

**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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**5101:3-10-13**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Oxygen: covered services and limitations in a private residence.****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**

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

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

This rule is being proposed for adoption to address updated coverage criteria for oxygen services. It replaces part of former rule 5101:3-10-13.

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 coverage criteria and requirements, the process for prior authorization and the payment process for oxygen services to Ohio Medicaid consumers in the private residence setting.

Changes from the rescinded rule include reformatting in order to account for a change in the technology for home oxygen delivery and to clarify the departments requirements for the authorization of oxygen services in a private residence. The underlying payment method for oxygen concentrators is changing from a payment method based on the monthly utilization by consumed volume of this equipment to a reimbursement system based on the monthly possession of an oxygen concentrator. The maximum payment amounts set forth in Appendix DD of rule 5101:3-1-60 is not changing. The introduction of codes pertaining to "Trans-fill" and portable concentrator technology is also being implemented. This rule also introduces a new certificate of medical necessity (JFS 01909, rev. 6/2005) to be utilized in conjunction with the prior authorization request for oxygen services.

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).

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:

This rule is being revised to add paragraph (E)(1)(b), which says: "No modifier is used when supplying portable oxygen contents or a portable system rental." This paragraph is currently codified in the existing oxygen rule 5101:3-10-13 and is being added to this new rule for the sake of program consistency.

This rule is being refiled to correct a typographical error in paragraph (D)(2) by adding the word "or" to paragraph (D)(2), which states that an oxygen saturation study must be performed while at rest (awake) "or" during exercise.

At the request of stakeholders this rule is being refiled a second time in order to include the removal of the prior authorization requirements for home oxygen services provided to consumers in a private residence if the consumer meets the specific clinical criteria stated in the rule. Prior authorization requirements will remain for consumers who do not meet the stated clinical criteria to determine medical necessity. This rule is also being filed a second time to assure that the language contained within this rule is consistent with the language for the supply of oxygen services in a long term care facility (LTCF), proposed rule 5101:3-10-13.1. Changes for that reason include the need for oxygen tests to be performed in a chronic stable state and that oxygen tests cannot be over forty eight hours old for consumers in a LTCF or hospital or over thirty days old for a consumer in a private residence.

A paragraph is being added to question 13 and two sentences are being added to the end of question 15 of the rule summary and fiscal analysis to reflect the fiscal impact of the second refile of this rule.

#### 12. 119.032 Rule Review Date:

(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

Financial impact of the original filing is addressed in item 13 of the Rule Summary and Fiscal Analysis for rule 5101:3-1-60.

With the second refile of this rule there will be an expenditure offset to the department for the biennium due to the elimination of the use of modifiers in conjunction with the billing of oxygen concentrators. This offset is the result of providers not receiving compensation increases for consumers with high volume oxygen use as well as compensation reductions for consumers with low volume oxygen use provided through the use of oxygen concentrators. Reimbursement for oxygen services provided via the use of an oxygen concentrator will be made at a set reimbursement rate regardless of the monthly utilization of the concentrator since this technology uses room air in order to generate oxygen.

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 department estimates that this filing will have an administrative cost of compliance for affected stakeholders. The actual cost or nature of this compliance cost will vary from stakeholder to stakeholder and be dependent on the current service delivery model that stakeholder is utilizing and therefore cannot be estimated by the department. In addition, the filing of these rules will result in provider specific administrative savings due to the deletion of the need for the provider to obtain meter readings for oxygen concentrators. The second refile filing of this rule will result in provider-specific administrative savings as a result of the removal of prior authorization requirements for the majority of consumers obtaining home oxygen services. It is anticipated that the affected stakeholders will experience administrative cost savings the level of which would be unique to each individual stakeholder dependent on his or her level of participation in the oxygen program.

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**

