

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-3-16.4

Rule Type: Amendment

Rule Title/Tagline: Nursing facilities (NFs): covered days and bed-hold days.

Agency Name: Ohio Department of Medicaid

Division:

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

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 8/17/2022
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?** 5165.02
5. **What statute(s) does the rule implement or amplify?** 5165.34
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to enact certain flexibilities in the Medicaid nursing facility program that were adopted in emergency rules filed as a result of the public health emergency caused by COVID-19.

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 nursing facility bed hold days.

The changes to the rule are:

1. In paragraph (D), language is being modified so payments to reserve a bed beyond 30 days but not exceeding 60 days may be made to a nursing facility provider until December 1, 2020 for Medicaid eligible residents in a certified nursing facility that meets the requirements of Section 14 of Amended Substitute House Bill 197 of the 133rd General Assembly.

2. In paragraph (F)(2), the word "thirty" is being deleted to align with the modifications being made in paragraph (D).

- 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. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

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).

This rule incorporates one or more references to another rule or rules of the Administrative Code. This question is not applicable to any incorporation by reference to another Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(d).

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(A)(2)(d).

- 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. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will increase expenditures.

\$100,000.00

The estimated increase in expenditures is due to the increase that is anticipated in payments made to reserve a bed beyond 30 but not exceeding 60 days until December 1, 2020 for Medicaid eligible residents in nursing facilities that meets the requirements of Section 14 of Am. Sub. HB197 of the 133rd GA.

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

In accordance with paragraph (D)(4)(b)(i) and (D)(4)(c)(i) of this rule, any plan to use therapeutic leave days or to use leave days to visit with friends or family must be approved in advance by the resident's primary physician and documented in the resident's medical record. The documentation must be available for viewing by the County Department of Job and Family Services (CDJFS) and the Department of Medicaid. The Department of Medicaid estimates it will take a resident's primary physician approximately 15 minutes at the rate of approximately \$125.00 per hour (total estimated cost: \$31.25) to approve one use of leave days in advance for one resident and to document the approval in the resident's medical record. The Department of Medicaid estimates there will be no cost to have the documentation available for viewing by the CDJFS and by the Department of Medicaid because the documentation will already be available in the resident's medical record.

In accordance with paragraph (D)(4)(b)(ii) and (D)(4)(c)(iii) of this rule, when a resident uses approved therapeutic leave days or approved leave days to visit with friends or family, the nursing facility provider must make arrangements for the resident to receive required care and services while using the leave days. The Department of Medicaid estimates it will take a nursing facility provider's nurse approximately 1.5 hours at the rate of approximately \$22.00 per hour (total estimated cost: \$33.00) and a business office staff person approximately 30 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$8.00) to make these arrangements. The Department of Medicaid therefore estimates it will cost a nursing facility provider a grand total of approximately \$41.00 to make the arrangements for one resident to receive required care and services while using approved therapeutic leave days or approved leave days to visit with friends or family.

In accordance with paragraph (E) of this rule, a nursing facility provider must electronically submit claims for nursing facility bed-hold days in accordance with Administrative Code rule 5160-3-39.1. The Department of Medicaid estimates it will take a nursing facility staff member approximately 5 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$1.33) to electronically submit one claim for bed-hold days.

In accordance with paragraph (F)(2) of this rule, a nursing facility provider must establish and follow a written policy under which a Medicaid resident who has expended their annual allotment of thirty bed-hold days, and therefore is no longer entitled to a reserved bed under the Medicaid bed-hold limit, and is considered to be discharged, shall be admitted to the first available Medicaid certified bed in a semiprivate room. The Department of Medicaid estimates it will take a nursing facility administrator approximately 2 hours at the rate of approximately \$72.00 per hour (total estimated cost: \$144.00) to establish the above policy. In addition, the Department of Medicaid estimates it will take a nursing facility provider's admissions director approximately 5 hours at the rate of approximately \$35.00 per hour (total estimated cost: \$175.00), and a nurse approximately 3 hours at the rate of approximately \$22.00 per hour (total estimated cost: \$66.00) to arrange for the admission of one individual. The Department of Medicaid therefore estimates it will cost a grand total of approximately \$241.00 for a nursing facility provider to admit one individual.

In accordance with paragraph (G)(1) of this rule, prior to a resident's use of bed-hold days, a nursing facility provider must furnish the resident and their family member or legal representative with written information about the facility's bed-hold policies. The Department of Medicaid estimates it will take a nursing facility staff member approximately 30 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$8.00) to provide written information about the facility's bed-hold policies prior to a resident's use of bed-hold days.

In accordance with paragraph (G)(2) of this rule, at the time a resident is scheduled to use bed-hold days, a nursing facility provider must furnish the resident and their family member or legal representative a written notice that specifies all the following:

- The maximum duration of Medicaid covered bed-hold days as described in this rule.
- The duration of bed-hold status during which the resident is permitted to return to the nursing facility.
- Whether Medicaid payment will be made to hold a bed and if so, for how many days.
- The resident's option to make payments to hold a bed beyond the Medicaid bed-hold day limit, and the amount of such payments.

The Department of Medicaid estimates it will take a nursing facility staff member approximately 30 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$8.00) to provide a written notice to the resident and their family member or legal representative that specifies all the above.

In accordance with paragraph (H) of this rule, in the case of emergency hospitalization, a nursing facility provider must furnish the resident and a family member or legal representative a written notice with the specifications listed above within 24 hours of the hospitalization. This requirement is met if the resident's copy of the notice is sent

to the hospital with other documents that accompany the resident. The Department of Medicaid estimates it will take a nursing facility staff member approximately 5 minutes at the rate of approximately \$16.00 per hour (total estimated cost: \$1.33) to provide the resident and a family member or legal representative with a copy of the notice.

In accordance with paragraph (L)(1)(a) of this rule, if a nursing facility is not in compliance with the provisions of this rule, the Department of Medicaid may require the provider to submit and implement a corrective action plan approved by the Department on a schedule specified by the Department. The Department of Medicaid cannot estimate the cost of compliance if the Department requires the provider to submit and implement a corrective action plan because the Department does not know what the extent of non-compliance might be for any particular facility, or the complexity of any particular corrective action plan. However, if these factors could be determined, the cost could be calculated by multiplying the time needed by each individual staff person to perform the tasks needed to write, submit, and implement the corrective plan by the rate of pay for each of those individuals.

In accordance with paragraph (L)(2) of this rule, a nursing facility provider must furnish copies of any records requested by the Department of Medicaid in cases of an investigation by the Department for compliance purposes. The Department of Medicaid cannot estimate the cost of compliance in cases of an investigation by the Department for compliance purposes because the Department does not know what the extent of any particular investigation might be, or the extent of the records that any particular facility might be required to provide. However, the cost would be calculated by multiplying the time needed by a nursing facility's staff to locate, copy, and furnish any records requested by the rate of pay for that staff.

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

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**
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.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

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

17. 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 (L)(1)(a) of this rule, if a nursing facility is not in compliance with the provisions of this rule, the Department of Medicaid may require the provider to submit and implement a corrective action plan approved by the Department on a schedule specified by the Department.

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

In accordance with paragraph (D)(4)(b)(i) and (D)(4)(c)(i) of this rule, any plan to use therapeutic leave days or to use leave days to visit with friends or family must be approved in advance by the resident's primary physician and documented in the resident's medical record.

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In accordance with paragraph (L)(2) of this rule, a nursing facility provider must furnish copies of any records requested by the Department of Medicaid in cases of an investigation by the Department for compliance purposes.

- 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**

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

- 18. **Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. **How many new regulatory restrictions do you propose adding?**

Not Applicable

- B. **How many existing regulatory restrictions do you propose removing?**

Not Applicable

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

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**
\$331.91
 - 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**
\$0.00
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.