

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-3-03.2

Rule Type: New

Rule Title/Tagline: Nursing facilities (NFs): resident protection fund and collection of fines.

Agency Name: Ohio Department of Medicaid

Division:

Address: 50 Town St 4th floor Columbus OH 43218-2709

Contact: Tommi Potter **Phone:** 614-752-3877

Email: tommi.potter@medicaid.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5162.02
5. **What statute(s) does the rule implement or amplify?** 5162.66
6. **What are the reasons for proposing the rule?**

This rule is replacing rule 5160-3-03.2, which is being rescinded because more than 50% of the rule is being changed.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the provisions for the resident protection fund, including management and disbursement of funds, 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The differences between this rule and rescinded rule 5160-3-03.2 are:

1. In paragraph (A), the definitions of "Certification requirements," "Deficiency," "Dually participating facility," and "Noncompliance" are being deleted because they are not used in the rule.

2. Paragraph (B)(1) is being deleted because the process it describes is obsolete.

3. In new paragraph (B)(4), language is being added to clarify that, if a nursing facility is not actively participating in the Medicaid program and fails to adhere to the terms of a payment agreement or fails to select a payment option within ten days, the facility's fine shall be referred to the Attorney General's Office for collection.

4. In paragraph (C)(2), the phrase "in which deficiencies are found" is being deleted in order to align with federal regulations. Also in paragraph (C)(2), language is being deleted regarding the need for prior approval by CMS for all uses of CMP funds because the requirement is contained in federal regulations.

5. In paragraph (E), language is being changed in order to describe the Ohio Department of Medicaid's current process for the disbursement of monies in the resident protection fund.

6. Paragraph (F) is being deleted because the annual report process it describes is obsolete.

7. Paragraph headers are being added to paragraphs (D) and (E), and paragraphs are being re-numbered and re-lettered as necessary.

8. Does the rule incorporate material by reference? Yes

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

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 CFR because such reference is exempt from compliance with RC 121.71 to 121.74 in accordance with RC 121.75(A)(2)(d).

This rule incorporates one or more references to the Revised Code. This question is not applicable to any incorporation by reference to the Revised Code because

such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(a).

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

No impact on current budget

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

In accordance with paragraph (B)(3) of this rule, when the Department of Medicaid attempts to collect a CMP fine and notifies the facility via certified mail of the available payment options, the facility shall select a payment option and advise the Department in writing. The Department of Medicaid estimates it will take a nursing facility's accountant approximately 0.5 hours at the rate of approximately \$32.00 per hour (total estimated cost: \$16.00) to select a payment option and advise the Department in writing.

In accordance with paragraph (B)(4) of this rule, if an actively participating nursing facility fails to adhere to the terms of the payment agreement or fails to select a payment option within 10 days, the Department of Medicaid shall immediately implement collection by Medicaid payment offset. If a facility is not actively participating in the Medicaid program, the fine shall be referred to the Attorney General's Office for collection. The amount of the fine can vary greatly, with the calculation based on the severity of the deficiency and the number of days during which the deficiency occurred, with greater fines for more severe deficiencies and for those that last for a longer period of time. Fines can range anywhere from a few thousand dollars to hundreds of thousands of dollars.

QUESTION #15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

RESPONSE: This rule does not impose a regulation fee.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office? Yes**

16. **Does this rule have an adverse impact on business? Yes**

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**

In accordance with paragraph (B)(4) of this rule, if an actively participating nursing facility fails to adhere to the terms of the payment agreement or fails to select a payment option within 10 days, the Department of Medicaid shall immediately implement collection by Medicaid payment offset. If a facility is not actively participating in the Medicaid program, the fine shall be referred to the Attorney General's Office for collection.

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

In accordance with paragraph (B)(3) of this rule, a nursing facility must select a payment option and advise the Department of Medicaid in writing not later than 10 days after the Department notifies the facility of the available payment options,.

D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No.**

Rule Summary and Fiscal Analysis

Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	No
B. County Government	Yes
C. Township Government	No
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

County and city/village governments that operate nursing facilities could incur costs of compliance with the proposed rule. The costs of compliance are the following:

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In accordance with paragraph (B)(4) of this rule, if an actively participating nursing facility fails to adhere to the terms of the payment agreement or fails to select a payment option within 10 days, the Department of Medicaid shall immediately implement collection by Medicaid payment offset. If a facility is not actively participating in the Medicaid program, the fine shall be referred to the Attorney General's Office for collection. The amount of the fine can vary greatly, with the calculation based on the severity of the deficiency and the number of days during which the deficiency occurred, with greater fines for more severe deficiencies and for those that last for a longer period of time. Fines can range anywhere from a few thousand dollars to hundreds of thousands of dollars.

3. Is this rule the result of a federal government requirement? No

- A. **If yes, does this rule do more than the federal government requires?** *Not Applicable*
 - B. **If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**
Not Applicable
4. **Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**
- A. **Personnel Costs**
\$16.00
 - B. **New Equipment or Other Capital Costs**
\$0.00
 - C. **Operating Costs**
\$0.00
 - D. **Any Indirect Central Service Costs**
\$0.00
 - E. **Other Costs**
CMP fines range from several thousand dollars to hundreds of thousands of dollars.
5. **Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**
- There are no increased costs to providers associated with this rule filing. All costs of compliance are existing costs.
6. **What will be the impact on economic development, if any, as the result of this rule?**
- There is no discernible impact on economic development as a result of this proposed rule.