

**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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**5101:3-12-01**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Home health services: provision requirements, coverage and  
service specification.****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 the following reasons: 1) to align it with the requirements of Section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010, 2) to change from the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities, 3) to update JFS 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" to align it with the requirements of section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010 and 4) to correct citations.

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 explains the services available through the home health benefit for Medicaid consumers and providers. The proposed amendments to this rule set forth the following: 1) a requirement for a face-to-face encounter (between the consumer and the consumer's physician, advanced practice nurse or physician assistant under the supervision of the qualifying treating physician) during the six months prior to the supervising physician certifying medical necessity of home health services in order to align this rule with the requirements of Section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010, 2) a change from the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities and 3) a revision of JFS 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" to align it with the requirements of section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010.

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 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 references to 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 dated references to the Code of Federal Regulations (CFR). This question is not applicable to any dated incorporation by reference to the Code of Federal Regulations 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 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).

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 refiled in order to bring the State into compliance with Medicare home health provisions regarding face-to-face encounters made applicable to Medicaid home health services by Section 6407 of the Patient Protection and Affordable Care Act. These provisions became effective on January 1, 2010. ODJFS' public hearing notice stated that the face-to-face encounter had to occur during the six months preceding certification of medical necessity of home health services in order to align this rule with the federal law. However, the law also gave the Secretary of the Department of Health and Human Services the authority to develop federal regulations to support that law, including the ability to alter the time frame during which the face-to-face encounter must occur. ODJFS learned that the final federal regulations were to be issued on or around November 1, 2010. Consequently ODJFS TBR'd this rule on October 25, 2010 in anticipation of the issuance of the final federal regulations. The final federal regulations were subsequently issued on November 2, 2010, and they modified the time frame during which the encounter must occur. The face-to-face encounter time frame was changed to no more than ninety days prior to the home health start of care date or within thirty days of the start of the home health care. The changes set forth in paragraph (B) of this refiled rule implement those final federal regulations. ODJFS has also updated the revision date of the JFS 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" throughout the rule as a result of this refiling, and has corrected the form name in paragraphs (B)(1), (B)(2) and (B)(3) of the rule. Additionally, ODJFS has corrected a typographical error in paragraph (B)(1)(b) changing an erroneous possessive

noun, "credential's", to a non-possessive noun, "credentials", and adding the word "qualifying" before "treating physician" in paragraph (E)(1) for consistency with usage in paragraph (B).

Additionally, several changes have been made to part B of the RSFA as a result of these changes. Specifically, in the agency's response to questions (2), (5)(a) to (5)(e), and (6), it has been noted that the advanced practice nurse acts in collaboration with the qualifying treating physician; the agency's response to questions (5)(a) to (5)(e) have been modified to indicate that the department cannot provide an estimate of the impact on costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary; question (6) has been modified to reflect that the face-to-face encounter must occur within ninety days prior to the home health services start of care date, or within thirty days following the start of care date inclusive of the start of care date; and the agency's response to question (6) has been modified to reflect that the estimated increase in the agency's expenditures has been decreased as a result of this refiling and this is also noted in the agency's answer to Question 13 of part A of the RSFA.

#### 12. 119.032 Rule Review Date: 7/1/2011

(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 increase expenditures.

\$792,150

This rule is being proposed to implement new provisions of federal law that provide that require a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse or physician assistant under the supervision of the qualifying treating physician) prior to the supervising physician certifying

medical necessity for home health services. Implementation of this federal law is expected to increase the agency's expenditures by an estimated maximum of \$792,150 during the current biennium since a consumer must have a face-to-face encounter no more than ninety days prior to the home health start of care date or within thirty days of the start of home health care.

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

ALI 600525 Health Care/Medicaid

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 cost of compliance for the face-to-face encounter, described in the answer to question 13, conducted by the health care professional cannot be estimated because it will likely be included with the patient assessment which may be part of an evaluation and management visit which is a billable event. The cost of compliance for the face-to-face encounter, described in the answer to question 13, for the home health agency's administrative costs can not be estimated by the Department because business models and administrative efficiencies vary from home health agency to home health agency.

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	No	No

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.

The proposed amendments to this rule may increase the costs for facilitation of home health services to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers. The Department cannot provide an estimate of the impact on costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary.

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 as a result of requirements to facilitate home health services to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers.

(a) Personnel Costs

Personnel costs for county home health agencies may increase because requirements to facilitate home health services to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers. The Department cannot provide an estimate of the impact on personnel costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary.

(b) New Equipment or Other Capital Costs

Equipment/capital costs for county home health agencies may increase because requirements to facilitate home health services to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers. The Department cannot provide an estimate of the impact on equipment/capital costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary.

(c) Operating Costs

Operating costs for county home health agencies may increase because requirements to facilitate home health services to ensure that a face-to-face

encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers. The Department cannot provide an estimate of the impact on operating costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary.

(d) Any Indirect Central Service Costs

Indirect costs for county home health agencies may increase because requirements to facilitate home health services to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers. The Department cannot provide an estimate of the impact on indirect costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary.

(e) Other Costs

Other costs for county home health agencies may increase because requirements to facilitate home health services to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health providers. The Department cannot provide an estimate of the impact on other costs because it is unknown how frequently physicians perform evaluation and management with consumers for whom home health services are certified to be medically necessary.

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.



The Ohio Department of Job and Family Services estimates that the amendments to rule 5101:3-12-01 may increase expenditures up to the amount of \$792,150, because additional physician evaluation and management visits may be conducted in order to comply with the requirement that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred within the ninety days prior to the home health services start of care date, or within thirty days following the start of care date inclusive of the start of care date, and prior to the supervising physician certifying that home health services are medically necessary. This increase in expenditures is reflected in the answer to the Rule Summary and Fiscal Analysis, Part A, Question 13, for rule 5101:3-12-01.

The proposed amendments to this rule may increase the administrative costs for care coordination delivered by home health agencies because they will be required to ensure that a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse in collaboration with the qualifying treating physician, or physician assistant under the supervision of the qualifying treating physician) occurred within the ninety days prior to the home health services start of care date, or within thirty days following the start of care date inclusive of the start of care date, and prior to the supervising physician certifying medical necessity for home health services and before home health services are delivered by county home health agency providers. The county's ability to pay for the costs of this additional aspect of care coordination for ensuring that only medically necessary home health services are delivered cannot be estimated because these costs will vary from agency to agency.

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

ODJFS estimates that the amendments to this rule will not have a significant impact on economic development. To the extent that some physicians and/or home health agencies deliver more services related to home health care, there could be a slight increase in economic activity.