

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

DATE: December 21, 2009
TIME: 10:00 a.m.
LOCATION: Lobby Hearing Room, Rhodes State Office Tower
30 East Broad Street, Columbus, Ohio 43215

Pursuant to Sections 5111.0112, 5111.02, 5111.16, 5111.162, 5111.17, and 5111.176, and Chapter 119. of the Ohio Revised Code, and 42 CFR 447.205, the director of the Ohio Department of Job and Family Services (ODJFS) gives notice of the Department's intent to consider the amendment or rescission of the rules identified below and of a public hearing thereon.

ODJFS is proposing to implement a pharmacy carve-out for the Medicaid Managed Health Care Program. This policy change is being proposed to streamline administrative processes for prescribers and pharmacies by moving all Medicaid consumers to one list of covered drugs and one prior authorization policy, as well as to take advantage of federal and state supplemental Medicaid rebates. The pharmacy carve out will become effective February 1, 2010. Through this proposed policy change, prescribed drugs and certain medical supplies provided through pharmacies will be provided to managed care plan (MCP) enrollees through the Medicaid fee-for-service program, instead of through MCPs. As a result of the proposed carve-out, MCPs will no longer be responsible for providing these services to their members and will no longer receive capitation payments that include prescribed drugs and certain medical supplies provided through pharmacies. Instead, pharmacy providers participating in the Medicaid program will be reimbursed directly for dispensing prescribed drugs and supplies to MCP enrollees pursuant to Chapter 5101:3-9 of the Administrative Code, as amended. These amendments are being proposed in accordance with Amended Substitute House Bill 1 of the 128th General Assembly (House Bill 1) as the savings associated with carving pharmacy out of the Medicaid Managed Health Care Program were assumed in the funds appropriated to JFS in the 600525 account, found in section 309.10 of House Bill 1.

As set forth in detail below, many of these rules are also being proposed for amendment for five-year rule review and other changes unrelated to the pharmacy carve-out.

In addition, two rules are being proposed for amendment for reasons unrelated to the pharmacy carve-out. Language related to a franchise permit fee imposed on the MCPs has been deleted and cross-references are being updated in the rule providing for the termination of membership in managed health care programs.

The effective date for each of the proposed rule changes is February 1, 2010.

The following eight rules are being proposed for amendment for reasons related to the pharmacy carve-out, and for additional reasons where noted:

Rule 5101:3-1-09, entitled Medicaid co-payment program [except for Medicaid consumers enrolled in a Medicaid managed health care program], sets forth policy on co-payments for the Ohio Medicaid program. This rule is being proposed for amendment to change the title of the rule and the opening paragraph to subject consumers enrolled in a MCP to co-payments on prescription drugs received through the Medicaid fee-for-service pharmacy benefit. Other amendments to this rule delete references to the Disability Medical Assistance program and to billing instructions located on the ODJFS website.

Rule 5101:3-1-13.1, entitled Medicaid consumer liability [except for Medicaid consumers enrolled in a Medicaid managed health care program], sets forth policy on Medicaid consumer liability under the Medicaid program. The only proposed amendment to this rule is in the title of the rule to be consistent with other Ohio Administrative Code Chapter 5101:3-1 rule titles. The title change clarifies that all Medicaid consumers are liable for the payment of co-payments for pharmaceutical drugs under the fee-for-service pharmacy benefit. There are no changes to the rule body.

Rule 5101:3-1-19, entitled General principles regarding claim submission [except for services provided through a Medicaid managed care program], sets forth policy for Medicaid providers on how to properly send medical claims for payment of Medicaid services. This rule is being proposed for amendment for five year rule review and to more clearly state that prescription drug claims are exempt from this rule and are defined in Chapter 5101:3-9 of the Administrative Code. Additional amendments to this rule more accurately state the types of claims submissions ODJFS accepts for payment of Medicaid services, more clearly explains ODJFS policy on claims resubmitted for payment when original requests were denied payment, clarifies policy on obtaining claims status information, and reorganizes paragraphs throughout the rule.

Rule 5101:3-9-02, entitled Pharmacy services: medical supplies and durable medical equipment, is being proposed for amendment for five-year rule review and to change coverage for certain medical supplies from the durable medical equipment program to the pharmacy program. This rule sets forth coverage policy for pharmacies to bill medical equipment and supplies. Amendments to the rule specify that beginning February 1, 2010, only pharmacies may bill certain medical supplies that are commonly obtained at the pharmacy, including diabetic supplies and supplies used for respiratory medications. Durable medical equipment providers will no longer be able to bill Ohio Medicaid for these items. Appendix A has been added to specify the services covered only at the pharmacy, including coverage parameters and reimbursement.

Rule 5101:3-9-09, entitled Consumer co-payments for certain pharmacy medications (except for consumers enrolled in the medicaid managed health care program), This rule is being proposed for five-year rule review and to clarify that all Medicaid consumers may have a co-payment for pharmacy services, whether enrolled in the Medicaid fee-for-service program or a Medicaid managed care plan. This rule sets forth the policy on co-payments for prescribed drugs and exclusions to co-payment. This rule and its title are being amended to clarify that all Medicaid consumers may have a co-payment for pharmacy services, whether enrolled in the Medicaid fee-for-service program or a

Medicaid managed care plan. In addition, changes have been made to delete historical references, delete a reference to the Disability Medical Assistance program, clarify the definition of long-term care facilities, update references to hospice policies, update cross-references and clarify the wording of existing policy.

Rule 5101:3-10-17, entitled Blood glucose monitors (glucometers) and supplies, is being proposed for rescission because it is no longer applicable to the Medicaid durable medical equipment program. This rule sets forth medical necessity for blood glucose monitors and related supplies. This rule is being rescinded because coverage of these items is being moved to the Medicaid pharmacy program.

Rule 5101:3-26-03, entitled Managed health care programs: covered services, is being proposed for amendment. This rule sets forth the services that MCPs are required to provide to Medicaid managed care consumers. The changes to the rule add services provided through Medicaid Schools Program providers, certain medical supplies provided at pharmacies, and drugs covered under the Medicaid fee-for-service pharmacy benefit to the list of coverage exclusions under the Medicaid Managed Health Care Programs. The changes to the rule also revise a term and update a cross reference.

Rule 5101:3-26-12, entitled Managed health care programs: member co-payments, is being proposed for amendment. This rule sets forth provisions for MCP member co-payments. The changes to the rule delete language permitting MCPs to impose pharmacy co-payments.

The changes described above will permit Ohio to collect additional federal and state supplemental rebates, resulting in an estimated net annualized decrease of expenditures to the state of Ohio of \$140.4 million for the period February 1, 2010 to January 31, 2011. Rule amendments related to co-payment will have no financial impact on ODJFS, because savings associated with co-payments were assumed in the managed care capitation rate calculations, whether or not the managed care plan charged co-payments. Rule amendments related to coverage of supplies will have no financial impact on ODJFS because the reimbursement for the supplies will not change, only the billing procedure. Additionally, rule amendments related to the MSP clarification have no financial impact on ODJFS.

The changes to the following two rules are unrelated to the pharmacy carve-out:

Rule 5101:3-26-02.1, entitled Managed health care programs: termination of membership, is being proposed for amendment. This rule sets forth provisions for the termination of membership in managed health care programs. The changes to the rule update cross references.

Rule 5101:3-26-09.2, entitled Managed health care programs: franchise permit fee, is being proposed for rescission. This rule sets forth the percentage to be used in calculating the franchise permit fee to be paid by managed care plans. The rule is being

rescinded because House Bill 1 ended the statutory authority for the rule, found in section 5111.176 of the Ohio Revised Code, for quarters beginning on and after October 1, 2009.

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 copies 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.