

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-3-20

**Rule Type:** Rescission

**Rule Title/Tagline:** Nursing facilities (NFs) and state operated intermediate care facilities for individuals with intellectual disabilities (ICFs-IID): medicaid cost report filing, disclosure requirements, and records retention.

**Agency Name:** Ohio Department of Medicaid

**Division:**

**Address:** 50 Town St 4th floor Columbus OH 43218-2709

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#### I. Rule Summary

1. Is this a five year rule review? Yes
  - A. What is the rule's five year review date? 12/9/2019
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, 5165.107, 5165.108, 5165.40, 5165.41
6. What are the reasons for proposing the rule?

This rule is being proposed for rescission as a result of five-year review. It is being replaced by new 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 (NFs) and state operated intermediate care facilities for individuals with intellectual disabilities (ICFs-IID).

- 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 the opening paragraph of this rule, nursing facilities and state operated 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 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 (A) of this rule, a provider may submit a cost report within 14 days after the original due date if written approval from the Department of Medicaid is received prior to the original due date of the cost report. The provider also must submit a request for an extension in writing and explain the circumstances resulting in the need for an extension. The Department of Medicaid estimates it will take a facility's accountant approximately 1 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00) to comply with these requirements.

In accordance with paragraph (A)(2) of this rule, if a facility does not submit a cost report within 14 days after the original due date, or by the extension date granted by the Department of Medicaid, or submits an incomplete or inadequate report, the Department shall provide immediate written notice to the facility that its provider agreement will be terminated in 30 days unless the facility submits a complete and adequate cost report within 30 days of receiving the notice. The cost of compliance will be determined by the amount of the per diem rate multiplied by the number of residents multiplied by the number of days the facility would have received Medicaid payment if its provider agreement had not been terminated.

In accordance with paragraph (A)(3) 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 (B) of this rule, facilities must include an Addendum for Disputed Costs that may be used by a facility to set forth costs the facility believes may be disputed by the Department of Medicaid. The Department of Medicaid estimates it will take a facility's accountant approximately 1/2 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$13.00) to provide an Addendum of Disputed Costs for inclusion with the cost report.

In accordance with paragraph (C) of this rule, a provider must furnish any documentation or other information requested by the Department of Medicaid when the Department conducts a desk review of the facility's cost report. The Department of Medicaid estimates it will take a provider's accountant approximately 1-3 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00 - \$78.00) to comply with this requirement.

In accordance with paragraph (C)(2) 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)(4) 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 (D) of this rule, a provider may amend a 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 1 – 3 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00 - \$78.00) to amend one cost report.

In accordance with paragraph (D)(1) of this rule, if a nursing facility provider may not amend a cost report because ODM has notified the provider that an audit of the cost report or a cost report of the provider for a subsequent cost reporting period is to be conducted, the provider may provide the Department of Medicaid with information that affects the costs included in the cost report. The Department of Medicaid estimates it will take a nursing facility provider's accountant approximately 2 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$52.00) to provide the department with information that affects the costs included in a cost report.

In accordance with paragraph (G) of this rule, 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 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 (H) 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 (I) 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 (J) through (J)(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 costs 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 (A)(2) of this rule, if a facility does not submit a cost report with 14 days after the original due date, or by the extension date granted by the Department of Medicaid, or submits an incomplete or inadequate report, the Department shall provide immediate written notice to the facility that its provider agreement will be terminated in 30 days unless the facility submits a complete and adequate cost report within 30 days of receiving the notice.

In accordance with paragraph (A)(3) 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 shall be determined using the prorated Medicaid days paid in the late file period multiplied by the penalty. The penalty shall be \$2 per patient day. The late file penalty shall be a reduction to the Medicaid payment. No penalty shall be imposed during a 14-day extension granted by ODM as specified in paragraph (A) of this rule.

In accordance with paragraph (J)(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 (J)(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 (J)(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 the Department, after review of the documentation submitted during the 60-day period, determines the records are still not auditable, the Department shall impose the penalty as specified in paragraph (J)(1) of this rule.

In accordance with paragraph (J)(3) of this rule, refusing legal access to financial, statistical, or medical records shall result in a penalty as specified in paragraph (J)(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 the opening paragraph of this rule, NF and ICF-IID providers must file cost reports as a condition of participation in the Medicaid program.

In accordance with paragraph (B) of this rule, cost reports shall include an addendum for disputed costs that may be used by a facility to set forth costs the facility believes may be disputed by the Department of Medicaid.

In accordance with paragraph (C) of this rule, when the Department of Medicaid conducts a desk review and notifies a facility of any costs preliminarily determined not to be allowable, the facility shall provide any documentation or other information requested by the Department that supports the facility's reported costs.

In accordance with paragraph (C)(2) 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 (D) of this rule, not later than 3 years after a provider files a cost report, the provider may amend the cost report if the provider discovers a material error in the report or additional information to be included in the report. The provider may not amend the cost report if the Department has notified the provider that an audit of the cost report or a cost

report for a subsequent cost reporting period is to be conducted. The provider may, however, furnish the Department with information that affects the costs included in the cost report.

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

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

In accordance with paragraph (I) 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 (J)(2) of this rule, providers whose records have been found to be unauditible will be allowed 60 days to provide 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:**

<b>A. Public School Districts</b>	No
<b>B. County Government</b>	Yes
<b>C. Township Government</b>	No
<b>D. City and Village Governments</b>	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 the opening paragraph of this rule, nursing facilities and state operated 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 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 (A) of this rule, a provider may submit a cost report within 14 days after the original due date if written approval from the Department of Medicaid is received prior to the original due date of the cost report. The provider also must submit a request for an extension in writing and explain the circumstances resulting in the need for an extension. The Department of Medicaid estimates it will take a facility's accountant approximately 1 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00) to comply with these requirements.

In accordance with paragraph (A)(2) of this rule, if a facility does not submit a cost report within 14 days after the original due date, or by the extension date granted by the Department of Medicaid, or submits an incomplete or inadequate report, the Department shall provide immediate written notice to the facility that its provider agreement will be terminated in 30 days unless the facility submits a complete and

adequate cost report within 30 days of receiving the notice. The cost of compliance will be determined by the amount of the per diem rate multiplied by the number of residents multiplied by the number of days the facility would have received Medicaid payment if its provider agreement had not been terminated.

In accordance with paragraph (A)(3) 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 (B) of this rule, facilities must include an Addendum for Disputed Costs that may be used by a facility to set forth costs the facility believes may be disputed by the Department of Medicaid. The Department of Medicaid estimates it will take a facility's accountant approximately 1/2 hour at the rate of approximately \$26.00 per hour (total estimated cost: \$13.00) to provide an Addendum of Disputed Costs for inclusion with the cost report.

In accordance with paragraph (C) of this rule, a provider must furnish any documentation or other information requested by the Department of Medicaid when the Department conducts a desk review of the facility's cost report. The Department of Medicaid estimates it will take a provider's accountant approximately 1-3 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00 - \$78.00) to comply with this requirement.

In accordance with paragraph (C)(2) 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)(4) 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 (D) of this rule, a provider may amend a 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 1 – 3 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$26.00 - \$78.00) to amend one cost report.

In accordance with paragraph (D)(1) of this rule, if a nursing facility provider may not amend a cost report because ODM has notified the provider that an audit of the cost report or a cost report of the provider for a subsequent cost reporting period is to be conducted, the provider may provide the Department of Medicaid with information that affects the costs included in the cost report. The Department of Medicaid estimates it will take a nursing facility provider's accountant approximately 2 hours at the rate of approximately \$26.00 per hour (total estimated cost: \$52.00) to provide the department with information that affects the costs included in a cost report.

In accordance with paragraph (G) of this rule, 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 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 (H) 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 (I) 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 (J) through (J)(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.

**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**

\$1,553 - \$1,657

**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.