

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

DATE: February 17, 2009
TIME: 9:00 a.m.
LOCATION: Room 2925, Rhodes State Office Tower
30 East Broad St., Columbus Ohio 43215

Pursuant to section 5111.02 and Chapter 119. of the Ohio Revised Code (ORC) and 42 CFR 447.205, the director of the Department of Job and Family Services gives notice of the department's intent to consider the amendment, adoption, and rescission of the rules as identified below and of a public hearing thereon.

The following rules were emergency filed by the department for an effective date of January 1, 2009 in response to healthcare common procedure coding system (HCPCS) changes introduced for 2009 by the American Medical Association (AMA). These rule changes were necessary to insure compliance with the Health Insurance Portability and Accountability Act of 1996, pursuant to 45 CFR 162.1000 and 45 CFR 162.1002. These rules are now being proposed for amendment through regular filing with an effective date of March 31, 2009. The proposed amendments include additional changes.

Rule **5101:3-1-60**, entitled "Medicaid reimbursement." sets forth the reimbursement policies for all professional providers. Changes included the addition of new codes, deletion of obsolete or discontinued codes, and revision of definitions and current reimbursement amounts for various medical equipment codes. Changes also included the creation of reimbursement amounts for the 2009 codes and discontinuing the reimbursement amounts for codes obsolete, discontinued or eliminated from program coverage. Some of the coding changes require amendments to existing policy on coverage. There is no fiscal impact as a result of these changes. Corrections were also made to vaccine codes 90696, 90681, and 90698 in order to codify the reimbursement amount allowed for these codes, which became effective November 13, 2008 in rule 5101:3-4-12. Also, this rule is being amended to increase the price for vaccine code 90378. This adjustment was necessary to assure that access to this vaccine for children remains accessible to Ohio medicaid consumers. The department estimates the financial impact for the additional reimbursement amount for code 90378 (Respiratory syncytial virus immune globulin IM 50mg) is \$40,000 in expenditures for the year. The other vaccine codes do not generate an additional cost for the department.

The reimbursement amounts for specific durable medical equipment (DME) codes for which the Ohio rate would have been in excess of the comparable medicare rate as of January 1, 2009 are proposed for reduction. Thirty-six of these codes are for wheel chair components, five are for oxygen items and one each is for a humidifier and bed side rails. The average rate reduction over the DME codes is approximately 10 percent, of which five percent is attributable to aligning the medicaid rate with that of medicare and five percent is attributable to a cost-savings initiative. The yearly savings on this initiative is estimated by the department to be \$2.3 million.

In addition, the maximum payment amounts for drugs administered in a provider setting are proposed for updating using the Centers for Medicare and Medicaid Services most recent Average Sales Price (ASP) listing. ASP is based on the average price charged by the manufacturer or manufacturers of the drug product, so the maximum payment for an individual code may have increased or decreased based on market conditions. The overall yearly savings on this initiative is estimated by the department to be \$920,000.

The department estimates that as a result of the initiatives contained in this filing of rule 5101:3-1-60 a program yearly savings of \$3.1 million will be recognized.

Rule **5101:3-10-20**, entitled "Covered orthotic and prosthetic services and associated limitations." sets forth information regarding the orthotic and prosthetic equipment and supplies covered by the medicaid program. Changes included the addition of new codes, deletion of obsolete codes and revision of definitional codes. Some of the coding changes require amendments to existing policy on coverage.

The following rules are being proposed for amendment by the department for an effective date of April 1, 2009 in response to stakeholder requests for program coverage updates and clarification regarding the Ohio medicaid durable medical equipment (DME) program.

Rule **5101:3-10-03**, entitled "Medicaid supply list." sets forth information regarding the durable medical equipment and supplies covered by the medicaid program. The appendix to this rule is being amended to reflect changes in program coverage to include the addition of new codes and the deletion of codes that are being removed from program coverage and to require DME prescribers and providers to comply with federal anti-kickback regulations. The body of this rule is also being amended in order to update and clarify coverage criteria for DME.

Rule **5101:3-10-08**, entitled "Repair of medical equipment." sets forth information regarding the necessary criteria for a provider to file a reimbursement claim to medicaid for the repair of medical equipment. This rule is being amended to revise and clarify program policy regarding the repair of durable medical equipment (DME) to include provisions for repairs resulting from malicious damage. A new certificate of medical necessity (CMN) JFS 01904 (6/2007) "Certificate of Medical Necessity/Prescription repair of durable medical equipment (DME)" is also being added as an appendix to this rule in order to facilitate the prior authorization for the repair of DME in lieu of a written prescription. In addition, the reimbursement rate for the repair of hearing aids is being amended to reflect a program increase from the present rate of one hundred and ten per cent of the provider's invoice cost to one hundred and twenty five per cent of the provider's invoice cost.

Rule **5101:3-10-15** entitled "Transcutaneous electrical nerve stimulators (TENS)." sets forth program policy pertaining to the supply of TENS units and is being filed for policy amendments to reflect that prior authorization of this equipment will no longer be required for the supply of this equipment. This rule is also being amended primarily to make the rule reflective of recent program changes in regards to the program coverage of TENS units. This rule has had additional coverage criteria added to it as well as revisions to the certificate of medical necessity (CMN) JFS 03402 (10/2008) Certificate of Medical Necessity/Prescription transcutaneous electrical nerve stimulators (TENS) which will be utilized by providers to document in their records the medical necessity of a TENS unit. Revisions to the rule body of this rule include but are not limited to:

- A trial period of 30 days before TENS is dispensed, up from 14 days in the current rule.
- The addition of a limitation that when a TENS unit is used for post-operative pain, reimbursement is limited to 30 days after surgery
- Requirement that, before TENS is available, other appropriate treatment modalities have been tried and failed.
- Temporomandibular joint disorder (TMJ) is eliminated as a condition for which a TENS unit is available.
- Disorders of the sacrum are eliminated as conditions for which a TENS unit is available.

Copies of the proposed rules and the certificates of medical necessity are available, without charge, to any person affected by the rules at the address listed below and at the county departments of job and family services. These 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 received may be reviewed at this address.