

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-3-57  
**Rule Type:** New  
**Rule Title/Tagline:** Nursing facilities (NFs): tax costs payment rate.  
**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?**
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 49 - 132  
- Smith
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?** 5165.151, 5165.21
6. **What are the reasons for proposing the rule?**

Implement provisions of Section 5165.151 of the Revised Code adopted under Amended Substitute House Bill 49 of the 132nd General Assembly relating to the administration of the Medicaid program.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth provisions for determining the payment rate for tax costs for nursing facilities.

The differences between this rule and rescinded rule 5160-3-57 are:

1. The rule title is being modified to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.

2. In paragraph (A), the phrase "per resident per day rate" is being changed to "per medicaid day payment rate" in order to use current terminology and for purposes of clarity.

3. Also in paragraph (A), new language is being added in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly so that the Ohio Department of Medicaid shall now determine each new nursing facility's initial per Medicaid day payment rate for tax costs in accordance with ORC section 5165.151.

4. New language in paragraph (B) is being added to specify the documentation required by ODM for purposes of calculating a new nursing facility's initial tax rate.

5. New paragraph (B)(1) is being added to specify that the statewide median tax rate for the new facility's peer group for ancillary and support costs will be used as the initial tax rate if any required documentation is not received within 30 days of approval of the initial provider agreement, or if the documentation is determined to be unsatisfactory.

6. New paragraph (B)(2) is being added to specify that the effective date of the initial tax cost rate for a new facility will be the same as the effective date of the new facility's Medicaid provider agreement.

7. New paragraph (B)(3) is being added to specify the address for submission of all required documentation.

8. In paragraph (C), phrasing changes are being made for purposes of clarity and consistency.

**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. 121.71 to 121.76, 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 121.76(A)(1).

This rule incorporates one or more references to the Medicaid nursing facility cost report. The Medicaid nursing facility cost report is exempt from compliance with sections 121.71 to 121.74 of the Revised Code pursuant to RC 121.75(E). The Medicaid nursing facility cost report is generally available on the internet at <http://medicaid.ohio.gov/PROVIDERS/ProviderTypes/LongTermCareFacilities/AutomatedCostReporting.aspx>.

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. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will increase expenditures.

\$166,774

This proposed rule is estimated to increase expenditures for the Department of Medicaid by approximately \$166,774 in the current biennium due to the change in methodology for calculating the initial tax rate for new nursing facilities. Estimating there will be a 5% increase in tax costs in each subsequent year, and estimating there will be 10 new facilities each year, this rule is expected to increase expenditures in SFY 20/21 by approximately \$175,113 and in SFY 22/23 by approximately \$183,868.

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

In accordance with paragraph (B) of this rule, a new nursing facility may provide the Department of Medicaid with the facility's projected tax costs for the calendar year in which the facility obtains an initial provider agreement. The Department of Medicaid estimates it will take a nursing facility's accountant approximately 3 hours at the rate

of approximately \$26.00 per hour (total estimated cost: \$78.00) to determine the facility's projected tax costs and submit them to the Department of Medicaid.

In accordance with paragraph (B)(1) of this rule, if any documentation required under this rule is not received within 30 days of approval of the initial provider agreement, or is determined to be unsatisfactory, the statewide median tax rate for the new facility's peer group will be used as the initial tax rate. The Department cannot estimate the impact of this provision to a provider because the Department does not know what any particular new nursing facility's projected tax costs might be, or if the application of the statewide median tax rate for the new facility's peer group will result in an increase or decrease in the facility's tax cost rate.

In accordance with paragraph (C) of this rule, if a provider does not have a cost report filed with the Department of Medicaid for the applicable calendar year used to determine the tax cost rate under section 5165.21 of the Revised Code, the provider will be paid a tax cost rate that is the median rate for tax costs for the facility's peer group determined under ORC Section 5165.16. The Department cannot estimate the impact of this provision to a provider because the Department does not know what any particular nursing facility's current tax cost rate might be, or if the application of the tax cost rate for any particular facility's peer group will result in an increase or decrease in the facility's tax cost rate.

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**

### **III. Common Sense Initiative (CSI) Questions**

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **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? No**

However, in accordance with paragraph (B)(1) of this rule, if any documentation required under this rule is not received by the Department of

Medicaid within 30 days of approval of the initial provider agreement, or is determined to be unsatisfactory, the statewide median tax rate for the new facility's peer group determined under division (B) of section 5165.16 of the Revised Code will be used as the initial tax rate. Additionally, in accordance with paragraph (C) of this rule, if a provider does not have a cost report filed with the Department of Medicaid for the applicable calendar year used to determine the tax rate, the nursing facility shall be paid a tax cost rate that is the median rate for tax costs for the facility's peer group determined in Division (B) of ORC Section 5165.16.

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

In accordance with paragraph (B) of this rule, a new nursing facility may provide the Department of Medicaid with the facility's projected tax costs for the calendar year in which the facility obtains an initial provider agreement. The projected tax costs should include the state and county tax records and assessments. If the state and county tax records and assessments are not available, the facility may provide any other documentation satisfactory to the Department of Medicaid that verifies the amount and type of tax costs reportable in Schedule B-1 of the Medicaid nursing facility cost report.

## Rule Summary and Fiscal Analysis

### Part B - Local Governments Questions

**1. Does the rule increase costs for:**

<b>A. Public School Districts</b>	No
<b>B. County Government</b>	Yes
<b>C. Township Government</b>	No
<b>D. City and Village Governments</b>	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:

In accordance with paragraph (B) of this rule, a new nursing facility may provide the Department of Medicaid with the facility's projected tax costs for the calendar year in which the facility obtains an initial provider agreement. The Department of Medicaid estimates it will take a nursing facility's accountant approximately 3 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$78.00) to determine the facility's projected tax costs and submit them to the Department of Medicaid.

In accordance with paragraph (B)(1) of this rule, if any documentation required under this rule is not received within 30 days of approval of the initial provider agreement, or is determined to be unsatisfactory, the statewide median tax rate for the new facility's peer group will be used as the initial tax rate. The Department cannot estimate the impact of this provision to a provider because the Department does not know what any particular new nursing facility's projected tax costs might be, or if the application of the statewide median tax rate for the new facility's peer group will result in an increase or decrease in the facility's tax cost rate.

In accordance with paragraph (C) of this rule, if a provider does not have a cost report filed with the Department of Medicaid for the applicable calendar year used to determine the tax cost rate under section 5165.21 of the Revised Code, the provider will be paid a tax cost rate that is the median rate for tax costs for the facility's peer group determined under ORC Section 5165.16. The Department cannot estimate the cost of compliance to a provider because the Department does not know what any

particular nursing facility's current tax cost rate might be, or if the application of the tax cost rate for any particular facility's peer group will result in an increase or decrease in the facility's tax cost rate.

- 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**
- \$78.00
- 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.**

The Department of Medicaid is unable to provide an explanation of the ability of nursing facilities operated by county and city/village governments to pay the increased costs associated with this proposed rule because the Department does not have this level of detailed information about the finances of these facilities.

**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.