

**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, and Chapter 119. of the Ohio Revised Code, 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 is being changed from "rev. 01/2007" to "Rev. 1/2010".

Language is being modified to more clearly state the existing policy regarding the assessment of a penalty for the late filing of a cost report. The proposed language states that late file penalties are assessed beginning with the start of the thirty day termination period and ending when a complete and adequate cost report is filed or the provider agreement is terminated. In paragraph (D) of the proposed rule, language is being stricken to remove the requirement that in order to file there must be a change in the total per diem cost of the applicable cost center by ten cents or more per patient day. A reference to section 5111.27 of the Revised Code is being added to paragraph (D) making it clear that the ODJFS review is conducted in accordance with section 5111.27 of the Revised Code.

The proposed amendments to rules **5101:3-3-42**, **5101:3-3-42.1**, and **5101:3-3-42.4** bring the NF cost report and chart of accounts in line with the changes implemented in Amended Substitute House Bill 1 and Ohio Ambulance and Medical Transportation Association v. Lumpkin, Case No. 09CVH-07-11498, Franklin County Common Pleas Court. The impact of the proposed changes to these rules will not be reflected in NF rates until the affected cost reports are used to rebase NF prices.

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. The changes to the "Chart of Accounts" are 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 is being 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 is being changed to read as follows:

6321 Oxygen - Emergency stand-by only

A new account for oxygen is being 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 is being 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 are being added to include such items as payroll taxes, employee fringe benefits, and staff development related to the "Direct Care Therapies".

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revised to delete the second paragraph referring to Cincinnati Municipal Code, Chapter 847, as this chapter has been repealed.

Under account number 7271, an incorrect sub-account number 7761.2 is being 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 is being deleted and replaced with a reference to the current version of the of the resident assessment instrument.

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

Pursuant to Am. Sub. H.B. 1, section 5111.20 (B) and Ohio Ambulance and Medical Transportation Association v. Lumpkin, Case No. 09CVH-07-11498, Franklin County Common Pleas Court, "ancillary and support costs" now include "wheelchairs" and "resident transportation". To address this, account numbers 7735 and 7631 are being 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 they 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 are being added as follows:

5180 Resident Transportation

5190 Wheelchairs

References to the Code of Federal Regulations (CFR), are being 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. The changes to the NF cost report and related instructions are as follows:

General Cost Report Instructions

The revision dates for the cost report form and related cost reporting instructions are being updated from 01/2007 to 01/2010. Line number references throughout the instructions have been updated.

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

On page 24 of 63, under the heading "Position Number for Owners/Relatives of Owner", lines are being 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 that are being added to Schedule B-2, Page 2 of 2.

Schedules and Attachments

Line numbers throughout the cost report are being renumbered to accommodate new or moved line items. Other changes to the cost report schedules and attachments are as follows:

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

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

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

Schedule B-2, Page 1 of 2: Account number 6322 is being 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 are being 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 are being 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 are being changed to indicate these accounts are used only through 07/31/09.

Attachment 5: Columns 1 through 4 on line 1 are being 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 are being added, for the "Direct Care Therapies" described on Schedule B-2, Page 2 of 2 above.

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 is being 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 is being 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.

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 are being made to Appendix A to implement section 5111.233 of the Ohio Revised Code as enacted in Am. Sub. H.B. 1.

New language is being 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 is also being added to indicate payment for "Active Treatment Off-site Day Programming Services" is to be reimbursed through the direct care rate per diem of the Medicaid rate calculation. Language is being added to explain that 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.

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. The following changes to the proposed rule remove the references in the rule to the add-on that ended on June, 2007.

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

A copy of the proposed rules is available, without charge, to any person affected by the rules at the address listed below. 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 e-mail at rules@odjfs.state.oh.us. Comments may be reviewed at this address also.