

5160-3-16.4

**Nursing facilities (NFs): covered days and bed-hold days.**

## (A) Definitions.

- (1) "Home and community-based services" (HCBS) means services that enable individuals to live in a community setting rather than in an institutional setting such as a NF, an intermediate care facility for individuals with intellectual disabilities (ICF-IID), or a hospital.
- (2) "Hospitalization" means transfer of a NF resident to a medical institution as defined in paragraph (A)(4) of this rule. A NF resident is considered hospitalized if the resident is formally admitted to a medical institution, or is on observation status in a medical institution.
- (3) "Institution for mental disease" (IMD) means a hospital, NF, or other institution of more than sixteen beds that is engaged primarily in the diagnosis, treatment, and care of persons with mental diseases, and that provides medical attention, nursing care, and related services. An institution is determined to be an IMD when its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such.
- (4) "Medical institution" means an institution other than a NF that meets all of the following criteria:
  - (a) Is organized to provide medical care, including nursing and convalescent care.
  - (b) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health care needs of patients on a continuing basis in accordance with accepted standards.
  - (c) Is authorized under state law to provide medical care.
  - (d) Is staffed by professional personnel who are responsible to the institution for professional medical and nursing services. Professional medical and nursing services shall include all of the following:
    - (i) Adequate and continual medical care and supervision by a physician.
    - (ii) Registered nurse or licensed practical nurse supervision and services sufficient to meet nursing care needs.
    - (iii) Nurses' aid services sufficient to meet nursing care needs.

- (iv) A physician's guidance on the professional aspects of operating the institution.
- (5) "NF admission" means the act that allows an individual who was not considered a resident of any Ohio medicaid certified NF during the time immediately preceding their current NF residence to officially enter a facility to receive NF services. This may include former NF residents who have exhausted their bed-hold days while in the community and/or hospital and returned to the facility. A NF admission may be a new admission or a return admission after an official discharge. A NF admission is distinguished from the readmission of a resident who has not exhausted all bed-hold days..
- (6) "NF bed-hold day," also referred to as "NF leave day," means a day for which a bed is reserved for a NF resident while the resident is temporarily absent from the NF for hospitalization, therapeutic leave days, or visitation with friends or relatives. Payment for NF bed-hold days may be made only if the resident has the intent and ability to return to the same NF. A resident on NF bed-hold day status is not considered discharged from the NF.
- (7) "NF discharge" means the full release of a NF resident from the facility, allowing the resident who leaves the facility to no longer be counted in the NF's census. Reasons for NF discharge include but are not limited to the resident's transfer to another facility, exhaustion of NF bed-hold days, decision to reside in a community-based setting, or death.
- (8) "NF occupied day" means one of the following:
- (a) A day of admission or readmission.
  - (b) A day during which a medicaid eligible resident's stay in a NF is eight hours or more, and for which the facility receives the full per resident per day payment directly from medicaid in accordance with Chapter 5165. of the Revised Code.
- (9) "NF readmission" means the status of a resident who is readmitted to the same NF following a stay in a hospital to which the resident was sent to receive care, or the status of a resident who returns after a therapeutic program or visit with friends or relatives. A NF resident can only be readmitted to a facility if that individual was not officially discharged from the facility during that NF stay.
- (10) "NF therapeutic leave day" means a day that a resident is temporarily absent from a NF with intent and ability to return, and is in a residential setting other than a long-term care facility, hospital, or other entity eligible to receive federal, state,

or county funds to maintain a resident, for the purpose of receiving a regimen or program of formal therapeutic services.

- (11) "NF transfer" means the events that occur when a person's place of residence changes from one Ohio medicaid certified NF to another, with or without an intervening hospital stay. However, when the person has an intervening IMD admission, or when the person is discharged from a NF during a hospital stay due to exhaustion of available NF bed-hold days and is admitted to a different NF immediately following that hospital stay, the change of residence is not considered a NF transfer.
- (12) "Skilled nursing facility" (SNF) means a facility certified to participate in the medicare program.

(B) Prohibition of preadmission NF bed-hold payment.

- (1) The Ohio department of medicaid (ODM) shall not make payment to reserve a bed for a medicaid eligible prospective NF resident.
- (2) A NF provider shall not accept preadmission bed-hold payments from a medicaid eligible prospective NF resident or from any other source on the prospective resident's behalf as a precondition for NF admission.

(C) Determination of NF bed-hold day or NF occupied day.

To determine whether a specific day during a resident's stay is payable as a NF bed-hold day or a NF occupied day, the following criteria shall be used:

- (1) The day of NF admission or readmission counts as one occupied day.
- (2) The day of NF discharge is not counted as either a bed-hold or an occupied day.
- (3) When NF admission and NF discharge occur on the same day, the day is considered a day of admission and counts as one occupied day, even if the day is less than eight hours.
- (4) The day a resident leaves on bed-hold status counts as one occupied day for payment purposes if the resident is in the NF for eight hours or more. A day begins at twelve a.m. and ends at eleven fifty-nine p.m.

(D) Limits and payment for NF bed-hold days.

- (1) For medicaid eligible residents in a certified NF, except those described in paragraph (K) of this rule, ODM shall pay the NF provider to reserve a bed

only for as long as the resident intends to return to the facility, but for not more than thirty days in any calendar year, and only if the requirements of paragraph (D)(3) of this rule are met. Notwithstanding any provision in this paragraph to the contrary, payments to reserve a bed beyond thirty days in any calendar year shall be made to a NF provider for medicaid eligible residents in a certified NF who, due to COVID-19, exceed thirty bed hold days but intend to return before exceeding sixty bed hold days. For purposes of bed hold days payment, ODM shall designate these NFs as COVID-19 community providers pursuant to Section 14 of Amended Substitute House Bill 197 of the 133rd General Assembly.

- (2) According to section 5165.34 of the Revised Code, payment for NF bed-hold days shall be as follows:
  - (a) Fifty per cent of the NF provider's per diem rate if the facility had an occupancy rate in the preceding calendar year exceeding ninety-five per cent; or
  - (b) Eighteen per cent of the NF provider's per diem rate if the facility had an occupancy rate in the preceding calendar year of ninety-five per cent or less.
- (3) Payment for NF bed-hold days according to paragraph (D)(2) of this rule shall be considered payment in full, and the NF provider shall not seek supplemental payment from the resident.
- (4) Payment for NF bed-hold days shall be made for the following reasons:
  - (a) Hospitalization.

NF bed-hold days used for hospitalization of NF residents, including NF residents on HCBS waivers, shall be authorized only until:

    - (i) The day the resident's anticipated level of care (LOC) at the time of NF discharge from the hospital changes to a LOC that the NF provider is not certified to provide; or
    - (ii) The day the resident is discharged from the hospital, including discharge resulting in transfer to another hospital-based or free-standing NF or SNF; or
    - (iii) The day the resident decides to go to another NF upon discharge from the hospital and notifies the first NF provider; or

- (iv) The day the hospitalized resident dies.
- (b) NF therapeutic leave days.
  - (i) Any plan to use therapeutic leave days must be approved in advance by the resident's primary physician and documented in the resident's medical record. The documentation shall be available for viewing by the county department of job and family services (CDJFS) and ODM staff.
  - (ii) A NF provider shall make arrangements for the resident to receive required care and services while on approved therapeutic leave, but medicaid shall not pay for care and services that are included in medicaid's continued payments, including but not limited to home health care, personal care services, durable medical equipment (DME), and private duty nursing.
  - (iii) NF therapeutic leave days are not payable for NF residents who are on an HCBS waiver and do not count towards the annual leave day limit specified in this rule.
- (c) Visits with friends or relatives.
  - (i) Any plan for a limited absence to visit with friends or relatives must be approved in advance by the resident's primary physician and documented in the resident's medical record. The documentation shall be available for viewing by the CDJFS and ODM staff.
  - (ii) The number of days per visit is flexible within the maximum NF bed-hold days, allowing for differences in the resident's physical condition, the type of visit, and travel time.
  - (iii) The NF provider shall make arrangements for the resident to receive required care and services while on approved visits, but medicaid shall not pay for care and services that are included in medicaid's continued payments, including but not limited to home health care, personal care services, DME, and private duty nursing.
  - (iv) Leave days for visits with friends or relatives are not payable for NF residents who are on an HCBS waiver and do not count towards the annual leave day limit specified in this rule.
- (5) The number and frequency of NF bed-hold days used shall be considered in evaluating the continuing need of a resident for NF care.

(E) Submission of claims for NF bed-hold days.

A NF provider shall submit claims for NF bed-hold days electronically to ODM in accordance with rule 5160-3-39.1 of the Administrative Code.

(F) NF admission after depletion of NF bed-hold days.

- (1) A resident who leaves a facility and has already exhausted their bed-hold days is considered in a NF discharge status.
- (2) A NF provider shall establish and follow a written policy under which a medicaid resident who has expended their annual allotment of thirty NF bed-hold days, and therefore is no longer entitled to a reserved bed under the medicaid bed-hold limit, and is considered to be discharged, shall be admitted to the first available medicaid certified bed in a semiprivate room.
  - (a) The first available bed means the first unoccupied bed not being held by a resident (regardless of the source of payment) who has elected to make payment to hold that bed.
  - (b) Unless involuntary discharge hearing and notice requirements were issued as set forth in section 3721.16 of the Revised Code for the previous admission span, a resident shall be admitted to the first available medicaid certified bed in a semiprivate room even if the resident has an outstanding balance owed to the NF provider from the previous admission. The admitted NF resident may be discharged if the NF provider can demonstrate that nonpayment of charges exists, and if hearing and notice requirements have been issued as set forth in section 3721.16 of the Revised Code.
- (3) A medicaid eligible NF resident whose absence from the facility exceeds the bed-hold limit or for whom no bed-hold coverage is available may choose to do one of the following:
  - (a) Return to the NF upon the availability of the first semiprivate bed in the facility.
  - (b) Ensure the timely availability of a specific bed upon return to the facility by making bed-hold payments for any days of absence in excess of the medicaid limit or for which no bed-hold coverage is available. Such payment is separate and distinct from the prohibition of any third party payment guarantee as set forth in rule 5160-3-02 of the Administrative Code.

- (4) A medicaid eligible resident's NF bed-hold day rights extend only to situations in which the resident leaves the NF for hospitalization, therapeutic leave days, or visits with friends or relatives, and has the intent and ability to return to the same NF.
- (a) If a resident who has depleted medicaid covered NF bed-hold days is transferred from a NF to a hospital and then undergoes a NF transfer to a second NF because the second NF provider offers services the first NF provider does not, the first NF provider has no obligation to admit the resident.
- (b) If a resident who has depleted medicaid NF bed-hold days is admitted from a NF to a hospital and then is transferred to a hospital-based NF or SNF, the type of NF or SNF to which the resident is transferred does not change the requirements stated in paragraph (F) of this rule. Therefore, a resident transfer to a hospital-based NF or SNF shall be considered the same as a transfer to any other NF or SNF, and the first NF provider has no obligation to admit the resident.
- (5) NF admission following the depletion of bed-hold days during a prior stay and subsequent NF discharge requires that a resident has a NF LOC and is eligible for medicaid NF services.

(G) Information and notice prior to leave.

- (1) Prior to a resident's use of NF bed-hold days, a NF provider shall furnish the resident and their family member or legal representative written information about the facility's bed-hold policies, which shall be consistent with paragraph (F) of this rule.
- (2) At the time a resident is scheduled for a temporary leave of absence, a NF provider shall furnish the resident and their family member or legal representative a written notice that specifies all of the following:
- (a) The maximum duration of medicaid covered NF bed-hold days as described in this rule.
- (b) The duration of bed-hold status during which the resident is permitted to return to the NF.
- (c) Whether medicaid payment will be made to hold a bed and if so, for how many days.

(d) The resident's option to make payments to hold a bed beyond the medicaid bed-hold day limit, and the amount of such payments.

(H) Emergency hospitalization.

- (1) In the case of emergency hospitalization, a NF provider shall furnish the resident and a family member or legal representative a written notice as described in paragraph (G) of this rule within twenty-four hours of the hospitalization.
- (2) This requirement is met if the resident's copy of the notice is sent to the hospital with other documents that accompany the resident.

(I) Maximum number of NF bed-hold days.

- (1) Medicaid payment for covered NF bed-hold days is considered payment for reserving a bed for a resident who intends to return to the same NF and is able to do so.
- (2) The number of NF inpatient days as defined in section 5165.01 of the Revised Code for the calendar year shall not exceed one hundred per cent of available bed days.

(J) Residents eligible for payment of NF bed-hold days.

- (1) Medicaid payment for NF bed-hold days is available under the provisions specified in this rule if a resident meets all of the following criteria:
  - (a) Is eligible for medicaid services and has met the patient liability and financial eligibility requirements as stated in rule 5160:1-3-04.3 of the Administrative Code.
  - (b) Requires a NF LOC or is using medicare part A SNF benefits as described in paragraph (H)(2) of this rule.
  - (c) Is not a participant of special medicaid programs or assigned special status as outlined in paragraph (K) of this rule.
- (2) Dual eligible for both medicare and medicaid.
  - (a) If a resident meets all of the criteria in paragraph (J)(1) of this rule and is both medicare part A and medicaid eligible, medicaid payment shall be made for NF bed-hold days up to the bed-hold day limit specified in this rule. Medicaid will, therefore, pay NF bed-hold days during the acute care hospitalization of a medicaid eligible resident who had been

receiving medicare part A SNF benefits in the NF immediately prior to and/or following the period of hospitalization.

(b) A level of care evaluation is not necessary in the following circumstances:

- (i) A medicaid eligible resident receives medicare part A SNF benefits in the NF.
- (ii) A medicaid eligible resident who receives medicare part A SNF benefits in the NF is transferred to the hospital, and the NF bills the hospital bed-hold days to medicaid.

(3) Medicaid pending.

If a resident meets all of the criteria in paragraph (J)(1) of this rule, and is pending approval of a medicaid application and requires NF bed-hold days, medicaid payment shall be made retroactive to the date the resident became medicaid eligible and approved for NF medicaid payment, through the date the resident returns from a leave or until the maximum number of NF bed-hold days are exhausted.

(4) Medicaid eligible.

If a resident meets all of the criteria in paragraph (J)(1) of this rule, and is approved for NF medicaid payment, medicaid payment shall be made for NF bed-hold days up to the maximum number of days as specified in this rule. Medicaid eligible residents include low resource utilization residents for whom medicaid payment is made in accordance with section 5165.152 of the Revised Code.

(5) HCBS waiver.

If a resident using the NF for a short-term stay is enrolled in an HCBS waiver program and is not using short-term respite care as a waiver service, medicaid payment shall be made for NF bed-hold days for hospitalization up to the bed-hold day limit specified in this rule. Payment for NF bed-hold days shall not be made for NF residents who are on an HCBS waiver for purposes other than hospitalization.

**(K) Exclusions.**

NF bed-hold days are not available to medicaid eligible NF residents in the following situations:

(1) Hospice.

A person enrolled in a medicare or medicaid hospice program is not entitled to medicaid covered NF bed-hold days. It is the hospice provider's responsibility to contract with and pay the NF provider. Hospice program provisions and criteria are stated in Chapter 5160-56 of the Administrative Code.

(2) IMD.

A resident age twenty-one and over, and in some circumstances age twenty-two and over, and under age sixty-five who becomes a patient of an IMD is not entitled to NF bed-hold days, and a NF provider shall not receive reimbursement for NF bed-hold days during the period the person is hospitalized in an IMD except as permitted in 42 C.F.R. 438.6(e) (October 1, 2016).

(3) HCBS waiver.

NF bed-hold days do not apply to a person enrolled in a HCBS waiver program who is using the NF for short-term respite care as a waiver service.

(4) Restricted medicaid coverage.

A person who is medicaid eligible but is in a period of restricted medicaid coverage because of an improper transfer of resources is not eligible for NF bed-hold days until the period of restricted coverage has been met. The criteria for the determination of restricted medicaid coverage are specified in rule 5160:1-3-07.2 of the Administrative Code.

(5) Facility closure and resident relocation.

NF bed-hold days are not available to residents who have relocated due to the facility's anticipated closure, voluntary withdrawal from participation in the medicaid program, or other termination of the facility's medicaid provider agreement. No span of NF bed-hold days shall be approved that ends on a facility's date of closure or termination from participation in the medicaid program.

(L) Compliance.

(1) Without limiting such other remedies provided by law for noncompliance with the provisions of this rule, ODM may do one or both of the following:

- (a) Require the provider to submit and implement a corrective action plan approved by ODM on a schedule specified by ODM.
  - (b) Terminate the facility's NF provider agreement.
- (2) A NF provider shall cooperate with any investigation and shall provide copies of any records requested by ODM.

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**CERTIFIED ELECTRONICALLY**

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**Certification**

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