

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

DATE: January 8, 2015
TIME: 1:00 p.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, adoption, and amendment 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 rescind rule 5160-3-65.1, adopt new rule 5160-3-65.1, amend rules 5160-3-41 and 5160-3-42.3, and of a public input process thereon.

Proposed for Rescission

Rule 5160-3-03.2, entitled "Resident protection fund (RPF) for nursing facilities (NFs) and collection of fines" sets forth the provisions for the resident protection fund, including the methods and procedures for collection of fines that are subsequently deposited into the resident protection fund, and the purposes for which the money in the fund may be used. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for rescission and is being replaced by new rule 5160-3-03.2.

Rule 5160-3-39.1, entitled "Claim submission for nursing facilities (NFs)" sets forth the provisions for claim submission 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 and is being replaced by new rule 5160-3-39.1.

Rule 5160-3-65.1, entitled "Nursing facilities (NFs): rates for providers that change provider agreements" sets forth the provisions for determining rates for nursing facilities that change provider agreements as a result of a change of operator. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for rescission and is being replaced by new rule 5160-3-65.1.

The Ohio Department of Medicaid estimates this rule rescission will not change expenditures for nursing facility services in state fiscal year 2015 when compared to expenditures for nursing facility services in state fiscal year 2014.

Proposed for Adoption

Rule 5160-3-03.2, entitled "Resident protection fund (RPF) for nursing facilities (NFs) and collection of fines" sets forth the provisions for the resident protection fund, including the methods and procedures for collection of fines that are subsequently deposited into the resident protection fund, and the purposes for which the money in the fund may be used. This rule is being proposed for adoption to replace rule 5160-3-03.2, which is being proposed for rescission. The differences between this rule and the rule it is replacing 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 definition of fines is being revised to include assessments other than civil monetary penalties (CMPs).
- The definition of and references to the resident protection fund coordinator are being removed because the position does not exist. The phrase has been replaced with "ODM."
- The provisions regarding the methods and procedures for collection of fines are being combined and revised to reflect that CMS is responsible for imposing and collecting the CMP fines and, if CMS is unable to do so, CMS will notify ODM, who will attempt to collect. It further clarifies that ODH is responsible for issuing fines to Medicaid-only providers for noncompliance with certification requirements, and for notifying ODM, who will attempt to collect.
- In paragraph (C), language is being revised pursuant to changes in federal requirements regarding the purposes for which the resident protection fund may be used, and language is being added regarding the requirement for CMS approval for the use of CMP funds deposited in the resident protection fund.
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).
- Paragraph references are being updated as necessary.

Rule 5160-3-39.1, entitled "Nursing facilities (NFs): claim submission" sets forth the provisions for claim submission for nursing facilities. This rule is being proposed for adoption to replace rule 5160-3-39.1, which is being proposed for rescission. The differences between this rule and the rule it is replacing 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 rule is being restructured to better delineate the requirements for submitting claims for services included and not included in the NF per diem rate, and to enhance readability and comprehension.
- Language is being added that requires nursing facility claims for services not included in the nursing facility per diem rate to be submitted in accordance with rule 5160-1-19 of the Administrative Code.
- Language is being clarified regarding use of electronic data interchange (EDI) and the Health Care Claim Institutional (837I) electronic format.
- Language is being added and modified to require electronic claim submission in EDI or the Medicaid Information Technology Systems (MITS) web portal and to require the use of the UB04 national uniform billing data specifications.
- Language is being added requiring use of the coding standards set forth in the healthcare common procedure coding system, the current procedure terminology codebook, and the international classification of diseases codebook.
- Language is being added that requires trading partners who submit EDI claim transactions to follow the requirements set forth in paragraph (H) of rule 5160-1-19 of the Administrative Code.
- Language is being updated to reference the ODM 837I Companion Guide for compliance requirements for claim submissions.
- Language is being updated to clarify that a single claim shall include days of service provided, including qualifying leave days, for a single individual within a single calendar month and shall not cross calendar months.

- Language is being modified to clarify provisions regarding lump sum payments when the County Department of Job and Family Services (CDJFS) and a Medicaid recipient in a NF determine that a lump sum shall be assigned to the NF as payment for past per diem services received by the recipient.
- Language is being modified to clarify that the date of receipt of an original claim submission shall be determined by the date the claim is received in the web portal or the date the claim is received via electronic data interchange (EDI).
- Language is being modified to clarify that when a provider identifies an underpaid claim, the provider shall submit an adjustment within 180 days of the date the underpaid claim was paid, and when a provider identifies an overpaid claim, an adjustment shall be submitted within 60 days of discovery of the overpayment. The language further clarifies that checks in lieu of claim adjustments shall not be accepted.
- Language is being modified to clarify that, if ODM identifies the need for a provider to adjust a claim, ODM shall notify the provider to make the adjustment within 60 days of notification. If the provider fails to make the adjustment, ODM shall either make the adjustment or void the claim. If an adjustment cannot be made due to lack of outgoing payments, ODM shall issue an invoice and the provider shall remit payment or seek reconsideration within 60 days. Any remaining balance shall be certified to the Ohio Attorney General for collection.
- Language is being added to clarify that claims with prior payment by Medicare or another insurance plan shall be submitted within 180 days from the date Medicare or the insurance plan paid the claim to the nursing facility.
- Language regarding delayed claim submissions has been moved to new paragraph (B)(10), "Exceptions to timely filing requirements."
- The Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).
- Ohio Administrative Code references are being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th General Assembly and the subsequent renumbering of rules by the Legislative Services Commission.
- Language applicable to dates of service prior to July 1, 2005 and between July 1, 2005 and November 30, 2005 has been removed.
- Interest provisions have been removed.

Rule 5160-3-65.1, entitled "Nursing facilities (NFs): rates for providers that change provider agreements" sets forth the provisions for determining rates for nursing facilities that change provider agreements as the result of a change of operator. This rule is being proposed for adoption to replace rule 5160-3-65.1, which is being proposed for rescission. The differences between this rule and the rule it is replacing are:

- Old paragraphs (A) and (B) are being deleted because the provisions in them determine initial rates for entering operators that began participating in the Medicaid program between July 1, 2006 and October 31, 2006, and therefore are no longer necessary.
- In new paragraph (A), language is being added so that the quality incentive component of the nursing facility rate will equal the statewide median as calculated according to section 5165.25 of the Revised Code.
- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130th General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.

- An Ohio Administrative Code reference is being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th General Assembly and the subsequent renumbering of rules by the Legislative Services Commission.
- Paragraph references are being updated as necessary.

The quality incentive component of the nursing facility rate was designed to stimulate high-quality practices that support residents in five general areas: nursing home performance, choice, staffing, clinical practice, and environment. With the adoption of this rule, a nursing facility operator who enters the Medicaid program will have its quality incentive payment calculated at the statewide median rate instead of receiving the exiting operator's quality incentive rate in order to eliminate any negative impact the exiting operator's previous performance on quality measures might have on the entering operator's initial overall rate. The Ohio Department of Medicaid estimates this rule adoption will not change expenditures for nursing facility services in state fiscal year 2015 when compared to expenditures for nursing facility services in state fiscal year 2014.

Proposed for Amendment

Rule 5160-3-16.1, entitled "Nursing facilities (NFs): resource assessment notice" sets forth the provisions that govern the nursing facility resource assessment notice. 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 form number of the Medicaid Resource Assessment Notice form is being changed from JFS 04080 to ODM 04080 due to the creation of the Department of Medicaid, and the effective date of the form is being updated to 7/2014.
- An Ohio Administrative Code reference is being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th 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).

Rule 5160-3-16.5, entitled "Nursing facilities (NFs): personal needs allowance (PNA) accounts and other resident funds" sets forth the provisions for the management and use of nursing facility personal needs allowance accounts and other resident funds. 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 the opening paragraph, the revision date of the reference to the Code of Federal Regulations is being updated.
- Ohio Administrative Code references are being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th 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) or the ODJFS office of Ohio Health Plans (OHP) to the Ohio Department of Medicaid (ODM).

- An Ohio Revised Code citation is being updated because Am. Sub. HB 59 of the 130th General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
- Form references are being updated and grammatical errors are being corrected.

Rule 5160-3-24, entitled "Nursing facilities (NFs): prospective rate reconsideration for possible calculation errors" sets forth the provisions for nursing facilities' requests for rate reconsiderations in cases of possible calculation errors. 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).
- In paragraph (A)(1), language regarding the timeframe for filing a rate reconsideration request is being changed from "no more than thirty days after the later of the initial payment of the rate or the receipt of the rate-setting calculation" to "no more than thirty days after the later of the initial payment of the rate for which reconsideration is being requested or the date on the rate setting package notification."
- In paragraph (A)(2)(b), the address where a rate reconsideration request must be sent is being updated.

Rule 5160-3-41, entitled "Nursing facilities (NFs): placement into peer groups" sets forth the provisions for placement of nursing facilities into peer groups. 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 (A)(1), language is being changed so that for providers new to the Medicaid program, the number of licensed beds will be determined from the provider application as verified by ODH rather than from the provider agreement.
- In paragraph (B), language is being changed to clarify that peer group adjustments due to a change in bed size will be made in the fiscal year following the filing of an annual cost report that reflects the change.
- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130th 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).

Paragraph (B) of this rule clarifies that peer group adjustments due to a change in bed size will be made in the fiscal year following the filing of an annual cost report that reflects the change. Although the language change in paragraph (B) is not a change in methodology, it is a change that further clarifies and memorializes ODM's long-standing methodology, and is being noted to ensure providers are aware of it. The Ohio Department of Medicaid estimates this rule amendment will not change expenditures for nursing facility services in state fiscal year 2015 when compared to expenditures for nursing facility services in state fiscal year 2014.

Rule 5160-3-42.3, entitled "Nursing facilities (NFs): capital asset and depreciation guidelines" sets forth the provisions for capital assets, including guidelines for the depreciation of capital assets, 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), language is being added to require nursing facility providers to refer to CMS publication 15-1, Chapter 1 entitled "Depreciation" for purposes of determining if an expenditure should be capitalized.
- In paragraph (B), the threshold amount over which an asset must be capitalized and depreciated is being changed from \$500 or more to \$5,000 or more in order to be consistent with federal regulations.
- In paragraph (C), language is being added that requires all capital assets to be depreciated using the straight-line method of depreciation, and salvage value to be used to adjust capital asset values when calculating depreciation, in accordance with CMS publication 15-1 entitled "Depreciation."
- Language in paragraph (D) is being changed to require use of the guidelines in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets" instead of the guidelines in Appendix A of this rule when determining the useful life of a capital asset because Appendix A of this rule is being rescinded.
- Additional language in paragraph (D) is being changed to require the use of the Internal Revenue Service (IRS) publication "How to Depreciate Property" instead of Appendix A of this rule if a capital asset is not reflected in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets" because Appendix A of this rule is being rescinded.
- An Ohio Administrative Code reference is being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th 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).

The Ohio Department of Medicaid allows a per diem for depreciation on buildings, components, and equipment used in the provision of patient care that is not reimbursable by the Department directly to the medical equipment supplier. With the adoption of this rule, the threshold amount over which an asset must be capitalized and depreciated is being increased from \$500 or more to \$5,000 or more in order to be consistent with regulations set forth in section 108, Chapter 1 of the Centers for Medicare and Medicaid (CMS) publication 15-1 entitled "Depreciation." Any assets between \$500 and \$4,999 then may be reported as medical minor equipment and claimed at the entire value of the item rather than at the depreciated value. To be further consistent with the guidelines in CMS publication 15-1, Chapter 1, this rule is also being changed to require the use of salvage value to adjust capital asset values when calculating depreciation. The Ohio Department of Medicaid estimates this amendment will not change expenditures for nursing facility services in state fiscal year 2015 when compared to expenditures for nursing facility services in state fiscal year 2014.

Rule 5160-3-65, entitled "Nursing facilities (NFs): rates for providers with an initial date of certification on or after July 1, 2006" sets forth the provisions for determining initial rates for nursing facilities that begin participation in the Medicaid program with a first date of licensure and subsequent certification on or after July 1, 2006. 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 Department's name is being updated from the Ohio Department of Job and Family Services (ODJFS) to the Ohio Department of Medicaid (ODM).
- Ohio Revised Code citations are being updated because Am. Sub. HB 59 of the 130th General Assembly created the Ohio Department of Medicaid, and subsequently relocated and reorganized many Revised Code provisions governing the Medicaid program.
- An Ohio Administrative Code reference is being updated due to the creation of the Ohio Department of Medicaid by Am. Sub. HB 59 of the 130th General Assembly and the subsequent renumbering of rules by the Legislative Services Commission.

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. Comments received may be reviewed upon request.