

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

Agency Name

Division of Medical Assistance

Division

Ben Anderson

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5101:3-10-05

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Reimbursement for covered services.**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: **5111.02, Sect. 309.30.75 of Am. Sub. H.B. 1 of 128th GA**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.01, 5111.02, 5111.021, Section 309.30 75 of Am. Sub. H.B. 1 of 128th GA**

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

To incorporate a federally mandated requirement contained in section 6407 of the Patient Protection and Affordable Care Act regarding face-to-face encounters between consumers and prescribers of durable medical equipment (DME).

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:

The rule sets forth the reimbursement provisions for the Medicaid durable medical equipment benefit.

The changes to this rule include the following:

Updated language pertaining to the dispensing of orthotic and prosthetic (O&P) supplies.

A new provision requiring that prescriptions for certain DME and O&P items designated by the Centers for Medicare & Medicaid Services must have originated as a result of a face-to-face encounter.

Updated language regarding cost effective reimbursement.

Updated language regarding reimbursement when the consumer expires prior to the dispensing of custom molded or fitted items.

Updated language regarding the use of the RT (right side) and LT (left side) modifiers.

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 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 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 a federal act or acts. This question is not applicable to any dated incorporation by reference to a federal act because such reference is exempt from compliance with ORC 121.71 to 121.74 in accordance with ORC 121.75(C).

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. 119.032 Rule Review Date: **1/1/2015**

(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

No impact on current budget.

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:

The Office estimates that the administrative costs to providers of these services may be increased due to the requirement to complete, keep on file and submit when appropriate specific medical necessity documentation for prior authorization of DME. However, as these costs are provider specific and dependent on any particular provider's current administrative costs, as well as the quantity of equipment and supplies for which the provider bills, the overall impact on providers cannot be determined by the Office at this time.

The Office also estimates that the administrative costs for prescribers affected by the provisions of section 6407 of the Patient Protection and Affordable Care Act may be increased due to the need for prescribers to acquire certification of a face-to-face encounter in association with the prescription of specific DME. However, as these costs are provider specific and dependent on any particular prescriber's current administrative costs, as well as the quantity of equipment and supplies for which the prescriber orders, the overall impact on prescribers cannot be determined by the Office at this time.

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**

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? **No**

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? **No**

As described in the March 26, 2013 memo to CSIO and JCARR, OMA has determined that the conditions described in this rule are required by federal law and/or other generally applicable Ohio administrative rules regarding Medicaid reimbursement. Accordingly, even if these conditions were not included in 5101:3-10-05, Medicaid providers would still be required to comply with them. OMA's Chief Legal Counsel has already discussed this determination with CSIO.

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
Yes	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 school district, county, township, or municipal corporation, there may be a cost of compliance associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider, and, if necessary, the provider will send this documentation to the Office for prior authorization review. The actual cost for each provider cannot be estimated because the cost will vary from provider to provider depending on the provider's business model and the frequency at which the provider bills for the affected supplies. Because providers are experienced at navigating the prior authorization process, any additional costs should be minimal.

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 school district, county, township, or municipal corporation, there may be an impact on personnel costs associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider, and, if necessary, the provider will send this documentation to the Office for prior authorization review. The actual cost for each provider cannot be estimated because the cost will vary from provider to provider depending on the provider's business model and the frequency at which the provider bills for the affected supplies. Because providers are experienced at navigating the prior authorization process, any additional costs should be minimal.

(b) New Equipment or Other Capital Costs

To the extent that a Medicaid provider is also a school district, county, township, or municipal corporation, there may be an impact on equipment/capital costs associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider, and, if necessary the provider will send this documentation to the Office for prior authorization review. The actual cost for each provider cannot be estimated because the cost will vary from provider to provider depending on the provider's business model and the frequency at which the provider bills for the affected supplies. Because providers are experienced at navigating the prior authorization process, any additional costs should be minimal.

(c) Operating Costs

To the extent that a Medicaid provider is also a school district, county, township, or municipal corporation, there may be an impact on operating costs associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider, and, if necessary the provider will send this documentation to the Office for prior authorization review. The actual cost for each provider cannot be estimated because the cost will vary from provider to provider depending on the provider's business model and the frequency at which the provider bills for the affected supplies. Because providers are experienced at navigating the prior authorization process, any additional costs should be minimal.

(d) Any Indirect Central Service Costs

To the extent that a Medicaid provider is also a school district, county, township, or municipal corporation, there may be an impact on indirect costs associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider and if necessary, the provider will send this documentation to the Office for prior authorization review. The actual cost for each provider cannot be estimated, because the cost will vary from provider to provider depending on the provider's business model and the frequency at which the provider bills for the affected supplies. Because providers are experienced at navigating the prior authorization process, any additional costs should be minimal.

(e) Other Costs

To the extent that a Medicaid provider is also a school district, county, township, or municipal corporation, there may be an impact on other costs associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider, and, if necessary, the provider will send this documentation to the Office for prior authorization review. The actual cost for each provider cannot be estimated because the cost will vary from provider to provider depending on the provider's business model and the frequency at which the provider bills for the affected supplies. Because providers are experienced at navigating the prior authorization process, any additional costs should be minimal.

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 school district, county, township, or municipal corporation, there may costs of compliance associated with the implementation of the proposed rule. This rule requires specific medical necessity documentation to be kept on file by the provider, and, if necessary, the provider will send this documentation to the Office for prior authorization review. The Office cannot provide an estimate of the entity's ability to pay for the new requirements imposed by the proposed rule because the amount of an actual cost, if any, for each provider will vary from provider to provider, depending on the provider's business model and the frequency at which the provider bills for the affected supplies.

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

Some of the providers that will be impacted by this rule are owned by government entities other than the state. We cannot determine how revenues from these government owned providers impact the revenues or operations of the government entity that owns them, but we anticipate that the changes made by this rule will have no discernible impact on economic development.