

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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5101:3-12-06

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Reimbursement: private duty nursing services.**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: **HB153**General Assembly: **129**Sponsor: **Rep. 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: **5111.02, 5111.0213**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.02, 5111.021, 5111.0213**

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

This rule is being amended to implement RC Section 5111.0213, adopted under Amended Substitute House Bill 153 of the 129th General Assembly, because of implementation of the Medicaid Information Technology System (MITS), and because of the five-year review.

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 specifies coverage requirements for the provision of state plan private duty nursing services. Changes to the rule decrease the Medicaid maximum rate of reimbursement for state plan private duty nursing services effective October 1, 2011. The changes include the following: The base rate for the first hour of private duty nursing services will be reduced to 97 percent of the June 30, 2011 rate from \$54.95 to \$52.20 for agency providers, and the base rate for the non-agency providers of private duty nursing services will be reduced an additional 20 percent from \$54.95 to \$41.76. In addition, clarifying language defining the terms "base rate" and "unit rate," and clarifying language providing a reference to the Administrative Code for the group visit HQ modifier are added to this rule. The current Appendix A to this rule is rescinded and another proposed, which amends the base rates for private duty nursing code T1000. The current Appendix B to this rule is rescinded and another proposed, which 1) changes the requirement for the Healthchek U5 modifier and private duty nursing (PDN) authorization modifier U6 from "must" to "may" as they will no longer be required due to the implementation of the Medicaid Information Technology System (MITS) and 2) adds the group visit HQ modifier described in the body of this rule for clarity.

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:

Not Applicable.

12. 119.032 Rule Review Date: **7/14/2011**

(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 decrease expenditures.

\$7,030,699.00

Beginning in October 2011, the rates the state pays for the initial units of these services will be reduced each time the service is delivered and reimbursement is requested. As a result, the total amount the state pays for these services in SFY 12 and beyond will be less than what it would have paid if the rates had not been reduced. The total estimated decrease in expenditures for the proposed amendments to state plan private duty nursing services is \$7.0 million (all funds) for the biennium.

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

600525

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 does not believe the changes to this rule place new compliance obligations on directly affected persons; therefore, there would not be that type of compliance costs. However, the changes in this rule will reduce Medicaid reimbursement to providers. To the extent that a reduction in reimbursement results in a decrease in Medicaid revenue to the affected persons, the decrease in revenue will affect cash flow and may create an impact that results in the affected persons incurring other types of costs. The Department cannot provide an estimate of what this cost impact would be for the affected persons because that information is not available to the Department and the impact will be provider-specific and depend upon multiple factors, including individual business models, amount of Medicaid services provided, and overhead costs, etc. In addition, the Department recognizes that some providers may choose to discontinue providing these services because of the rate reduction. And certain beneficiaries will need to work with new providers.

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.

The Department does not believe the changes to this rule place new compliance obligations on directly affected persons; therefore, there would not be that type of compliance costs. However, the changes in this rule will reduce Medicaid reimbursement to providers. To the extent that providers are counties, townships or municipal corporations, and to the extent that a reduction in reimbursement results in a decrease in Medicaid revenue to the affected persons, the decrease in revenue will affect cash flow and may create an impact that results in the affected counties, townships or municipal corporations incurring other types of costs. The Department cannot provide an estimate of what this cost impact would be for the affected counties, townships or municipal corporations because that information is not available to the Department and the impact will be provider-specific and depend upon multiple factors, including individual business models, amount of Medicaid services provided, and overhead costs, etc. In addition, the Department recognizes that some providers may choose to discontinue providing these services because of the rate reduction.

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.

This rule is being proposed in response to provisions in Section 5111.0213 of Amended Substitute House Bill 153 of the 129th General Assembly which require the Department to reduce the base rate for the first hour of nursing services (including, but not limited to, state plan private duty nursing services) to 95 percent of the June 30, 2011 price and to further reduce the reimbursement rate for non-agency providers of private duty nursing services such that they will be paid 80 percent of the base rate paid to agency providers of the same service.

(a) Personnel Costs

The changes in this rule will reduce Medicaid reimbursement to providers of state plan private duty nursing services. To the extent that providers of these services are counties, townships or municipal corporations, they will be subject to a reduction in their rate of reimbursement. The Department cannot provide an estimate of the impact on personnel costs because the amount will vary by provider depending on the services provided, their business model and the frequency in which services are provided.

(b) New Equipment or Other Capital Costs

The changes in this rule will reduce Medicaid reimbursement to providers of state plan private duty nursing services. To the extent that providers of these services are counties, townships or municipal corporations, they will be subject to a reduction in their rate of reimbursement. The Department cannot provide an estimate of the impact on new equipment or other capital costs because the amount will vary by provider depending on the services provided, their business model and the frequency in which services are provided.

(c) Operating Costs

The changes in this rule will reduce Medicaid reimbursement to providers of state plan private duty nursing services. To the extent that providers of these services are counties, townships or municipal corporations, they will be subject to a reduction in their rate of reimbursement. The Department cannot provide an estimate of the impact on operating costs because the amount will vary by provider depending on the services provided, their business model and the frequency in which services are provided.

(d) Any Indirect Central Service Costs

The changes in this rule will reduce Medicaid reimbursement to providers of state plan private duty nursing services. To the extent that providers of these services are counties, townships or municipal corporations, they will be subject to a reduction in their rate of reimbursement. The Department cannot provide an estimate of the impact on indirect central service costs because the amount will vary by provider depending on the services provided, their business model and the frequency in which services are provided.

(e) Other Costs

The changes in this rule will reduce Medicaid reimbursement providers of state plan private duty nursing services. To the extent that providers of these services are counties, townships or municipal corporations, they will be subject to a reduction in their rate of reimbursement. The Department cannot provide an estimate of the impact on other costs because the amount will vary by provider depending on the services provided, their business model and the frequency in which services are provided.

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 changes in this rule will reduce Medicaid reimbursement to providers of state plan private duty nursing services. To the extent that this reduction in reimbursement in Medicaid reimbursement imposes new requirements, and to the extent that providers of these services are counties, townships or municipal corporations, providers will receive less revenue as Medicaid reimbursement when they bill for the affected services. The Department cannot provide an estimate of the impact on 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 the reduced codes.

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

These rule amendments reduce reimbursement to providers of state plan private duty nursing services and thus could result in a reduction in Medicaid reimbursement received in a county, township or municipal corporation. The Department cannot estimate the effect of these proposed rule amendments on

economic development.