

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

Agency Name

Division

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5160-3-19

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Nursing facilities (NFs): relationship of NF services to other covered medicaid services.**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? **Yes**Bill Number: **HB483**General Assembly: **131**Sponsor: **Amstutz**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: **5165.01**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Five-year review, and to implement provisions of Revised Code section 5165.01 adopted under HB 483 of the 131st General Assembly relating to the administration of the Medicaid program.

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 covered services generally available to Medicaid recipients, and describes the relationship of those services to the services provided to Medicaid recipients who reside in a nursing facility.

The changes to this rule are:

1. In new paragraph (A), due to a change in departmental policy, language is being added so that acupuncture services in nursing facilities provided by eligible acupuncture providers are paid directly to the provider of acupuncture services in accordance with OAC rule 5160-8-51.
2. In new paragraph (B), language is being added in order to implement provisions of ORC Section 5165.01 adopted under HB 483 of the 131st General Assembly that removed behavioral and mental health services from the direct care component of the nursing facility per diem rate, and to reflect current departmental practices.
3. In the header of paragraph (E), terminology is being changed from "medical supply services" to "medical supplier services" in order to be consistent with the terminology used in OAC rule 5160-10-02.
4. In the opening paragraph of (E), a citation to rule 5160-10-02 is being added for purposes of clarification.
5. In paragraph (E)(1)(a), terminology is being changed from "needed medical and program supplies" to "medical supplies" in order to be consistent with the terminology used in OAC rule 5160-10-02.
6. Also in paragraph (E)(1)(a), electric pads are being deleted as a medical supply item paid for by Medicaid because federal life safety code regulations do not permit the use of these items in nursing facilities.
7. In paragraph (E)(2), language is being changed for purposes of accuracy and clarification.
8. In paragraph (F)(1), a paragraph reference to rule 5160-9-03 is being corrected.
9. In paragraph (H)(1), language is being changed in order to clarify that payment for physician services rendered to NF residents is made directly to the physician, not through the NF per diem rate.
10. Provisions in paragraphs (H)(1)(a), (H)(1)(b), and (H)(1)(c) are being deleted because the provisions are addressed elsewhere in the Administrative Code.
11. In paragraph (H)(3)(a), in order to be consistent with federal regulations, language is being changed so that after a resident is seen by a physician at least

once every 30 days for the first 90 days after admission, the resident must then be seen at least once every 60 days thereafter instead of 90 days thereafter.

12. In paragraph (H)(3)(c)(iii), in order to be consistent with federal regulations, language is being added that, in addition to signing all orders, a physician must also date all orders, except influenza and pneumococcal vaccines, which may be administered per physician-approved facility policy after an assessment for contraindications.

13. Paragraph (H)(1)(c)(iii) is being moved to new paragraph (H)(3)(d)(ii) for more logical organization of information.

14. In paragraph (H)(3)(d)(i), the acronym APRN is being spelled out to comply with Legislative Service Commission rule filing guidelines.

15. In new paragraph (H)(3)(d)(i)(c), language is being added in order to describe the criteria for physician assistants. Language to include physician assistants also is being added in paragraph (H)(4).

16. Provisions in existing paragraph (H)(3) is being moved to new paragraph (H)(2) for more logical organization of information.

17. Due to a change in the Department of Medicaid's policy, language is being removed in paragraph (I) that limits nursing facility residents to one podiatry visit per month in a NF setting.

18. In old paragraph (H), language is being deleted in order to remove obsolete provisions.

19. Ohio Revised Code, Ohio Administrative Code, and Code of Federal Regulations citations are being updated as necessary.

20. Paragraph references are being changed or deleted as necessary.

21. Grammatical and phrasing changes are being made throughout the rule for purposes of clarity, accuracy, and improved readability.

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 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 Ohio Revised Code. This question is not applicable to any incorporation by reference to the ORC because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(1).

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).

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: **8/14/2017**

(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:

There are no costs of compliance with this rule to nursing facility providers.

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? **No**

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? **No**

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