

**FEDERAL MEDICAID NOTICE AND PUBLIC HEARING NOTICE  
OHIO DEPARTMENT OF MEDICAID**

**DATE:** August 1, 2014  
**TIME:** 11:00 a.m.  
**LOCATION:** Room A401, 50 West Town Street  
Columbus, Ohio 43215

Pursuant to section 5165.02 and Chapter 119. of the Ohio Revised Code, the director of the Ohio Department of Medicaid gives notice of the department's intent to consider the rescission of the rules identified below and of a public hearing thereon.

Pursuant to 42 CFR 447.205(a) and Section 1902(a)(13)(A) of the Social Security Act, the director of the Ohio Department of Medicaid gives notice of the department's intent to amend rule 5160-3-17, rescind rules 5160-3-17.1 and 5160-3-17.3, and of a public input process thereon.

Proposed for Rescission

Rule 5160-3-16.2, entitled "Advance directives for nursing facilities (NFs)" sets forth the provisions for advance directives for nursing facilities. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for rescission because the provisions in it are contained in federal regulations at 42 C.F.R. 489.100 or 42 C.F.R. 489.102, or in section 1337.16 or section 2133.10 the Ohio Revised Code.

Rule 5160-3-17.1, entitled "Outlier services in nursing facilities for individuals with severe maladaptive behaviors due to traumatic brain injury (NF-TBI services)" sets forth the provisions for outlier services in nursing facilities for individuals with traumatic brain injury. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for rescission. The Department has determined it no longer needs to have a NF-TBI program because no Medicaid payments for the provision of NF-TBI services have been made since July 1, 2008, and no nursing facility providers have expressed interest to the Department in furnishing NF-TBI services since that time. With the rescission of this rule, reimbursement will no longer be available to nursing facility providers who may wish to begin provision of NF-TBI services and receive Medicaid payment for the provision of those services. The Ohio Department of Medicaid estimates this rescission will not change expenditures for nursing facility services in state fiscal year 2014 when compared to expenditures for nursing facility services in state fiscal year 2013.

Rule 5160-3-17.3, entitled "Out-of-state nursing facility (NF) services for individuals with traumatic brain injury (TBI)" sets forth the provisions for out-of-state nursing facility services for individuals with traumatic brain injury. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for rescission. The Department has determined it no longer needs to have an out-of-state NF-TBI program because no Medicaid payments for the provision of out-of-state NF-TBI services have been made since August 20, 2000. With the rescission of this rule, reimbursement will no longer be available to nursing facility providers who may wish to begin provision of out-of-state NF-TBI services and receive Medicaid payment for the provision of those services. The Ohio Department of Medicaid estimates this rescission will not change expenditures for nursing

facility services in state fiscal year 2014 when compared to expenditures for nursing facility services in state fiscal year 2013.

#### Proposed for Amendment

Rule 5160-3-04, entitled "Payment during the Ohio department of job and family services (ODJFS) administrative appeals process for denial or termination of a provider agreement" sets forth payment provisions during and after proposed termination or non-renewal of a nursing facility's provider agreement by the Department of Medicaid, and payment provisions during and after the appeals process of that proposed action. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for amendment to update the Department's name from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).

Rule 5160-3-16.3, entitled "Private rooms in nursing facilities (NFs)" sets forth the provisions for private room accommodations in nursing facilities, including payment for such accommodations. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for amendment. The changes to the rule are:

- The rule title is being modified in order to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
- The phrase "at the medicaid rate" in paragraph (C)(5) is being deleted for purposes of clarification.

Rule 5160-3-17, entitled "Payment methodology for the provision of outlier services in nursing facilities (NFs)" sets forth the methodology used to pay for outlier services provided in nursing facilities. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for amendment. The changes to the rule are:

- The rule title is being modified in order to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
- In paragraph (C), references to the franchise fee add-on are being deleted because the franchise fee add-on became obsolete when section 5111.243 of the Revised Code was repealed with the implementation of Am. Sub. HB 153 of the 129<sup>th</sup> General Assembly, and is no longer a component of the outlier per diem rate.
- Paragraph references have been re-lettered and re-numbered as necessary due to the deletion of original paragraph (C)(1)(e), which contains the franchise fee add-on provision.
- In re-numbered paragraph (C)(1)(e), the Administrative Code citation is being replaced with a Revised Code citation because the provision in that paragraph is set forth in the Revised Code.
- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130<sup>th</sup> General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
- Ohio Administrative Code references are being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130<sup>th</sup> General Assembly and the subsequent renumbering of rules by the Legislative Services Commission.
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).

Repeal of section 5111.243 of the Ohio Revised Code eliminated the franchise fee add-on as a component of the outlier rate. At the same time, the direct care and quality payment components of the outlier rate were increased significantly to comprise a larger portion of the total outlier rate and link more of the Medicaid payment to quality measures. As a result, outlier providers who are not able to meet the accountability measures necessary to receive the full quality incentive payment as set forth in section 5165.10 of the Revised Code may receive a lower calculated outlier rate than in past fiscal years. The Ohio Department of Medicaid estimates this rescission will not change expenditures for nursing facility services in state fiscal year 2014 when compared to expenditures for nursing facility services in state fiscal year 2013 because no outlier rates were set in state fiscal year 2013 pursuant to this rule, and the Department does not anticipate setting any in state fiscal year 2014.

Rule 5160-3-42, entitled "Nursing facilities (NFs): chart of accounts" sets forth the Medicaid chart of accounts for nursing facilities. This rule is being proposed for amendment to update the Revised Code citation in paragraph (D) because Am. Sub. HB 59 of the 130<sup>th</sup> General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.

Rule 5160-3-57, entitled "Tax cost add-on for nursing facilities (NFs)" sets forth the provisions for determining the per diem rate for tax costs for nursing facilities. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for amendment. The changes to the rule are:

- The rule title is being modified in order to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
- In paragraph (B), the word "provider" is being added for clarification.
- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130<sup>th</sup> General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).

Rule 5160-3-64.1, entitled "Nursing facility (NF) payment for cost-sharing other than medicare part A" sets forth the provisions for cost sharing for nursing facilities other than Medicare Part A. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for amendment. The changes to the rule are:

- The rule title is being modified in order to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).

Copies of the proposed rules are available at the address listed below, without charge, to any person affected by the rules 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 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 Medicaid, Office of Legal Counsel, 50 W. Town Street, Suite 400, Columbus, Ohio 43215, by fax at (614) 995-1301, or by e-mail at [rules@medicaid.ohio.gov](mailto:rules@medicaid.ohio.gov). Comments received may be reviewed upon request.