5101:3-3-17.3 **Out-of-state nursing facility (NF) services for individuals with traumatic brain injury (TBI).**

(A) Purpose.

(1) This rule identifies the process for prior authorization of out-of-state NF-TBI services.

(2) This rule sets forth the following:

(a) In paragraph (C), the criteria to determine if an individual with a TBI who has a nursing facility (NF) level of care (LOC) is eligible for out-of-state NF-TBI services.

(b) In paragraph (D), the conditions under which a NF or a discrete unit within a NF may be approved by the Ohio department of job and family services (ODJFS) as an eligible provider of out-of-state NF-TBI services and thereby receive payment established in accordance with this rule.

(c) In paragraph (E), the prior authorization process for admission or continued stay for individuals who are seeking medicaid payment for out-of-state NF-TBI services.

(d) In closing paragraphs, details about the provider agreement addendum, payment authorization, and materials to be submitted by the provider to support the establishment of the initial and subsequent contracted per diem rate.

(B) Definitions.

(1) "Individual" means a person with TBI seeking or receiving out-of-state prior authorized TBI services.

(2) "LOC review" means the evaluation of an individual's physical, mental, and social/emotional status to determine the LOC required to meet the individual's service needs and includes activities necessary to safeguard against unnecessary utilization. LOC determinations are based upon the criteria regarding the amount and type of services needed by an individual that are set forth in rules contained in Chapter 5101:3-3 of the Administrative Code. The LOC process is also the mechanism by which medicaid payment is initiated.

(3) "Nursing facility (NF)" means any long term care facility except an ICF-MR that is currently certified by the Ohio department of health (ODH) as being in compliance with NF standards and medicaid conditions of participation.

(4) "ODJFS out-of-state TBI prior authorization committee" means a committee

organized and operated by ODJFS that makes TBI out-of-state prior authorization determinations.

(5) "PAS" means preadmission screening and refers to that part of the preadmission screening and annual resident review (PASARR) process, which must be met prior to any new admission to a NF and completed in accordance with rule 5101:3-3-15.1 of the Administrative Code.

(6) "Physician" means a doctor of medicine or osteopathy who is licensed to practice medicine.

(7) "Rancho los amigos (RLA) hospital levels of cognitive functioning scale" means a scale designed to measure and track an individual's progress regarding levels of cognitive functioning. The RLA scale (see the appendix to this rule) has been used as a means to develop level specific treatment interventions and strategies designed to facilitate movement from one level to another. The RLA level of an individual is determined by behavioral observations.

(8) "Representative" means a person acting on behalf of an individual who is applying for or receiving medicaid. A representative may be a family member, guardian, attorney, hospital social worker, or any other person chosen to act on the individual's behalf.

(9) "Traumatic brain injury (TBI)" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. TBI also excludes brain damage due to anoxia, metabolic disorders, cerebral vascular insults, or other internal causes.

(C) Individual eligibility criteria.

(1) To receive prior authorization approval for out-of-state placement for NF-TBI services, an individual shall meet all the criteria in paragraphs (C)(1) to (C)(9) of rule 5101:3-3-17.1 of the Administrative Code and be inappropriately served or not served in Ohio.

(2) An individual is considered inappropriately served or not served when the individual has tried to access the services specified in rule 5101:3-3-17.1 of the Administrative Code and a prior authorized admission to an Ohio NF-TBI facility is unavailable for placement in a timely manner.

(D) Provider eligibility criteria.

In order to obtain an out-of-state NF-TBI provider agreement and thereby qualify to provide NF-TBI services for individuals who have received prior authorization by ODJFS for admission or continued stay, a provider shall meet all of the requirements in paragraphs (D)(2), (D)(4), (D)(6), (D)(8), (D)(9), (D)(10), and (D)(11) of rule 5101:3-3-17.1 of the Administrative Code.

At regular intervals established by ODJFS subsequent to that enrollment, ODJFS shall determine whether the provider qualifications are fulfilled through review of documentation of appropriate policies and procedures, completion of on-site visits, or through other mechanisms determined appropriate by ODJFS.

In addition, a provider shall meet the following requirements prior to enrollment as an out-of-state NF-TBI provider:

(1) Certified NF.

The provider shall be a medicaid certified NF.

(2) Contracted rates.

(a) ODJFS shall contract with the provider to set initial and subsequent rates.

(b) The rate paid the provider will be based on the rate submitted by the provider in accordance with paragraphs (H) and (I) of this rule.

(c) With the exception of any specific items that are direct billed in accordance with rule 5101:3-3-19 of the Administrative Code, the provider shall agree to accept, as payment in full, the per diem rate established for NF-TBI services in accordance with this rule, and to make no additional charge to the individual, any member of the individual's family, or to any other source for covered NF-TBI services.

(d) The provider shall assure ODJFS that consultant, ancillary, and acute services not covered in the contract rate can be made available to an individual participating in the Ohio medicaid program.

(E) Prior authorization of out-of-state NF-TBI services.

Reimbursement for out-of-state NF-TBI services covered by medicaid is available only upon prior authorization from the ODJFS out-of-state TBI prior authorization committee in accordance with the procedures set forth in paragraph (E) of rule 5101:3-3-17.1 of the Administrative Code.

(F) Provider agreement addendum.

(1) After ODJFS has approved a NF operator as a qualified provider of out-of-state NF-TBI services, both parties shall sign the JFS 03634 "Provider Agreement for Traumatic Brain Injury Outlier Services in Nursing Facilities" (Rev. 7/2007), which is an addendum to the JFS 03623 "Ohio Medicaid Provider Agreement for Long Term Care Facilities: SNF/NFs and ICFs-MR" (Rev. 7/2007).

(2) This addendum shall also be signed as part of each subsequent annual provider agreement renewal with ODJFS, unless the provider chooses to withdraw as a provider of NF-TBI out-of-state services or is determined by ODJFS to no longer meet the requirements set forth in paragraph (D) of this rule.

(G) Payment authorization.

Authorization of payment to an eligible provider for the provision of out-of-state NF-TBI services shall be the effective date of the individual's NF-TBI prior authorization approval by the ODJFS out-of-state TBI prior authorization committee, but shall not be earlier than the effective date of the individual's LOC determination.

The payment authorization date shall be determined in one of the following ways:

(1) The date of admission to the NF-TBI unit if it is within thirty days of the physician's signature; or

(2) If the individual was required to undergo PAS and failed to do so prior to admission, the effective date of the LOC determination and NF-TBI eligibility determination shall be the later of the date of either the PAS determination when the individual required the level of services available in a NF, or the date established in paragraph (G)(1) of this rule.

(H) Initial contracted rate.

(1) The initial rate for a newly approved provider of out-of-state NF-TBI services will be based upon the rates received by the facility from its state of residence, or the Ohio average rate paid to NF-TBI prior authorized facilities, whichever is less. Any contracted rate shall first be approved by the ODJFS director.

(2) ODJFS will establish the initial contracted rate no later than ninety days after ODJFS receives all the required information from the provider. The initial contracted rate will be implemented retroactively to the initial date services were provided pursuant to the out-of-state NF-TBI provider agreement.

(3) The rate the facility receives for services in its state of residence may be submitted as soon as the provider receives notification from ODJFS of the

effective date of the out-of-state NF-TBI provider agreement, but shall be submitted within ninety days of the provider agreement's effective date.

(4) Prior authorized out-of-state NF-TBI facilities will not be required to submit financial and statistical reports as required by rule 5101:3-3-20 of the Administrative Code.

(5) Payment for periods when the individual is absent for visitation or hospitalization will be made to the out-of-state facility in accordance with rule 5101:3-3-16.4 of the Administrative Code.

(I) Contracted rates subsequent to the initial rate year.

(1) The contracted rate will be effective for the fiscal year beginning on the first of July and ending on the thirtieth day of June of the following calendar year.

(2) ODJFS will establish the contracted rate for subsequent fiscal years in accordance with paragraph (H) of this rule.

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