

**PUBLIC HEARING NOTICE
OHIO DEPARTMENT OF MEDICAID**

DATE: July 27, 2018
TIME: 11:00 a.m.
LOCATION: Room A401 Lazarus Building
50 W. Town St., Columbus, OH 43215

Pursuant to sections 5164.02, 5165.02 and 5165.153 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 Rescission

Rule 5160-3-17, entitled "Nursing facilities (NFs): payment methodology for the provision of outlier services" sets forth the payment methodology provisions for outlier services. This rule was reviewed pursuant to a five-year rule review. As a result of that review, this rule is being proposed for rescission. This rule is no longer necessary because Ohio nursing facility providers have not furnished outlier services since 2008, and none are anticipated to do so in the foreseeable future.

Rule 5160-3-57, entitled "Nursing facilities (NFs): tax cost add-on" sets forth provisions for determining the payment 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 rescission, and is being replaced by new rule 5160-3-57.

Proposed for Adoption

Rule 5160-3-57, entitled "Nursing facilities (NFs): tax costs payment rate" sets forth provisions for determining the payment rate for tax costs for nursing facilities. This rule replaces rule 5160-3-57, which is being proposed for rescission. Changes to this rule are being made to implement provisions of Section 5165.151 of the Revised Code adopted under Amended Substitute House Bill 49 of the 132nd General Assembly relating to the administration of the Medicaid program. The differences between this rule and rescinded rule 5160-3-57 are: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), the phrase "per resident per day rate" is being changed to "per medicaid day payment rate" in order to use current terminology and for purposes of clarity.
- Also in paragraph (A), new language is being added in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly so that the Ohio Department of Medicaid shall now determine each new nursing facility's initial per Medicaid day payment rate for tax costs in accordance with ORC section 5165.151.
- New language in paragraph (B) is being added to specify the documentation required by ODM for purposes of calculating a new nursing facility's initial tax rate.
- New paragraph (B)(1) is being added to specify that the statewide median tax rate for the new facility's peer group for ancillary and support costs will be used as the initial tax rate

if any required documentation is not received within 30 days of approval of the initial provider agreement, or if the documentation is determined to be unsatisfactory.

- New paragraph (B)(2) is being added to specify that the effective date of the initial tax cost rate for a new facility will be the same as the effective date of the new facility's Medicaid provider agreement.
- New paragraph (B)(3) is being added to specify the address for submission of all required documentation.
- In paragraph (C), phrasing changes are being made for purposes of clarity and consistency.

Proposed for Amendment

Rule 5160-3-01 entitled "Nursing facilities (NFs): definitions" sets forth definitions used in Chapter 5160-3 of the Administrative Code. 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 definition of cost per case mix unit is being deleted because the information in that definition is contained in sections 5165.19 and 5165.36 of the Revised Code. As a consequence of the deletion, paragraphs are being re-lettered as necessary.
- The dates of citations to the Code of Federal Regulations (C.F.R.), the Centers for Medicare and Medicaid Services (CMS), the American Institute of CPAs (AICPA), and the Wall Street Journal are being updated to comply with the Joint Committee on Agency Rule Review (JCARR) rule filing requirements.

Rule 5160-3-41, entitled "Nursing facilities (NFs): placement into peer groups" sets forth provisions for the 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:

- In paragraph (A), a citation to ORC section 5165.17 is being added in order to correct an unintentional omission.
- In paragraph (A)(1), the word "licensed" is being added to clarify that, for purposes of peer group assignment, the Department of Medicaid will use licensed beds to determine the number of beds in a new nursing facility in the years subsequent to the initial year of participation in the Medicaid program.
- Also in paragraph (A)(1), the phrase "provider application" is being replaced with "provider's licensure application" to clarify that the Department of Medicaid will use a new nursing facility's licensure application to initially determine the number of licensed beds in the facility.

Rule 5160-3-58, entitled "Nursing facilities (NFs): quality indicators and quality payment rate" sets forth provisions regarding the Ohio Department of Medicaid's quality program for nursing facilities. This rule was reviewed pursuant to a five-year rule review. As a result of that review, and to implement provisions of Section 5165.25 of the Revised Code adopted under Amended Substitute House Bill 49 of the 132nd General Assembly relating to the administration of the Medicaid program, 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 paragraphs (A) and (C), language is being modified because there are more than five quality indicators.
- In paragraph (B)(2), language regarding the measurement period is being modified in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly.
- In paragraph (C), language is being added regarding the points that nursing facilities may earn for rates for short-stay residents and long-stay residents for the pressure ulcer quality indicator and the antipsychotic medication quality indicator. This language is being added in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly.
- In paragraph (C)(1), language is being added to clarify what data is being used for the determination of the pressure ulcer rates.
- In paragraphs (C)(1) and (C)(2), the scoring percentile for pressure ulcer rates and antipsychotic medication use rates is being changed from no more than the 25th percentile to no more than the 40th percentile, in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly.
- Also in paragraphs (C)(1) and (C)(2), provisions regarding the time period for the statistical data to be included in the calculation of the pressure ulcer rate and antipsychotic medication use rate are being removed because the provisions were only necessary for the first year the rates were calculated.
- In paragraph (C)(2), the website address where the Department of Medicaid had obtained antipsychotic medication use rates is being removed to allow the Department to use an alternative data source.
- Also in paragraph (C)(2), language is being added in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly so that the antipsychotic medication use rate shall not include short-stay nursing facility residents who newly received an antipsychotic medication in conjunction with hospice care, or long-stay nursing facility residents who received an antipsychotic medication in conjunction with hospice care.
- In paragraph (C)(3), the avoidable inpatient hospital admissions quality indicator is being replaced with the unplanned weight loss quality indicator in accordance with provisions adopted under Amended Substitute House Bill 49 of the 132nd General Assembly. In addition, in paragraph (E)(1), a reference to the avoidable inpatient hospital admissions quality indicator is being replaced with a reference to the unplanned weight loss quality indicator.
- In paragraph (D), language is being modified so that religious non-medical health care institutions (RNHCIs) shall receive 1 point for each of the pressure ulcer, antipsychotic medication, and unplanned weight loss quality indicators. This change is being made in accordance with the methodology established by the Ohio Department of Medicaid.
- Phrasing and grammatical changes are being made to improve clarity and readability.

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 provisions regarding rates for nursing facility providers that have a date of initial Medicaid certification on or after July 1, 2006. This rule was reviewed pursuant to a five-year rule review. As a result of that review, and to implement provisions of Section 5165.151 of the Revised Code adopted under Amended Substitute House

Bill 49 of the 132nd General Assembly relating to the administration of the Medicaid program, this rule is being proposed for amendment. The changes to the rule are:

- In paragraph (A), a citation to ORC section 5165.151 is being added, in accordance with Amended Substitute House Bill 49 of the 132nd General Assembly.
- Also in paragraph (A), for purposes of clarity, two instances of "that date" are being replaced with "July 1, 2006."
- In paragraph (B), a correction to an ORC citation is being made, in accordance with Amended Substitute House Bill 49 of the 132nd General Assembly.

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, Suite 400, Columbus, Ohio 43215-3414, by fax at (614) 995-1301, or by e-mail at Rules@Medicaid.Ohio.gov. Testimony received may be reviewed at this address.