

5101:3-3-17.3 **Out-of-state placement for individuals with traumatic brain injury (TBI).**

(A) Purpose:

This rule identifies the process for prior authorization of out-of-state long-term care (LTC) services for individuals with TBI . This rule sets forth:

- (1) In paragraph (C) of this rule, the criteria to determine if an individual with a nursing facility (NF) TBI ~~LOC~~level of care (LOC) is eligible for out-of-state TBI services; and
- (2) In paragraph (D) of this rule, 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; and
- (3) In paragraph (E) of this rule, the prior authorization process for admission or continued stay for individuals who are seeking medicaid payment for out-of-state NF-TBI services; and
- (4) In closing paragraphs of this rule, details about the provider agreement addendum, authorization for payment, 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", for purposes of this rule, means any person with TBI seeking or receiving out-of-state prior authorized TBI services.
- (2) "Level of care (LOC) review" is 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 vendor payment is initiated.
- (3) "Ohio department of job and family services (ODJFS) out-of-state TBI designated coordinator", means the designated ODJFS staff member who coordinates the general operation of the out-of-state prior authorization process for individuals with TBI. The coordinator's duties include but are not

limited to the following:

- (a) Assisting with the initial approval and ongoing monitoring of the individual requiring out-of-state TBI services and;
 - (b) Coordinating the processing of TBI out-of-state requests and continued stay prior authorization requests for individuals and;
 - (c) Serving on the TBI out-of-state prior authorization committee and;
 - (d) Reviewing documents for out-of-state LTC TBI services for individuals pursuant to rule 5101:3-1-31 of the Administrative Code. This coordinator works actively with the individual and/or his/her representatives requesting and receiving out-of-state TBI services, other service agencies, and within ODJFS.
- (4) "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.
- (5) "Physician" means a doctor of medicine or osteopathy who is licensed to practice medicine.
- (6) "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 based on behavioral observations.
- (7) "Representative", means a person acting on behalf of an individual who is applying for or receiving medical assistance. A representative may be a family member, guardian, attorney, hospital social worker, or any other person chosen to act on the individual's behalf.
- (8) "TBI prior authorization committee" means a committee organized and operated by ODJFS that makes TBI out-of-state prior authorization determinations.
- (9) "Traumatic brain injury (TBI)," for purposes of this rule, is defined as 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; judgement; 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) Eligibility criteria for individuals.

To receive prior authorization approval for out-of-state placement for NF-TBI services, the individual must meet all the criteria in paragraphs (C)(1) to (C)(9) of rule 5101:3-3-54.1 of the Administrative Code and be inappropriately served or unserved in Ohio. A individual will be considered inappropriately served or unserved when the individual has tried to access the services specified in rule 5101:3-3-54.1 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.

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 for admission or continued stay by ODJFS, the provider must meet all of the following requirements plus the requirements in paragraphs (D)(5), (D)(6), (D)(7), (D)(9), (D)(10), (D)(12), and (D)(13) of rule 5101:3-3-54.1 of the Administrative Code prior to enrollment as an out-of-state NF-TBI provider. At regular intervals subsequent to that enrollment, to be determined by ODJFS, ODJFS shall determine whether the qualifications are fulfilled; through review of documentation of appropriate policies and procedures, completion of on-site visits, or through other mechanisms as determined by ODJFS to be appropriate.

(1) Certified NF.

The provider must be a medicaid-certified NF.

(2) Contracted rates.

The rate paid the provider will be based on materials submitted by the provider in accordance with paragraphs (H) and (I) of this rule. ODJFS shall contract with the provider to set initial and subsequent rates. 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 must 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. The provider shall assure ODJFS that consultants, ancillary, and acute services not covered in the contract rate can be made available to an individual on the Ohio medicaid program.

(E) Prior authorization for services.

Reimbursement for out-of-state NF-TBI services covered by the medical assistance program is available only upon prior authorization from the TBI prior authorization committee in accordance with the procedures set forth in paragraph (E) of rule 5101:3-3-54.1 of the Administrative Code.

(F) Provider agreement addendum.

After ODJFS has approved the NF as a qualified provider of out-of-state NF-TBI services, both parties shall sign the JFS 03642, an addendum to the Ohio medical assistance program's LTC facility provider agreement (JFS 03623). This addendum must also be signed as a part of each subsequent annual provider agreement renewal with ODJFS, unless the provider chooses to withdraw as a provider of this NF-TBI out-of-state service or is determined by ODJFS to no longer meet the qualifications set forth in paragraph (D) of this rule.

(G) Authorization of payment.

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

- (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 the PAS determination that 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 lower. 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 is receiving 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 must be submitted within ninety days of the provider agreement's effective date.
 - (4) Prior authorized out-of-state NF-TBI facilities shall not be required to submit financial and statistical reports as required by rule 5101:3-3-20 of the Ohio 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 5101:3-3-59 of the Ohio 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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Certification

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