

**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 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 of the rules as identified below and of a public hearing thereon.

These rules are being proposed for amendment 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 Amended Substitute House Bill 1(amended section 5111.20, new section 5111.262, repealed section 5111.263) changed this arrangement by making NFs responsible for providing these services to Medicaid NF residents and by reimbursing NFs for the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.

Rule 5101:3-1-05, entitled Medicaid coordination of benefits with the Medicare program (Title XVIII), defines Medicaid's coordination of benefits with the Medicare program. It also describes the Medicare crossover claim process, reimbursement of cost sharing and what a provider must do to receive payment for a covered Medicaid service when Medicare denied payment as the primary insurance. Changes to the rule can be found in paragraphs (E)(2) and (E)(3). The changes direct providers to Chapter 5101:3-3 of the Administrative Code to find Medicaid cost sharing obligations for nursing facility services included in the nursing facility per diem. The

changes also clarify cost sharing for Medicare services not covered under rule 5101:3-2-25 or Chapter 5101:3-3 of the Administrative Code are covered under rule 5101:3-1-05.3 of the Administrative Code.

Rule 5101:3-1-05.3, entitled Payment for "Medicare Part B" cost sharing, defines Medicaid's payment methodologies for Medicare Part B crossover claims not covered under Chapters 5101:3-2 and 5101:3-3 of the Administrative Code. Changes include directing providers to Chapter 5101:3-3 of the Administrative Code to find Medicaid cost sharing obligations for nursing facility services included in the nursing facility per diem. Other changes to the rule are not substantive and should better clarify to providers our payment policies for cost sharing on Part B crossover claims.

Rule 5101:3-9-03, entitled Covered Drugs and Associated Limitations, sets forth the coverage and limitations of the Ohio Medicaid pharmacy program. This rule is being proposed for amendment as a result of Amended Substitute House Bill 1 and for five-year rule review. This rule sets forth the drugs covered by the Medicaid program and the associated limitations. Changes were made to comply with five-year rule review requirements, including deletion of language regarding claims submitted prior to November 2003 and replacing the term long-term care facility with the more specific terms nursing facility (NF) and intermediate care facility for the mentally retarded (ICF-MR). Changes were also made in coverage of over-the-counter drugs for residents of NFs. Some over-the-counter drugs are the responsibility of the NF and are reimbursed to the NF through the facility per diem.

Rule 5101:3-10-03, entitled Medicaid Supply List, sets forth a listing of medical/surgical supplies, durable medical equipment and supplier services covered by the Ohio Medicaid program. Appendix A to this rule is being amended to clarify that the coverage of oxygen and wheelchairs under this rule applies only to residents of Intermediate Care Facilities for the Mentally Retarded (ICFs-MR), and not to residents of NFs. This rule is also being submitted for five year rule review.

Rule 5101:3-10-08, entitled Repair of Medical Equipment, sets for the coverage criteria for the repair of medical equipment. This rule is being amended to set forth that the repair of all wheelchairs in a NF is the responsibility of the NF and reimbursable to the NF through the facility per diem. Fee-for-service providers can no longer bill for the repair of NF resident wheelchairs. The provisions in this rule do not apply to NFs. This rule is also being submitted for five year rule review.

Rule 5101:3-10-13.1, entitled Oxygen: Covered Services and Limitations in a Long Term Facility (LTCF), sets forth the coverage and reimbursement criteria for oxygen provided to residents of long term care facilities, which includes both ICFs-MR and NFs. This rule is being amended to set forth that the provision of oxygen services to residents of a NF is the responsibility of the NF and reimbursable through the facility per diem. Fee-for-service providers can no longer bill for oxygen supplied to NF residents. The provisions in this rule do not apply to NFs. The coverage of, and reimbursement for, oxygen services supplied to residents of an ICF-MR remains unchanged. This rule is also being submitted for five year rule review.

Rule 5101:3-10-16, entitled Wheelchairs, sets forth the coverage and reimbursement criteria for wheelchairs. This rule is being amended to set forth that the provision of wheelchairs, including all parts, options, accessories and repairs, to residents of a NF is the responsibility of the NF and reimbursable through the facility per diem. Fee-for-service providers can no longer bill for wheelchairs supplied to NF residents. The provisions in this rule do not apply to NFs. This rule is also being submitted for five year rule review.

Rule 5101:3-15-02.8, entitled Medical Transportation Services: Eligible Providers, sets forth the requirements necessary for enrollment as a provider of ambulance and ambulette services. This rule is being amended to set forth that the provision of medical transportation services to residents of a NF is the responsibility of the NF and reimbursable through the facility per diem. Fee-for-service providers can no longer bill for the transport of NF residents. The provisions in Chapter 3-15 do not apply to NFs.

Rule 5101:3-34-01.3, entitled Physical Therapy, Occupational Therapy and Speech-language Pathology/Audiology Services: Provider Claims, Billing, Payment and Reimbursement, sets forth the billing criteria for providers of physical therapy, occupational therapy and speech-language pathology/audiology services. This rule is being amended to set forth that the provision of therapy services to residents of a NF is the responsibility of the NF and reimbursable through the facility per diem. Fee-for-service providers can no longer bill for therapy services to NF residents. The provision in this rule and in rule 3-34-01.2 do not apply to NFs.

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 proposed 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 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 43215-0414, by fax at (614) 752-8298, or by e-mail at rules@jfs.ohio.gov. Comments received may be reviewed at this address.