

**FEDERAL MEDICAID NOTICE AND PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

Date: August 31, 2010
Time: 10:00 a.m.
Location: Room 2921 Rhodes State Office Tower
30 East Broad St., Columbus, Ohio 43215

Pursuant to section 5111.02 and Chapter 119. of the Ohio Revised Code, and section 1902(a)(13)(A) of the Social Security Act, the director of the Ohio Department of Job and Family Services (ODJFS) gives notice of the department's intent to consider the adoption, amendment, or rescission of the rules as identified below and of a public hearing thereon.

The following rules are being proposed for rescission pursuant to section 119.032 of the Revised Code.

Rule **5101:3-3-30** entitled Beds and facilities subject to the franchise permit fee (FPF) for nursing facilities (NFs), nursing homes (NHs), hospitals, and intermediate care facilities for the mentally retarded/developmentally disabled (ICFs-MR/DD) identifies beds and facilities subject to the franchise permit fee for NFs, NHs, long term care hospital beds, and ICFs-MR. This rule is being proposed for rescission because most of the provisions in it are set forth in the Ohio Revised Code. Provisions not contained in the Revised Code are being moved to proposed new rule 5101:3-3-30. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this rescission.

Rule **5101:3-3-30.1** entitled Calculation, billing, payment remittance, and appeal process for the franchise permit fee (FPF) for nursing facilities (NFs), nursing homes (NHs), hospitals, and intermediate care facilities for the mentally retarded/developmentally disabled (ICFs-MR/DD) establishes the calculation method, billing cycle, payment remittance procedure, and appeal process for the franchise permit fee for NFs, NHs, long term care hospital beds, and ICFs-MR. This rule is being proposed for rescission because most of the provisions in it are set forth in the Ohio Revised Code. Provisions not contained in the Revised Code are being moved to proposed new rules 5101:3-3-30.1 and 5101:3-3-30.2. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this rescission.

Rule **5101:3-3-30.2** entitled Enforcement of the franchise permit fee (FPF) program for nursing facilities (NFs), nursing homes (NHs), hospitals, and intermediate care facilities for the mentally retarded/developmentally disabled (ICFs-MR/DD) sets forth the procedures for enforcement of the franchise permit fee program for NFs, NHs, long term care hospital beds, and ICFs-MR. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code. The department expects no

increase or decrease in annual aggregate Medicaid expenditures as a result of this rescission.

Rule **5101:3-3-30.3** entitled Distribution method for franchise permit fee (FPF) proceeds from nursing facilities (NFs), nursing homes (NHs), hospitals, and intermediate care facilities for the mentally retarded/developmentally disabled (ICFs-MR/DD) sets forth the distribution method for franchise permit fee proceeds from NFs, NHs, long term care hospital beds, and ICFs-MR. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this rescission.

The following rules are being proposed for adoption in conjunction with the rescission of rules by the same number pursuant to section 119.032 of the Revised Code.

Rule **5101:3-3-30** entitled Beds excluded from the franchise permit fee (FPF) for intermediate care facilities for the mentally retarded (ICFs-MR) sets forth the beds excluded from the ICF-MR franchise permit fee. The provisions in this rule are being moved from rule 5101:3-3-30, which is being proposed for rescission, and do not exist in the Revised Code. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this adoption.

Rule **5101:3-3-30.1** entitled Appeal of the franchise permit fee (FPF) determination sets forth the procedure for appealing a FPF determination that has been submitted in accordance with sections 3721.55 and 5112.35 of the Revised Code. The provisions in this rule are being moved from rule 5101:3-3-30.1, which is being proposed for rescission, and do not exist in the Revised Code. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this adoption.

Rule **5101:3-3-30.2** entitled Prohibition against billing residents for the franchise permit fee (FPF) sets forth the prohibition against directly billing or directly passing through the FPF to residents of NFs, NHs, hospitals, or ICFs-MR. The provisions in this rule are being moved from rule 5101:3-3-30.1, which is being proposed for rescission, and do not exist in the Revised Code. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this adoption.

The following rule is being proposed for amendment pursuant to section 119.032 of the Revised Code.

Rule **5101:3-3-30.4** entitled Procedure for terminating the franchise permit fee (FPF) assessment for nursing facilities (NFs), nursing homes (NHs), long term care hospital beds, and intermediate care facilities for the mentally retarded (ICF-MR) sets forth the procedure for terminating the franchise permit fee for NFs, NHs, long term care hospital beds, and ICFs-MR if the Centers for Medicare and Medicaid Services (CMS) determines the FPF is an impermissible health care related tax. Changes to this rule are as follows:

In the title and in paragraph (B) the word "assessment" is being deleted in order to conform more closely to statutory language; the term "developmentally disabled" is being deleted from the title in order to conform to current federal terminology, and the acronym "ICF-MR/DD" is being changed to "ICF-MR" throughout the rule; references to Ohio Administrative Code rules proposed for rescission are being replaced throughout the rule with references to the applicable Ohio Revised Code sections; in paragraph (D)(1)(d)(i) the term "nursing homes" is being replaced with the acronym "NHs," and in paragraph (D)(1)(d)(ii) the term "nursing home" is being replaced with the acronym "NH" in order to follow rule drafting convention; also in paragraph (D)(1)(d)(i) the acronym "SN" is being replaced with "NF" in order to correct a typographical error, and the acronym "SNF/NF" is being replaced with the phrase "skilled nursing facility/nursing facility (SNF/NF)" in order to follow rule drafting convention; and in paragraph (D)(3)(a)(iii) the phrase "claims payment offsets for subsequent dates of service" is being changed to "offsets of future payments" in order to clarify departmental procedure. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of this amendment.

Copies of the proposed rules are available, without charge, to any person affected by the rules at the address listed below and at the county departments of job and family services. The rules are also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rules will be held at the date, time, and location listed at the top of this notice. Either written or oral testimony will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than the date of the public hearing will be treated as testimony.

Requests for a copy of the proposed rules or comments on the rules should be submitted by mail to the Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414, by fax at (614) 752-8298, or by e-mail at rules@jfs.ohio.gov. Comments may also be reviewed at this address.