

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

Agency Name

**Division of Medical Assistance**

Division

**Mike Lynch**

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**5101:3-3-42.4**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Nursing facilities (NFs): nonreimbursable costs.****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, 5111.26, 5111.262**

5. Statute(s) the rule, as filed, amplifies or implements: **5111.20, 5111.26, 5111.262, 5111.271**

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 costs that are not reimbursable to nursing facilities through the nursing facility per diem rate.

Changes to this rule include the following: Fines or penalties paid under Section 5111.271 of the Revised Code are being added as nonreimbursable costs; and the costs of physical therapy, occupational therapy, speech therapy, audiology, oxygen (other than emergency stand-by oxygen), and custom wheelchairs are being removed as nonreimbursable costs as these services are reimbursed through the nursing facility per diem effective August 1, 2009.

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 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 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 federal Centers for Medicare and Medicaid Services (CMS) Publication 15-1, the Provider Reimbursement Manual. This question is not applicable to any incorporation by reference to the Provider Reimbursement Manual because such reference is 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: **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

This rule adds fines paid under Section 5111.271 of the Revised Code to the nonreimbursable costs for nursing facilities. This rule will thus increase revenues to the Department when fines are assessed and collected for nursing facilities pursuant to Section 5111.271 of the Revised Code. The Department cannot provide an estimate of the increase in revenues, because the increase will depend on the number of nursing facilities audited, their level of compliance contained in ORC 5111.271, and the amounts of the fines assessed.

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

line item 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 changes in this rule will require nursing facility providers to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the cost of compliance, because it will vary from provider to provider depending on their level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

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.

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the cost of compliance, because it will vary from provider to provider depending on their level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

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.

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the cost of compliance, because it will vary from provider to provider depending on their level of compliance contained in ORC

5111.271 and the amount of the fines assessed.

**(a) Personnel Costs**

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the impact on personnel costs, because they will vary from provider to provider depending on the nursing facility's level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

**(b) New Equipment or Other Capital Costs**

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the impact on new equipment or other capital costs, because they will vary from provider to provider depending on the nursing facility's level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

**(c) Operating Costs**

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the impact on operating costs, because they will vary from provider to provider depending on the nursing facility's level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

**(d) Any Indirect Central Service Costs**

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The Department cannot provide an estimate of the impact on indirect central service costs, because they will vary from provider to provider depending on the nursing facility's level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

**(e) Other Costs**

The changes in this rule will require county operated nursing facilities to pay fines they incur under ORC 5111.271 as a result of a cost report audit. The

Department cannot provide an estimate of the impact on other costs, because they will vary from provider to provider depending on the nursing facility's level of compliance contained in ORC 5111.271 and the amount of the fines assessed.

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 costs incurred as a result of the changes in this rule, 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.