

PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

DATE: September 9, 2008
TIME: 10:00 a.m.
LOCATION: Room 3110B, Rhodes State Office Tower
30 East Broad Street, Columbus, Ohio 43215

Pursuant to sections 5111.02 and Chapter 119. of the Ohio Revised Code (ORC), 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.

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 is being proposed for amendment in order to comply with the agency's five year rule review requirements pursuant to ORC Section 119.032. This rule identifies covered services generally available to medicaid recipients and describes the relationship of such services to those provided by a nursing facility (NF) or an intermediate care facility for the mentally retarded (ICF-MR). The changes to the rule are as follows:

In the introductory paragraph of the proposed rule, "the provisions governing such reimbursement as set forth in Chapter 5101:3-3 of the Administrative Code are applicable." was corrected to read: "the rules governing such reimbursement are set forth in Chapter 5101:3-3 of the Administrative Code." The sentence "For state operated ICFs-MR reimbursement is made in accordance with rule 5101:3-3-99 of the Administrative Code." was stricken, and the last sentence of the introductory paragraph was edited to read: "All references to "ICFs-MR" in paragraphs (A) to (I) of this rule do not include state-operated ICFs-MR for which reimbursement is made in accordance with rule 5101:3-3-99 of the Administrative Code."

In paragraph (C)(2)(d) of the proposed rule, "except that emergency stand-by oxygen is" was changed to "except emergency stand-by oxygen which is."

Paragraph (D)(2) was shortened to simply point to Chapter 5101:3-9 of the Administrative Code and provisions established by the Ohio State Board of Pharmacy for limitations on pharmaceuticals reimbursable directly to the pharmacy provider. Paragraphs (D)(2)(a), (D)(2)(b) and (D)(2)(c) were stricken for being duplicative of language found in Chapter 5101:3-9 and provisions of the Ohio State Board of Pharmacy.

In paragraph (E)(1) of the proposed rule, references to rules 5101:3-3-47, 5101:3-3-47.3, and 5101:3-3-46 were corrected to 5101:3-3-46, 5101:3-3-46.3, and 5101:3-3-46.1, respectively. In paragraph (E)(2) of the proposed rule, "rule 5101:3-3-78 of the Administrative Code" was replaced with "sections 5111.20 to 5111.33 of the Revised Code." Paragraph (E)(3) of the proposed rule was deleted as psychologist services and

respiratory therapy are addressed in paragraphs (E)(1) and (E)(2) of the proposed rule for NFs and ICFs-MR respectively.

The wording of paragraph (F)(1) was changed from "services provided by a physician to a resident of a NF or ICF-MR" to "services provided to a resident of a NF or ICF-MR by a physician." In paragraphs (F)(1)(c)(iii) and (F)(1)(c)(iv)(a) of the proposed rule, "nurse practitioner" was changed to "certified nurse practitioner" to comport with current terminology. Paragraph (F)(1)(c)(iv)(a) was expanded to reference Revised Code Chapter 4730 and Administrative Code Chapter 4730-1 for physician assistants, and Revised Code Chapter 4723 and Administrative Code Chapter 4723-4 for certified nurse practitioners. Duplicative language in subsequent paragraphs of the rule was stricken where the provisions were covered in Revised Code Chapters 4730 and 4723 and Administrative Code Chapters 4730-1 and 4723-4, and paragraph references were updated accordingly.

Existing paragraphs (G) and (H) regarding psychologist services and respiratory therapy services respectively were deleted from the proposed rule, and the deleted language was included in paragraphs (E)(1) and (E)(2) to better organize the rule content. Lastly, new paragraphs (G) through (I) of the proposed rule were arranged in alphabetical order according to paragraph titles.

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 in order to comply with the agency's five year rule review requirements pursuant to ORC Section 119.032. This rule sets forth the requirement for the timely filing of cost reports by NFs and ICFs-MR, the methodology for processing those reports by ODJFS, and penalties that may be applied for not filing cost reports as required. Changes to the proposed rule are as follows:

In the introductory paragraph of the proposed rule, the revision dates for the "Medicaid Nursing Facility Cost Report" (JFS 02524N) and the "Medicaid ICF-MR Cost Report" (JFS 02524) were both updated to 01/2007. In paragraph (A)(1)(b) of the proposed rule, the reporting period end date in the case of a facility closure was clarified by referencing the definition of "closure" in rule 5101:3-3-02(A)(1) of the Administrative Code. Paragraph (A)(1)(b) of the proposed rule also clarifies that a facility closure under any circumstance would trigger submission of a final cost report. Paragraph (A)(1)(b) was also rearranged such that new language is inserted following stricken language pursuant to the LSC rule drafting manual.

In paragraph (A)(3) of the proposed rule, "the Ohio department of job and family services" was replaced with the agency's acronym, and a paragraph reference was corrected.

The last sentence of paragraph (C) was edited to remove the colon in the middle of the sentence and to read as follows: "ODJFS shall notify each NF and ICF-MR of any costs

preliminarily determined not to be allowable and provide the reasons for the determination."

In paragraph (D) of the proposed rule, "...per diem cost..." was changed to "...per diem cost or rate..." in both of the first two sentences so that the rule applies to both NFs and ICFs-MR.

In paragraphs (H) and (I)(1) of the proposed rule, paragraph references were corrected. In paragraph (I)(5) of the proposed rule, an amended date was added for the cited reference to the Social Security Act.

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.