

PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

DATE: October 22, 2010

TIME: 10:00 AM

LOCATION: Room 2925, Rhodes State Office Tower, 30 East Broad Street,
Columbus, Ohio 43215

Pursuant to sections 5111.021 and 5111.85, and Chapter 119. of the Ohio Revised Code (ORC), the director of the Ohio Department of Job and Family Services (ODJFS) gives notice of the department's intent to consider the amendment and rescission of the rules as identified below and of a public hearing thereon.

The following rules are being proposed for amendment for the following reasons: 1) to require a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse or physician assistant under the supervision of the qualifying treating physician) prior to the supervising physician certifying medical necessity for home health services in order to align these rules with the implementation of Section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010, 2) to require a face-to-face encounter (between the consumer and the consumer's physician, advance practice nurse or physician assistant under the supervision of the qualifying treating physician) prior to the supervising physician certifying medical necessity for private duty nursing services in order to provide consistency of requirements for both home health services and private duty nursing services, 3) to make minor changes and corrections described below, 4) to revise the definition of palliative care in order to align the definition with Ohio Department of Health's recently enacted definition contained in paragraph (R) to rule 3701-19-01 of the Administrative Code and 5) to comply with the implementation of the forthcoming Medicaid Information Technology System (MITS). A description of these rules follows below.

Rule 5101:3-12-01, entitled Home health services: provision requirements, coverage and service specification, explains the services available through the home health benefit for Medicaid consumers and providers. Proposed amendments to this rule include: 1) a requirement for a face-to-face encounter during the six months preceding certification of medical necessity of home health services in order to align this rule with the implementation of Section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010, 2) a change from the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities and 3) a revision of JFS 07137 "Certificate of Medical Necessity for Home Health Services and Private Duty Nursing Services" in order to align this form with the implementation of Section 6407(d) of the federal Patient Protection and Affordable Care Act (PPACA) of 2010. The proposed amendments also update and correct citations.

Rule 5101:3-12-02, entitled Private duty nursing: services, provision requirements, coverage and service specification, explains the services available through the private duty nursing benefit for Medicaid consumers and providers. Proposed amendments to this rule include: 1) a requirement for face-to-face encounter as described above during the six months preceding certification of medical necessity of private duty nursing (PDN) services in order to provide consistency of requirements for both home health services and private duty nursing services, 2) a change from the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities, 3) a revision of an Ohio Department of Job and Family Services form JFS 02374 "Private Duty Nursing (PDN) Services Request" in order to provide consistency of requirements for both home health nursing services and private duty nursing services, 4) a correction of an existing omission to specify that providers of PDN services must comply with all requirements for Medicaid providers and 5) an elimination of the billing requirement for using two modifiers (U5 and U6) that indicate increased PDN services for children and adults, respectively, to comply with the forthcoming Medicaid Information Technology System (MITS). The proposed amendments also update and correct citations.

Rule 5101:3-12-02.3, entitled Private duty nursing: procedures for service authorization, explains the prior authorization process for Medicaid consumers and providers. Proposed amendments to this rule include: 1) a requirement for face-to-face encounter as described above during the six months preceding certification of medical necessity of private duty nursing (PDN) services, 2) a change from the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities and 3) a revision of an Ohio Department of Job and Family Services form JFS 02374, "Private Duty Nursing (PDN) Services Request" in order to provide consistency of requirements for both home health nursing services and private duty nursing services.

Rule 5101:3-12-06, entitled Reimbursement: private duty nursing services, explains the reimbursement for providers. Proposed amendments to Appendix B of this rule include an elimination of the billing requirement for using two modifiers (U5 and U6) that indicate increased private duty nursing services for children and adults, respectively, because prior authorization is already required and these modifiers will not be needed by the forthcoming Medicaid Information Technology System (MITS) to adjudicate PDN claims. There is no amendment to the body of the rule.

Rule 5101:3-56-01, entitled Hospice services: definitions, contains definitions for the hospice benefit. Proposed amendments to this rule include: 1) a revision of the definition of palliative care in order to be consistent with the Ohio Department of Health's recently enacted definition contained in paragraph (R) to rule 3701-19-01 of the Administrative Code, 2) a change from the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities and 3) a replacement from "advance" to "advanced" practice nurse. The proposed amendments also update and correct citations.

Rule 5101:3-56-02, entitled Hospice services: eligibility and election requirements, explains hospice eligibility requirements for consumers. The proposed amendment to this rule states that when a child voluntarily elects hospice, he or she does not waive the right to be provided with, or have payment made for, services that are related to the treatment of the child's condition for which a diagnosis of terminal illness has been made in order to align this rule with the implementation of Section 2302 of the federal Patient Protection and Affordable Care Act (PPACA) of 2010.

Rule 5101:3-56-04, entitled Hospice services: provider requirements, explains requirements for hospice providers. Proposed amendments to this rule include these additional requirements: 1) facilitation of concurrent care for children under age twenty-one with other Medicaid providers, 2) documentation about how services are coordinated between the hospice provider and other Medicaid providers, 3) provision of a copy of the consumer's advance directive and hospice election form to other Medicaid providers, 4) notification to consumers of their responsibilities to report to the hospice provider the names of their other Medicaid providers and 5) correction of citations. These amendments are part of the implementation of Section 2302 of the federal Patient Protection and Affordable Care Act (PPACA) of 2010, and provide for the assurance of continuity of care and coordination to avoid duplication of equivalent services.

Rule 5101:3-56-06, entitled Hospice services: reimbursement, explains the reimbursement to providers for covered hospice services. Proposed amendments to this rule specify that ODJFS will reimburse only non-hospice providers for curative treatments delivered to consumers under age twenty-one for the consumer's terminal illness, and that medicaid providers who provide curative treatments for these consumers must comply with all the requirements for medicaid providers in Chapter 5101:3-1 of the Administrative Code and not bill hospice organizations. The proposed amendments also update and correct citations.

In addition two rules are being proposed for rescission because the core plus benefit package was no longer available as of July 1, 2006 and these rules provided for program consumers who were enrolled in core plus for the 120 days prior to July 1, 2006 to receive an eligibility determination for an ODJFS-administered waiver. Since all of these events have taken place, these rules are being proposed for rescission. A description of these rules follows below.

Rule 5101:3-12-02.1, entitled Provision for consumers enrolled in and providers who provide the core plus benefit package services, explains that the core plus benefit package was no longer available as of July 1, 2006 and provided for program consumers who were enrolled in core plus for the 120 days prior to July 1, 2006 to receive an eligibility determination for an ODJFS-administered waiver. Since all of these events have taken place, this rule is being proposed for rescission.

Rule 5101:3-45-15, entitled Provisions for transferring consumers receiving core-plus benefit package services to ODJFS-administered waivers, explains that the core plus benefit package was no longer available as of July 1, 2006 and provided for program

consumers who were enrolled in core plus for the 120 days prior to July 1, 2006 to receive an eligibility determination for an ODJFS-administered waiver. Since all of these events have taken place, this rule is being proposed for rescission.

A copy of the proposed rules is available, without charge, to any person affected by the rules at the address listed below. 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.