

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

DATE: September 14, 2009
TIME: 10:00 a.m.
LOCATION: Room 2925, Rhodes State Office Tower
30 East Broad Street, Columbus, Ohio 43215-3414

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

These rules are being proposed for adoption, amendment, or rescission as a result of Amended Substitute House Bill 1 which changed how Medicaid will reimburse some services provided to nursing facility (NF) residents. These services, which include oxygen; custom wheelchairs and repair; physical, occupational and speech language pathology/audiology therapy; medical transportation (ambulance and ambulette); and some over-the-counter drugs, were previously provided by, and reimbursed to, fee-for-service (FFS) providers. Amended Substitute House Bill 1(amended section 5111.20, new section 5111.262, repealed section 5111.263) changed this arrangement by making NFs responsible for providing these services to Medicaid NF residents and by reimbursing NFs for the services through the facility per diem.

As a result of these changes in service delivery, the department estimates that expenditures to NFs will increase by approximately \$72 million annually and the reimbursement to FFS providers for these same services will decrease by approximately \$76 million. The department estimates that its aggregate annual expenditures for oxygen, custom wheelchairs and repair, physical, occupational and speech language pathology/audiology therapy, medical transportation, and over-the-counter drugs will decrease by approximately \$3.8 million as a result of these changes when comparing historic payments to fee-for-service providers of these services to the estimated future payments to NFs for these same services. The department estimates a savings of \$1.3 million attributable to oxygen, \$2.0 million in savings attributable to custom wheelchairs and \$1.8 million in savings attributable to over-the-counter drugs. An increase in expenditures of \$1.3 million is attributable to medical transportation. No savings is attributable to including the skilled therapies costs in the nursing facility per diem. The amount to be included in the NF rate for these services, \$3.91 per day, was determined by considering historic utilization in the nursing home population, historic Medicaid cost data, and market trends that impact purchasing strategies.

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

Rule 5101:3-3-19.1 entitled "Relationship of other covered medicaid services to intermediate care facility for the mentally retarded (ICF-MR) services" sets forth covered services generally available to medicaid recipients and describes the relationship of such services to those provided by an ICF-MR. This rule is being proposed for adoption to separately identify covered services in ICFs-MR. Previously, these services were identified along with those covered in nursing facilities (NFs) in rule 5101:3-3-19.

Rule 5101:3-3-64.1 entitled "Nursing facility payment for cost-sharing other than medicare part A" is being proposed for adoption in order to clarify that for Medicaid eligible NF residents, the NF per diem rate includes Medicaid payments for Medicare and other third-party insurance cost-sharing, including coinsurance or deductible payments, associated with services that are included in the NF per diem, and that neither the Medicaid eligible NF resident nor ODJFS is responsible for such cost-sharing.

The following rule is being proposed for amendment pursuant to section 119.032 of the Revised Code:

Rule 5101:3-3-19 entitled "Relationship of other covered medicaid services to nursing facility (NF) services" sets forth covered services generally available to Medicaid recipients and describes the relationship of such services to those provided by NFs. This rule is being proposed for amendment as a result of Amended Substitute House Bill 1 of the 128th General Assembly which changed services included in the nursing facility per diem to include oxygen, custom wheelchairs and repair, physical, occupational and speech language pathology/audiology therapy, medical transportation (ambulance and ambulette), and some over-the-counter drugs. These services were previously provided by fee-for-service providers. Amended Substitute House Bill 1 changed this arrangement by making NFs responsible for providing these services to Medicaid NF residents. This rule previously addressed covered services in both NFs and in Intermediate Care Facilities for the Mentally Retarded (ICFs-MR). A new rule (5101:3-3-19.1) will now address covered services in ICFs-MR.

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

Rule 5101:3-3-46 entitled "Skilled therapy services for nursing facilities (NFs): definitions" sets forth the definition of terms used to describe the coverage of physical, occupational, speech-language pathology therapy, respiratory care and restorative nursing care services in the NF setting. This rule is being proposed for rescission because the provision of these services in the NF setting is now addressed in amended rule 5101:3-3-19.

Rule 5101:3-3-46.1 entitled "Skilled therapy and related services for nursing facilities (NFs): coverage and limitations" sets forth the coverage and limitation criteria for physical, occupational, speech-language pathology/audiology therapy, respiratory care and restorative nursing care services in the NF setting. This rule is being proposed for rescission because the provision of these services in the NF setting is now addressed in amended rule 5101:3-3-19.

Rule 5101:3-3-46.2 entitled "Claim submission and payment for covered skilled therapy services for nursing facilities (NFs)" sets forth the billing and payment criteria for NF services. This rule is being proposed for rescission because the reimbursement for skilled therapy services is now set forth in amended rule 5101:3-3-19.

Rule 5101:3-3-46.3 entitled "Payment authorization for covered skilled therapy services denied by medicare and required for certification of nursing facilities (NFs)" sets forth the process providers of skilled therapy services must follow for reimbursement of covered services denied by Medicare. This rule is being proposed for rescission because the provision of these services in the NF setting is now addressed in amended rule 5101:3-3-19.

Copies of the proposed rules 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. 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 email at rules@jfs.ohio.gov. Comments received may be reviewed at this address.