

- (b) THE INTEREST SHALL BE NO GREATER THAN TWO AND ONE-HALF TIMES THE AVERAGE BANK PRIME RATE IF THE OVERPAYMENT WAS GREATER THAN ONE PER CENT OF THE TOTAL MEDICAID PAYMENTS TO THE PROVIDER FOR THE FISCAL YEAR FOR WHICH THE INCORRECT INFORMATION WAS USED TO ESTABLISH A RATE.
- (3) ODHS SHALL DETERMINE THE AVERAGE BANK PRIME RATE USING STATISTICAL RELEASE H.15, "SELECTED INTEREST RATES," A WEEKLY PUBLICATION OF THE FEDERAL RESERVE BOARD, OR ANY SUCCESSOR PUBLICATION. IF STATISTICAL RELEASE H.15, OR ITS SUCCESSOR CEASES TO CONTAIN THE BANK PRIME RATE INFORMATION OR CEASES TO BE PUBLISHED, ODHS SHALL REQUEST A WRITTEN STATEMENT OF THE AVERAGE BANK PRIME RATE FROM THE FEDERAL RESERVE BANK OF CLEVELAND OR THE FEDERAL RESERVE BOARD.
- (C) ODHS ALSO MAY IMPOSE THE FOLLOWING PENALTIES:
- (1) IF A PROVIDER DOES NOT FURNISH INVOICES OR OTHER DOCUMENTATION THAT ODHS REQUESTS DURING AN AUDIT WITHIN SIXTY DAYS AFTER THE REQUEST, NO MORE THAN THE GREATER OF ONE THOUSAND DOLLARS PER AUDIT OR TWENTY-FIVE PER CENT OF THE CUMULATIVE AMOUNT BY WHICH THE COSTS FOR WHICH DOCUMENTATION WAS NOT FURNISHED INCREASED THE TOTAL MEDICAID PAYMENTS TO THE PROVIDER DURING THE FISCAL YEAR FOR WHICH THE COSTS WERE USED TO ESTABLISH A RATE;
- (2) IF AN OWNER FAILS TO PROVIDE NOTICE OF SALE OF THE FACILITY OR VOLUNTARY TERMINATION OF PARTICIPATION IN THE MEDICAL ASSISTANCE PROGRAM, AS REQUIRED BY RULES 5101:3-3-516 AND 5101:3-3-845 OF THE ADMINISTRATIVE CODE, NO MORE THAN TWO PER CENT OF THE LAST TWO MONTHLY PAYMENTS.

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- (D) IF THE PROVIDER CONTINUES TO PARTICIPATE IN THE MEDICAL ASSISTANCE PROGRAM, ODHS SHALL DEDUCT ANY AMOUNT THAT THE PROVIDER IS REQUIRED TO REFUND UNDER THIS RULE, AND THE AMOUNT OF ANY INTEREST CHARGED OR PENALTY IMPOSED UNDER THIS RULE, FROM THE NEXT AVAILABLE PAYMENT FROM ODHS TO THE PROVIDER. ODHS AND THE PROVIDER MAY ENTER INTO AN AGREEMENT UNDER WHICH THE AMOUNT, TOGETHER WITH INTEREST, IS DEDUCTED IN INSTALLMENTS FROM PAYMENTS FROM ODHS TO THE PROVIDER.

- (E) ODHS SHALL TRANSMIT REFUNDS AND PENALTIES TO THE TREASURER OF STATE FOR DEPOSIT IN THE GENERAL REVENUE FUND.

EFFECTIVE DATE: _____

CERTIFICATION: _____

DATE

PROMULGATED UNDER: RC CHAPTER 119.
STATUTORY AUTHORITY: RC SECTION 5111.02
RULE AMPLIFIES: RC SECTIONS 5111.01, 5111.02, 5111.28

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04 DEC 22 A10 : 48

5101:3-3-23

PRIVATE ROOMS FOR MEDICAID RESIDENTS IN NURSING FACILITIES (NF) AND INTERMEDIATE-CARE FACILITIES FOR THE MENTALLY RETARDED (ICF-S-MR).

MEDICAID WILL NOT PAY MORE FOR A PRIVATE ROOM THAN THE FACILITY CURRENT PER DIEM RATE.

- (A) IF A PRIVATE ROOM IS REQUIRED DUE TO MEDICAL NECESSITY, A NF OR AN ICF-MR MUST PROVIDE THAT ROOM. MEDICAID PAYMENT IS CONSIDERED PAYMENT IN FULL. NO SUPPLEMENTAL PAYMENT CAN BE REQUESTED OR ACCEPTED FROM THE RESIDENT AND/OR DESIGNEE.
- (B) MEDICAID PAYMENT IS CONSIDERED TO BE PAYMENT IN FULL IN INSTANCES WHEN A MEDICAID RESIDENT IS GIVEN PRIVATE ROOM ACCOMMODATIONS AND NO SEMIPRIVATE OR WARD ACCOMMODATIONS ARE AVAILABLE. THE FACILITY MAY NOT SEEK SUPPLEMENTAL PAYMENT FROM OTHER SOURCES SUCH AS THE RESIDENT OR THE FAMILY UNLESS A BED IN SEMIPRIVATE ACCOMMODATIONS BECOMES AVAILABLE, AND PARAGRAPH (C) OF THIS RULE APPLIES.
- (C) IF A BED IN SEMIPRIVATE ACCOMMODATIONS IS AVAILABLE AND OFFERED TO A RESIDENT, BUT THE RESIDENT OR THE RESPONSIBLE PARTY SPECIFICALLY REQUESTS PRIVATE ROOM ACCOMMODATIONS, THE PRIVATE ROOM ACCOMMODATION IS CONSIDERED A NONCOVERED SERVICE.

IN THESE INSTANCES, THE FACILITY MAY SEEK SUPPLEMENTAL PAYMENT FROM THE RESIDENT UNDER THE FOLLOWING CONDITIONS:

- (1) THE SUPPLEMENTAL PAYMENT AMOUNT SHALL REPRESENT NO MORE THAN THE DIFFERENCE BETWEEN THE NF'S OR ICF'S-MR CHARGE TO PRIVATE PAY RESIDENTS FOR SEMIPRIVATE ROOM ACCOMODATIONS, AND THE CHARGE TO PRIVATE PAY RESIDENTS FOR PRIVATE ROOM ACCOMODATIONS; AND

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82-30 Date Appr'd Oct 31 1991
JH _____ 7/1/92

- (2) THE CHARGE FOR PRIVATE ROOM ACCOMODATIONS SHALL NOT INCLUDE CHARGES FOR SERVICES COVERED BY THE MEDICAID PROGRAM, WHETHER OR NOT THE MEDICAID PAYMENT MEETS THE NF'S OR ICF'S-MR COST FOR THE PER DIEM SERVICE; AND
- (3) BOTH MONTHLY AND ANNUAL SUPPLEMENTAL CHARGES, IF APPLICABLE, ARE TO BE DETAILED ON THE RESIDENT'S STATEMENT OF CHARGES SO THAT THE ADDITIONAL COST OF THE PRIVATE ROOM IS EVIDENT TO THE RESIDENT AND FAMILY; AND
- (4) THE AMOUNT OF ANY SUPPLEMENTAL PAYMENT IS NOT CONSIDERED AS AN OFFSET IN DETERMINING THE RESIDENT'S LIABILITY FOR COST OF CARE. ALL INCOME WHICH WOULD OTHERWISE BE CONSIDERED AVAILABLE TO APPLY TO THE COST OF CARE AT THE MEDICAID RATE WILL CONTINUE TO BE CONSIDERED AVAILABLE.

REPLACES RULE 5101:3-3-52

EFFECTIVE DATE: JAN 01 1995
CERTIFICATION: *Arnold K. Taylor*
DEC 22 1994
DATE

PROMULGATED UNDER: RC CHAPTER 119.
STATUTORY AUTHORITY: RC SECTION 5111.02
RULE AMPLIFIES: RC SECTIONS 5111.01 AND 5111.02
PRIOR EFFECTIVE DATE: 9/2/82

HCFA-179 # 97-19 Date Rec'd 00 31 1997
Supercedes 82-30 Date Appr. 2/1/97
State Rep. In 8 H Date Eff. 2/1/97

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5101:3-3-24 Prospective rate reconsideration for nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR).

A NF, an ICF-MR, a group or association of facilities may request reconsideration of a prospective rate established under ~~sections 5111.23 to 5111.28 of the Revised~~ RULES SET FORTH UNDER CHAPTER 5101:3-3 OF THE ADMINISTRATIVE Code.

(A) A facility, group, or association may request a reconsideration of a prospective rate on the basis of a possible error in the calculation of the rate as follows:

- (1) For the initial annual rate-setting calculation effective July 1, 1993, a request for reconsideration of a prospective rate on the basis of a possible error in the calculation of the rate shall be filed with the Ohio department of human services (ODHS) no more than sixty days after the later of the initial payment of the rate or the receipt of the initial rate-setting calculation.
- (2) For all rates established after the initial annual rate-setting calculation effective July 1, 1993, a request for reconsideration of a prospective rate on the basis of a possible error in the calculation of the rate shall be filed with ODHS no more than thirty days after the later of the initial payment of the rate or the receipt of the rate-setting calculation.
- (3) The request for a reconsideration of a prospective rate on the basis of a possible error in the calculation of the rate shall be filed in accordance with the following procedures:
 - (a) The request for rate reconsideration shall be in writing; and
 - (b) The request shall be addressed to long term care, office of medicaid, rate reconsiderations; and
 - (c) The request shall indicate that it is a request for rate reconsideration due to a possible error in the calculation of the rate; and
 - (d) The request shall include a detailed explanation of the possible error and the proposed corrected calculation; and
 - (e) The request shall include references to the relevant sections of the Revised Code and/or paragraphs of the Administrative Code as appropriate.

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- (4) ODHS shall respond in writing within sixty days of receiving each written request for reconsideration of a prospective rate due to a possible error in the calculation of the rate. If ODHS requests additional information to determine whether a rate adjustment is warranted, ODHS shall respond in writing within sixty days of receiving the additional information to the request for reconsideration of a prospective rate due to a possible error in the calculation of the rate.
- (5) If a rate adjustment is warranted as the result of a reconsideration of a prospective rate due to a possible error in calculation, the adjustment shall be implemented retroactively to the initial service date for which the rate is effective.
- (B) A facility may request a reconsideration of any prospective direct care rate which was established by recalculating the direct care rate as a result of an exception review of resident assessment information conducted before the effective date of the rate under ~~section 5111.27 of the Revised~~ RULES 5101:3-3-521 AND 5101:3-3-851 OF THE ADMINISTRATIVE Code. Requests for rate reconsiderations related to exception review findings must be submitted in accordance with the following procedures.
- (1) A reconsideration of a prospective direct care rate on the basis of a dispute with an ODHS exception review finding shall be submitted to ODHS no more than thirty days after the later of receipt of exception review findings or initial payment of the rate.
- (2) The request for a reconsideration of prospective rates on the basis of a dispute with exception review findings shall be filed in accordance with the following procedures:
- (a) The request shall be in writing; and
 - (b) The request shall be addressed to long term care, office of medicaid, rate reconsiderations; and
 - (c) The request shall indicate that it is a request for rate reconsideration due to a dispute with an exception review finding; and
 - (d) The request shall include a detailed explanation of the item(s) on the resident assessment records under dispute as well as necessary supporting documentation and proposed resolution.

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- (3) ODHS shall respond in writing within sixty days of receiving each written request for a rate reconsideration related to a disputed exception review finding. If ODHS requests additional information to determine if the rate adjustment is warranted, ODHS shall respond in writing within sixty days of receiving the additional information to the request for a rate reconsideration due to disputed exception review findings.
 - (4) If the rate is increased pursuant to a rate reconsideration due to a disputed exception review finding, the rate adjustment shall be implemented retroactively to the initial service date for which the rate is effective.
 - (5) When calculating the annual facility average case mix scores in accordance with rules 5101:3-3-42 and 5101:3-3-77 of the Administrative Code, ODHS shall use any scores adjusted as a result of a rate reconsideration determination in lieu of the score from the exception review finding.
- (C) A facility may request a rate reconsideration before the end of the fiscal year for which the rate is paid if the facility can demonstrate that its actual, allowable costs exceed its prospective rate due to extreme circumstances.
- (1) Extreme circumstances are factors beyond the facility's control. Extreme circumstances include but are not limited to the following:
 - (a) Renovations approved under ~~division (D) of section 5111.251 of the Revised~~ RULE 5101:3-3-843 OF THE ADMINISTRATIVE Code; or
 - (b) An increase in worker's compensation experience rating of greater than five per cent for a facility that has an appropriate claims management program; or
 - (c) Increased security costs for an inner-city facility; or
 - (d) A change of ownership PROVIDER AGREEMENT that results from any of the following:
 - (i) Bankruptcy; or
 - (ii) Foreclosure; or
 - (iii) In the case of NFs, findings of level A deficiencies by the Ohio department of health (ODH); or

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- (iv) In the case of ICFs-MR, findings of conditions of participation out of compliance by ODH.
- (2) Circumstances which are not considered extreme and are not beyond the provider's control include but are not limited to:
 - (a) Wage increases; or
 - (b) Negotiated union contracts; or
 - (c) Renovations approved or disapproved under ~~division (F) of section 5111.25 of the Revised~~ RULE 5101:3-3-513 OF THE ADMINISTRATIVE Code.
- (3) A rate reconsideration due to extreme circumstances will be granted at the discretion of ODHS only when the following circumstances are satisfied.
 - (a) The facility does not have efficiency incentives and equity payments included in the prospective rate that cover the cost increase. Costs in excess of ceilings and nonallowable costs will not be considered in the determination of available efficiency incentives.
 - (b) In the case of changes of ownership that result from bankruptcy, foreclosure, or findings of level A deficiencies or conditions of participation out of compliance by ODH, rate adjustments will be granted only for cost increases in direct care, medical supplies, incontinence supplies, dietary expenses, and housekeeping.
- (4) A rate reconsideration due to extreme circumstances shall not increase a rate in excess of any rate limitations or maximum rates set forth in the Revised Code or the Administrative Code.
- (5) A request for a rate reconsideration due to extreme circumstances must be filed before the end of the fiscal year for which the rate is paid.
- (6) A request for a rate reconsideration due to extreme circumstances must be filed in accordance with the following procedures:
 - (a) The request for rate reconsideration shall be in writing; and

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- (b) The request shall be addressed to long term care, office of medicaid, rate reconsiderations; and
- (c) The request for rate reconsideration must indicate that it is a request for reconsideration due to extreme circumstances.
- (d) The request for a rate reconsideration must give a detailed explanation as to why a rate adjustment is warranted. This explanation must include efforts the facility has made to address the problem outside the rate reconsideration process.
- (e) The facility must file a full and complete three-month cost report which includes schedules, attachments, a trial balance, and other documentation supporting the cost component increase in accordance with the following conditions:
 - (i) If the requested rate adjustment affects cost of ownership or renovations reimbursement, actual cost data for the three-month period immediately preceding the date the assets are placed in service must be reported on the three-month cost report. Capital costs must be restated to reflect the impact of the capital additions using actual depreciation and amortization tables. The depreciation and amortization tables that support the information on the cost report shall be filed with the cost report. The computation restating capital costs must be filed with the cost report. The greater of reported inpatient days or ninety-five per cent of licensed bed days shall be used to compute the per diem for capital reimbursement.
 - (ii) If the requested rate adjustment is due to an increase in the worker's compensation experience rating, a three-month cost report shall be filed using actual data for the three-month period immediately preceding the period affected by the premium increase. The worker's compensation expense reported on the cost report shall be restated to reflect the change in the worker's compensation experience rating. Documentation of the increase in the rating shall be filed with the cost report. The calculation used to restate the worker's compensation expense shall be filed with the cost report.

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- (iii) If the requested rate adjustment is the result of a change of ~~ownership~~ PROVIDER AGREEMENT that results from bankruptcy, foreclosure, or findings of level A deficiencies or conditions of participation out of compliance by ODH, the greater of eighty-five per cent of licensed bed days or actual occupancy shall be used to compute the direct care per diem. The following information must be submitted in addition to the cost report.
 - (a) Documentation of any findings of deficiency or conditions of participation out of compliance by ODH; and
 - (b) A plan of correction addressing the findings of deficiency or conditions of participation out of compliance that has been approved by ODH; and
 - (c) A complete staffing plan by classification of employee; and
 - (d) A schedule of wages to be paid to facility staff; and
 - (e) Any other justification for an increase in ~~in~~ costs for expenses included in direct care, medical supplies, incontinence supplies, dietary, and housekeeping; ~~and~~.
- (iv) If the requested rate adjustment affects any other cost center, actual data must be filed on the three-month cost report.

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- (7) ODHS shall respond in writing within sixty days of receiving each written request for a rate reconsideration due to extreme circumstances. If ODHS requests additional information to determine if the rate adjustment is warranted, ODHS shall respond in writing within sixty days of receiving the additional information to the request for a rate reconsideration due to extreme circumstances.
- (8) If a rate is increased pursuant to a rate reconsideration due to extreme circumstances, the rate adjustment shall be effective on the first day of the first month after ODHS receives the written request.

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