

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

Agency Name

Tommi Potter

Division

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5160-3-04.1

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

**Payment to nursing facilities (NFs) during the survey agency's
administrative appeals process.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
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: **5165.02**
5. Statute(s) the rule, as filed, amplifies or implements: **5165.72, 5165.84, 5165.77, 5165.74**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Five-year review.

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 payment provisions during the state survey agency administrative appeals process for the proposed termination or non-renewal of a nursing facility's Medicaid certification.

The changes to this rule are:

1. The rule title is being modified to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code, and to be more descriptive.
 2. The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM) because of the creation of the Ohio Department of Medicaid.
 3. Regarding Medicaid provider agreements, the term "non-renewal" is being updated to "non-revalidation" due to a change in terminology.
 4. Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130th General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
 5. In paragraphs (C)(1)(a) and (C)(2)(a), language is being corrected to accurately reflect the provisions in the Revised Code sections being cited.
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:
- Not Applicable
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: 9/22/2017

(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:

In accordance with paragraph (C)(2)(b) of this rule, a nursing facility provider must cooperate with state, local, and federal entities in efforts to transfer residents to other nursing facilities, institutions, or community programs that can meet the residents' needs in order to receive payment during the appeals process provided by the state survey agency for the proposed termination or non-renewal of the facility's Medicaid certification. The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular nursing facilities might undergo termination or non-renewal of their Medicaid certification, what those facilities' specific per diem rates might be, or how long the appeals process might last for any particular facility.

However, these costs are existing costs of compliance. There are no new costs of compliance with 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**

In accordance with paragraph (C)(2)(b) of this rule, a nursing facility provider must cooperate with state, local, and federal entities in efforts to transfer residents to other nursing facilities, institutions, or community programs that can meet the residents' needs in order to receive payment during the appeals process provided by the state survey agency for the proposed termination or non-renewal of the facility's Medicaid certification.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **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	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 may incur costs of compliance with this proposed rule. The costs of compliance are the following:

In accordance with paragraph (C)(2)(b) of this rule, a nursing facility provider must cooperate with state, local, and federal entities in efforts to transfer residents to other nursing facilities, institutions, or community programs that can meet the residents' needs in order to receive payment during the appeals process provided by the state survey agency for the proposed termination or non-renewal of the facility's Medicaid certification. The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular nursing facilities might undergo termination or non-renewal of their Medicaid certification, what those facilities' specific per diem rates might be, or how long the appeals process might last for any particular facility.

However, these costs are existing costs of compliance. There are no new costs of compliance with this rule filing.

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 of Medicaid cannot estimate the cost of compliance because the Department does not know which particular nursing facilities might undergo termination or non-renewal of their Medicaid certification, what those facilities' specific per diem rates might be, or how long the appeals process might last for any particular facility.

However, these costs are existing costs of compliance. There are no new costs of compliance with this rule filing.

(a) Personnel Costs

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

(b) New Equipment or Other Capital Costs

The Department of Medicaid 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

The Department of Medicaid 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

The Department of Medicaid 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

The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular nursing facilities might undergo termination or non-renewal of their Medicaid certification, what those facilities' specific per diem rates might be, or how long the appeals process might last for any particular facility.

However, these costs are existing costs of compliance. There are no new costs of compliance with 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.

This proposed rule imposes no new requirements on counties and municipal corporations that operate nursing facilities.

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.