

## TO BE RESCINDED

5160-3-22

**Rate recalculations, interest on overpayments, penalties, repayment of overpayments, and deposit of repayment of overpayments for nursing facilities (NFs).**

(A) If the provider properly amends its cost report under rule 5101:3-3-20 of the Administrative Code, the Ohio department of job and family services (ODJFS) makes a finding based on an audit under section 5111.27 of the Revised Code, or ODJFS makes a finding based on an exception review of resident assessment information conducted under section 5111.27 of the Revised Code after the effective date of the rate for direct care costs that is based on the assessment information any of which results in a determination that the provider has received a higher rate than it was entitled to receive, ODJFS shall recalculate the provider's rate using the revised information. ODJFS shall apply the recalculated rate to the periods when the provider received the incorrect rate to determine the amount of the overpayment. The provider shall refund the amount of the overpayment. In addition to requiring a refund under this rule, ODJFS may charge the provider interest at the applicable rate specified in this rule from the time the overpayment was made.

(1) If the overpayment resulted from costs reported for calendar year 1993, the interest shall be no greater than one and one-half times the average bank prime rate.

(2) If the overpayment resulted from costs reported for subsequent calendar years:

(a) The interest shall be no greater than two times the average bank prime rate if the overpayment was equal to or less than one per cent of the total medicaid payments to the provider for the fiscal year for which the incorrect information was used to establish a rate.

(b) The interest shall be no greater than two and one-half times the average bank prime rate if the overpayment was greater than one per cent of the total medicaid payments to the provider for the fiscal year for which the incorrect information was used to establish a rate.

(3) ODJFS shall determine the average bank prime rate using statistical release H.15, "Selected Interest Rates," a weekly publication of the federal reserve board available at <http://www.federalreserve.gov/releases/H15/>, or any successor publication. If statistical release H.15, or its successor ceases to contain the bank prime rate information or ceases to be published, ODJFS shall request a written statement of the average bank prime rate from the federal reserve bank of Cleveland or the federal reserve board.

(B) ODJFS also may impose the following penalties and fines:

- (1) If a provider does not furnish invoices or other documentation that ODJFS requests during an audit within sixty days after the request, no more than the greater of one thousand dollars per audit or twenty-five per cent of the cumulative amount by which the costs for which documentation was not furnished increased the total medicaid payments to the provider during the fiscal year for which the costs were used to establish a rate;
- (2) If an owner or operator fails to provide notice of facility closure, voluntary withdrawal or voluntary termination of participation in the medicaid program, or change of operator as required by the Revised Code, no more than the current average bank prime rate plus four per cent of the last two monthly payments.
- (3) ODJFS shall fine the provider of a nursing facility if the report of an audit conducted under division (B) of section 5111.27 of the Revised Code regarding a cost report for the nursing facility includes either of the following:
  - (a) Adverse findings that exceed three per cent of the total amount of medicaid-reimbursable costs reported in the cost report;
  - (b) Adverse findings that exceed twenty per cent of medicaid-reimbursable costs for a particular cost center reported in the cost report.
- (4) A fine issued under paragraph (B)(3) of this rule shall equal the greatest of the following:
  - (a) If the adverse findings exceed three per cent but do not exceed ten per cent of the total amount of medicaid-reimbursable costs reported in the cost report, the greater of three per cent of those reported costs or ten thousand dollars;
  - (b) If the adverse findings exceed ten per cent but do not exceed twenty per cent of the total amount of medicaid-reimbursable costs reported in the cost report, the greater of six per cent of those reported costs or twenty-five thousand dollars;
  - (c) If the adverse findings exceed twenty per cent of the total amount of medicaid-reimbursable costs reported in the cost report, the greater of ten per cent of those reported costs or fifty thousand dollars;
  - (d) If the adverse findings exceed twenty per cent but do not exceed twenty-five per cent of medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of three per cent of the total amount of medicaid-reimbursable costs reported in the cost report or ten thousand dollars;

- (e) If the adverse findings exceed twenty-five per cent but do not exceed thirty per cent of medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of six per cent of the total amount of medicaid-reimbursable costs reported in the cost report or twenty-five thousand dollars;
  - (f) If the adverse findings exceed thirty per cent of medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of ten per cent of the total amount of medicaid-reimbursable costs reported in the cost report or fifty thousand dollars.
- (5) The department may not collect a fine issued under paragraph (B)(3) of this rule until all appeal rights relating to the audit report that is the basis for the fine are exhausted.
- (C) If the provider continues to participate in the medicaid program, ODJFS shall deduct any amount that the provider is required to refund under this rule, and the amount of any interest charged or penalty imposed under this rule, from the next available payment from ODJFS to the provider. ODJFS and the provider may enter into an agreement under which the amount, together with interest, is deducted in installments from payments from ODJFS to the provider.
- (D) Fines issued under paragraph (B)(3) of this rule and paid shall be deposited into the health care services administration fund created under section 5111.94 of the Revised Code. ODJFS shall transmit all other refunds and penalties issued under this rule to the treasurer of state for deposit in the general revenue fund.

Effective:

Five Year Review (FYR) Dates: 6/15/2017

WITHDRAWN ELECTRONICALLY

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Certification

08/21/2017

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Date

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