

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Five-Year Review – Various Nursing Facility Rules

Rule Number(s): 5160-3-16.3 (Amend)

For Informational Purposes Only: 5160-3-64.1 (Amend), 5160-3-65.1 (Rescind/New)

Date: July 6, 2018

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Rescinded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.

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5160-3-16.3 Nursing facilities (NFs): private rooms

This rule sets forth the provisions for private rooms in nursing facilities. This rule is being proposed for amendment. The adverse impacts of this rule are part of the preexisting content of the rule. The proposed changes to the rule are:

- In paragraph (A)(1), language is being added to clarify that infection control is an example of medical necessity requiring a nursing facility operator to provide a private room, if available, to a Medicaid eligible resident.
- In paragraph (A)(2), language is being added to clarify that Medicaid payment shall be considered payment in full, and no supplemental payment may be requested or accepted from a resident or from a resident's authorized representative or family.
- In paragraph (B)(2), language is being added to clarify that, when semiprivate or ward accommodations are not available, Medicaid will not pay more for a private room than the current Medicaid per diem rate, and no supplemental payment may be requested or accepted from the resident, or from a resident's authorized representative or family.
- In paragraph (C), language is being added to clarify that, when semiprivate or ward accommodations are available but the resident or resident's authorized representative or family member makes a written request for a private room, the nursing facility may seek supplemental payment from the resident's authorized representative or family.
- In paragraph (C)(3), language is being added to clarify that, when supplemental payment is made for a private room, the nursing facility operator must detail the supplemental charges, if applicable, on a resident's statement of charges so the additional cost of the private room is evident to the resident and the resident's authorized representative and family.
- In paragraph (C)(5), language regarding patient liability is being re-written to be more clear and succinct.
- Throughout the rule, the term "representative" is being changed to "authorized representative" in order to use more precise terminology.
- Grammatical changes are being made throughout the rule to improve readability.

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

ORC 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.

This proposed rule does not implement a federal requirement.

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

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)?**

The public purpose of this rule is to ensure that private rooms are made available to Medicaid eligible nursing facility residents under circumstances such as medical necessity, and that payment for private rooms is made in a consistent and fiscally responsible manner.

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

The success of this rule will be measured by the extent to which the provision of and payment for private rooms in nursing facilities are made in accordance with this 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 rule when the Department of Medicaid emailed the draft rule and a summary of the rule changes to the associations on May 25, 2018.

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 stakeholders on the proposed draft rule.

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 are not considered appropriate for this rule.

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

The Department of Medicaid's staff reviewed the applicable ORC and OAC to ensure these rules do not duplicate any of the Department of Medicaid's rules or any other regulations in the ORC or 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 Ohio Department of Medicaid will be posted on the Department's website at

<http://medicaid.ohio.gov/RESOURCES/LegalandContracts/Rules.aspx>.

In addition, the Department will notify stakeholders during regular Provider Association meetings when the final rules become effective.

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;

These rules impact approximately 950 nursing facilities in Ohio that choose to participate in the Medicaid program. Provider participation in the Medicaid program is optional and at the provider's discretion.

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). and c.) In accordance with paragraph (B) of this rule, if semiprivate or ward accommodations are not available, Medicaid shall not pay more for a private room than the Medicaid per diem rate the facility currently is receiving. The Department of Medicaid cannot quantify the adverse impact of this provision to nursing facility providers because the Department of Medicaid does not know what the per diem private room rate or Medicaid per diem rate is for any particular nursing facility, how many residents at any particular facility would qualify for a private room under this provision, or how many days those residents would qualify for a private room under this provision.

In accordance with paragraph (C)(3) of this rule, if supplemental payment is made for a private room, a nursing facility operator must detail both monthly and annual supplemental charges, if applicable, on a resident's statement of charges so the additional cost of the private room is evident to the resident and to the resident's authorized representative and family. The Department of Medicaid estimates it will take nursing facility staff approximately 2 hours per year at an estimated rate of

approximately \$12.50 per hour (total estimated cost: \$25.00 per year) to detail monthly and annual supplemental charges on one resident's statement of charges.

In accordance with paragraph (C)(4) of this rule, a nursing facility operator must keep written requests for a private room in the requesting resident's file. The Department of Medicaid estimates it will take nursing facility staff approximately 5 minutes at an estimated rate of approximately \$12.50 per hour (total estimated cost: \$1.04) to file one resident's written request for a private room.

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

The adverse impact associated with this rule is justified because the rule helps ensure proper payment is made for private rooms, and that private rooms are furnished in circumstances such as medical necessity.

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 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.