment supply limit reduction policy. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover personnel costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. Providers may also realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. This could also impact personnel costs; however, the actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected services.

(b) New Equipment or Other Capital Costs

To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be an impact on equipment/capital costs related to the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover capital costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business

model and the frequency at which they bill for the affected supplies. There may also be an impact on equipment/capital costs for Medicaid pharmacy providers. To the extent that Medicaid pharmacy providers are counties, townships, or municipal corporations and will be required to update their billing systems to bill for supplies listed in Appendix A under the pharmacy benefit rather than the DME benefit, they may experience increased equipment/capital costs. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. There may be an impact on equipment/capital costs related to the incontinence garment supply limit reduction policy. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover equipment/capital costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. Providers may also realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. This could also impact equipment/capital costs; however, the actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected services.

(c) Operating Costs

To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be an impact on operating costs related to the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover operating costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which

they bill for the affected supplies. There may also be an impact on operating costs for Medicaid pharmacy providers. To the extent that Medicaid pharmacy providers are counties, townships, or municipal corporations and will be required to update their billing systems to bill for supplies listed in Appendix A under the pharmacy benefit rather than the DME benefit, they may experience increased operating costs. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. There may be an impact on operating costs related to the incontinence garment supply limit reduction policy. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover operating costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. Providers may also realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. This could also impact operating costs; however, the actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected services.

(d) Any Indirect Central Service Costs

To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be an impact on indirect costs related to the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover indirect costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected supplies. There may also be an impact on indirect costs for Medicaid pharmacy providers. To the extent that Medicaid

pharmacy providers are counties, townships, or municipal corporations and will be required to update their billing systems to bill for supplies listed in Appendix A under the pharmacy benefit rather than the DME benefit, they may experience increased indirect costs. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. There may be an impact on indirect costs related to the incontinence garment supply limit reduction policy. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover indirect costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. Providers may also realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. This could also impact indirect costs; however, the actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected services.

(e) Other Costs

To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be an impact on other costs related to the pharmacy carve out policy. This rule removes certain medical supplies from the durable medical equipment (DME) benefit. OAC rule 5101:3-9-02, Appendix A includes these same supplies as part of the pharmacy benefit. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover other costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected supplies. There may also be an impact on other costs for Medicaid pharmacy providers. To the extent that Medicaid pharmacy providers are counties, townships, or municipal corporations and will be required to update their billing systems to bill for supplies listed in Appendix

A under the pharmacy benefit rather than the DME benefit, they may experience increased other costs. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures .There may be an impact on other costs related to the incontinence garment supply limit reduction policy. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover other costs because they can no longer bill for the affected services. The Department cannot provide an estimate of the impact in reimbursement, because the amount of the reduction will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. Providers may also realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. This could also impact other costs; however, the actual cost for each provider cannot be estimated as it will vary from provider to provider depending on their business model and the frequency at which they bill for the affected services.

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.

To the extent that a Medicaid provider is also a county, township, or municipal corporation, there may be costs of compliance related to the pharmacy carve out policy. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue. The Department cannot provide an estimate of the entity's ability to pay for the new requirements imposed by the proposed rule because the amount of the reduction in revenue will vary from provider to provider, depending on provider's business model and the frequency at which they bill for the affected supplies. However, they also will not be providing supplies originally considered to be part of the DME benefit because those supplies will instead be part of the pharmacy benefit. Additionally, Medicaid pharmacy providers that are counties, townships or municipal corporations may experience a cost of compliance because they may need to update their pharmacy billing systems to be able to bill for these supplies. The cost of these updates cannot be estimated, but is expected to be small because

many other payers require the same billing procedures. There may also be costs of compliance related to the incontinence garment limit reduction. The changes in this rule will reduce Medicaid reimbursement to DME providers. To the extent that this reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue that can be used to cover costs. The Department cannot provide an estimate of the entity's ability to pay for the new requirements imposed by the proposed rule because the amount of the reduction in revenue will vary from provider to provider, depending on provider's business model and the frequency at which they bill for the affected supplies. However, providers will be providing fewer supplies. Providers may also realize a minimal additional administrative cost related to seeking prior authorization for quantities greater than 200 supplies per consumer per month. This additional cost should be minimal, however, because providers are experienced at navigating the prior authorization process.

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

There may be an impact on economic development related to the pharmacy carve out policy, although it cannot be estimated. The pharmacy carve out will reduce reimbursement to DME providers for certain medical supplies, but increase reimbursement to pharmacy providers for these same supplies. The amount of the reduction and increase will vary by county, township, or municipal corporation. Therefore, the Department cannot estimate the effect of the proposed rule amendment on economic development. There may be an impact on economic development related to the incontinence garment limit reduction because the changes in this rule will reduce Medicaid reimbursement to DME providers. The amount of the reduction in reimbursement will vary by county, township, or municipal corporation. Therefore, the Department cannot estimate the effect of the proposed rule amendment on economic development.