

**LEGAL NOTICE****STATE OF OHIO  
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
COLUMBUS, OHIO****October 29, 2003****10:00 a.m.****Room 1855**

PURSUANT TO SECTION 5111.02 AND CHAPTER 119. OF THE REVISED CODE, THE DIRECTOR OF THE DEPARTMENT OF JOB AND FAMILY SERVICES GIVES NOTICE OF THE DEPARTMENT'S INTENT TO ADOPT RULE 5101:3-3-90 AND AMEND RULES 5101:3-3-57 AND 5101:3-3-82.3 ON AN EMERGENCY BASIS AND ADOPT RULE 5101:3-3-90 AND AMEND RULES 5101:3-3-57 AND 5101:3-3-82.3 ON A PROPOSED PERMANENT BASIS, AND OF A PUBLIC HEARING UPON THE PROPOSED ADOPTION AND AMENDMENTS.

In March 2003, pursuant to Section 1902 (a)(13)(A) of the Social Security Act, the Ohio Department of Job and Family Services (ODJFS) issued a notice starting a public process soliciting comments on its proposal to amend the Ohio Revised Code to hold rates for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR) at June 30, 2003 levels for FYs 2004 and 2005. These proposals, which were intended to impose greater cost containment and efficiencies than the current reimbursement policies for long-term care facilities, were included in the executive budget for FY 2004 and 2005. The proposals made by ODJFS, were the subject of much debate in the General Assembly. After this debate concluded in the General Assembly and before the department, and in consideration of the issues raised in the public process, changes to the Medicaid long term care facility reimbursement system emerged in Am. Sub. H.B. 95 (FY04 and 05 Budget Bill) and became effective for services provided on and after July 1, 2003. ODJFS is now adopting and amending rules on an emergency and permanent basis to make the existing long term care rules set forth below consistent with the changes made by Am. Sub. H. B. 95. ODJFS is now promulgating emergency rules to be effective on or about September 30, 2003. ODJFS is also proposing a permanent adoption and permanent amendments of rules to implement the provisions of the ICF-MR expenditure limitation, the NF expenditure limitation, and the ICF-MR franchise fee inflation adjustment contained in Am. Sub. H. B. 95 for which ODJFS had previously engaged in a public input process. The department estimates that annual aggregate expenditures for ICFs-MR will increase by \$12 million in FY04 from FY03 levels and will be \$9 million less than projected aggregate expenditures without this change. The department estimates that annual aggregate expenditures for NFs will increase by \$74 million in FY04 from FY03 levels and will be \$125 million less than projected aggregate expenditures without this change.

The following rule is being proposed for adoption on an emergency basis and subsequently proposed for permanent adoption:

Rule 5101:3-3-90 entitled Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) Expenditure Limitation sets forth the methodology for calculating the expenditure limitations for ICFs-MR. This rule is being adopted on an emergency basis and proposed for permanent adoption to include the expenditure limitations as set forth in paragraphs (A) through (D) of this rule, of two hundred twenty-one dollars and forty-three cents for fiscal year 2004 and two hundred twenty-five dollars and eighty-six cents for fiscal year 2005. The department currently establishes a facility specific rate for each ICF-MR, excluding state-operated ICFs-MR, using the reported costs for the facility for the calendar year preceding the fiscal year and making adjustments for inflation and changes in resident acuity. In accordance with provisions of Am. Sub. H. B. 95, ICFs-MR rates, excluding state-operated ICFs-MR, will now be readjusted using the reported costs for each facility for the calendar year 2002, making adjustments for inflation and resident acuity, but subject to expenditure limitations for FYs 2004 and 2005. The mean Medicaid rate for all ICFs-MR, excluding state-operated ICFs-MR, weighted by Medicaid days, on July 1 of each fiscal year will be compared to the statutorily defined expenditure limitation. Each ICF-MR rate, excluding state-operated ICFs-MR, will be reduced by the percentage by which the calculated mean Medicaid rate exceeds

the expenditure limitation. In addition, rates are subject to any adjustments required or authorized by Chapter 5111 of the Revised Code. The proposed changes will help balance state resources among competing demands while continuing to assure access to quality care in a variety of long-term care options for the disabled populations in Ohio. The proposed changes have been developed with attention to the need to assure sufficient capacity to meet the need for quality care for those in need of services. The department estimates that annual aggregate expenditures will increase by \$ 12 million in FY04 from FY03 levels and will be \$9 million less than projected aggregate expenditures without this change.

The following rules are to be amended on an emergency basis and subsequently proposed for permanent amendment:

Rule 5101:3-3-57 entitled Nursing Facilities (NFs) Expenditure Limitation sets forth the methodology for calculating the expenditure limitations for NFs. This rule is being amended on an emergency basis and proposed for permanent amendment to include the expenditure limitations as set forth in paragraphs (D) through (G) of this rule, of one hundred fifty-six dollars and sixty-eight cents for fiscal year 2004 and one hundred fifty-nine dollars for fiscal year 2005, plus the difference by which the fiscal year 2004 limit of one hundred fifty-six dollar and sixty-eight cents exceeds the mean total per diem for all nursing facilities for fiscal year 2004. The department currently establishes a facility specific rate for each NF using the reported costs for the facility for the calendar year preceding the fiscal year, and making adjustments for inflation and changes in resident acuity. In accordance with provisions of Am. Sub. H. B. 95, NF rates will now be readjusted using each facility's reported costs for calendar year 2002, making adjustments for inflation and resident acuity, but subject to the expenditure limitations for FYs 2004 and 2005. The mean Medicaid rate for all NFs, weighted by Medicaid days, on July 1 of each fiscal year will be compared to the statutorily defined expenditure limitation. Each NF facility rate will be reduced by the percentage by which the calculated mean Medicaid rate exceeds the expenditure limitation. In addition, rates are subject to any adjustments required or authorized by Chapter 5111 of the Revised Code. The proposed changes will help balance state resources among competing demands while continuing to assure access to quality care in a variety of long-term care options for the disabled populations in Ohio. The proposed changes have been developed with attention to the need to assure sufficient capacity to meet the need for quality care for those in need of services. The department estimates that annual aggregate expenditures will increase by \$74 million in FY04 from FY03 levels and will be \$125 million less than projected aggregate expenditures without this change.

Rule 5101:3-3-82.3 entitled Calculation, Billing, Collection and Appeal Process for the Franchise Permit Fee (FPF) sets forth for the ICFs-MR FPF calculation, the ICFs-MR FPF billing process, the ICFs-MR FPF collection process, and the ICFs-MR FPF appeal process. This rule is being amended on an emergency basis and proposed for permanent amendment in paragraph (A)(1) to specify that the FPF will remain at nine dollars and sixty-three cents for fiscal years 2004 and 2005. This rule is also being amended on an emergency basis and proposed for permanent amendment in paragraph (A)(1) to state that starting July 1, 2005 and the first day of July thereafter, the FPF will be inflated by the twelve month inflation factor. This rule is also being amended on an emergency basis and proposed for permanent amendment to correct the reference to the rule specified in paragraph (C)(4) and update the zip code specified in paragraph (E)(1)(b). The department estimates that annual aggregate Medicaid expenditures will not increase or decrease as a result of this emergency amendment and proposed permanent amendment.

Payment rates resulting from these changes were reflected in provider vendor payments on or about August 15, 2003 for services rendered effective July 1, 2003. If you need help in determining the impact of these changes on your payment rate, please contact the Bureau of Long Term Care Facilities, Reimbursement Section, at (614) 466-8460.

A copy of the rules is available for review in each County Department of Job and Family Services. A copy of the rules is also available, without charge, at the address listed below and on the internet at <http://www.state.oh.us/odjfs/ols/pubHearings/index.stm>.

A public hearing on the rules will be held on **October 29, 2003** at 10:00 a.m. in room **1855, 30 East Broad Street, Columbus, Ohio**. Either written or verbal testimony on the rules will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than **October 29, 2003** will be treated as testimony.

Requests for a copy of the rules or the written comments on the rules should be submitted by mail to the Office of Legal Services, Ohio Department of Job and Family Services (ODJFS), 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414, by fax at (614) 752-8298, or by e-mail at [legal@ODJFS.state.oh.us](mailto:legal@ODJFS.state.oh.us). Written comments received by ODJFS may be reviewed at the address listed above.