

PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

DATE: January 17, 2012
TIME: 10:00 a.m.
LOCATION: Room 3110B, Rhodes State Office Tower
30 East Broad St., Columbus, Ohio 43215

Pursuant to section 5111.02 and Chapter 119. of the Ohio Revised Code, the director of the Ohio Department of Job and Family Services gives notice of the department's intent to consider the adoption, amendment, or rescission of the rule or rules as identified below and of a public hearing thereon.

An initial notice pursuant to section 1902(a)(13)(A) of the Social Security Act was given in eleven Ohio newspapers in May, 2011, when the department was proposing to modify provisions relating to the reimbursement of nursing facilities and intermediate care facilities for the mentally retarded. Final notice for these same provisions was given in the Register of Ohio from September 14, 2011 through October 19, 2011. Modifications were ultimately enacted in Amended Substitute House Bill 153 of the 129th General Assembly. The modifications that were enacted in statute are also reflected in the following rules in this rule packet: 5101:3-3-16.4, 5101:3-3-58, and 5101:3-3-64.

The following rules are being proposed for amendment pursuant to sections 119.03 and 119.032 of the Revised Code.

Rule 5101:3-3-16.4, entitled Coverage of bed-hold days for medically necessary and other limited absences from nursing facilities (NFs), is being proposed for amendment due to five year review, and to implement provisions of Section 5111.331 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth the bed-hold day provisions for nursing facilities. Changes have been made to this rule so that during calendar year 2012 and thereafter, reimbursement of nursing facility (NF) bed-hold days will be fifty per cent of the NF provider's per diem rate if the facility had an occupancy rate in the preceding calendar year exceeding ninety-five per cent. The reimbursement will be eighteen per cent of the NF provider's per diem rate if the facility had an occupancy rate in the preceding calendar year of ninety-five per cent or less.

Rule 5101:3-3-20, entitled Nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR): medicaid cost report filing, record retention, and disclosure requirements, is being proposed for amendment due to five year review, and to implement provisions of Section 5111.261 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth provisions for Medicaid cost report filing, record retention, and disclosure requirements for nursing facilities and intermediate care facilities for the mentally retarded. Changes to this rule include the following: In the opening paragraph, the date of JFS form 02524N, the Medicaid Nursing Facility Cost Report, is being updated to 09/2011;

and paragraph (D) is being restructured and the language in it amended to provide that although the general rule is that a provider may amend their cost report within three years of filing it with the Department, a provider may not amend a cost report if the Department has notified the provider of an audit of that cost report or an audit of a subsequent cost reporting period.

Rule 5101:3-3-22, entitled Rate recalculations, interest on overpayments, penalties, repayment of overpayments, and deposit of repayment of overpayments for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), is being proposed for amendment due to five year review, and to implement provisions of Section 5111.271 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth the provisions for rate recalculations, interest on overpayments, imposition of penalties, repayment of overpayments, and deposit of repayment of overpayments for nursing facilities and intermediate care facilities for the mentally retarded. Changes to this rule include the following: In paragraph (A) the reference to OAC rule 5101:3-3-21 is being replaced with reference to ORC section 5111.27 because rule 5101:3-3-21 is being proposed for rescission; in paragraph (A)(3), the internet address for the publication "Selected Interest Rates" is being added; in the heading to paragraph (B) the words "and fines" is being added for clarification; new paragraphs (B)(3) and (B)(4) identify the fines to be issued based on the amount of adverse findings included in the report of an audit conducted under ORC section 5111.27; new paragraph (B)(5) prohibits the Department from collecting fines issued under paragraph (B)(3) until all appeals relating to the audit report that is the basis for the fine are exhausted; language has been added in paragraph (D) so that fines collected pursuant to paragraph (B)(3) shall be deposited into the Health Care Services Administration Fund created under ORC section 5111.94; and language has been added to paragraph (D) specifying where all other penalties issued under this rule will be deposited.

Rule 5101:3-3-30.1, entitled Appeal of the franchise permit fee (FPF) determination, is being proposed for amendment due to five year review, and to implement provisions of Sections 3721.531 and 3721.532 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth provisions for appeal of the franchise permit fee (FPF) determination. Changes to this rule include the following: The addition of "and re-determination" in the rule title; re-wording of paragraph (A) for clarification; and insertion of new language in paragraph (A) regarding an appeal of the FPF re-determination in accordance with section 3721.55 of the Revised Code.

Rule 5101:3-3-32, entitled Debt estimation methodology for change of operator, facility closure, voluntary termination, or voluntary withdrawal for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), is being proposed for amendment due to five year review, and to implement provisions of Section 5111.68 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth the debt estimation methodology for change of operator, facility closure, voluntary termination, involuntary termination, or voluntary withdrawal for nursing facilities and intermediate care facilities for the mentally retarded. This rule is being changed to add involuntary termination

to the title to clarify that it is one of the cases to which the debt estimation methodology applies.

Rule 5101:3-3-32.1, entitled Debt estimate and debt summary report procedure for change of operator, facility closure, voluntary termination, or voluntary withdrawal for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), is being proposed for amendment due to five year review, and to implement provisions of Section 5111.68 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth the debt estimate and debt summary report procedure in cases of a change of operator, facility closure, voluntary termination, involuntary termination, or voluntary withdrawal for nursing facilities and intermediate care facilities for the mentally retarded. This rule is being changed to add involuntary termination to the title to clarify that it is one of the cases to which the debt estimate and debt summary report procedure applies.

Rule 5101:3-3-42.4, entitled Nursing facilities (NFs): nonreimbursable costs, is being proposed for amendment due to five year review, and to implement provisions of Section 5111.271 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth the costs that are not reimbursable to nursing facilities through the nursing facility per diem rate. Changes to this rule include the following: Fines or penalties paid under Section 5111.271 of the Revised Code are being added as nonreimbursable costs; and the costs of physical therapy, occupational therapy, speech therapy, audiology, oxygen (other than emergency stand-by oxygen), and custom wheelchairs are being removed as nonreimbursable costs as these services are reimbursed through the nursing facility per diem effective August 1, 2009.

Rule 5101:3-3-58, entitled Quality incentive payment for nursing facilities (NFs), is being proposed for amendment due to five year review, and to implement provisions of Section 5111.244 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth provisions for the quality incentive payment for nursing facilities. This rule is being changed so that it only applies to fiscal year 2012, and three points instead of one will be awarded to a nursing facility if the nursing facility's medicaid utilization rate is above the statewide average. Additionally, because the rule is being limited to fiscal year 2012, language is being deleted that allows the quality incentive payment to be recalculated in the next fiscal year.

Rule 5101:3-3-64, entitled Nursing facility payment for medicare part A cost sharing, is being proposed for amendment due to five year review, and to implement provisions of Section 5111.225 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth payment provisions for Medicare Part A cost sharing for nursing facilities. This rule changes the medicaid maximum allowable amount from one hundred nine per cent of a nursing facility's per diem rate to one hundred per cent of the per diem rate.

Rule 5101:3-3-82, entitled Intermediate care facilities for the mentally retarded (ICFs-MR): method for establishing the other protected costs component of the prospective rate, is being proposed for amendment due to five year review, and to implement provisions of Section 5111.235 of the Revised Code adopted under Amended Substitute House Bill 153 of the 129th General Assembly relating to the administration of the Medicaid program. This rule sets forth the method for establishing the other protected costs component of the prospective rate for intermediate care facilities for the mentally retarded. This rule is being changed to replace "The Consumer Price Index for All Urban Consumers for Nonprescription Drugs and Medical Supplies" with two separate indexes, "The Consumer Price Index for All Urban Consumers for Nonprescription Drugs" and "The Consumer Price Index for All Urban Consumers for Medical Supplies."

Rule 5101:3-3-82.1, entitled Method for establishing reimbursement to intermediate care facilities for the mentally retarded (ICFs-MR) for the franchise permit fee, is being proposed for amendment due to five year review. This rule sets forth the method for establishing reimbursement for the franchise permit fee to intermediate care facilities for the mentally retarded. Changes to this rule include: Removal of language that refers to the franchise permit fee as an "add-on" to the per diem rate; replacement of references to Administrative Code rules 5101:3-3-30 to 5101:3-3-30.4 with references to relevant sections of Revised Code; and movement of the language in paragraph (B)(1) to a new paragraph under (B) in order to comport with rule drafting guidelines of the Legislative Service Commission.

Rule 5101:3-3-84.2, entitled Cost of ownership and efficiency incentive for intermediate care facilities for the mentally retarded (ICFs-MR), is being proposed for amendment due to five year review. This rule sets forth provisions for the reporting of accumulated depreciation for a change of provider, the cost of ownership, and the efficiency incentive for intermediate care facilities for the mentally retarded (ICFs-MR). Part of rule 5101:3-3-84.5, which is being proposed for rescission, is being moved to this rule. Changes to this rule include: Provisions regarding the reporting of accumulated depreciation for new owners of ICFs-MR are being moved from rule 5101:3-3-84.5 to new paragraph (G) of this proposed rule; references to rule 5101:3-3-84.5 are being replaced with references to new paragraph (G); the name of the applicable consumer price index is being corrected; and the website address for the consumer price index is being added.

The following rules are being proposed for rescission pursuant to sections 119.03 and 119.032 of the Revised Code.

Rule 5101:3-3-21, entitled Audits of nursing facility (NF) cost reports, sets forth the provisions governing audits of Medicaid cost reports for nursing facilities. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code.

Rule 5101:3-3-69, entitled Nursing facilities (NFs): method for establishing the fiscal year 2006 medicaid reimbursement rate for NFs, sets forth the method for establishing the Medicaid reimbursement rate for nursing facilities for fiscal year 2006. This rule is being proposed for rescission because it sets forth the method for establishing the reimbursement rate for services provided in nursing facilities for the period beginning July 1, 2005 and ending June 30, 2006, and is therefore obsolete.

Rule 5101:3-3-83, entitled Method for establishing the indirect care costs component of the prospective rate for intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the method for establishing the indirect care costs component of the prospective rate for intermediate care facilities for the mentally retarded. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code.

Rule 5101:3-3-84, entitled Method for establishing capital reimbursement for intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the methodology for establishing reimbursement for capital costs for intermediate care facilities for the mentally retarded. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code.

Rule 5101:3-3-84.4, entitled Intermediate care facilities for the mentally retarded (ICFs-MR): return on equity, sets forth the method for establishing the return on equity for intermediate care facilities for the mentally retarded. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code.

Rule 5101:3-3-84.5, entitled Recovery of excess depreciation paid and the reporting of accumulated depreciation for new owners of intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the method for calculation and recovery of excess depreciation paid, and the reporting of accumulated depreciation, for new owners of intermediate care facilities for the mentally retarded. This rule is being proposed for rescission because the provisions in it are set forth in the Ohio Revised Code, are no longer needed, or are being moved to rule 5101:3-3-84.2, which is being proposed for amendment.

Rule 5101:3-3-98, entitled Intermediate care facilities for the mentally retarded (ICFs-MR): method for establishing the fiscal year 2006 and 2007 medicaid reimbursement rate for ICFs-MR, sets forth the method for establishing the Medicaid reimbursement rate for intermediate care facilities for the mentally retarded for fiscal years 2006 and 2007. This rule is being proposed for rescission because it sets forth the method for establishing the reimbursement rate for services provided in intermediate care facilities for the mentally retarded for the period beginning July 1, 2005 and ending June 30, 2007, and is therefore obsolete.

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. Comments also may be reviewed at this address.