CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Medicaid

Regulation/Package Title: Nursing Facility Reimbursement Rules

Rule Number(s): 5160-3-22 (Rescind), 5160-3-30.1 (Amend), 5160-3-64 (Amend)

5160-3-42.4 (for informational purposes only)

Date: April 20, 2017

Rule Type:

- New
- ☑ Amended
- ☑ 5-Year Review
- ☑ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   5160-3-22

   This rule sets forth provisions for rate recalculations, overpayments, and the associated penalties for nursing facilities. This rule is being proposed for rescission because the provisions in it are contained in the Ohio Revised Code.

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5160-3-30.1

This rule sets forth provisions for appealing the franchise permit fee determination or re-determination for nursing facilities or hospital long term care units. 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.
- 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) because of the creation of the Ohio Department of Medicaid.
- The name of the Bureau of Long Term Services and Supports is being changed from the Bureau of Long Term Care Services and Supports due to an update in terminology.
- Phrasing and grammatical changes are being made to improve clarity, comprehension, and readability.

5160-3-64

This rule sets forth provisions for Medicare Part A cost sharing for nursing facilities. 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 (B) the phrase "including QMB plus" is being removed because QMB plus is not defined in OAC rule 5160:1-3-02.1.
- In paragraph (C), a phrasing change is being made to improve 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 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) because of the creation of the Ohio Department of Medicaid.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

5160-3-22

Ohio Revised Code section 5164.02

5160-3-30.1

Ohio Revised Code section 5168.56

5160-3-64

Ohio Revised Code section 5165.02

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
If yes, please briefly explain the source and substance of the federal requirement.

5160-3-22
Not applicable. This rule is being proposed for rescission.

5160-3-30.1
This proposed rule does not implement any federal requirements.

5160-3-64
This proposed rule does not implement any federal requirements.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

5160-3-22

Not applicable. This rule is being proposed for rescission.

5160-3-30.1

This proposed rule does not exceed any federal requirements.

5160-3-64

This proposed rule does not exceed any federal requirements.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

5160-3-22

Not applicable. This rule is being proposed for rescission.

5160-3-30.1

The public purpose of this rule is to ensure the accuracy and integrity of franchise permit fee payments made by nursing homes and hospital long term care units to the Department of Medicaid.

5160-3-64

The public purpose of this rule is to ensure the accuracy and integrity of Medicaid payments made to nursing facilities.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

5160-3-22

Not applicable. This rule is being proposed for rescission.

5160-3-30.1

The success of this rule will be measured by the extent to which nursing homes and hospital long term care units implement the provisions contained in this rule according to the specifications in the rule.

5160-3-64

The success of this rule will be measured by the extent to which the Department of Medicaid and nursing facilities implement the provisions contained in this rule according to the specifications in the rule.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

The primary stakeholders are Ohio's three nursing facility provider associations. The nursing facility provider associations in Ohio are:

- Ohio Health Care Association (OHCA)
- The Academy of Senior Health Sciences, Inc.
- LeadingAge Ohio

Ohio's nursing facility provider associations represent and advocate for small and large nursing facilities and nursing facilities with both individual and group ownership, publicly-traded and government-owned properties, and for-profit and non-profit facilities. In addition to representing and advocating for nursing facilities, the associations are informational and educational resources to Ohio's nursing facilities, their suppliers, consultants, and the public at large.

The nursing facility provider associations were involved in review of the draft rules when the Department of Medicaid emailed the draft rules and summaries of the rule changes to the associations on March 30, 2017.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

   No input was provided by the nursing facility provider associations.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

   Scientific data was not applicable to the development of these rules.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    No alternative regulations were considered. The Department of Medicaid considers Administrative Code rules the most appropriate type of regulation for the provisions contained in these rules.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    Performance-based regulations were not considered appropriate.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    These rules have been reviewed by the Department of Medicaid's staff, including legal staff, to ensure there is no duplication within the Department of Medicaid's rules or any others in the OAC.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The final rules as adopted by the Department of Medicaid will be made available to all stakeholders and to the general public on the Department of Medicaid's website.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;
Provider participation in the Medicaid program is optional and at the provider's discretion. These rules impact hospital long term care units and approximately 960 nursing facilities in Ohio that choose to participate in the Medicaid program.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
Compliance with Medicaid program requirements is mandatory for providers who choose to participate in the program, and may result in administrative costs as detailed below.

c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

b.) **5160-3-22**

Not applicable. This rule is being proposed for rescission.

5160-3-30.1

If a nursing home or hospital long term care unit chooses to submit an appeal of a franchise permit fee (FPF) determination or re-determination, a facility operator shall do the following:

-Submit the appeal to the Department of Medicaid in writing and make sure it is received not later than 15 days after the date on which the FPF assessment notice was mailed.

-Indicate the appeal is due to a possible material error in determining the amount of the FPF.

-Include a detailed explanation of the possible material error and the proposed correction of the amount of the FPF.

-Include references to the relevant sections of the Revised Code or Administrative Code rules that support the appeal.

If a facility's representative is unable to attend the appeal hearing, the representative shall request a teleconference hearing at least 5 days prior to the scheduled hearing.

5160-3-64

In accordance with paragraph (C) of this rule, nursing facility providers that submit Medicare Part A crossover claims to the Medicaid program must be able to provide upon request documentation to the Department of Medicaid supporting that the information provided on the claim matches the information on the part A plan's remittance advice.

c.) **5160-3-22**

Not applicable. This rule is being proposed for rescission.

5160-3-30.1

The Department of Medicaid estimates it will take a facility's attorney approximately 4 hours at the rate of approximately $250.00 per hour (total estimated cost: $1,000.00) to write and submit a franchise permit fee appeal.

The Department of Medicaid estimates it will take a facility's office staff approximately 15 minutes at the rate of approximately $12.50 per hour (total estimated cost: $3.13) to request a teleconference hearing for a facility's representative if the facility's representative is unable to attend the scheduled appeal hearing.

However, these costs are existing costs of compliance. There are no new costs of compliance.

5160-3-64

The Department of Medicaid estimates it will take a provider's business office manager approximately 15 minutes at the rate of approximately $20.00 per hour (total estimated cost: $5.00) to provide upon request the average amount of required documentation to the

Department of Medicaid supporting that the information provided on a Medicare Part A crossover claim matches the information on the Medicare part A plan's remittance advice.

However, this is an existing cost of compliance. There are no new costs of compliance.

15. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

5160-3-22

Not applicable. This rule is being proposed for rescission.

5160-3-30.1

The adverse impact associated with this rule is justified because this rule helps ensure the accuracy and integrity of franchise permit fee payments.

5160-3-64

The adverse impact associated with this rule is justified because this rule helps ensure the accuracy and integrity of Medicare Part A cost sharing payments made by the Department of Medicaid.

Regulatory Flexibility

16. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. The provisions in these rules are the same for all nursing facilities and hospital long term care units regardless of size.

17. **How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ORC section 119.14 is not applicable to these regulations.

18. **What resources are available to assist small businesses with compliance of the regulation?**

Providers in need of assistance may contact the Bureau of Long Term Services and Supports at (614) 466-6742.