

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 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: **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 (ODM) identifies nursing facilities that are at risk of becoming IMDs, preventative

measures to be taken by ODM when at-risk facilities are identified, and the action to be taken by ODM if a nursing facility is determined to be an IMD.

The changes to this rule are:

1. In order to comply with federal regulations contained in 42 C.F.R. 438.6(e), language is being modified in paragraph (A) to allow Medicaid payment as permitted in 42 C.F.R. 438.6(e) for individuals in an IMD who are age 21 and over, and in certain circumstances age 22 and over, and under age 65.
2. Also to comply with federal regulations contained in 42 C.F.R. 438.6(e), language in paragraph (D)(3)(a) is being modified to allow Medicaid payment as permitted in 42 C.F.R. 438.6(e) for individuals residing in a nursing facility that has been determined to be an IMD.
3. In paragraphs (D) and (E), language is being updated so that a nursing facility determined to be an IMD has 30 days rather than 10 working days from the date the determination notice was mailed to exercise its reconsideration rights pursuant to OAC 5160-70-02. Also in paragraphs (D) and (E), the word "appeal" is being updated to "reconsideration" to be consistent with terminology used in OAC 5160-70-02.
4. In paragraphs (B)(4)(c) and (E)(2), typographical errors are being corrected.

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 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).

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 references to the National Center for Health Statistics publication "International Classification of Diseases, Tenth Revision, Clinical Modification." This publication is generally available to the public on the internet at www.cdc.gov/nchs/icd/icd10cm.htm in accordance with ORC 121.75(E).

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: **5/31/2017**

(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. Any payments to IMDs made under 42 C.F.R. 438.6(e) will be made as managed care capitated payments.

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:

According to paragraph (D)(3)(a) of this rule, if a nursing facility is determined to be an IMD, Medicaid payment is terminated for all Medicaid-eligible individuals residing in that facility who are under age 65, and age 21 and over, and in certain circumstances age 22 and over, except as permitted in 42 C.F.R. 438.6(e). The Department of Medicaid cannot estimate the cost of compliance because the Department does not know the per diem rate of any particular nursing facility that may be determined to be an IMD. Additionally, the Department of Medicaid cannot estimate how many individuals in any particular facility that has been determined to be an IMD will fall into the age group specified above and will have their Medicaid payments terminated.

According to paragraph (D)(3)(a) of this rule, if a facility chooses to request a reconsideration of a determination that it is an IMD, it must do so within 30 days from the date the determination notice was mailed. The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a reconsideration, what their unique per diem rates might be, or how long their payments might be terminated.

According to paragraph (E) of this rule, if a facility does not choose to request a reconsideration within that 30 day period, it must wait at least six months after the date of the initial determination if it chooses to request a redetermination survey. The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a redetermination survey, what their unique per diem rates might be, or how long their payments might be terminated.

The Department of Medicaid cannot estimate the cost of compliance for any particular nursing facility regarding time and effort expended by providers to facilitate IMD reviews, or to request a reconsideration of a determination or a redetermination survey because business practices vary from provider to provider.

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

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 (D)(3)(a) of this rule, nursing facilities determined to be institutions for mental diseases (IMDs) will have Medicaid payment terminated for all Medicaid-eligible individuals residing in that facility who are under age 65, and age 21 and over, and in certain circumstances age 22 and over, except as permitted in 42 C.F.R. 438.6(e).

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

In accordance with paragraph (E) of this rule, a nursing facility that has been determined to be an IMD may submit, following a period of not less than 6 months, a written request to the Department of Medicaid to conduct a redetermination survey when changes have been made in the facility's overall character such that the facility administrator believes the facility no longer qualifies as an IMD.

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 NFs could incur costs of compliance with the proposed rule. The costs of compliance are the following:

According to paragraph (D)(3)(a) of this rule, if a nursing facility is determined to be an IMD, Medicaid payment is terminated for all Medicaid-eligible individuals residing in that facility who are under age 65, and age 21 and over, and in certain circumstances age 22 and over, except as permitted in 42 C.F.R. 438.6(e). The Department of Medicaid cannot estimate the cost of compliance because the Department does not know the per diem rate of any particular nursing facility that may be determined to be an IMD. Additionally, the Department of Medicaid cannot estimate how many individuals in any particular facility that has been determined to be an IMD will fall into the age group specified above and will have their Medicaid payments terminated.

According to paragraph (D)(3)(a) of this rule, if a facility chooses to request a reconsideration of a determination that it is an IMD, it must do so within 30 days from the date the determination notice was mailed. The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a reconsideration, what their unique per diem rates might be, or how long their payments might be terminated.

According to paragraph (E) of this rule, if a facility does not choose to exercise its reconsideration rights within that 30 day period, it must wait at least six months after the date of the initial determination if it chooses to request a redetermination survey. The Department of Medicaid cannot estimate the cost of compliance because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a redetermination survey, what their unique per diem rates might be, or how long their payments might be terminated.

The Department of Medicaid cannot estimate the cost of compliance for any particular nursing facility regarding time and effort expended by providers to facilitate IMD reviews, or to request a reconsideration of a determination or a redetermination survey because business practices vary from provider to provider.

However, 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 of Medicaid cannot estimate the cost of compliance if a nursing facility is determined to be an IMD and Medicaid payment therefore is terminated for all Medicaid-eligible individuals residing in that facility who are under age 65, and age 21 and over, and in certain circumstances age 22 and over, except as permitted in 42 C.F.R. 438.6(e), because the Department does not know the per diem rate of any particular nursing facility that may be determined to be an IMD. Additionally, the Department of Medicaid cannot estimate how many individuals in any particular facility that has been determined to be an IMD will fall into the age group specified above and will have their Medicaid payments terminated.

The Department of Medicaid cannot estimate the cost of compliance if a nursing facility chooses to request a reconsideration of a determination it is an IMD, because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a reconsideration, what their unique per diem rates might be, or how long their payments might be terminated.

The Department of Medicaid cannot estimate the cost of compliance if a nursing facility chooses to request a redetermination survey because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a redetermination survey, what their unique per diem rates might be, or how long their payments might be terminated.

The Department of Medicaid cannot estimate the cost of compliance for any particular nursing facility regarding time and effort expended by providers to facilitate IMD reviews, or to request a reconsideration of a determination or a redetermination survey because business practices vary from provider to provider.

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

(a) Personnel Costs

The Department of Medicaid cannot estimate the cost of compliance for any particular nursing facility regarding time and effort expended by providers to facilitate IMD reviews, or to request a reconsideration of a determination or a redetermination survey because business practices vary from provider to provider.

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

(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

The Department of Medicaid cannot estimate the cost of compliance if a

nursing facility is determined to be an IMD and Medicaid payment therefore is terminated for all Medicaid-eligible individuals residing in that facility who are under age 65, and age 21 and over, and in certain circumstances age 22 and over, except as permitted in 42 C.F.R. 438.6(e), because the Department does not know the per diem rate of any particular nursing facility that may be determined to be an IMD. Additionally, the Department of Medicaid cannot estimate how many individuals in any particular facility that has been determined to be an IMD will fall into the age group specified above and will have their Medicaid payments terminated.

The Department of Medicaid cannot estimate the cost of compliance if a nursing facility chooses to request a reconsideration of a determination it is an IMD, because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a reconsideration, what their unique per diem rates might be, or how long their payments might be terminated.

The Department of Medicaid cannot estimate the cost of compliance if a nursing facility chooses to request a redetermination survey because the Department does not know which particular facilities that have been determined to be IMDs might choose to request a redetermination survey, what their unique per diem rates might be, or how long their payments might be terminated.

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

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.

ODM is unable to provide an explanation of the ability of NFs operated by counties and municipal corporations to pay for the new requirements imposed by this proposed rule because the Department does not have this level of detailed information about the finances of these NFs.

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.