

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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5101:3-56-04

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Hospice services: provider requirements.**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? **No**

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: **5111.01, 5111.02, 5111.021**

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

This rule is being proposed for amendment for the following reasons: 1) to implement Section 2302 of the federal Patient Protection and Affordable Care Act (PPACA) of 2010, which states that a voluntary election for hospice care does not waive the rights of any child less than age twenty-one to be provided with or have payment made for services that are related to the treatment of the child's condition for which a diagnosis of terminal illness has been made and 2) to correct citations.

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 explains responsibilities of hospice providers. The proposed amendments to this rule will require hospice providers 1) to facilitate concurrent care for children under age twenty-one with other Medicaid providers, 2) to document how services are coordinated between the hospice provider and other Medicaid providers, 3) to provide a copy of the consumer's advance directive and hospice election form to other Medicaid providers and 4) to notify consumers of their responsibilities to report to the hospice provider the names of their other Medicaid providers. The proposed amendments also update and correct citations to federal regulations.

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 Social Security Act. This question is not applicable to any incorporation by reference to the Social Security Act because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(B)(2).

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 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 dated references to the Code of Federal Regulations (CFR). This question is not applicable to any dated incorporation by reference to the Code of Federal Regulations because such reference is exempt from compliance with ORC 121.71 to 121.74 in accordance with ORC 121.75(D).

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:

In paragraph (I) and section (N)(3)(iii), the phrase "concurrent care" is being changed to "concurrent curative treatment" to more accurately describe the nature of service being described. In paragraphs (J) and (K), the words "including providers of concurrent curative treatment" are being added to ensure that all providers of a consumer receive necessary documents from the hospice providing care. Additionally, the estimated increase in the agency's expenditures has been decreased as a result of this refiling and is noted in the agency's answers to RSFA Part A, Question 13 and RSFA Part B, Question 6.

12. 119.032 Rule Review Date: **3/1/2013**

(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 have no impact on revenues or expenditures.

\$0.00

This rule is being proposed to implement new provisions of federal law that provide that a voluntary election for hospice care does not waive the right of any child under age twenty-one to be provided with or have payment made for treatment of the child's terminal illness. Implementation of this federal law is expected to increase the agency's expenditures by an estimated \$73,400 during the current biennium since parents and children will no longer be required to forgo curative treatment. This increase has been reported in the rule summary and fiscal analysis submitted with the amendment to OAC 5101:3-56-06.

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

ALI 600525 Health Care/Medicaid

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:

Medicaid providers of hospice services may incur costs of compliance as a result of the requirement to facilitate concurrent care with other Medicaid providers of services for a child. The costs of compliance cannot be estimated because these costs will vary from consumer to consumer depending on the number of medical providers involved in the child's case, the course of treatment for the child's condition for which a diagnosis of terminal illness has been made and the available curative treatments that are determined to be medically necessary.

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 proposed amendments to this rule may increase the administrative costs for care coordination delivered by county hospice providers to children with a diagnosis of terminal illness. The Department cannot provide an estimate of the costs of compliance because these costs will vary depending on the number of medical providers involved in a child's case, the course of treatment for the child's condition for which a diagnosis of terminal illness has been made and the available curative treatments that are determined to be medically necessary.

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.

There may be costs of compliance as a result of requirements to facilitate concurrent care with other Medicaid providers of services to a child.

(a) Personnel Costs

Personnel costs for county hospice providers may increase because they will be coordinating care for consumers less than age twenty-one who will be receiving both hospice care and concurrent curative treatments. The Department cannot provide an estimate of the impact on personnel costs because it is unknown how many consumers less than age twenty-one will elect hospice care while receiving concurrent curative treatments.

(b) New Equipment or Other Capital Costs

Equipment/capital costs for county hospice providers may increase because they will be coordinating care for consumers less than age twenty-one who will be receiving both hospice care and concurrent curative treatments. The Department cannot provide an estimate of the impact on equipment/capital costs because it is unknown how many consumers less than age twenty-one will elect hospice care while receiving concurrent curative treatments.

(c) Operating Costs

Operating costs for county hospice providers may increase because they will be coordinating care for consumers less than age twenty-one who will be receiving both hospice care and concurrent curative treatments. The Department cannot provide an estimate of the impact on operating costs because it is unknown how many consumers less than age twenty-one will elect hospice care while receiving concurrent curative treatments.

(d) Any Indirect Central Service Costs

Indirect costs for county hospice providers may increase because they will be coordinating care for consumers less than age twenty-one who will be receiving both hospice care and concurrent curative treatments. The Department cannot provide an estimate of the impact on indirect costs because it is unknown how many consumers less than age twenty-one will elect hospice care while receiving concurrent curative treatments.

(e) Other Costs

Other costs for county hospice providers may increase because they will be coordinating care for consumers less than age twenty-one who will be receiving both hospice care and concurrent curative treatments. The Department cannot provide an estimate of the impact on other costs because it

is unknown how many consumers less than age twenty-one will elect hospice care while receiving concurrent curative treatments.

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 Ohio Department of Job and Family Services estimates that the amendments to rules 5101:3-56-02, 5101:3-56-04 and 5101:3-56-06 will increase expenditures in the amount of \$73,400, because parents and children will be permitted to elect hospice care and also receive curative treatment for the child's terminal disease. This increase in expenditures is reflected in the answer to the Rule Summary and Fiscal Analysis, Part A, Question 13, for rule 5101:3-56-06.

The proposed amendments to this rule may increase the administrative costs for care coordination delivered by county hospice providers to children with a diagnosis of terminal illness. However, other county Medicaid providers may receive additional reimbursement because they will be able to provide curative services to such children at the same time these children are receiving hospice services. This additional Medicaid reimbursement may offset the county hospice provider's costs involved in providing care coordination. The county's ability to pay for the costs of care coordination cannot be estimated because these costs will vary from child to child depending on the number of medical providers involved in a child's case, the course of treatment for the child's condition for which a diagnosis of terminal illness has been made and the available curative treatments that are determined to be medically necessary.

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

ODJFS estimates that the amendments to this rule will not have a significant impact on economic development. To the extent that some Medicaid consumers under age twenty-one elect both hospice care and concurrent curative treatment, there could be a slight increase in economic activity.