

Rule Summary and Fiscal Analysis (Part A)**Ohio Department of Medicaid**

Agency Name

Division

Tommi Potter

Contact

**50 West Town Street Suite 400 Columbus OH
43218-2709**

Agency Mailing Address (Plus Zip)

614-752-3877

Phone

Fax

Tommi.Potter@medicaid.ohio.gov

Email

5160-3-03.2

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Nursing facilities (NFs): resident protection fund and collection of fines.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **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: **5162.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5162.66**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being proposed for adoption to replace rule 5160-3-03.2, which is being proposed for rescission.
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 the resident protection fund, including the methods and procedures for collection of fines that are subsequently deposited into the resident protection fund, and the purposes for which the money in the fund may be used.

The differences between this rule and the rule it is replacing are:

1. The rule title is being modified in order to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
2. The definition of fines is being revised to include assessments other than civil monetary penalties (CMPs).
3. The definition of and references to the resident protection fund coordinator are being removed because the position does not exist. The phrase has been replaced with "ODM."
4. The provisions regarding the methods and procedures for collection of fines are being combined and revised to reflect that CMS is responsible for imposing and collecting the CMP fines and, if CMS is unable to do so, CMS will notify ODM, who will attempt to collect. It further clarifies that ODH is responsible for issuing fines to Medicaid-only providers for noncompliance with certification requirements, and for notifying ODM, who will attempt to collect.
5. In paragraph (C), language is being revised pursuant to changes in federal requirements regarding the purposes for which the resident protection fund may be used, and language is being added regarding the requirement for CMS approval for the use of CMP funds deposited in the resident protection fund.
6. The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).
7. Paragraph references are being updated as necessary.

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 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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date:

(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 proposed rule will not change the agency's projected budget during the current biennium.

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:

The Department estimates it will take a nursing facility provider, per instance, approximately one hour of staff time at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to select a payment option with which to pay fines, and to advise the Department of Medicaid in writing.

According to paragraph (B)(5) of this rule, if a nursing facility fails to adhere to the terms of a payment agreement or fails to select a payment option within ten days, the Department must implement collection from an actively participating nursing facility by Medicaid payment offset. The Department is not able to estimate the amount of such payments because the number of fines imposed, and the amounts of the fines, will necessarily vary.

However, these costs are existing costs of compliance. There are no new costs of compliance as a result of this rule filing.

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**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

If a nursing facility provider fails to adhere to the terms of the payment agreement, or fails to select a payment option within ten days of notification of the collection of a fine, the Department of Medicaid shall immediately begin collection through Medicaid payment offset if the NF is a Medicaid participating facility.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

A nursing facility provider must notify the Department of Medicaid in writing which payment option the provider selects.

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	Yes

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.

Counties and municipal corporations that operate nursing facilities could incur a cost of compliance with the proposed rule. The cost of compliance is the requirement to select a payment option with which to pay fines, and to advise the Department of Medicaid in writing of the selection. The cost of compliance with the payment selection requirement in this rule is estimated at \$12.50 per occurrence.

If a nursing facility fails to adhere to the terms of a payment agreement or fails to select a payment option within ten days, ODM must implement collection from an actively participating nursing facility by Medicaid payment offset. The Department is not able to estimate the amount of such payments because the number of fines imposed, and the amounts of the fines, will necessarily vary.

These costs are existing costs of compliance. There are no new costs of compliance.

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 Department estimates it will take a nursing facility provider, per instance, approximately one hour of staff time at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to select a payment option with which to pay fines, and to advise the Department of Medicaid in writing.

According to paragraph (B)(5) of this rule, if a nursing facility fails to adhere to the terms of a payment agreement or fails to select a payment option within ten days, the Department must implement collection from an actively participating nursing facility by Medicaid payment offset. The Department is not able to estimate the amount of such payments because the number of fines imposed, and the amounts of the fines, will necessarily vary.

However, these costs are existing costs of compliance. There are no new costs of compliance as a result of this rule filing.

(a) Personnel Costs

The Department estimates it will take a nursing facility provider, per instance, approximately one hour of staff time at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to select a payment option with which to pay fines imposed by the Centers for Medicare and Medicaid Services, and to advise the Department of Medicaid in writing.

However, this cost is an existing cost of compliance. There are no new costs of compliance as a result of this rule filing.

(b) New Equipment or Other Capital Costs

ODM does not expect that the proposed rule will result in any new equipment or other capital costs to Medicaid providers of nursing facility services.

(c) Operating Costs

ODM does not expect that the proposed rule will result in any operating costs to Medicaid providers of nursing facility services.

(d) Any Indirect Central Service Costs

ODM does not expect that the proposed rule will result in any indirect central

service costs to Medicaid providers of nursing facility services.

(e) Other Costs

According to paragraph (B)(5) of this rule, if a nursing facility fails to adhere to the terms of a payment agreement or fails to select a payment option within ten days, the Department must implement collection from an actively participating nursing facility by Medicaid payment offset. The Department is not able to estimate the amount of such payments because the number of fines imposed, and the amounts of the fines, will necessarily vary.

However, this cost is an existing cost of compliance. There are no new costs of compliance as a result of this rule filing.

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 cost of compliance with the payment selection requirement in this rule is estimated at \$12.50 per occurrence, a minimal amount that will have no appreciable fiscal impact on a local government.

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

There is no discernible impact on economic development as a result of this proposed rule.