

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

Date: December 23, 2009
Time: 10:00 a.m.
Location: Room 3110B, Rhodes State Office Tower
30 East Broad St., Columbus, Ohio 43215

Pursuant to Sections 5111.02, 5111.26, 5111.20 and Chapter 119. of the Ohio Revised Code, 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.

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" 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 failure to file cost reports as required. Changes to the proposed rule are as follows:

In the leading paragraph, the revision date for the NF cost report has changed from (rev. 01/2007) to (REV. 01/2010).

In paragraph (A)(3) of the proposed rule, language was added to specify that late file penalties assessed for each day the cost report is submitted after its original due date shall occur during the thirty day termination period. In paragraph (D) of the proposed rule, language was stricken to remove the requirement that an amended cost report must change the total per diem cost of the applicable cost center by ten cents or more per patient day. New language was added to paragraph (D) of the proposed rule to reference section 5111.27 of the Revised Code for the requirement that ODJFS notify providers of its determination regarding its review for accuracy of amended cost reports.

The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of the proposed amendments to this rule.

Rule **5101:3-3-42**, entitled "Nursing facilities (NFs): chart of accounts", sets forth the chart of accounts (Appendix A) for nursing facilities. The rule text is not being revised; however, the existing Appendix A, entitled "Chart of Accounts" is being rescinded and a new Appendix A with the same title is being enacted. Changes to the "Chart of Accounts" are listed as follows:

Pursuant to Am. Sub. H.B. 1, section 5111.20 (H)(2), "direct care costs" now include oxygen, over-the-counter pharmacy products, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists and audiologists. The leading paragraph under Medical Supplies has been changed to add, "Beginning 08/01/09 report over-the-counter pharmacy product expenses in account 6301 or account 6311 pursuant to rule 5101:3-9-03 (J) of the Administrative Code. For those facilities participating in medicaid and not in medicare, all medical supplies are to be classified in

account 6311. For those facilities participating in both the medicare and medicaid programs, medical supplies must be categorized and classified as follows:"

Account 6321 has been changed to read as follows:

6321 Oxygen – Emergency stand-by only

A new account for oxygen has been added as follows:

6322 Oxygen

Beginning 08/01/09 report all oxygen other than emergency stand-by oxygen in this account. This includes contents of oxygen cylinders or tanks, including liquid oxygen, oxygen producing machines (concentrators) for specific use by an individual recipient, and costs of equipment associated with oxygen administration, such as: carts, regulators/humidifiers, cannulas, masks, and demurrage, pursuant to rule 5101:3-3-19 of the Administrative Code.

The therapies have been added to the chart of accounts as numbers 6600, 6605, 6610, 6615, 6620, and 6630 respectively under a new section, "Direct Care Therapies". Beginning 08/01/09 use these accounts to report therapies. Account numbers 6640 through 6680.2 have been added to include such items as payroll taxes, employee fringe benefits, and staff development related to the "Direct Care Therapies".

Account number 6205 has been revised to delete the second paragraph referring to Cincinnati Municipal Code, Chapter 847, as this chapter has been repealed.

Under account number 7271, the incorrect sub-account number 7761.2 has been corrected to 7271.2.

In the description for account number 6330, reference to the version number of the minimum data set (MDS) resident assessment instrument has been deleted and replaced with a reference to the current version of the of the resident assessment instrument.

Account numbers 7055 and 7056 have been revised to delete the last sentence of each account description excluding "peptamen enteral nutritional therapy" and "parenteral nutritional therapy" because these services are reimbursed to the nursing facility through the per diem payment.

Pursuant to Am. Sub. H.B. 1, section 5111.20 (B), "ancillary and support costs" now include "wheelchairs" and "resident transportation". Account numbers 7735 and 7631 have been added as follows:

7735 Custom Wheelchairs (only 08/01/09 forward)

Beginning 08/01/09 this account includes the cost of all custom wheelchairs and related repairs. Report all expenses related to wheelchairs in this account except for those wheelchairs that meet capitalization guidelines.

7631 Resident Transportation

For the period 08/01/09 – 08/17/09 and for 10/01/09 and forward report all transportation expenses in this account except for expenses related to assets which

meet capitalization guidelines and should be reported as capital assets in account 8050. Resident transportation costs for the period 08/18/09 – 09/30/09 are reimbursed on a direct bill basis.

Under the "non-reimbursable expenses" account category, account numbers 9600 through 9700.2 have been revised to indicate these are valid only through 07/31/09 and that beginning 08/01/09 "direct care therapy" account numbers 6600 through 6680.2 should be used. Account 9720 has been revised to read as follows:

9720 Oxygen - (only through 07/31/09). Beginning 08/01/09 and forward report all oxygen other than emergency stand-by oxygen in account number 6322. Emergency stand-by oxygen should be reported in account number 6321.

Two new revenue accounts have been added as follows:

5180 Resident Transportation
5190 Wheelchairs

References to the Code of Federal Regulations (CFR), have been updated throughout the chart of accounts to reflect the current CFR revision date.

Rule **5101:3-3-42.1**, entitled "Nursing Facility (NF): medicaid cost report", sets forth the medicaid cost report for nursing facilities. The existing Appendix A is being rescinded and a new Appendix A with the same title is being enacted. Changes to the NF cost report and related instructions are listed as follows:

General Cost Report Instructions: The revision dates for the cost report form and related cost reporting instructions have been updated from 01/2007 to 01/2010. Line number references throughout the instructions have been updated.

Lines 6,7 and 8 have been deleted from the instructions for Schedule C-1 because the automated cost report software completes these lines automatically.

Position Number for Owners/Relatives of Owner, Page 24 of 63: Lines have been added for the five-digit "WH Code" position numbers for the "direct care therapies" and the related payroll taxes, employee fringe benefits, and staff development costs added to Schedule B-2, Page 2 of 2, as described below.

Schedule A-1: A new column 6 was added to accommodate "Medicaid managed care days". The heading of column 9 was changed to read, "Medicare managed care, veteran and other days". The cost report instructions were updated accordingly.

Schedule A-2: Reference lines on this schedule have changed to reflect changes made on Schedules B-2 and C as described below.

Schedule A-3: Reference lines on this schedule have changed to reflect changes made on Schedules B-2 and C as described below.

Schedule B-2, Page 1 of 2: Account number 6322 has been added for "Oxygen" beginning 08/01/09, to report all oxygen other than emergency stand-by oxygen.

Schedule B-2, Page 2 of 2: a new section, "Direct Care Therapies", Lines 37 through 49 has been added for reporting costs beginning 08/01/09 and forward for physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, audiologists and related payroll taxes, employee fringe benefits, and staff development costs.

Schedule C, Page 2 of 3: Two new chart of accounts titles have been added to this schedule for 08/01/09 and forward. Chart of accounts number 7631 for "resident transportation" is on line 51 and account number 7735 for "custom wheelchairs" is on line 71.

Schedule C, Page 3 of 3: The account titles on lines 82 through 93 and line 97 have been changed to indicate these accounts are used only through 07/31/09.

Attachment 5: Columns 1 through 4 on line 1 have been deleted since quarterly reporting is no longer required.

Attachment 6, Page 1 of 2: a new section, for "Direct Care Therapies", Lines 19 through 28 has been added, for the "Direct Care Therapies" described on Schedule B-2, Page 2 of 2 above.

Line numbers throughout the cost report have been renumbered to accommodate new or moved line items.

Rule **5101:3-3-42.4**, entitled " Nursing facilities (NFs): nonreimbursable costs", sets forth costs which are not reimbursable to NFs through the per diem. New language was added to paragraph (D) of the proposed rule to explain therapy costs are nonreimbursable only through July 31, 2009. Beginning August 1, 2009, these costs are reimbursable through the cost reporting mechanism in the direct care cost center. Similarly, new language was added to paragraph (E) of the proposed rule to explain oxygen costs (excluding emergency stand-by oxygen) and custom wheelchairs are reimbursable through the cost reporting mechanism beginning August 1, 2009 and subsequent.

The proposed amendments to rules **5101:3-3-42**, **5101:3-3-42.1**, and **5101:3-3-42.4** are a result of Amended Substitute House Bill 1 which changed how Medicaid will reimburse some services provided to 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, and 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 NF per diem. The department expects no increase or decrease in annual aggregate Medicaid expenditures as a result of the proposed amendments to these rules.

Rule **5101:3-3-71**, entitled: "Intermediate care facilities for the mentally retarded (ICFs-MR): chart of accounts", sets forth the chart of accounts for ICFs-MR. The existing Appendix A to the rule, entitled "Chart of Accounts", is being proposed for rescission and a new Appendix A with

the same title is being proposed for adoption. Changes to the proposed Appendix A are as follows:

New language was added to the description for account number 6215 to indicate services reported under account 6215 should not include services reported under other account numbers elsewhere in the cost report. Language was also added to indicate payment for "Active Treatment Off-site Day Programming Services" are reimbursed through the direct care rate per diem of the Medicaid rate calculation. Clarifying language was also added to explain the costs of off-site day programming shall be reimbursed as part of the ICF-MR's direct care costs regardless of whether or not the area in which the day programming is provided is less than two hundred feet away from the ICF-MR or whether or not the day programming is provided by an individual who, or organization that, is a related party to the provider of the ICF-MR.

The department is unable to estimate the increase or decrease in annual aggregate Medicaid expenditures as a result of proposed amendments to the ICF-MR chart of accounts.

Rule **5101:3-3-94**, entitled "Payment for active treatment day programming services of intermediate care facilities for the mentally retarded (ICFs-MR)", sets forth the provisions to reimburse facilities for active treatment day programming services. Changes to the proposed rule are as follows:

In the title of the proposed rule, "Payment for active" was stricken and replaced by "Active". Paragraph (A) of the proposed rule was stricken and replaced with "The costs of day programming shall be part of the direct care costs of an ICF-MR as off-site day programming". In paragraph (B) of the proposed rule, "For the purposes of this add-on, active" was stricken and replaced with "Active". Appendix A to the rule entitled "Counties and Active Treatment Add-On Rates" is being proposed for rescission.

The department is unable to estimate the increase or decrease in annual aggregate Medicaid expenditures as a result of proposed amendments to this rule.

These rules are 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.