

Rule Summary and Fiscal Analysis (Part A)**Ohio Department of Medicaid**

Agency Name

Division

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5160-3-20

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Nursing facilities (NFs): medicaid cost report filing, record retention, and disclosure requirements.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **Yes**2. Are you proposing this rule as a result of recent legislation? **No**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **5165.02**5. Statute(s) the rule, as filed, amplifies or implements: **5165.10, 5165.107, 5165.108, 5165.40, 5165.41**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Five-year review.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule sets forth the Medicaid cost report filing, record retention, and disclosure provisions for nursing facilities and state operated ICFs-IID.

The changes to the rule are:

1. 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.
2. Throughout the rule, "ICF-MR" is being changed to "ICF-IID" because the terminology has been updated.
3. In the opening paragraph, reference to the Medicaid Nursing Facility Cost Report as found in Appendix A to OAC rule 5101:3-3-42.1 (now 5160-3-42.1), including its supplements and attachments or other approved forms for state operated ICFs-IID, is being deleted. The reference to the cost report is being deleted because Appendix A to rule 5160-3-42.1 was removed from the rule in a previous rule filing and the cost report is now posted on the Department of Medicaid's website. The reference to other approved forms for state operated ICFs-IID is being deleted because it is no longer necessary.
4. New language is being added in the opening paragraph that requires nursing facilities to file the Medicaid cost report via the Medicaid Information Technology System (MITS) web portal or other electronic means designated by the Department of Medicaid because web portal submission currently is the Department's preferred method of filing cost reports and is consistent with the method currently used by other Medicaid providers.
5. Also in the opening paragraph, the provision that the Department shall issue the appropriate software for an electronically submitted cost report not later than 60 days prior to the initial due date of the cost report is being deleted because the provision is contained in the Revised Code. Additionally, the provision that requires the Department of Medicaid to issue an approved list of vendors is being deleted because the provision is obsolete.
6. In paragraph (A)(1)(a), language is being changed to specify that, for the first calendar year a provider has a provider agreement, if the provider agreement goes into effect after October first of that calendar year, the provider shall file the first cost report for the immediately following calendar year. This change is being made to be consistent with statute, and because this rule is eliminating language regarding three-month cost reports.
7. Provisions regarding three-month cost reports for a new facility or in cases of a change of operator are being deleted because the Department of Medicaid no longer requires nursing facilities to file three-month cost reports.
8. In paragraph (A)(3), a sentence is being added to clarify that the late file penalty may be assessed even if the Department of Medicaid has provided written notice of

termination to a facility. Also in paragraph (A)(3), the requirement regarding adjustment of the late file penalty for inflation each July first is being deleted because that provision is no longer contained in the Revised Code. Additionally, the late file penalty period is being changed to begin on the day after the original due date or, if applicable, on the day after the extension due date instead of on the date the Department of Medicaid issues its written notice in order to be consistent with current Department of Medicaid practices.

9. In paragraph (C), the provision is being deleted that requires the Department of Medicaid to notify the facility of any information on the cost report that requires further support before issuing the preliminary determination of whether the reported costs are allowable costs. In addition, the sequence of activities is being changed so that the facility shall provide any documentation or other information requested by the Department of Medicaid and may submit any information it believes supports its reported costs after the Department notifies the facility of any costs preliminarily determined not to be allowable and the reasons for the determination. These changes are being made in order to be consistent with current Department of Medicaid practices.

10. In new paragraph (H), language regarding publicly owned and traded corporations is being deleted so the ownership disclosure requirements for these types of nursing facilities are consistent with the ownership disclosure requirements for non-publicly owned and traded corporations.

11. In new paragraph (H)(5), references to the Social Security Act are being updated and dates are being added in order to comply with Joint Committee on Agency Rule Review (JCARR) rule filing requirements.

12. In new paragraph (H)(6), in order to be consistent with current Department of Medicaid procedure, the Office of the Auditor of State is being added to the list of organizations for which a provider must identify previous employment for individuals who are currently employed by or under contract with the provider or related party organization in a managerial, accounting, auditing, legal, or similar capacity.

13. In new paragraph (I), the reference to audit provisions contained in 42 C.F.R. 420 subpart (D) is being deleted because the reference is not necessary.

14. In new paragraph (J), new language is being added specifying that financial, statistical, and medical records supporting cost reports or claims shall also be available to the Department of Medicaid's authorized agent in order to be consistent with current Department of Medicaid practices.

15. In new paragraph (K)(1), the depreciation value of depreciable equipment is being changed from \$500 or more per item to \$5,000 or more per item.

16. Also in new paragraph (K)(1), the provision regarding costs of equipment

acquired by an operating lease executed before December 1, 1992 reported in the ancillary/support cost component of the cost report is being deleted because it is no longer necessary.

17. 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.

18. 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.

19. 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.

20. Paragraph references and designations are being updated as necessary.

21. Phrasing and grammatical changes are being made to improve clarity, comprehension, and readability.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the ORC because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(1).

This rule incorporates one or more references to the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(3).

This rule incorporates one or more references to the Social Security Act. This question is not applicable to any incorporation by reference to the Social Security Act because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(B)(2).

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not Applicable

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date: **10/17/2016**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

This proposed rule will not change the agency's projected budget during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Nursing facilities and state operated intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) must file Medicaid cost reports with the Department of Medicaid within 90 days after the end of the reporting period via the Medicaid Information Technology System (MITS) web portal or other electronic means designated by the Department. The Department of Medicaid estimates it will take a nursing facility or state operated ICF-IID provider's accountant approximately 15 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$379.80) to prepare one Medicaid cost report and file it via the MITS web portal.

Providers that want a cost report filing extension must submit a written request to the Department of Medicaid explaining the circumstances resulting in the need for an extension. The Department of Medicaid estimates it will take a provider's attorney approximately 1 hour at the rate of approximately \$250.00 per hour (total estimated cost: \$250.00) to prepare and submit one written request for a cost report filing extension.

Facilities may incur a late file penalty of \$2.00 per patient day for each day a complete and adequate cost report is not received by the original due date, or by an approved extension due date if applicable, regardless of the written notification of termination. The Department of Medicaid cannot estimate the cost of compliance to facilities because the Department of Medicaid does not know how many facilities will file late cost reports and incur late file penalties.

After the Department of Medicaid notifies facilities of any costs preliminarily determined by a desk review not to be allowable and the reasons for the determination, facilities must provide any documentation or other information requested by the Department of Medicaid and may submit any information they believe supports their reported costs. The Department of Medicaid estimates it will take a facility's accountant approximately 2 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$50.64) to prepare and submit such documentation and information.

A facility may revise a cost report within 60 days after the original due date without the revised information being considered an amended cost report. The Department of Medicaid estimates it will take a facility's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to prepare

and submit one revised cost report.

After final rates have been issued, a provider that disagrees with a desk review decision may request a rate reconsideration. The Department of Medicaid estimates it will take a provider's attorney approximately 2 hours at the rate of approximately \$250.00 per hour (total estimated cost: \$500.00) to prepare a rate reconsideration. The Department of Medicaid further estimates it will take a provider's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to assist in the preparation of the rate reconsideration. The Department of Medicaid therefore estimates it will cost a total of approximately \$702.56 to prepare and submit one rate reconsideration.

Not later than three years after a provider files a Medicaid cost report, the provider may amend the cost report if the provider discovers a material error in the cost report or additional information to be included in the cost report. The Department of Medicaid estimates it will take a provider's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to prepare and submit one amended cost report.

Providers are required to identify on the cost report all known related parties as set forth under paragraph (G) of OAC rule 5160-3-01. The Department of Medicaid estimates it will take a provider's office staff approximately 1 hour at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to identify all known related parties.

Providers are required to provide upon request all contracts in effect during the cost report period for which the cost of the service from any individual or organization is \$10,000.00 or more in a 12-month period. The Department of Medicaid estimates it will take a provider's office staff approximately 1 hour at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to provide all such contracts.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to

R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

The Department of Medicaid may assess a late file penalty of \$2.00 per patient day for each day a complete and adequate cost report is not received by the original due date, or by an approved extension due date if applicable, regardless of the written notification of termination.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

This rule requires nursing facilities and state operated intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) to file Medicaid cost reports, which necessarily involves the report of information to the Department of Medicaid. Additionally, this rule requires the report of information in the following circumstances:

-Providers that want a cost report filing extension must submit a written request to the Department of Medicaid explaining the circumstances resulting in the need for an extension.

-After the Department of Medicaid notifies facilities of any costs preliminarily determined by a desk review not to be allowable and the reasons for the determination, facilities must provide any documentation or other information requested by the Department of Medicaid and may submit any information they believe supports their reported costs.

-Providers that want to submit a revised cost report without the revised information being considered an amended cost report must do so to the Department of Medicaid within 60 days after the original due date.

-Providers that want a rate reconsideration because they disagree with a desk review decision after final rates have been issued must submit a request for a rate reconsideration to the Department of Medicaid.

-If a provider wants to amend a cost report because the provider discovers a material error in the cost report or additional information to be included in the cost

report, the provider must submit an amended cost report to the Department of Medicaid no later than three years after the original cost report was filed.

-Providers are required to identify on the cost report all known related parties as set forth under paragraph (G) of OAC rule 5160-3-01.

-Providers are required to provide upon request all contracts in effect during the cost report period for which the cost of the service from any individual or organization is \$10,000 or more in a 12-month period.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
No	Yes	No	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

Counties and municipal corporations that operate nursing facilities and state operated intermediate care facilities for individuals with intellectual disabilities could incur costs of compliance with the proposed rule. The costs of compliance are the following:

Nursing facilities and state operated intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) must file Medicaid cost reports with the Department of Medicaid within 90 days after the end of the reporting period via the Medicaid Information Technology System (MITS) web portal or other electronic means designated by the Department. The Department of Medicaid estimates it will take a nursing facility or state operated ICF-IID provider's accountant approximately 15 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$379.80) to prepare one Medicaid cost report and file it via the MITS web portal.

Providers that want a cost report filing extension must submit a written request to the Department of Medicaid explaining the circumstances resulting in the need for an extension. The Department of Medicaid estimates it will take a provider's attorney approximately 1 hour at the rate of approximately \$250.00 per hour (total estimated cost: \$250.00) to prepare and submit one written request for a cost report filing extension.

Facilities may incur a late file penalty of \$2.00 per patient day for each day a complete and adequate cost report is not received by the original due date, or by an approved extension due date if applicable, regardless of the written notification of termination. The Department of Medicaid cannot estimate the cost of compliance to facilities because the Department of Medicaid does not know how many facilities will file late cost reports and incur late file penalties.

After the Department of Medicaid notifies facilities of any costs preliminarily

determined by a desk review not to be allowable and the reasons for the determination, facilities must provide any documentation or other information requested by the Department of Medicaid and may submit any information they believe supports their reported costs. The Department of Medicaid estimates it will take a facility's accountant approximately 2 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$50.64) to prepare and submit such documentation and information.

A facility may revise a cost report within 60 days after the original due date without the revised information being considered an amended cost report. The Department of Medicaid estimates it will take a facility's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to prepare and submit one revised cost report.

After final rates have been issued, a provider that disagrees with a desk review decision may request a rate reconsideration. The Department of Medicaid estimates it will take a provider's attorney approximately 2 hours at the rate of approximately \$250.00 per hour (total estimated cost: \$500.00) to prepare a rate reconsideration. The Department of Medicaid further estimates it will take a provider's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to assist in the preparation of the rate reconsideration. The Department of Medicaid therefore estimates it will cost a total of approximately \$702.56 to prepare and submit one rate reconsideration.

Not later than three years after a provider files a Medicaid cost report, the provider may amend the cost report if the provider discovers a material error in the cost report or additional information to be included in the cost report. The Department of Medicaid estimates it will take a provider's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to prepare and submit one amended cost report.

Providers are required to identify on the cost report all known related parties as set forth under paragraph (G) of OAC rule 5160-3-01. The Department of Medicaid estimates it will take a provider's office staff approximately 1 hour at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to identify all known related parties.

Providers are required to provide upon request all contracts in effect during the cost report period for which the cost of the service from any individual or organization is \$10,000 or more in a 12-month period. The Department of Medicaid estimates it will take a provider's office staff approximately 1 hour at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to provide all such contracts.

3. If the proposed rule is the result of a federal requirement, does the proposed

rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

The Department of Medicaid estimates it will cost a nursing facility or state operated ICF-IID provider approximately \$379.80 to prepare one Medicaid cost report and file it via the MITS web portal.

The Department of Medicaid estimates it will cost a provider approximately \$250.00 to prepare and submit one written request for a cost report filing extension.

The Department of Medicaid estimates it will cost a facility approximately \$50.64 to prepare and submit documentation and information requested by the Department of Medicaid, and to submit any information the facility believes supports its reported costs after the Department of Medicaid notifies the facility of any costs preliminarily determined by a desk review not to be allowable.

The Department of Medicaid estimates it will cost a facility approximately \$202.56 to prepare and submit one revised cost report.

The Department of Medicaid estimates it will cost a provider approximately \$702.56 to prepare and submit one rate reconsideration.

The Department of Medicaid estimates it will cost a provider approximately \$202.56 to prepare and submit one amended cost report.

The Department of Medicaid estimates it will cost a provider approximately \$12.50 to identify all known related parties as set forth under paragraph (G) of OAC rule 5160-3-01.

The Department of Medicaid estimates it will cost a provider approximately \$12.50 to provide upon request all contracts in effect during the cost report period for which the cost of the service from any individual or organization is \$10,000 or more in a 12-month period.

(a) Personnel Costs

The Department of Medicaid estimates it will take a nursing facility or state operated ICF-IID provider's accountant approximately 15 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$379.80) to prepare one Medicaid cost report and file it via the MITS web portal.

The Department of Medicaid estimates it will take a provider's attorney approximately 1 hour at the rate of approximately \$250.00 per hour (total estimated cost: \$250.00) to prepare and submit one written request for a cost report filing extension.

The Department of Medicaid estimates it will take a facility's accountant approximately 2 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$50.64) to prepare and submit documentation and information requested by the Department of Medicaid, and to submit any information the facility believes supports its reported costs after the Department of Medicaid notifies the facility of any costs preliminarily determined by a desk review not to be allowable.

The Department of Medicaid estimates it will take a facility's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to prepare and submit one revised cost report.

The Department of Medicaid estimates it will take a provider's attorney approximately 2 hours at the rate of approximately \$250.00 per hour (total estimated cost: \$500.00) to prepare a rate reconsideration. The Department of Medicaid further estimates it will take a provider's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to assist in the preparation of the rate reconsideration. The Department of Medicaid therefore estimates it will cost a total of approximately \$702.56 to prepare and submit one rate reconsideration.

The Department of Medicaid estimates it will take a provider's accountant approximately 8 hours at the rate of approximately \$25.32 per hour (total estimated cost: \$202.56) to prepare and submit one amended cost report.

The Department of Medicaid estimates it will take a provider's office staff approximately 1 hour at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to identify all known related parties as set forth under

paragraph (G) of OAC rule 5160-3-01.

The Department of Medicaid estimates it will take a provider's office staff approximately 1 hour at the rate of approximately \$12.50 per hour (total estimated cost: \$12.50) to provide upon request all contracts in effect during the cost report period for which the cost of the service from any individual or organization is \$10,000 or more in a 12-month period.

(b) New Equipment or Other Capital Costs

The Department of Medicaid does not expect that the proposed rule will result in any new equipment or other capital costs to Medicaid providers of nursing facility or ICF-IID services.

(c) Operating Costs

The Department of Medicaid does not expect that the proposed rule will result in any operating costs to Medicaid providers of nursing facility or ICF-IID services.

(d) Any Indirect Central Service Costs

The Department of Medicaid does not expect that the proposed rule will result in any indirect central service costs to Medicaid providers of nursing facility or ICF-IID services.

(e) Other Costs

The Department of Medicaid does not expect that the proposed rule will result in any other costs to Medicaid providers of nursing facility or ICF-IID services.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

The Department of Medicaid is unable to provide an explanation of the ability of nursing facilities operated by counties and municipal corporations to pay for costs incurred as a result of the changes in this rule because the Department does not have this level of detailed information about the finances of these nursing facilities.

7. Please provide a statement on the proposed rule's impact on economic development.

There is no discernible impact on economic development as a result of this proposed rule.