

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-3-20

Rule Type: New

Rule Title/Tagline: Nursing facilities (NFs) : medicaid cost report filing, disclosure requirements, and records retention.

Agency Name: Ohio Department of Medicaid

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5165.02
5. **What statute(s) does the rule implement or amplify?** 5165.10, 5165.106, 5165.107, 5165.108, 5165.40, 5165.41
6. **What are the reasons for proposing the rule?**

This rule is being proposed for adoption as a result of five-year review. This rule is replacing rescinded rule 5160-3-20.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the Medicaid cost report filing, disclosure requirement, and records retention provisions for nursing facilities.

The differences between this rule and rescinded rule 5160-3-20 are:

1. References to and provisions for state operated intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) are being removed because provisions for state operated ICFs-IID are addressed in a separate rule of the Ohio Administrative Code.
2. A new opening paragraph is being added to incorporate Revised Code sections 5165.10 through 5165.109 into this rule.
3. Most of the provisions in the old opening paragraph are being moved to new paragraphs (A) and (B) and reorganized for enhanced readability.
4. Because it is contained in section 5165.10 of the Revised Code, the provision in the old opening paragraph is being deleted that states a cost report shall cover a calendar year or the portion of a calendar year during which a nursing facility participated in the Medicaid program, except as otherwise specified in this rule.
5. The provisions in old paragraphs (A)(1), and (A)(1)(a) are being deleted because they are contained in section 5165.10 of the Revised Code.
6. The provisions in old paragraphs (A)(1)(b) and (A)(1)(c) are being moved to new paragraphs (B)(4)(b) and (B)(4)(c) for purposes of reorganization.
7. The provisions in old paragraph (A)(2) are being deleted because they are contained in section 5165.106 of the Revised Code.
8. The provisions in old paragraph (A)(3) are being moved to new paragraph (B)(5) and reorganized for enhanced readability.
9. The provisions in old paragraph (B) are being deleted because they are contained in section 5165.105 of the Revised Code or are no longer necessary.
10. The provisions in paragraph (C) are being deleted because they are contained in section 5165.108 of the Revised Code.
11. The provisions in old paragraph (C)(1) are being moved to existing paragraph (C) for purposes of reorganization and is being slightly re-worded to better reflect the Department's desk review process.

12. Most of the provisions in existing paragraph (D) are being deleted because they are contained in section 5165.107 of the Revised Code.

13. The interest provision contained in old paragraph (D)(2) is being moved to existing paragraph (D) for purposes of reorganization.

14. The dates cited for Title XVIII, Title XIX, and Title XX of the Social Security Act are being updated to comply with the Joint Committee on Agency Rule Review (JCARR) rule filing requirements.

15. Phrasing and grammatical changes are being made to improve clarity and readability.

16. Paragraph references are being updated as necessary.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to the Revised Code. This question is not applicable to any incorporation by reference to the Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(a).

This rule incorporates one or more references to another rule or rules of the Administrative Code. This question is not applicable to any incorporation by reference to another Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(d).

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

No impact on current budget.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

In accordance with paragraph (B) of this rule, nursing facilities 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 provider's accountant approximately 15 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$390.00) to prepare one Medicaid cost report and file it via the MITS web portal or other electronic means designated by the Department of Medicaid.

In accordance with paragraph (B)(1) of this rule, cost reports may be submitted within 14 days after the original due date for good cause shown if written approval is received from the Department of Medicaid prior to the original due date. Requests for extensions must be in writing and explain the circumstances resulting in the need for an extension. The Department of Medicaid estimates it will take a nursing facility provider's accountant approximately 1 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00) to request an extension.

In accordance with paragraph (B)(5) of this rule, if a cost report is not received by the original due date, or by an approved extension due date if applicable, a nursing facility provider may be assessed a late file penalty for each day a complete and adequate cost report is not received. The Ohio Department of Medicaid cannot estimate the cost of compliance because the department does not know how many days any particular nursing facility may be late in filing a cost report. However, the late file penalty is \$2.00 per patient day, and the cost of compliance will be determined by using the prorated Medicaid days paid in the late file period multiplied by the \$2.00 late file penalty.

In accordance with paragraph (C)(1) of this rule, 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 \$26.00 per hour (total estimated cost: \$208.00) to prepare and submit one revised cost report.

In accordance with paragraph (C)(3) of this rule, a provider that disagrees with a desk review decision may request a rate reconsideration after final rates have been issued. 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 \$26.00 per hour (total estimated cost: \$208.00) to assist in the preparation of the rate reconsideration. The Department of Medicaid therefore estimates it will cost a total of approximately \$708.00 to prepare and submit one rate reconsideration.

In accordance with paragraph (F) of this rule, providers are required to identify on the cost report all known related parties as set forth under paragraph (F) of OAC rule 5160-3-01. The Department of Medicaid estimates it will take a provider's accountant approximately 1 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00) to identify all known related parties.

Providers are required to identify all the entities specified in paragraph (F) of this rule. The Department of Medicaid estimates it will take a provider's accountant approximately 2 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$52.00) to comply with this requirement.

In accordance with paragraph (H) of this rule, 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, or for the services of a sole proprietor or partnership where there is no cost incurred and the imputed value of the service is \$10,000 or more in a 12-month period. The Department of Medicaid estimates it will take a provider's accountant approximately 1 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00) to comply with this requirement.

In accordance with paragraphs (I) through (I)(3) of this rule: Failure of a nursing facility to retain financial, statistical, and medical records supporting the cost reports or claims for services rendered to residents for the greater of 7 years after the cost report is filed if the Department of Medicaid issues an audit report, or 6 years after all appeal rights relating to the audit report are exhausted records renders the provider liable for a penalty of \$1,000 per audit, or 25% of the amount by which the undocumented cost increased the Medicaid payments to the provider during the fiscal year. Failure to retain the required records to the extent that filed cost reports are not auditable shall result in the imposition of the same penalty. Providers whose records have been found to be not auditable will be allowed 60 days to provide the necessary documentation. If at the end of the 60 days the required records have been provided and are determined auditable, the proposed penalty will be withdrawn. If ODM, after

review of the documentation submitted during the 60-day period, determines the records are still not auditable, ODM shall impose the penalty. If a nursing facility provider refuses legal access to financial, statistical, or medical records, the penalty of \$1,000 per audit or 25% of the amount by which the undocumented cost increased the Medicaid payments to the provider during the fiscal year shall be imposed for outstanding medical services until such time as the requested information is made available to the Department of Medicaid.

QUESTION #15: If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

RESPONSE: The rule does not impose a regulation fee.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **Does this rule have an adverse impact on business? Yes**
 - 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**

In accordance with paragraph (B)(5) of this rule, if a cost report is not received by the original due date, or by an approved extension due date, if applicable, the provider may be assessed a late file penalty for each day a complete and adequate cost report is not received. The late file penalty is determined using the prorated Medicaid days paid in the late file period multiplied by the penalty. The penalty is \$2.00 per patient day. The late file penalty shall be a reduction to the Medicaid payment. However, no penalty shall be imposed during a 14-day extension granted by the Department in accordance with ORC section 5165.10.

In accordance with paragraph (I)(1) of this rule, failure to retain the required financial, statistical, or medical records renders a provider liable for monetary damages that are the greater of the following:

- a) \$1,000 per audit; or
- b) 25% of the amount by which the undocumented cost increased the Medicaid payments to the provider during the fiscal year.

In accordance with paragraph (I)(2) of this rule, failure to retain the required financial, statistical, or medical records to the extent that filed cost reports are not auditable shall result in the penalty specified in paragraph (I)(1) of this rule. Providers whose records have been found to be not auditable will be allowed 60 days to provide the necessary documentation. If, at the end of the 60 days, the required records have been provided and are determined auditable, the proposed penalty will be withdrawn. If ODM, after review of the documentation submitted during the 60-day period, determines the records are still not auditable, ODM shall impose the penalty as specified in paragraph (I)(1) of this rule.

In accordance with paragraph (I)(3) of this rule, refusing legal access to financial, statistical, or medical records shall result in a penalty as specified in paragraph (I)(1) of this rule for outstanding medical services until such time as the requested information is made available to the Department of Medicaid.

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

In accordance with paragraph (B) of this rule, nursing facility providers must file cost reports via the MITS web portal or other electronic means designated the Department of Medicaid.

In accordance with paragraph (C)(1) of this rule, a nursing facility may revise a cost report within 60 days after the original due date without the revised information being considered an amended cost report.

In accordance with paragraph (F) of this rule, providers are required to identify all known related parties as set forth under paragraph (F) of OAC rule 5160-3-01.

Providers are required to identify all entities specified in paragraph (F) of this rule,

In accordance with paragraph (H) of this rule, providers must furnish 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; or for the services of a sole proprietor or partnership where there is no cost incurred and the imputed value of the service is \$10,000 or more in a 12-month period.

In accordance with paragraph (I)(2) of this rule, providers whose records have been found to be unauditible will be allowed 60 days to provide the necessary documentation.

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies? No.

Rule Summary and Fiscal Analysis

Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	No
B. County Government	Yes
C. Township Government	No
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

County and city/village governments that operate nursing facilities could incur costs of compliance with the proposed rule. The costs of compliance are the following:

In accordance with paragraph (B) of this rule, nursing facilities 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 provider's accountant approximately 15 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$390.00) to prepare one Medicaid cost report and file it via the MITS web portal or other electronic means designated by the Department of Medicaid.

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nursing facility may be late in filing a cost report. However, the late file penalty is \$2.00 per patient day, and the cost of compliance will be determined by using the prorated Medicaid days paid in the late file period multiplied by the \$2.00 late file penalty.

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In accordance with paragraph (F) of this rule, providers are required to identify on the cost report all known related parties as set forth under paragraph (F) of OAC rule 5160-3-01. The Department of Medicaid estimates it will take a provider's accountant approximately 1 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00) to identify all known related parties.

Providers are required to identify all the entities specified in paragraph (F) of this rule. The Department of Medicaid estimates it will take a provider's accountant approximately 2 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$52.00) to comply with this requirement.

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for services rendered to residents for the greater of 7 years after the cost report is filed if the Department of Medicaid issues an audit report, or 6 years after all appeal rights relating to the audit report are exhausted records renders the provider liable for a penalty of \$1,000 per audit, or 25% of the amount by which the undocumented cost increased the Medicaid payments to the provider during the fiscal year. Failure to retain the required records to the extent that filed cost reports are not auditable shall result in the imposition of the same penalty. Providers whose records have been found to be not auditable will be allowed 60 days to provide the necessary documentation. If at the end of the 60 days the required records have been provided and are determined auditable, the proposed penalty will be withdrawn. If ODM, after review of the documentation submitted during the 60-day period, determines the records are still not auditable, ODM shall impose the penalty. If a nursing facility provider refuses legal access to financial, statistical, or medical records, the penalty of \$1,000 per audit or 25% of the amount by which the undocumented cost increased the Medicaid payments to the provider during the fiscal year shall be imposed for outstanding medical services until such time as the requested information is made available to the Department of Medicaid.

3. Is this rule the result of a federal government requirement? No

A. If yes, does this rule do more than the federal government requires? *Not Applicable*

B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?

Not Applicable

4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:

A. Personnel Costs

\$1,436

B. New Equipment or Other Capital Costs

\$0.00

C. Operating Costs

\$0.00

D. Any Indirect Central Service Costs

\$0.00

E. Other Costs

- \$1,000 per audit or 25% of the amount by which the undocumented cost increased Medicaid payments to the provider during the fiscal year
- Late file penalty: prorated Medicaid days in late file period multiplied by \$2.00

5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.

The Department of Medicaid is unable to provide an explanation of the ability of nursing facilities operated by county and city/village governments to pay the increased costs associated with this proposed rule because the Department does not have this level of detailed information about the finances of these facilities.

6. What will be the impact on economic development, if any, as the result of this rule?

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