

**PUBLIC HEARING NOTICE  
OHIO DEPARTMENT OF MEDICAID**

**DATE:** July 3, 2017  
**TIME:** 11:00 a.m.  
**LOCATION:** Room A401, Lazarus Building  
50 W. Town St., Columbus, OH 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 adoption, amendment, or rescission of the rule or rules as identified below and of a public hearing thereon.

Proposed for Amendment

Rule 5160-3-06.1, entitled "Institutions for mental diseases (IMDs)" sets forth the process by which the Ohio Department of Medicaid (ODM) identifies nursing facilities that are at risk of becoming IMDs, preventative measures to be taken by ODM when at-risk facilities are identified, and the action to be taken by ODM if a nursing facility is determined to be an IMD. 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:

- In order to comply with federal regulations contained in 42 C.F.R. 438.6(e), language is being modified in paragraph (A) to allow Medicaid payment as permitted in 42 C.F.R. 438.6(e) for individuals in an IMD who are age 21 and over, and in certain circumstances age 22 and over, and under age 65.
- Also to comply with federal regulations contained in 42 C.F.R. 438.6(e), language in paragraph (D)(3)(a) is being modified to allow Medicaid payment as permitted in 42 C.F.R. 438.6(e) for individuals residing in a nursing facility that has been determined to be an IMD.
- In paragraphs (D) and (E), language is being updated so that a nursing facility determined to be an IMD has 30 days rather than 10 working days from the date the determination notice was mailed to exercise its reconsideration rights pursuant to OAC 5160-70-02. Also in paragraphs (D) and (E), the word "appeal" is being updated to "reconsideration" to be consistent with terminology used in OAC 5160-70-02.
- In paragraphs (B)(4)(c) and (E)(2), typographical errors are being corrected.

Rule 5160-3-16.4, entitled "Nursing facilities (NFs): bed-hold days" sets forth the provisions for Medicaid bed-hold days 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 to be consistent with the titles of other nursing facility rules in Chapter 5160-3 of the Administrative Code.
- In paragraph (A)(1), reference to OAC rule 5101:3-1-06 (now 5160-1-06) is being deleted because that rule was rescinded effective May 1, 2015. Also in paragraph (A)(1), "intermediate care facility for the mentally retarded (ICF-MR)" is being changed to "intermediate care facility for individuals with intellectual disabilities (ICF-IID)" because the terminology has been updated.
- In paragraph (A)(2) the definition of hospitalization is being modified in order to account for situations in which residents are in the hospital on observation status rather than being formally admitted.

- In paragraphs (A)(5) and (A)(8), the definitions of NF Admission and NF Occupied Day are being modified in conjunction with language changes in paragraphs (C)(1) and (C)(4) so that a nursing facility may be paid for the day a resident returns from leave days even if the resident is in the NF for fewer than 8 hours on the day of return.
- In paragraphs (A)(8) and (I)(2), out-of-date references to the Administrative Code are being replaced with references to the Revised Code.
- In paragraph (J)(2)(b)(ii), for purposes of clarification, language is being modified so that a level of care evaluation is not necessary when a Medicaid eligible resident who receives Medicare Part A benefits in a nursing facility is transferred to the hospital and the nursing facility bills the hospital bed-hold days to Medicaid.
- In paragraph (J)(4), language is being added to clarify that Medicaid eligible residents includes low resource utilization residents for whom Medicaid payment is made in accordance with ORC section 5165.152.
- Paragraph (J)(5) is being deleted because there is nothing unique about leave day benefits for QMB eligible individuals who reside in nursing facilities.
- In order to comply with federal regulations contained in 42 C.F.R. 438.6(e), language in paragraph (K)(2) is being modified so that payment may be made for bed-hold days during the period NF residents age 21 and over, and in some circumstances age 22 and over, and under age 65, are hospitalized in an IMD, as permitted in 42 C.F.R. 438.6(e).
- Also in paragraph (K)(2), language regarding Medicaid eligibility is being deleted because it is not needed in this rule.
- In paragraph (K)(3), the citations for the Administrative Code Chapters that contain eligibility criteria for the HCBS waiver program are being deleted because they are not necessary for this rule.
- Paragraph (K)(4) is being deleted because it contains provisions excluding residents enrolled in a managed care program.
- The order of paragraphs (L)(1)(a) and (L)(1)(b) are being reversed to enhance readability.
- 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.
- 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 Office of Medical Assistance (OMA) to the Ohio Department of Medicaid (ODM) because of the creation of the Ohio Department of Medicaid.
- Paragraph designations are being updated as necessary.
- Phrasing and grammatical changes are being made to improve clarity, comprehension, and readability.

A copy of the proposed rules is available, without charge, to any person 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. Written and 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, 4th Floor, Columbus, Ohio 43215-3414, by fax at (614) 995-1301, or by e-mail at [Rules@Medicaid.Ohio.gov](mailto:Rules@Medicaid.Ohio.gov). Testimony received may be reviewed at this address.