

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

DATE: December 20, 2005
TIME: 11:00 a.m.
LOCATION: Room 3110B, Rhodes State Office Tower
30 East Broad Street, Columbus, Ohio 43215

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

These rules are being proposed for permanent adoption, amendment, or rescission pursuant to Am. Sub. H.B. 66 of the 126th General Assembly, and Section 119.032 of the Revised Code, which requires the review of all state agency rules within a five year period. The following changes to the Medicaid long term care facility reimbursement system emerged as a result of Am. Sub. House Bill 66 of the 126th General Assembly and will take effect for services provided on and after July 1, 2005. In accordance with Section 5111.22 of the Revised Code, the department is providing facilities with the rule number and title of rules proposed for rescission in lieu of an actual copy of the rules proposed for rescission.

These rules are being proposed for permanent **Adoption:**

Rule 5101:3-3-69 entitled Nursing facilities (NFs): method for establishing the fiscal year 2006 Medicaid reimbursement rate for NFs is being proposed to implement Section 206.66.22 of Am. Sub. H.B. 66 of the 126th General Assembly. The rule sets forth the method for establishing the reimbursement rate for NFs for the period beginning July 1, 2005 and ending June 30, 2006. The rule also sets forth the method of establishing the reimbursement rate for a provider that undergoes a change in operator, a provider that obtains certification as a NF and begins participation in the medicaid program, or a provider that adds one or more certified beds during the period from July 1, 2005 to June 30, 2006. The rule also states that the rate for those NFs that were not required to pay the franchise fee in fiscal year 2005 but are required to pay the fee in fiscal year 2006 will be increased by \$4.30 per day to reflect the franchise fee assessment rate. The rule also states that the NFs rate established under this rule is not subject to adjustments except to reflect an adjustment resulting from an audit of a 2003 cost report. ODJFS estimates that from state fiscal year 2005 to state fiscal year 2006, this reimbursement change will result in an increase in aggregate payments to nursing facilities of approximately \$40 million. If this change were not adopted, aggregate payments to nursing facilities would be an estimated \$440 million higher in state fiscal year 2006 than they will be after this change.

Rule 5101:3-3-85 entitled Approval of nonextensive renovations for intermediate care facilities for the mentally retarded (ICFs-MR) details requirements for the authorization of ICF-MR to report nonextensive renovations. The new rule replaces, in part, rescinded rule 5101:3-3-84.3 and specifies criteria and procedures for prior approval of renovation projects in accordance with Section 5111.258 of Am. Sub. H.B. 66 of the 126th General Assembly.

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 is being proposed to

implement provisions of Section 206.66.25 and 206.66.27 of Am. Sub. H.B. 66 of the 126th General Assembly relating to the administration of the Medicaid reimbursement program for intermediate care facilities for the mentally retarded. This rule sets forth the method for establishing the reimbursement rate for ICFs-MR for fiscal years 2006 and 2007. The rule also sets forth the method of establishing the reimbursement rate for a provider that undergoes a change in operator, a provider that obtains certification as an ICF-MR and begins participation in the Medicaid program, or a provider that adds one or more certified beds during the period from July 1, 2005 to June 30, 2007. The rule also sets forth the method of reimbursing the provider for active treatment day programming services as specified under rule 5101:3-3-94. The rule also states that the ICF-MRs rate established under this rule is not subject to adjustments except to reflect an adjustment resulting from an audit of a 2003 cost report. ODJFS estimates that the reimbursement change will result in a decrease in aggregate expenditures by the department of approximately \$95 million over the biennium. The net impact to the Medicaid program of the reimbursement for active treatment day programming to ICFs-MR is expected to be minimal due to the fact that, prior to this change, the Medicaid program paid other provider types for the provision of active treatment services. Medicaid will now make payments for active treatment only to ICFs-MR.

These rules are being proposed for permanent **Amendment** pursuant to Section 119.032 of the Revised Code, which requires the review of all state agency rules within a five year period.

Rule 5101:3-3-01 entitled Definitions defines terms relating to reimbursement for services provided by nursing facilities and intermediate care facilities for the mentally retarded. The proposed amendment eliminates references to Ohio Administrative Code rules that are being rescinded to implement Am. Sub. H.B. 66 of the 126th General Assembly. The amendment also eliminates references to the Ohio Revised Code and sections describing the nursing facility reimbursement formula that are no longer valid based on Am. Sub. H.B. 66 of the 126th General Assembly.

Rule 5101:3-3-19 entitled Relationship of other covered medicaid services to nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR) services identifies covered services generally available to Medicaid recipients and describes the relationship of such services to those provided by a NF or an ICF-MR. The proposed amendment eliminates references to Ohio Administrative Code rules that are being rescinded to implement Am. Sub. H.B. 66 of the 126th General Assembly. In (D)(1) and (D)(2) of the rule, reference to Ohio Medicaid Drug Formulary was changed to appendix A of rule 5101:3-9-12 of the Administrative Code. Paragraph (E) subparagraphs (1), (2), and (3), have been revised to specify the reimbursement method for therapy services rendered to residents of NFs and ICFs-MR. In (F)(1)(c)(iv)(a)(i)(A), reference to the American Nurses' Association has been changed to American Nurses Association, and reference to the National Board of Pediatric Nurse Practitioners and Associates has been changed to Pediatric Nursing Certification Board. In (F)(1)(c)(iv)(a)(ii)(B)(3), reference to American Medical Association's Committee on Allied Health Education and Accreditation has been changed to American Medical Association's Commission on Accreditation of Allied Health Education Programs. Various grammatical changes appear throughout the body of the rule.

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) identifies the provisions for 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). The proposed amendment eliminates references to Ohio Administrative Code rules that are being rescinded to implement Am. Sub. H.B. 66 of the 126th General Assembly. The amendment also changes "sale of the facility" to "facility closure, voluntary termination, or voluntary withdrawal" to be consistent with Section 5111.28 of Am. Sub. H.B. 66 of the 126th General Assembly.

Rule 5101:3-3-25 entitled Payment methodology for the provision of outlier services sets forth provisions under

which outlier services are reimbursed. This rule is being proposed for permanent amendment to comply with the provisions of Section 5111.258 of Amended Substitute House Bill 66 of the 126th General Assembly. The proposed amendment eliminates references to Ohio Administrative Code rules that are being rescinded to implement reimbursement system changes included in this bill. Changes include the elimination of language in paragraphs (B)(3), (B)(5), (C)(1), (C)(2), and (D)(2) describing the nursing facility reimbursement formula that is no longer valid based on Section 5111.258 of Am. Sub. H.B. 66 of the 126th General Assembly. Paragraph (A)(3) was deleted from the proposed rule as it referenced calculation of a prospective rate for cost centers that have been realigned for nursing facilities. Paragraph (B)(5) eliminates the phrase prior to July 1 and replaces it with the phrase after June 30 in accordance with 5111.258 (A)(2) of Amended Substitute House Bill 66 of the 126th General Assembly. Paragraph (C)(1) eliminates the phrase ICFS-MR and replaces it with ICFs-MR. Paragraphs (C)(2) and (D)(2) eliminates the phrase in accordance with paragraph (E) of this rule, which has been amended. Paragraph (D)(2) also eliminates language which describes payment of per diem rate for outlier services if the required information is not submitted, also in accordance to changes mandated by Section 5111.258 of Am. Sub. H.B. 66 of the 126th General Assembly. Paragraph (D)(3)(a) eliminates the word Sheets and replaces it with the word Sheet and eliminates the phrase ICF-IMR and replaces it with the phrase ICF-MR. Paragraph (D)(3)(d)(ii) eliminates the word march and replaces it with the word March. Paragraph (E) of the former rule, which described the determination of per diem rates for outlier services, has been eliminated as it describes the nursing facility reimbursement formula that is no longer valid based on Section 5111.258 of Am. Sub. H.B. 66 of the 126th General Assembly. Therefore, what was formerly Paragraph (F) has now become Paragraph (E).

Rule 5101:3-3-40 entitled Nursing facility (NF) case mix assessment instrument: minimum data set version 2.0 (MDS 2.0), sets forth the resident assessment instrument (RAI) specified by the state and approved by the Centers for Medicare and Medicaid Services (CMS). This rule is being proposed for permanent amendment to comply with the provisions of Sections 5111.232 of Am. Sub. H.B. 66 of the 126th General Assembly. The following changes all relate to language describing the nursing facility reimbursement formula that is no longer valid based on Sections 5111.231 and 5111.232 Am. Sub. H.B. 66 of the 126th General Assembly. Paragraph (A)(1) was deleted from the proposed rule as it referenced calculation of annual facility average case mix score and also referenced rule 5101:3-3-42 which is being proposed for rescission to implement Section 5111.26 of Am. Sub. H.B. 66 of the 126th General Assembly requiring that the charts of accounts for nursing facilities and intermediate care facilities for the mentally retarded be separated. Paragraph (A)(6) of the proposed rule was deleted as it defined the calculation of cost per case mix unit and the determination of the NFs rate for direct care costs that are no longer valid. Language referencing rate setting was also deleted from paragraph (A)(10) of the proposed rule and language referencing the calculation of the quarterly facility average case mix score was deleted from paragraph (A)(16) of the proposed rule.. Paragraph (A)(8) of the proposed rule was deleted as it defined direct care peer groups that are no longer valid. Quarterly rate setting was deleted from paragraph (C)(2) of the proposed rule, and replaced with determining the quarterly facility score. Paragraph (C)(3) of the proposed rule was deleted. The reference to an assigned quarterly average case mix score was deleted from paragraph (C)(4) of the proposed rule. Rate setting was deleted from paragraph (C)(6) of the proposed rule and was replaced with determining the quarterly facility score. Rate setting was deleted from paragraph (C)(7)(b) of the proposed rule and was replaced with determining the quarterly facility score. Rate setting was deleted from paragraph (C)(9)(b) of the proposed rule and was replaced with determining the quarterly facility score. For rate setting purposes was deleted from paragraphs (D)(1)(b), (D)(1)(d)(i), and (D)(1)(d)(ii) of the proposed rule. Reference to paragraph (C)(9) was corrected to (C)(8) in paragraph (D)(1)(d)(ii) of the proposed rule. Rate setting purposes was deleted from paragraph (D)(2)(a) of the proposed rule and replaced by determining the quarterly facility score. Used for rate setting was deleted from paragraph (E) of the proposed rule.

The following procedural changes and grammatical corrections were also made. The verbiage or an annual average was deleted from paragraph (A)(2) of the proposed rule. Language regarding the eighty day correction period was deleted from paragraph (A)(10) of the proposed rule as the correction period is not relevant to the definition of filing date. Paragraph (A)(15) was deleted from the proposed rule. References to paragraphs (C)(7) and (C)(9) were corrected to (C)(6) and (C)(8) respectively in paragraph (A)(21) of the proposed rule. A web site referenced in paragraph (A)(26) of the proposed rule was corrected. Reference to paragraph (C)(7)(a) was corrected to (C)(6)(a) in paragraph (C)(7)(b) of the proposed rule. The last sentence of paragraph (D)(2)(b) was deleted from the proposed rule. The last sentence of paragraph (D)(2)(d) was deleted from the proposed rule. Paragraph (D)(3) was deleted from the proposed rule. Reference to paragraph (C)(4) was corrected to (C)(3) in paragraph (E) of the proposed rule. The department estimates the annual aggregate Medicaid payments will not increase or decrease as a result of this amendment.

Rule 5101:3-3-41 entitled Resource utilization groups, version III (RUG III): the nursing facility case mix payment system, sets forth components of the Medicaid reimbursement methodology for the nursing facility direct care payment system, based on a core set of items included in the uniform resident assessment instrument (RAI) specified by the state and approved by the Centers for Medicare and Medicaid Services (CMS). This rule is being proposed for permanent amendment to comply with Section 5111.232 of Am. Sub. H.B. 66 of the 126th General Assembly. The second sentence of the introductory paragraph referencing establishment of each facility's rate for direct care costs was deleted from the proposed rule as it is no longer valid based on Section 5111.231 of Am. Sub. H.B. 66 of the 126th General Assembly. Acronyms for registered nurses, licensed practical nurses, and nurse aides were corrected from the singular to the plural form (RNs, LPNs, and NAs, respectively) in paragraph (G) of the proposed rule. The department estimates the annual aggregate Medicaid payments will not increase or decrease as a result of this amendment.

Rule 5101:3-3-52.1 entitled Exception review process for nursing facilities (NFs), sets forth protocols for the exception review process for NFs. This rule is being proposed for permanent amendment to comply with the provisions of Section 5111.27 and 5111.28 of Am. Sub. H.B. 66 of the 126th General Assembly. Paragraphs (A)(2), (N), (N)(1), (N)(2), (N)(3), and (P) were deleted from the proposed rule as they were no longer valid based on Sections 5111.231 and 5111.232 of Am. Sub. H.B. 66 of the 126th General Assembly. The reference to paragraph (P) was deleted from paragraph (O) accordingly. Paragraph (A)(1) of the proposed rule changes at selected nursing facilities (NFs) to the singular at a selected nursing facility (NF) and used to calculate the direct care rate was deleted from the first sentence. Exceeds was corrected to exceed in paragraph (C)(2) of the proposed rule. References to MDS2.0 were corrected to MDS 2.0 throughout the proposed rule. The department estimates the annual aggregate Medicaid payments will not increase or decrease as a result of this amendment.

Rule 5101:3-3-75 entitled Intermediate care facilities for the mentally retarded (ICFs-MR) case mix assessment instrument: Individual Assessment Form (IAF), sets forth the resident assessment instrument specified by the state for ICFs-MR. This rule is being proposed for permanent amendment to comply with the provisions of Amended Substitute House Bill 66. In paragraph (A) of the proposed rule, language referring to the determination of Medicaid payment rates was deleted as it was not valid based on Section 206.66.25 of Am. Sub. H.B. 66 of the 126th General Assembly limiting rate adjustments for ICFs-MR. In paragraph (B) of the proposed rule, an was corrected to a. The department estimates the annual aggregate Medicaid payments will not increase or decrease as a result of this amendment.

Rule 5101:3-3-76 entitled Resident assessment classification system (RACS): the intermediate care facility for the

mentally retarded (ICF-MR) case mix payment system, sets forth components of the Medicaid reimbursement methodology for the direct care payment system, based on the IAF, a uniform resident assessment instrument specified by the state for ICFs-MR. In the introductory paragraph of the proposed rule, the sentence indicating the department shall establish each facility's rate for direct care costs on a quarterly basis was deleted as it was not valid based on Section 206.66.25 of Am. Sub. H.B. 66 of the 126th General Assembly limiting rate adjustments for ICFs-MR. In paragraph (E) of the proposed rule, the reference to rule 5101:3-3-77 was deleted as this rule is being rescinded. A revision date of 11/1992 was added to references to form JFS 02220 throughout the proposed rule. The department estimates the annual aggregate Medicaid payments will not increase or decrease as a result of this amendment.

Rule 5101:3-3-85.1 entitled Exception review process for intermediate care facilities for the mentally retarded, sets forth protocols for the exception review process for ICFs-MR. This rule is being proposed for permanent amendment. The following changes are proposed to comply with the provisions of Section 206.66.25 of Am. Sub. H.B. 66 of the 126th General Assembly limiting rate adjustments for ICFs-MR. Paragraph (A)(2) was deleted from the proposed rule. The last sentence was deleted from paragraph (F) of the proposed rule. Language referencing adjustment to the facility's direct care component of the rate was deleted from paragraph (M) of the proposed rule. Paragraphs (N), (N)(1), (N)(2), and (N)(3) were deleted from the proposed rule. Paragraph (P) was deleted from the proposed rule, and the reference to paragraph (P) was deleted from paragraph (O) accordingly.

The following changes are also proposed. In paragraphs (A) and (O) of the proposed rule, the reference to rule 5101:3-3-77 was deleted as this rule is being rescinded. In paragraph (A)(4) of the proposed rule, an was corrected to a. In paragraph (C)(1) of the proposed rule, a revision date and web site were corrected for 42 CFR section 483.440. The department estimates the annual aggregate Medicaid payments will not increase or decrease as a result of this amendment.

These rules are being proposed for permanent **Rescission** pursuant to Section 119.032 of the Revised Code, which requires the review of all state agency rules within a five year period. Rescissions are required in order to eliminate rules implementing reimbursement formulas that are no longer valid based on Am. Sub. H.B. 66 of the 126th General Assembly and to facilitate a reorganization of rules under Ohio Administrative Code 5101:3-3.

Rule 5101:3-3-24 entitled Prospective rate reconsideration for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-24.1 entitled Rate adjustments for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR): government mandates.

Rule 5101:3-3-43 entitled Nursing facilities (NFs): method for establishing the total prospective rate.

Rule 5101:3-3-44 entitled Method for establishing the direct care cost component of the prospective rate for nursing facilities (NFs).

Rule 5101:3-3-45 entitled Purchased nursing services reimbursement for nursing facilities (NFs).

Rule 5101:3-3-48 entitled Compensation cost limits, reasonable costs for compensation, and compensation disallowances if any for owners, relatives of owners, and administrators in nursing facilities (NFs).

Rule 5101:3-3-48.1 entitled Compensation cost limits, reasonable costs for compensation, and compensation disallowances if any for owners and relatives of owners in nursing facilities (NFs).

Rule 5101:3-3-48.2 entitled Compensation cost limits, reasonable costs for compensation, and compensation disallowances if any for administrators in nursing facilities (NFs).

Rule 5101:3-3-49 entitled Nursing facilities (NFs): method for establishing the other protected costs component of the prospective rate.

Rule 5101:3-3-49.1 entitled Nursing facilities (NFs): method for establishing reimbursement for the franchise permit fee reported in account 6091.

Rule 5101:3-3-50 entitled Method for establishing the indirect care costs component of the prospective rate for nursing facilities (NFs).

Rule 5101:3-3-50.1 entitled Method for establishing the out-of-facility meal cost limits for nursing facilities (NFs).

Rule 5101:3-3-51 entitled Method for establishing capital reimbursement for nursing facilities (NFs).

Rule 5101:3-3-51.2 entitled Cost of ownership and efficiency incentive for nursing facilities (NFs).

Rule 5101:3-3-51.3 entitled Nonextensive renovations for nursing facilities (NFs).

Rule 5101:3-3-51.4 entitled Nursing facilities (NFs): return on equity.

Rule 5101:3-3-51.5 entitled Reimbursement for leased nursing facilities (NFs).

Rule 5101:3-3-51.6 entitled Notice, escrow, and recovery of excess depreciation paid, change in the medicaid provider agreement, closure or voluntary withdrawal from the medical assistance program for nursing facilities (NFs).

Rule 5101:3-3-53 entitled Nursing facilities (NFs): Rates for providers new to the medical assistance program and providers that change provider agreements.

Rule 5101:3-3-57 entitled Nursing facilities (NFs) expenditure limitation.

Rule 5101:3-3-58 entitled Nursing facilities (NFs) stabilization fund: method of establishing payment(s) from the stabilization fund.

Rule 5101:3-3-78 entitled Intermediate care facilities for the mentally retarded(ICFs-MR): method for establishing the total prospective rate.

Rule 5101:3-3-79 entitled Method for establishing the direct care costs component of the prospective rate for intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-81 entitled Compensation cost limits, reasonable costs for compensation, and compensation disallowances if any for owners, relatives of owners, and administrators in intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-81.1 entitled Compensation cost limits, reasonable costs for compensation, and compensation disallowances if any for owners, relatives of owners in intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-81.2 entitled Compensation cost limits, reasonable costs for compensation, and compensation disallowances if any for administrators in intermediate care facilities for the mentally retarded (ICFs-MR).

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.

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.

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).

Rule 5101:3-3-83.1 entitled Method for establishing the out of facility meal cost limits for intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-84 entitled Method for establishing capital reimbursement for intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-84.2 entitled Cost of ownership and efficiency incentive for intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-84.3 entitled Nonextensive renovations for intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-84.4 entitled Intermediate care facilities for the mentally retarded (ICFs-MR): return on equity.

Rule 5101:3-3-84.5 entitled Notice, escrow, and recovery of excess depreciation paid, change in the Medicaid provider agreement, closure or voluntary withdrawal from the medical assistance program, for intermediate care facilities for the mentally retarded (ICFs-MR).

Rule 5101:3-3-86 entitled Intermediate care facilities for the mentally retarded (ICFs-MR): Rates for providers new to the medical assistance program and for providers that change provider agreements.

Rule 5101:3-3-90 entitled Intermediate care facilities for the mentally retarded (ICFs-MR): expenditure limitation

A copy of the proposed rule(s) is available, without charge, to any person affected by the rule(s) at the address listed below. The rule(s) is also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rule(s) 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 rule(s) or comments on the rule(s) 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 legal@odjfs.state.oh.us.