

**PUBLIC HEARING NOTICE
OFFICE OF MEDICAL ASSISTANCE**

DATE: November 19, 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.

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

Rule **5101:3-3-02.1**, entitled Length and type of long term care provider agreements, sets forth provisions regarding the length and type of provider agreements for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR). This rule is being rescinded in conjunction with adoption of a new rule by the same number so that the new rule applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-04.1**, entitled Payment to nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR) during the survey agency's administrative appeals process, sets forth provisions for Medicaid payment to be made to NFs and ICFs-MR during the survey agency's administrative appeals process. This rule is being rescinded in conjunction with adoption of a new rule by the same number so that the new rule applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

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

Rule **5101:3-3-01.1**, entitled Authorization for the Ohio department of developmental disabilities (DODD) to administer the medicaid program for services provided by intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the provisions for DODD to administer Medicaid program services provided by ICFs-MR. This rule is being adopted since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental

Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-02.1**, entitled Length and type of long term care provider agreements, sets forth provisions regarding the length and type of provider agreements for nursing facilities. This new rule is replacing part of existing rule 5101:3-3-02.1, which is being proposed for rescission, so that this new rule applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-04.1**, entitled Payment to nursing facilities (NFs) during the survey agency's administrative appeals process, sets forth provisions for Medicaid payment to be made to NFs during the survey agency's administrative appeals process. This new rule is replacing part of existing rule 5101:3-3-04.1, which is being proposed for rescission, so that this new rule applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

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

Rule **5101:3-3-02**, entitled Provider agreements for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth provisions for the execution and maintenance of provider agreements between the Ohio Department of Job and Family Services and the operators NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-02.2**, entitled Termination, denial, and non-renewal of long term care provider agreements, sets forth provisions for the termination, denial, and non-renewal of provider agreements for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR). This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-02.3**, entitled Institutions eligible to participate in medicaid as nursing facilities (NFs) or intermediate care facilities for the mentally retarded (ICFs-MR), sets forth eligibility provisions for NFs and ICFs-MR to participate in the Medicaid program. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR. In paragraph (A)(10), the date referenced in the Social Security Act citation, as well as the phrase "as amended," are being removed due to rule filing guidelines.

Rule **5101:3-3-02.7**, entitled Emergency management and resident relocation plan for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth provisions for the preparation for, response to, and recovery from an emergency at a NF or ICF-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-04**, entitled Payment during the Ohio department of job and family services (ODJFS) administrative appeals process for denial or termination of a provider agreement, sets forth provisions for Medicaid payments to be made during the ODJFS administrative appeals process for denial or termination of the provider agreement of a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF-MR). This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-16.1**, entitled Resource assessment notice for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth provisions regarding JFS form 04080 "Medicaid Resource Assessment Notice" that are specific to NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

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, sets forth provisions for Medicaid cost report filing, record retention, and disclosure requirements for NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the

Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR. In paragraph (I)(5), the phrase "as amended (through 1/1/07)" is being removed from the Social Security Act citation due to rule filing guidelines.

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), sets forth provisions for rate recalculations, interest on overpayments, penalties, repayment of overpayments, and deposit of repayment of overpayments for NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-30.1**, entitled Appeal of the franchise permit fee (FPF) determination and re-determination, sets forth provisions for an appeal of the franchise permit fee determination or re-determination for nursing homes or hospital long term care units in accordance with Section 3721.55 of the Revised Code, or an appeal of the franchise permit fee determination for intermediate care facilities for the mentally retarded (ICFs-MR) in accordance with Section 5112.35 of the Revised Code. This rule is being amended so that it applies only to nursing homes and hospital long term care units since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-30.4**, entitled Procedure for terminating the franchise permit fee (FPF) for nursing facilities (NFs), nursing homes (NHs), long term care hospital beds, and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the procedure for terminating the franchise permit fee for NFs, NHs, long term care hospital beds, ICFs-MR. This rule is being amended so that it applies only to nursing facilities, nursing homes, and long term care hospital beds since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-32**, entitled Debt estimation methodology for change of operator, facility closure, voluntary termination, involuntary termination, or voluntary withdrawal for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the debt estimation methodology for change of operator, facility closure, voluntary termination, involuntary termination, and voluntary withdrawal for NFs and ICFs-MR. This

rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-32.1**, entitled Debt estimate and debt summary report procedure for change of operator, facility closure, voluntary termination, involuntary termination, or voluntary withdrawal for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth the debt summary report procedure for change of operator, facility closure, voluntary termination, involuntary termination, and voluntary withdrawal for NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-32.2**, entitled Successor liability agreements for operators of nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), sets forth provisions for successor liability agreements for operators of NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR.

Rule **5101:3-3-39**, entitled Payment and adjustment process for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR), is being amended due to five-year review, and to implement provisions of Section 5111.226 of the Revised Code. This rule sets forth the Medicaid payment and adjustment process for NFs and ICFs-MR. This rule is being amended so that it applies only to nursing facilities since, pursuant to Section 5111.226 of the Revised Code, the Department of Job and Family Services has entered into a contract with the Department of Developmental Disabilities under section 5111.91 of the Revised Code that provides for the Department of Developmental Disabilities to assume the powers and duties of the Department of Job and Family Services with regard to the Medicaid program's coverage of services provided by ICFs-MR. Changes being made to the rule due to five-year review include the following: in paragraph (A), the revision date of the JFS 09401 form is being updated; in paragraph (D), an Administrative Code rule number is being updated; and in paragraph (E), the word "shall" is being added to correct a typographical error.

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 and Acquisition 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.