

**Rule Summary and Fiscal Analysis (Part A)****Department of Job and Family Services**

Agency Name

**Division of Medical Assistance**

Division

**Mike Lynch**

Contact

**30 E. Broad St., 31st Floor ODJFS, Office of Legal Services Columbus OH 43215-3414**

Agency Mailing Address (Plus Zip)

**614-466-4605**

Phone

**614-752-8298**

Fax

**5101:3-3-22**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Rate recalculations, interest on overpayments, penalties, repayment of overpayments, and deposit of repayment of overpayments for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR).**

**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: **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**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.27, 5111.271, 5111.28**

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

Five year review.

To implement provisions of RC 5111.271 adopted under Am. Sub. H.B. 153 of the 129th G.A. relating to the administration of the Medicaid program.

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 provisions for rate recalculations, interest on overpayments, imposition of penalties, repayment of overpayments, and deposit of repayment of overpayments for nursing facilities and intermediate care facilities for the mentally retarded.

Changes to this rule: In paragraph (A) the reference to OAC rule 5101:3-3-21 is being replaced with reference to ORC section 5111.27 because rule 5101:3-3-21 is being proposed for rescission; in paragraph (A)(3), the internet address for the publication "Selected Interest Rates" is being added; in the heading to paragraph (B) the words "and fines" is being added for clarification; new paragraphs (B)(3) and (B)(4) identify the fines to be issued based on the amount of adverse findings included in the report of an audit conducted under ORC section 5111.27; new paragraph (B)(5) prohibits the Department from collecting fines issued under paragraph (B)(3) until all appeals relating to the audit report that is the basis for the fine are exhausted; language has been added in paragraph (D) so that fines collected pursuant to paragraph (B)(3) shall be deposited into the Health Care Services Administration Fund created under ORC section 5111.94; and language has been added to paragraph (D) specifying where all other penalties issued under this rule will be deposited.

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 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 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 "Selected Interest Rates" as published by the United States Federal Reserve Board. The publication is generally available to persons affected by this rule at the web site address provided in the rule

and in most public libraries.

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: **12/15/2011**

(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 revenues.

\$0.00

The changes to the proposed rule could result in an increase in revenue to the Department. Pursuant to section 5111.271 of the Revised Code, NF providers may

incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. Because the Department does not know how many NF providers will be fined during the biennium or the amount of those fines, the Department cannot provide an estimate of the increase in revenue.

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

Not applicable

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:

Pursuant to section 5111.271 of the Revised Code, nursing facility providers may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of the cost of compliance to directly affected persons because it will depend upon how many providers incur fines and the amount of those fines.

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.

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of the cost of compliance to county operated nursing facilities because it will depend upon how many facilities incur fines and the amount of those fines.

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.

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The

Department cannot provide an estimate of the cost of compliance to county operated nursing facilities because it will depend upon how many facilities incur fines and the amount of those fines.

(a) Personnel Costs

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of personnel costs to county operated nursing facilities because the Department does not know how facilities that incur fines will alter their personnel costs.

(b) New Equipment or Other Capital Costs

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of new equipment or other capital costs to county operated nursing facilities because the Department does not know how facilities that incur fines will alter their new equipment or other capital costs.

(c) Operating Costs

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of operating costs to county operated nursing facilities because the Department does not know how facilities that incur fines will alter their operating costs.

(d) Any Indirect Central Service Costs

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of any indirect central service costs to county operated nursing facilities because the Department does not know how facilities that incur fines will alter their indirect central service costs.

(e) Other Costs

Pursuant to section 5111.271 of the Revised Code, county operated nursing facilities may incur fines based upon the amount of adverse findings revealed in a cost report audit conducted under section 5111.27 of the Revised Code. The Department cannot provide an estimate of other costs to county operated nursing facilities because the Department does not know how facilities that incur fines will alter their other costs.

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 Department is unable to provide an explanation of the ability of county operated nursing facilities to pay for the cost of compliance because the Department does not have this level of detailed information about the finances of the county operated nursing facilities.

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

The Department is unable to provide a statement on the proposed rule's impact on economic development because the Department cannot estimate the amount of financial impact on county operated nursing facilities, and cannot explain how that unknown impact will affect economic development.