

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

Agency Name

Division

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5160-3-19

Rule Number

NEW

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)? **No**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB59**General Assembly: **130**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, 5165.47**

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

As a result of five-year rule review, this rule is being proposed for adoption to replace rule 5160-3-19, which is being proposed for rescission.

In addition, this rule is being proposed to implement provisions of section 5165.01 of the Revised Code adopted under Am. Sub. H.B. 59 of the 130th 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 differences between this rule and the rule it is replacing are:

1. The rule title is being modified in order to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
2. Language is being changed throughout the rule to refer to payment rather than to reimbursement, and references to reimbursement through the facility's cost report are being changed to payment through the NF per diem.
3. In paragraph (A) regarding dental services, language is being added to clarify that personal hygiene services provided by facility staff are related to dental services.
4. Language regarding custom wheelchairs, oxygen, and medical transportation by ambulance and wheelchair van, is being updated to reflect that these services are now paid for on a fee-for-service basis rather than through the NF per diem pursuant to Ohio Revised Code section 5165.01 adopted by Am. Sub. HB 59 of the 130th General Assembly. Additionally, to reflect the change in method of payment, the provisions for non-emergency oxygen are being moved from paragraph (C)(1)(c), which specifies items that must be paid for through the nursing facility per diem, to new paragraph (C)(2)(d), which specifies items for which payment is made on a fee-for-service basis.
5. The provisions regarding psychologist services and respiratory therapy services are being broken out from paragraph (E) and moved to new paragraphs (H) and (I) in order to be easier for readers to find.
6. In paragraph (F)(1)(c)(iii), the provisions regarding delegation of required physician visits are being modified to require compliance with federal regulations specified in 42 C.F.R. 483.40.
7. In paragraph (F)(1)(c)(iv) regarding physician delegation of tasks, the term "certified nurse practitioner" is being replaced with the term "advanced practice registered nurse (APRN)" in order to be consistent with definitions in the Ohio Revised Code and with current nursing practice in nursing facilities, and the Revised Code Chapter citation regarding APRNs is being corrected. Language is also being modified in paragraph (F)(1)(c)(iv)(A)(ii) to require APRNs to practice with a standard care arrangement entered into with each physician with whom an APRN collaborates in accordance with section 4723.431 of the Revised Code, and

to require a copy of the standard care arrangement to be on file at each nursing facility where the APRN practices.

8. In paragraph (F)(2), APRNs are being added to physicians as a provider type to whom direct payment for provision of physician services may be made. In paragraph (F)(2)(b), the requirement for physicians to sign and date every entry in a resident's medical record documenting provision of physician services is being extended to include APRNs.

9. Language in paragraph (G) regarding podiatry services is being modified to clarify that residents in a nursing facility may access podiatry services in the same amount, duration, and scope as all other Medicaid recipients, but only one podiatry visit per month may occur in a nursing facility setting.

10. 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.

11. Minor language is being changed throughout the rule for clarity and better comprehension.

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).

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:

(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

Effective January 1, 2014, eligible Medicaid providers began receiving payment on a fee-for-service basis for custom wheelchairs, non-emergency oxygen, and medical transportation by ambulance and wheelchair van for nursing facility residents. Prior to January 1, 2014, nursing facilities were responsible for providing these three services to their residents, and payment was made to the facilities through the per diem rate. It is estimated that this proposed rule will not impact the department's budget during the current biennium because the overall reduction in per diem payments for these three services will be offset by a corresponding increase in payment of fee-for-service claims.

Language regarding podiatry services is being modified to clarify that residents of a

nursing facility may access podiatry services in the same amount, duration, and scope as all other Medicaid recipients, but only one podiatry visit per month may occur in a nursing facility setting. It is estimated that this proposed rule will not impact the department's budget during the current biennium because podiatry providers historically have had this policy understanding, have been implementing it for numerous years, and routinely submit claims for nursing facility residents who receive multiple podiatry visits per month.

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:

Effective January 1, 2014, nursing facilities were no longer responsible for providing custom wheelchairs, non-emergency oxygen, and medical transportation by ambulance and wheelchair van to their residents, and the Ohio Department of Medicaid stopped paying nursing facilities through the per diem rate for providing these three services. Eligible fee-for-service providers for custom wheelchairs, non-emergency oxygen, and medical transportation may now receive payment directly from Medicaid for services delivered to Medicaid-eligible nursing facility residents. As a result of this change, nursing facility providers experienced a decrease in their Medicaid per diem payments. This cost of compliance to nursing facilities was one-time only, and was accounted for in a previous rule filing. The cost of compliance was provider specific and depended upon each provider's business model for the delivery of these three services, and on the payment agreement that had been negotiated between the service provider and the nursing facility. There is, however, no continuing or current cost of compliance to nursing facilities.

Language regarding podiatry services is being modified to clarify that residents of a nursing facility may access podiatry services in the same amount, duration, and scope as all other Medicaid recipients, but only one podiatry visit per month may occur in a nursing facility setting. This proposed rule will not result in any cost of compliance to nursing facilities because payment for these services is not through the nursing facility per diem rate, but is made directly to the podiatry provider on a fee-for-service basis.

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**