



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: The Ohio Department of Medicaid

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

HB 169 NF Provider Relief Payments

Rule Number(s): 5160-3-33 (NEW)

Date of Submission for CSI Review: 9/14/22

Public Comment Period End Date: 9/21/22

Rule Type/Number of Rules:

New/ 1 rules

No Change/ \_\_\_ rules (FYR? \_\_\_)

Amended/ \_\_\_ rules (FYR? \_\_\_)

Rescinded/ \_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

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.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Statutory Authority: 5160.02, 5165.02

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Amplifies: Section 220.60 of Am Sub HB 169, Ohio 134<sup>th</sup> General Assembly

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**  
*If yes, please briefly explain the source and substance of the federal requirement.*

No, this regulation does not implement any federal requirements.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of this regulation is to ensure provider relief funds are being utilized for their intended purpose.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The success of this regulation will be measured by the extent to which provider relief funds are being utilized for their intended purpose.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

This rule is not being submitted pursuant to these specified sections of the Revised Code.

### **Development of the Regulation**

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The primary stakeholders are Ohio's three nursing facility provider associations. The nursing facility provider associations in Ohio are:

- Ohio Health Care Association (OHCA)

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- The Academy of Senior Health Sciences, Inc.
- LeadingAge Ohio

Ohio's nursing facility provider associations represent and advocate for small and large nursing facilities and nursing facilities with both individual and group ownership, publicly-traded and government-owned properties, and for-profit and non-profit facilities. In addition to representing and advocating for nursing facilities, the associations are informational and educational resources to Ohio's nursing facilities, their suppliers, consultants, and the public at large.

The nursing facility provider associations were involved in review of the draft rule when the Department of Medicaid met with them to discuss the draft rule on May 26, 2022.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

ODM responded to all questions during the May 26, 2022 meeting and no concerns were identified.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Scientific data was not applicable to the development of these rules.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternative regulations were considered because the legislation allowed for rules. The Department of Medicaid considers Administrative Code rules the most appropriate type of regulation for the provisions contained in these rules.

**13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Performance-based regulations were not considered appropriate.

**14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

This rule has been reviewed by the Department of Medicaid's staff, including legal staff, to ensure there is no duplication within the Department of Medicaid's rules or any others in the Ohio Revised Code or the Ohio Administrative Code.

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**15. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The final rule as adopted by the Department of Medicaid will be made available to all stakeholders and to the general public on the Department of Medicaid's website <http://medicaid.ohio.gov/RESOURCES/LegalandContracts/Rules.aspx>. In addition, the Department will notify stakeholders during regular provider association meetings when the final rules become effective.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

These rules impact approximately 970 nursing facilities in Ohio that choose to participate in the Medicaid program. Provider participation in the Medicaid program is optional and at the provider’s discretion.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

Compliance with Medicaid program requirements is mandatory for providers who choose to participate in the program and may result in administrative costs as detailed below.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

**b. and c.)**

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 adverse impact 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

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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 adverse impact to a nursing facility would be the full amount of the relief payment that would be reimbursed to the Department. The Department is unable to quantify the adverse impact for any particular nursing facility because the amount of the relief payment varies 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 adverse impact 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 adverse impact 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.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The adverse impact of this rule is justified because this rule implements Section 220.60 of Am Sub HB 169, Ohio 134th General Assembly.

**Regulatory Flexibility**

**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. The provisions in this rule is the same for all nursing facilities regardless of size.

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**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ORC section 119.14 is not applicable to this regulation.

**20. What resources are available to assist small businesses with compliance of the regulation?**

Providers in need of assistance may contact the Bureau of Long-Term Services and Supports at (614) 466-6742.

5160-3-33

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

- (A) For purposes of Section 220.60 of Amended Substitute House Bill 169 of the 134th General Assembly and this rule, a "sale" occurs when a purchase agreement or similar document that outlines the terms of the purchase and results in the payment of money for the business or bed license, is signed or, if the signature is not dated, the effective date specified in the purchase agreement or similar document.
- (B) Any nursing facility that sells any of its business or bed licenses in accordance with paragraph (A) of this rule from March 29, 2022 through June 30, 2023 will reimburse the state in the following manner:
- (1) If the proceeds from the sale 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 will reimburse the state the full amount of the sale proceeds;
  - (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 will 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.
- (C) The department of medicaid will notify each nursing facility that is obligated to reimburse relief payments to the state. The notification will be by certified mail and include the manner of reimbursement and the deadline. If the reimbursement is not received by the department by the deadline, the department may, without further notice, offset from medicaid payments the amount of the reimbursement until it is paid in full.
- (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.