

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

Agency Name

Division of Medical Assistance

Division

Tommi Potter

Contact

50 W town B4028 OH 00000-0000

Agency Mailing Address (Plus Zip)

614-752-3877

Phone

Fax

tommi.potter@medicaid.ohio.gov

Email

5101:3-10-13

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Oxygen 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? **Yes**

Bill Number: **HB59**General Assembly: **130**Sponsor: **Amstutz**

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: **5164.02**

5. Statute(s) the rule, as filed, amplifies or implements: **5162.03, 5164.02, 5164.70, 5165.01, 5165.47**

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

This rule is being proposed to update policy governing the administration of the Medicaid program.

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, 5160-10-13, sets forth coverage and payment provisions for oxygen.

This rule replaces current rules 5160-10-13 and 5160-10-13.1. The exclusion of fee-for-service coverage of oxygen for NF residents has been removed. Maximum fee amounts for oxygen services have been revised and are now listed in a new appendix to the rule instead of Appendix DD to rule 5160-1-60 of the Ohio Administrative Code. Rental of oxygen-delivery systems is now limited (capped); no additional payment is made after the thirty-sixth month of the useful life of a system.

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 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 RC 121.75(E).

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:

Several modifications are being made to the rule in response to comments submitted by stakeholders:

- * Twenty-three definitions of standard medical terms are removed because they are unnecessary. -- Paragraph (A)
- * The term 'blood gas analysis' is corrected to 'blood gas study'. -- Paragraph (A) and throughout the rule
- * Examples are given of relevant specialties for advanced practice nurses, and the lists of rendering and billing providers are reordered. -- Paragraph (B)
- * Dates and time periods pertaining to certificates of medical necessity are clarified or changed. -- Paragraph (C)
- * A provision for certifying the need for a supplementary stationary oxygen system is removed because it is incompatible with the principle, addressed in paragraph (D)(3), that a portable system supplements a stationary system. -- Paragraph (C)(4)(b)(i)
- * A specification of delivery system capacity is removed because it is unnecessary. -- Paragraph (D)(3)
- * The frequency of payment is clarified. -- Paragraph (E)(2)
- * The payment reduction for low-flow oxygen delivery is removed. -- Paragraph (E)(3)(a)
- * The expression of the difference in maximum fee as a percentage for a stationary concentrator provided in a private residence is removed. -- Paragraph (E)(3)(d)
- * A paperwork requirement is removed because it is unnecessary. -- Paragraph (E)(4)
- * The limitation (cap) on rental payments is removed. -- Paragraph (E)(5)
- * The maximum fees are changed, and the schedule is reformatted. -- Appendix

Because of the change in fee structure, the decrease in expenditures over the remainder of the biennium (reported in question 13) becomes \$3.75 million instead of \$7 million.

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 decrease expenditures.

\$3.75 million

When oxygen ceases to be a NF service covered by the NF per diem payment, eligible providers may receive payment on a fee-for-service basis for furnishing it to NF residents. It is estimated that the overall reduction in NF per diem payments will be offset by a corresponding increase in payment of fee-for-service claims and that the change in fees for oxygen services will result in a total decrease over the current biennium of approximately \$3.75 million. (When this rule was originally proposed, the figure was \$7 million.)

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

651525

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:

As a result of a legislative amendment in Amended Substitute House Bill 59 (130th General Assembly), nursing facility (NF) providers on the whole will experience a decrease in their Medicaid per diem payments, accompanied by the lifting of the obligation to pay for oxygen, custom wheelchairs, major wheelchair repairs, and transportation by ambulance or wheelchair van for their Medicaid-eligible residents. Fee-for-service providers of oxygen, custom wheelchairs, wheelchair repair, and transportation may now receive payment directly from Medicaid for services delivered to Medicaid-eligible residents.

Fee-for-service providers of oxygen are likely to experience a decrease in their Medicaid payments because of the reduction in maximum fees for oxygen services. The fiscal impact will be provider-specific, depending on each provider's current business model for the delivery of these services and on the payment agreement that had been reached between the provider and the NF.

Medicaid-eligible NF residents should not incur any costs because of the adoption of this rule.

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? **Yes**

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? **Yes**

Providers are required to submit claims in order to receive Medicaid payment. On each claim, a provider reports many pieces of information, such as the identity of the person served, the services provided, related diagnoses, the date of service, and the place of service.

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 an entity controlled by a school district, county, township, or municipal corporation, it could be affected by the proposed rule.

The changes in this rule may reduce Medicaid payment for some providers and increase it for others. To the extent that a reduction in payment for services can be considered a cost of compliance, providers will be subject to a cost of compliance when they submit claims for the affected services. The department cannot provide an estimate of the impact on a particular provider, however, because the amount of any reduction will depend on which services are provided, how often they are rendered, and in what location (site) they are rendered.

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.

Comprehensive cost estimates are provided in the following sections.

(a) Personnel Costs

The department does not expect that the proposed rule will result in any increase to Medicaid providers in personnel costs.

(b) New Equipment or Other Capital Costs

The department does not expect that the proposed rule will result in any increase to Medicaid providers in new equipment or other capital costs.

(c) Operating Costs

The department does not expect that the proposed rule will result in any increase to Medicaid providers in operating costs.

(d) Any Indirect Central Service Costs

The department does not expect that the proposed rule will result in any increase to Medicaid providers in indirect central service costs.

(e) Other Costs

To the extent that a reduction in payment for services can be considered a cost of compliance, providers may be subject to a cost of compliance when they submit claims for the affected services. The department cannot provide an estimate of the impact on a particular provider, however, because the amount of any reduction will depend on which services are provided, how often they are rendered, and in what location (site) they are rendered.

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.

Incorporation of the proposed fee structure changes into the department's claim-processing system is part of the administration of the Medicaid program; it entails no significant new costs for the department.

Because of the changes in the proposed rule, affected providers will submit requests

for payment for certain services directly to Medicaid rather than to a nursing facility (NF). No implementation cost is anticipated for any local government or political subdivision.

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

This proposed rule has no discernible impact on economic development.