

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-3-33

**Rule Type:** New

**Rule Title/Tagline:** Nursing facilities (NFs): Reimbursement of NF relief payments upon sale of business or bed license.

**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?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 169 - 134 - Representatives Al Cutrona and DJ Swearingen
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5160.02, 5165.02
5. **What statute(s) does the rule implement or amplify?** Section 220.60 of Am Sub HB 169
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
  - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

This rule further clarifies the legislature's requirements in HB 169 and to ensure provider relief funds are being utilized for their intended purpose.

**8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the provisions for recoupment of nursing facility provider relief payments upon the sale of a NF's business or bed licenses. This rule is being proposed for adoption to implement provisions of Section 220.60 of Am Sub HB 169, 134th General Assembly. The rule provides that if proceeds from a sale of a NF's business or bed licenses are less than the relief payment, the NF must reimburse the state the full amount of the sale proceeds. If proceeds from the sale are greater than a NF's relief payment, the full amount of the relief payment must be reimbursed to the state. The rule also provides that ODM will notify a NF if a reimbursement is required and set a deadline for the reimbursement. If the reimbursement is not received by the deadline, reimbursement may be made through offset from Medicaid payments. Finally, the rule provides reconsideration rights for NFs notified that reimbursement is required.

**9. Does the rule incorporate material by reference? Yes**

**10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

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).

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

In paragraph (A), language is being updated to clarify that a sale of a nursing facility business or bed license occurs when a purchase agreement or similar document, is signed or, if the signature is not dated, the effective date specified in the purchase agreement or similar document.

In paragraph (B), language is being updated to clarify that a nursing facility will reimburse the state, in accordance with paragraph (A), if it sells any of its business or bed licenses from March 29, 2022 through June 30, 2023.

## **II. Fiscal Analysis**

**12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will increase revenues.

\$1,605,000.00

The Ohio Department of Medicaid estimates that approximately five nursing facilities will sell a business or bed license during the current biennium. The Department further estimates that it will recoup approximately \$321,000.00 per each such transaction, for a total recoupment of approximately \$1.6 million.

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

In accordance with paragraph (B)(1), if the proceeds from the sale of its business or bed licenses are less than the relief payment received by the nursing facility pursuant to Section 220.60 of Amended Substitute House Bill 169 of the 134th General Assembly, the nursing facility shall reimburse the state the full amount of the sale proceeds. The cost of compliance to a nursing facility would be the full amount of the sale proceeds that would be reimbursed to the Department. The Department is unable to quantify the amount of sale proceeds for any particular nursing facility because the amount would vary from facility to facility.

In accordance with paragraph (B)(2), if the proceeds from the sale are greater than the relief payment received by the nursing facility pursuant to Section 220.60 of Amended Substitute House Bill 169 of the 134th General Assembly, the nursing facility shall reimburse the state the full amount of the relief payment and retain any amount remaining from the sale after the relief payment is reimbursed in full. The cost of compliance to a nursing facility would be the full amount of the sale proceeds that would be reimbursed to the Department. The Department is unable to quantify the amount of sale proceeds for any particular nursing facility because the amount would vary from facility to facility.

In accordance with paragraph (C), if reimbursement for sale proceeds is not received by the Department by the deadlines of which a nursing facility has been notified, the facility may have the amount owed to the Department offset from its Medicaid payments. The cost of compliance to a nursing facility would be the amount to be reimbursed to the Ohio Department of Medicaid. The Department is unable to quantify the amount owed by any particular nursing facility because the amount would vary from facility to facility.

In accordance with paragraph (D), a nursing facility notified that it is obligated to reimburse the state pursuant to this rule may request a reconsideration pursuant to rule 5160-70-02 of the Administrative Code within thirty days of the date appearing on the notification. The Department is unable to determine the cost of compliance to a nursing facility because the amount would vary from facility to facility. However, it would be calculated by the length of time it would take an employee to create and submit a reconsideration request multiplied by the employee's hourly rate.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

This rule does not impose a regulation fee.

### **III. Common Sense Initiative (CSI) Questions**

17. **Was this rule filed with the Common Sense Initiative Office? Yes**
18. **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**

The rule requires a nursing facility that sells any of its business or bed licenses between March 29, 2022 and June 30, 2023 to reimburse the state all or a portion of the provider relief payments received from the state. If the reimbursement is not timely made, the department may offset the nursing facility's Medicaid payments in the amount owed.

- C. **Does this rule require specific expenditures or the report of information as a condition of compliance? No**
- D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

In accordance with paragraph (B)(1), if the proceeds from the sale of its business or bed licenses are less than the relief payment received by the nursing facility pursuant to Section 220.60 of Amended Substitute House Bill 169 of the 134th General Assembly, the nursing facility shall reimburse the state the full amount of the sale proceeds.

In accordance with paragraph (B)(2), if the proceeds from the sale are greater than the relief payment received by the nursing facility pursuant to Section 220.60 of Amended Substitute House Bill 169 of the 134th General Assembly, the nursing facility shall reimburse the state the full amount of the relief payment and retain any amount remaining from the sale after the relief payment is reimbursed in full.

**IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**

**19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

**A. How many new regulatory restrictions do you propose adding to this rule?**

Not Applicable

**B. How many existing regulatory restrictions do you propose removing from this rule?**

Not Applicable

**C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

Not Applicable

**D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable

## 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 cost of compliance are the following:

In accordance with paragraph (B)(1), if the proceeds from the sale of its business or bed licenses are less than the relief payment received by the nursing facility pursuant to Section 220.60 of Amended Substitute House Bill 169 of the 134th General Assembly, the nursing facility shall reimburse the state the full amount of the sale proceeds. The cost of compliance to a nursing facility would be the full amount of the sale proceeds that would be reimbursed to the Department. The Department is unable to quantify the amount of sale proceeds for any particular nursing facility because the amount would vary from facility to facility.

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In accordance with paragraph (C), if reimbursement for sale proceeds is not received by the Department by the deadlines of which a nursing facility has been notified, the facility may have the amount owed to the Department offset from its Medicaid

payments. The cost of compliance to a nursing facility would be the amount to be reimbursed to the Ohio Department of Medicaid. The Department is unable to quantify the amount owed by any particular nursing facility because the amount would vary from facility to facility.

In accordance with paragraph (D), a nursing facility notified that it is obligated to reimburse the state pursuant to this rule may request a reconsideration pursuant to rule 5160-70-02 of the Administrative Code within thirty days of the date appearing on the notification. The Department is unable to determine the cost of compliance to a nursing facility because the amount would vary from facility to facility. However, it would be calculated by the length of time it would take an employee to create and submit a reconsideration request multiplied by the employee's hourly rate.

**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**

In accordance with paragraph (D), a nursing facility notified that it is obligated to reimburse the state pursuant to this rule may request a reconsideration pursuant to rule 5160-70-02 of the Administrative Code within thirty days of the date appearing on the notification. The Department is unable to determine the cost of compliance to a nursing facility because the amount would vary from facility to facility. However, it would be calculated by the length of time it would take an employee to create and submit a reconsideration request multiplied by the employee's hourly rate.

**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**

The cost of compliance to a nursing facility would be the full amount of the sale proceeds that would be reimbursed to the Department. The Department is unable to quantify the amount of sale proceeds for any particular nursing facility because the amount would vary from facility to facility.

**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.