

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

Agency Name

Division

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**5160-3-06.1**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Institutions for mental diseases (IMDs).****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? **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: **5164.02**

5. Statute(s) the rule, as filed, amplifies or implements: **5162.06**

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 the process by which the Ohio Department of Medicaid identifies nursing facilities that are at risk of becoming institutions for mental diseases (IMDs), the preventative measures to be taken by the Department when at risk facilities are identified, and the course of action to be taken by the Department if a nursing facility is determined to be an IMD.

The changes to the rule are:

1. In paragraph (A), the age for individuals for whom federal financial participation (FFP) is available for inpatient psychiatric hospital services is being changed from "under age twenty-two" to "under age twenty-one and in certain circumstances under age twenty-two" in order to more accurately reflect the provisions in Section 1905(a)(16) of the Social Security Act.
2. In paragraph (B)(3), the reference to the International Classification of Diseases (ICD) publication is being updated as part of the Department of Medicaid's implementation of ICD-10 medical coding, which was mandated by federal regulations issued in 2009 by the U.S. Department of Health and Human Services (HHS) for all entities covered by the Health Insurance Portability and Accountability Act (HIPAA). The name of the publication is being updated from "International Classification of Diseases, Ninth Edition, Modified for Clinical Applications" (ICD-9-CM) to "International Classification of Diseases, Tenth Revision, Clinical Modification," and the website where the publication is available is being added.
3. 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.
4. Ohio Administrative Code references are being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th General Assembly and the subsequent renumbering of rules by the Legislative Services Commission.
5. The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).
6. The name of the Ohio Department of Mental Health and Addiction Services (ODHAS) is being updated from the Ohio Department of Mental Health (ODMH).
7. In paragraph (C)(2)(b)(ii), the name of the Joint Commission is being updated from the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO).
8. In paragraph (D)(3)(c), a reference to the County Department of Human Services is being updated to County Department of Job and Family Services (CDJFS), and a CDJFS reference is being corrected in paragraph (E)(1)(b).

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 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).

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. 119.032 Rule Review Date: **7/17/2014**

(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

If a nursing facility were found to be an IMD and the Department of Medicaid stopped paying for residents under age 65, there would be a decrease in expenditures. However, no nursing facility has ever been found to be an IMD, therefore ODM does not believe there will be a decrease in expenditures.

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:

Nursing facilities must assure they are not indentified as IMDs and perhaps incur costs to accomplish that, and incur costs to appeal an ODM determination that they are an IMD. It is not possible to estimate that cost of compliance because there is no historical data to analyze.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

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**

As set forth in paragraph (D)(3)(a) of this rule, nursing facilities determined to be institutions for mental diseases (IMDs) will have their Medicaid payment terminated for all Medicaid-eligible individuals residing in that facility who are under age 65.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**