

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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Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Managed health care programs: 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? **Yes**

Bill Number: **HB1**General Assembly: **128**Sponsor: **Sykes**

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, 5111.16, 5111.162, 5111.17**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.01, 5111.02, 5111.021, 5111.16, 5111.162, 5111.163, 5111.17, 5111.172, section 309.10 of Am. Sub. HB 1 of the 128th General Assembly**

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

This rule is being amended to carve the pharmacy benefit out of the Medicaid Managed Care Program. Carving pharmacy out of the managed care benefit was assumed in Amended Substitute HB 1 of the 128th General Assembly, because the funds appropriated to the Department of Job and Family Services in the 600525

account, found in section 309.10 of Amended Substitute HB 1, assume the fiscal impact associated with these changes. This policy change is being implemented to streamline administrative processes for prescribers and pharmacies by moving all Medicaid consumers to one list of covered drugs and one prior authorization policy, as well as to take advantage of federal and state supplemental Medicaid rebates. The rule is also being amended to revise a term and update a cross reference.

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 services that managed care plans are required to provide to Medicaid managed care consumers. The changes to the rule add to the list of coverage exclusions under Medicaid managed health care programs. The list of coverage exclusions now includes services provided through Medicaid School Program (MSP) providers, and prescribed drugs and certain medical supplies provided to Medicaid consumers pursuant to Chapter 5101:3-9 of the Administrative Code. The changes to the rule also revise a term and update a cross reference.

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 Ohio Administrative Code 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 references to the Social Security Act. This question is not applicable to those references in this rule because such references are exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(B)(2).

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: **1/1/2013**

(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.

\$240,700,000.00

This proposed rule will decrease the agency's expenditures by an estimated \$240,700,000.00 during the current biennium. This decrease will be achieved by carving out from the Medicaid Managed Care Program certain medical supplies provided at pharmacies and drugs covered under the Ohio Medicaid pharmacy

benefit. Medicaid managed care consumers will receive drugs and certain medical supplies through the Medicaid fee-for-service delivery system, pursuant to Chapter 5101:3-9 of the Administrative Code. This will allow the agency to receive rebates for the purchase of pharmaceuticals leading to a decrease in the cost of providing pharmacy services for Medicaid consumers.

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

600525 Health Care/Medicaid and 600692 Health Care Services

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:

There may be a cost of compliance to the following persons: Medicaid consumers who are enrolled in a Medicaid managed care plan (MCP); pharmacy and durable medical equipment (DME) providers; and Medicaid managed care plans. Medicaid consumers enrolled in a Medicaid MCP may have a cost of compliance if the provider that has been providing the prescribed drugs is not a pharmacy provider contracted with the Medicaid fee-for-service program. MCP consumers may need to move their prescriptions to a pharmacy contracted with Medicaid fee-for-service and may be subject to a different prior authorization policy than what is required by MCPs. To the extent that transferring their prescriptions to a Medicaid fee-for-service contracted provider and following a different prior authorization policy is a cost of compliance, these costs cannot be estimated by the Ohio Department of Job and Family Services (ODJFS) as the costs would depend on the affected drugs utilized by the consumer and the extent to which these drugs are subject to prior authorization requirements. Additionally, Medicaid consumers enrolled in a Medicaid MCP may have a cost of compliance if they choose to fill a prescription that is subject to co-payment. Current Medicaid fee-for-service consumers are already subject to co-payments. Carving pharmacy out of the Medicaid managed care benefit will move Medicaid MCP members to the fee-for-service pharmacy benefit that includes co-payments. Only one of the seven Medicaid MCPs has charged co-payments to its members. The cost of compliance is \$2.00 for most brand-name drugs and \$3.00 for drugs requiring prior authorization. The cost of compliance for a Medicaid consumer can be minimized or eliminated if a consumer uses generic drugs and drugs that do not require prior authorization. The amount of the cost of compliance cannot be estimated because the costs associated will vary from consumer to consumer depending on the prescriptions they have and whether the providers collect the co-payment amount. The consumer may need to obtain certain medical supplies from a pharmacy contracted with Medicaid instead of a DME provider, in order to continue receiving their supplies. The amount of the cost of compliance cannot be estimated because

the costs associated with changing providers will vary from consumer to consumer, depending on the medical supplies they have, the location of their providers, and what types of services the providers provide. The changes in this rule may change Medicaid reimbursement to pharmacy providers because the Medicaid reimbursement to the pharmacy will be reduced by the amount of the co-payment, and because Medicaid reimbursement may be higher or lower than reimbursement from a Medicaid managed care plan. The pharmacy may still need to provide a prescription to a consumer even if the co-payment is not collected. To the extent that any reduction in reimbursement is a cost of compliance, pharmacy providers may be subject to a cost of compliance if the services they bill for have a lower reimbursement than they have received from a Medicaid managed care plan. Pharmacy providers may also have a cost of compliance if they choose to bill a Medicaid consumer for co-payments that have not been paid. ODJFS cannot provide an estimate of the impact for pharmacy providers because the amount of the administrative cost and the frequency at which a provider will choose to pursue payment for unpaid co-payments will vary from provider to provider, depending on their business model and the frequency at which they bill for pharmacy services or supplies. The changes in this rule may change Medicaid reimbursement to DME providers contracted with MCPs because they will no longer be able to provide certain medical supplies to MCP members. ODJFS cannot provide an estimate of the impact in reimbursement to DME providers because the amount of the decrease in revenues will vary from provider to provider, depending on their business model and the frequency at which they billed the MCP for the affected supplies. Medicaid MCPs may have a cost of compliance to the extent that they will no longer receive funds in their capitation rate to provide these services and may be required to change their administrative processes. However, they are no longer required to provide the prescribed drugs and supplies pursuant to Chapter 5101:3-9 of the Administrative Code. The cost of compliance cannot be estimated because the amount of the capitation rate will vary from MCP to MCP, depending on their administrative costs, business model, regions they serve and the number and mix of members enrolled in the MCP.

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 changes in this rule may change Medicaid reimbursement to pharmacy providers because the Medicaid reimbursement to the pharmacy will be reduced by the amount of the co-payment, and because Medicaid reimbursement may be higher or lower than reimbursement from a Medicaid managed care plan. The pharmacy may still need to provide a prescription to a consumer even if the co-payment is not collected. To the extent that any reduction in reimbursement is a cost of compliance, and to the extent that providers of these services are counties, townships or municipal corporations, providers may be subject to a cost of compliance if the services they bill for have a lower reimbursement than they have received from a Medicaid managed care plan. The Ohio Department of Job and Family Services (ODJFS) cannot provide an estimate of the impact in reimbursement, because the amount of the increase or decrease will vary from provider to provider, depending on their business model and the frequency with which they bill for the affected services. The pharmacy may also have a cost of compliance if they choose to bill a Medicaid consumer for co-payments that have not been paid. To the extent that Medicaid-participating pharmacy providers are counties, townships or municipal corporations, ODJFS cannot provide an estimate of the impact because the amount of the administrative cost and the frequency at which a provider will choose to pursue payment for unpaid co-payments will vary from provider to provider, depending on their business model and the frequency at which they bill for pharmacy services. Medicaid pharmacy providers that may be counties, townships, or municipal corporations may have a cost of compliance because they may need to update their billing systems to be able to bill the supplies listed in Appendix A to OAC rule 5101:3-9-02 under the pharmacy benefit rather than the durable medical equipment (DME) benefit. The cost of these updates cannot be estimated, but is expected to be small because many other payers require the same billing procedures. DME providers will no longer be able to bill for certain supplies. To the extent that DME providers are counties, townships or municipal corporations and may have also billed for these supplies for members of

Medicaid managed care plans, there could be a cost of compliance for DME providers. The actual cost for each DME provider cannot be estimated, because the cost will vary from provider to provider depending on their business model and the frequency at which they bill for the affected supplies.

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 amended to support carving pharmacy and certain medical supplies out of the managed care benefit. Reimbursement to pharmacies from Medicaid managed care plans may be higher or lower than Medicaid reimbursement. Pharmacies may also incur increased administrative costs due to these changes. To the extent that pharmacy providers are counties, townships or municipal corporations they may receive increased or decreased reimbursement and incur administrative costs. The Ohio Department of Job and Family Services (ODJFS) cannot provide an estimate of the impact in reimbursement or administrative costs to pharmacies because the amount of the impact will vary from provider to provider, depending on their business model and the frequency at which they bill for the affected services. Durable medical equipment (DME) providers will no longer be able to bill for certain medical supplies and there may be a reduction in reimbursement. To the extent that any reduction in reimbursement is a cost of compliance, and to the extent that DME providers are counties, townships, or municipal corporations, providers will be subject to a cost of compliance because they can no longer bill for the affected supplies. ODJFS cannot provide an estimate of the impact in reimbursement for DME providers, because the cost will vary from provider to provider depending on their business model and the frequency at which they bill for the affected supplies.

(a) Personnel Costs

The changes in this rule may increase or decrease Medicaid reimbursement to providers and increase administrative costs as described in the answer to RSFA part B, question 2. To the extent that a potential reduction in reimbursement is a cost of compliance, or there is an increased administrative cost, and to the extent that the providers of these services are counties, townships, or municipal corporations, providers may have less revenue that can be used to cover personnel costs. ODJFS cannot provide an estimate of the impact on reimbursement or administrative costs, because the amount of any reimbursement reduction or increased administrative cost will vary from provider to provider, depending upon their business model and the frequency at which they bill for affected services.

(b) New Equipment or Other Capital Costs

The changes in this rule may increase or decrease Medicaid reimbursement to providers and increase administrative costs as described in the answer to RSFA part B, question 2. To the extent that a potential reduction in reimbursement is a cost of compliance, or there is an increased administrative cost, and to the extent that the providers of these services are counties, townships, or municipal corporations, providers may have less revenue that can be used to cover new equipment or other capital costs. ODJFS cannot provide an estimate of the impact on reimbursement or administrative costs, because the amount of any reimbursement reduction or increased administrative cost will vary from provider to provider, depending upon their business model and the frequency at which they bill for affected services.

(c) Operating Costs

The changes in this rule may increase or decrease Medicaid reimbursement to providers and increase administrative costs as described in the answer to RSFA part B, question 2. To the extent that a potential reduction in reimbursement is a cost of compliance, or there is an increased administrative cost, and to the extent that the providers of these services are counties, townships, or municipal corporations, providers may have less revenue that can be used to cover operating costs. ODJFS cannot provide an estimate of the impact on reimbursement or administrative costs, because the amount of any reimbursement reduction or increased administrative cost will vary from provider to provider, depending upon their business model and the frequency at which they bill for affected services.

(d) Any Indirect Central Service Costs

The changes in this rule may increase or decrease Medicaid reimbursement to providers and increase administrative costs as described in the answer to RSFA part B, question 2. To the extent that a potential reduction in reimbursement is a cost of compliance, or there is an increased administrative cost, and to the extent that the providers of these services are counties, townships, or municipal corporations, providers may have less revenue that can be used to cover any indirect central service costs. ODJFS cannot provide an estimate of the impact on reimbursement or administrative costs, because the amount of any reimbursement reduction or increased administrative cost will vary from provider to provider, depending upon their business model and the frequency at which they bill for affected services.

(e) Other Costs

The changes in this rule may increase or decrease Medicaid reimbursement to providers and increase administrative costs as described in the answer to RSFA part B, question 2. To the extent that a potential reduction in reimbursement is a cost of compliance, or there is an increased administrative cost, and to the extent that the providers of these services are counties, townships, or municipal corporations, providers may have less revenue that can be used to cover other costs. ODJFS cannot provide an estimate of the impact on reimbursement or administrative costs, because the amount of any reimbursement reduction or increased administrative cost will vary from provider to provider, depending upon their business model and the frequency at which they bill for affected services.

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 may increase or decrease Medicaid reimbursement to providers. To the extent that a potential reduction in Medicaid reimbursement imposes new requirements, and to the extent that providers of these services are counties, townships or municipal corporations, providers may receive less revenue as Medicaid reimbursement. Medicaid consumers who are unable to pay their co-payment must still receive the prescription from the pharmacy. The pharmacy may also have a cost of compliance if they choose to bill a Medicaid consumer for co-payments that have not been paid. The Ohio Department of Job and Family

Services (ODJFS) cannot provide an estimate of the impact in reimbursement, because the amount of the increase or decrease in reimbursement and the frequency at which a provider will choose to pursue payment for unpaid co-payments will vary from provider to provider, depending on their business model and the frequency at which they bill for pharmacy services. To the extent that any reduction in reimbursement is a cost of compliance, and to the extent that durable medical equipment (DME) providers are counties, townships, or municipal corporations, providers will be subject to a cost of compliance because they can no longer bill for the affected supplies. ODJFS cannot provide an estimate of the impact in reimbursement for DME providers, because the cost will vary from provider to provider depending on their business model and the frequency at which they bill for the affected supplies.

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

This rule amendment may increase or decrease reimbursement to pharmacy providers and thus could result in an increase or decrease in Medicaid reimbursement received in a county, township or municipal corporation. This rule amendment reduces reimbursement to durable medical equipment (DME) providers and thus could result in a reduction in Medicaid reimbursement received in a county, township or municipal corporation. The rule amendment reduces Medicaid expenditures to Medicaid managed care plans (MCPs) and thus can result in a decrease in Medicaid reimbursement received in a county, township or municipal corporation. To the extent that providers or plans may receive less Medicaid reimbursement, it may result in job losses. Also, premiums paid by Ohio Medicaid to MCPs are subject to sales and use tax. A reduction of premium payments will lead to a reduction in sales and use tax and a potential loss of tax revenues for local governments, estimated to be an aggregate statewide figure of \$15.5 million annually. The effects of each of these changes will vary by county, township or municipal corporation. Therefore, the Ohio Department of Job and Family Services cannot estimate the effect of the proposed rule on economic development.