

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-3-58

Rule Type: Amendment

Rule Title/Tagline: Nursing facilities (NFs): quality indicators and quality payment rate.

Agency Name: Ohio Department of Medicaid

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 7/13/2020
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 166 - 133
- Scott Oelslager
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?** 5165.25
6. **What are the reasons for proposing the rule?**

This rule is being proposed for amendment to implement provisions of Section 5165.25 and Section 121.95 of the Revised Code adopted under Amended Substitute House Bill 166 of the 133rd General Assembly.

As a result of legislative changes, the department determined amendments to the rule were necessary to update quality indicator provisions and remove regulatory restrictions.

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 the nursing facility quality indicators as well as the methodology used to determine the nursing facility quality payment rate.

The changes to this rule are:

1. In paragraph (B), language determining the measurement period for state fiscal year 2017 is being deleted because it is obsolete. The remaining language regarding the measurement period is being reworded slightly for accuracy.

2. In paragraph (C)(1), the web address where the CMS pressure ulcer data may be found is being generalized because the exact web location changes frequently.

3. Also in paragraph (C)(1), the description of the CMS pressure ulcer quality measure for short-stay residents is being changed because CMS is replacing the measure entitled Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened with the new measure entitled Post-Acute Pressure Ulcer/Pressure Injury Changes in Skin Integrity.

4. In paragraph (C)(2), language is being modified so the antipsychotic medication use rate now will include short-stay residents who newly received an antipsychotic medication in conjunction with hospice care and also will include long-stay residents who received an antipsychotic medication in conjunction with hospice care.

5. In paragraph (C)(5), the preferences for everyday living inventory (PELI) quality indicator is being replaced with the satisfaction survey quality indicator.

6. Paragraph (E)(3) regarding the PELI quality indicator is being deleted because the PELI quality indicator is being replaced with the satisfaction survey quality indicator.

7. In paragraph (F)(6), the word "and" is being removed to comply with LSC rule drafting guidelines.

8. Regulatory restrictions are being removed.

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 Nursing Home Compare. This cited document states federal administrative conclusions that are readily ascertainable from reliable sources and are not reasonably susceptible to state legislative or administrative variation. This question is not applicable to any incorporation by reference to Nursing Home Compare because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(B)(5).

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

No changes to the rule are being made with this refiling. This rule package is being refiled to have a JCARR hearing date before the end of the JCARR jurisdiction period.

08/18/2020 In paragraph (C) of this rule, a typographical error is being corrected. In the last sentence, the word "need" is being corrected to "needs."

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 have no impact on revenues or expenditures.

\$0.00

Replacing the PELI quality indicator with the satisfaction survey quality indicator does not impact the total amount of funds available for the quality payment and therefore does not impact agency expenditures.

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

In accordance with paragraph (E)(1) of this rule, a nursing facility will not receive a point for the pressure ulcer, antipsychotic medication, and unplanned weight loss quality indicators when the Department of Medicaid determines there is insufficient data to calculate a rate for these indicators. The cost to a nursing facility would be the facility's portion of the total amount of the quality funds to be paid statewide to all nursing facilities that the facility would now not receive.

In accordance with paragraph (E)(2) of this rule, a nursing facility will not receive a quality point for the employee retention quality indicator when the facility fails to complete section eight of the Department of Medicaid's nursing facility annual cost report. The cost to a nursing facility would be the facility's portion of the total amount of the quality funds to be paid statewide to all nursing facilities that the facility would now not receive.

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? No**

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

In accordance with paragraph (E)(1) of this rule, a nursing facility will not receive a point for the pressure ulcer, antipsychotic medication, and unplanned weight loss quality indicators when the Department of Medicaid determines there is insufficient data to calculate a rate for these indicators.

In accordance with paragraph (E)(2) of this rule, a nursing facility will not receive a quality point for the employee retention quality indicator when the facility fails to complete section eight of the Department of Medicaid's nursing facility annual cost report.

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

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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In accordance with paragraph (E)(2) of this rule, a nursing facility will not receive a quality point for the employee retention quality indicator when the facility fails to complete section eight of the Department of Medicaid's nursing facility annual cost report. The cost to a nursing facility would be the facility's portion of the quality funds that the facility would now not receive.

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

\$0.00

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

The cost to a nursing facility would be the facility's portion of the quality funds that the facility would now not receive.

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.