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5101:3-3-516 Notice, escrow, and recovery of excess depreciation paid, change in the medicaid provider agreement, or voluntary termination in the medical assistance program for nursing facilities (NFs).

- (A) For purposes of this rule, the sale of a NF is considered the sale of the building, the sale of the operating rights, or the sale of the building and the operating rights from an unrelated party regardless of whether the NF is participating in the medical assistance program.
- (B) The following circumstances shall result in a change in medicaid provider agreement:
- (1) A sale of a NF; or
 - (2) In the case of a NF operating as a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable state law; or
 - (3) In the case of a sole proprietorship, the transfer of title and property to another party; or
 - (4) In the case of leases, an initial lease or a new lease as set forth under rule 5101:3-3-515 of the Administrative Code; or
 - (5) In the case of a corporation, the merger of the provider corporation into another corporation or the consolidation of two or more corporations resulting in the creation of a new corporation.
- (C) A provider operating a NF under a medicaid provider agreement shall provide notice to Ohio department of human services (ODHS) as follows:
- (1) Any provider that owns and operates a NF which anticipates changing its medicaid provider agreement and the anticipated change does not involve the relocation of residents, shall provide written notice at least forty-five days prior to the change in the medicaid provider agreement; and
 - (2) Any provider that owns and operates a NF which anticipates changing its medicaid provider agreement or anticipates voluntary termination of its medicaid provider agreement and either involves the relocation of residents, shall provide written notice at least ninety days prior to the change in the medicaid provider agreement or the effective date of termination; and

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- (3) Any provider operating a NF pursuant to a lease which changes its medicaid provider agreement and the change does not involve the relocation of residents shall provide written notice at least forty-five days prior to the expiration of its lease if a new, extended or renewed lease is not in place at the time; and
 - (4) Any provider operating a NF pursuant to a lease which changes its medicaid provider agreement and the change involves the relocation of residents shall provide written notice at least ninety days prior to the expiration of its lease if a new, extended or renewed lease is not in place at the time; and
 - (5) Notwithstanding paragraphs (C)(1) to (C)(4) of this rule, any provider operating a NF shall provide immediate notice by telephone or FAX and written notice within five days of notification of a government mandate which requires the relocation of residents.
- (D) ODHS shall hold in escrow in a bank, trust company, or savings and loan association, the amount of the last two monthly vendor payments to a NF before a change in the medicaid provider agreement or voluntary termination from the medicaid program. The only exception is that if the amount the NF will be required to refund under this rule is likely to be less than the amount of the last two monthly vendor payments, ODHS shall take one of the following actions instead of withholding the amount of the last two monthly vendor payments:
- (1) In the case of a NF that owns other NFs or intermediate care facilities for the mentally retarded (ICFs-MR) that participate in the medical assistance program, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded; or
 - (2) In the case of all other NFs, withhold the amount of the last monthly vendor payment to the NF.

If there is no change in the medicaid provider agreement or its participation is not voluntarily terminated after notice is provided to ODHS under this rule, ODHS shall order any payments held in escrow released to the NF upon receiving written notice from the NF that there will be no change in the medicaid provider agreement or voluntary termination. After written notice is received from a NF that a change in the medicaid provider agreement or voluntary termination will not take place, the NF shall provide notice to ODHS as set forth under paragraph (C) of this rule.

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- (E) When a NF changes its medicaid provider agreement or voluntarily terminates its medicaid provider agreement, the NF shall file a final cost report, as set forth under rule 5101:3-3-20 of the Administrative Code, within ninety days after the date on which the transaction results in a change in the medicaid provider agreement or voluntary termination unless ODHS grants a waiver of the final cost report filing requirement. Any waiver granted by ODHS shall apply to all facilities that otherwise would be required to file a final cost report under this paragraph except for facilities that are sold. For NFs which change medicaid provider agreements as a result of a sale, the final cost report and additional information shall include:
- (1) The sales agreement; and
 - (2) The sales price; and
 - (3) The historical cost and accumulated depreciation of the assets sold; and
 - (4) The gain on the sale, which is determined by subtracting the net book value of the assets from the sales price less costs incurred for the sale; and
 - (5) Any other information requested by ODHS.
- (F) In accordance with paragraph (J)(4) of this rule, after the date on which a transaction of a sale of a NF is closed, the NF shall refund to ODHS the amount of excess depreciation paid to the NF by ODHS which is calculated as follows:
- (1) Determine the gain on the sale by subtracting the net book value of the assets from the sales price less costs incurred for the sale. If the operating rights to the NF are sold, but not the building, the net book value of all of the facility's building and equipment assets shall be used to determine the gain. If the net sales price for the operating rights is less than the net book value of the building and equipment assets, the net book value of those assets shall be reduced by the amount of the net sales price and the net book value, so reduced, shall be used to determine gain when the building is sold; and
 - (2) Beginning with the most recent reimbursement period, determine each component of the provider's per diem capital rate and the total capital rate reimbursed by ODHS; and

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- (3) Subtract from the total capital rate reimbursed, as calculated under paragraph (F)(2) of this rule, the components of the rate for return on equity, nonextensive renovation, and cost of ownership efficiency incentive. The balance is considered the allowable cost of ownership expense per diem reimbursed by ODHS; and
- (4) Subtract from the balance determined under paragraph (F)(3) of this rule one hundred per cent of the allowable actual interest expense, rent and lease expense, and amortization of financing costs per diems paid by the NF. The balance is considered depreciation paid to the NF by ODHS. For the purposes of this calculation only, actual interest expense that is otherwise allowable but exceeds the amount specified in paragraph (G)(4) of this rule shall be considered allowable; and
- (5) Multiply the depreciation paid to the NF by ODHS as determined under paragraph (F)(4) of this rule by the number of medicaid days for the applicable reimbursement period; and
- (6) Subtract the amount calculated under paragraph (F)(5) of this rule from the remaining gain calculated under paragraph (F)(1) of this rule; and
- (7) Repeat the procedure under paragraphs (F)(2) to (F)(6) of this rule for each reimbursement period until either the gain is completely offset or the depreciation paid to the NF by ODHS has been fully recaptured for all reimbursement periods the provider operated on the medical assistance program and ODHS paid any amount specifically for cost of ownership.
- (8) IF A NF IS SOLD AFTER FIVE OR FEWER YEARS OF OPERATION UNDER A PROVIDER AGREEMENT, THE REFUND TO ODHS SHALL BE EQUAL TO THE EXCESS DEPRECIATION PAID TO THE NF. IF A NF IS SOLD AFTER MORE THAN FIVE YEARS BUT LESS THAN TEN YEARS OF OPERATION UNDER A PROVIDER AGREEMENT, THE REFUND TO ODHS SHALL EQUAL THE EXCESS DEPRECIATION PAID TO THE NF MULTIPLIED BY TWENTY PER CENT, MULTIPLIED BY THE DIFFERENCE BETWEEN TEN AND THE NUMBER OF YEARS THAT THE NF WAS OPERATED UNDER A PROVIDER AGREEMENT. IF A NF IS SOLD AFTER TEN OR MORE YEARS OF OPERATION UNDER A PROVIDER AGREEMENT, THE OWNER SHALL NOT REFUND ANY EXCESS DEPRECIATION TO ODHS.

Proposed Effective Date September 1, 1995

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- (G) Upon a sale of a NF, the allowable capital asset cost basis, depreciation expense, and interest expense for the new NF provider (buyer) shall be determined as follows:
- (1) In order to determine the allowable capital asset cost basis, the new NF provider (buyer) shall receive the lower of the new NF provider's (buyer's) actual cost, or the seller's allowable historical capital asset cost basis for each asset that is transferred to the buyer increased by the lesser of:
 - (a) One-half of the change in construction costs during the time that the transferor held the asset, as calculated by ODHS using the "Dodge Building Cost Indexes, Northeastern and North Central States," published by Marshall and Swift; or
 - (b) One-half of the change in the "Consumer Price Index for All Items for All Urban Consumers," as published by the United States bureau of labor statistics, during the time that the transferor held the asset.
 - (2) If the operating rights to a NF are separately identified and valued in a sale that includes both the building and the operating rights, the operating rights shall be considered to be a part of the building for purposes of determining the allowable capital asset cost basis under paragraph (G)(1) of this rule. If a new NF provider (buyer) purchases only the operating rights to create a new NF or an ICF-MR and uses the operating rights to create a new NF or add beds to an existing NF, the purchase price of the operating rights shall be added to the capital asset cost basis of the new NF building or the additional beds.
 - (3) Depreciation expense shall be based on the allowable cost basis as determined under paragraph (G)(1) of this rule. For purposes of calculating the depreciation expense, the buyer shall:
 - (a) Separate the assets into three accounts and depreciate the separated assets using the following useful lives:
 - (i) "Land" is not depreciated; and
 - (ii) "Buildings" include buildings, renovations, and leasehold improvements completed by the prior NF and shall be depreciated over a thirty-three-year useful life; and
 - (iii) "Equipment" is all assets not included in land or buildings and shall be depreciated over a ten-year useful life.

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- (b) Upon the sale of a NF, the initial accumulated depreciation for the new NF provider (buyer) shall be recalculated starting at zero; and
 - (c) Report double accumulated depreciation in an amount equal to twice the depreciation expense incurred on its cost report for the first year of operation if the provider applies for a rate adjustment.
- (4) The allowable interest expense shall be calculated by multiplying the actual interest rate for the loan by the lesser of the actual loan balance or the maximum amount determined under (G)(1) of this rule. Any interest expense related to debt in excess of the maximum allowable amount shall be considered a nonallowable expense.
- (5) Any debt or asset in excess of the maximum allowable amount determined under paragraph (G)(1) of this rule is not included when computing equity capital.
- (6) Only upon a subsequent sale of a NF shall there be a recognition of a gain or loss upon the disposal of assets acquired through the sale of the NF.
- (7) For subsequent sales of a NF, the allowable capital asset cost basis of the new NF provider (buyer) shall be the lower of the new NF provider's (buyer's) actual cost or the previous buyer's allowable cost basis determined under paragraph (G)(1) of this rule for each asset that is transferred to the new NF provider (buyer) increased by the lesser of:
- (a) One-half of the change in construction costs during the time that the transferor held the asset, as calculated by odhs using the "Dodge Building Cost Indexes, Northeastern and North Central States," published by Marshall and Swift; or
 - (b) One-half of the change in the "Consumer Price Index for All Items for All Urban Consumers," as published by the United States bureau of labor statistics, during the time that the transferor held the asset.
- (H) For the sale of a NF under an operating lease, the following applies:
- (1) If the NF participated in the medicaid program and is subsequently sold prior to January 1, 1994, the new NF provider (buyer) shall receive the lesser of:
 - (a) The new NF provider's (buyer's) actual depreciation and interest expense; or

- (b) The old lease payment at the inception of the lease adjusted by the lesser of the following:
 - (i) One-half of the change in construction costs from the first year of the last lease agreement prior to the sale of the NF between the same parties to the date of sale as calculated by ODHS using the "Dodge Building Cost Indexes, Northeastern and North Central States," published by Marshall and Swift; or
 - (ii) One-half of the change in the "Consumer Price Index for All Items for All Urban Consumers," as published by the United States bureau of labor statistics, from the first year of the last lease agreement prior to the sale of the NF between the same parties to the date of sale.
- (2) If the NF participated in the medicaid program and is subsequently sold after December 31, 1993, the sales agreement shall require the seller to disclose the historical capital asset cost basis and dates of acquisition of the assets of the seller. The capital asset cost basis, depreciation expense, and interest expense of the new NF provider (buyer) shall be calculated as set forth under paragraph (G) of this rule.
- (I) A NF that changes medicaid provider agreements or voluntarily terminates its medicaid provider agreement shall refund any amount ODHS properly finds to be due.
- (J) When a change in medicaid provider agreement or voluntary termination of the medicaid provider agreement occurs, ODHS shall comply with the following:
 - (1) ODHS may impose a penalty of no more than two per cent of the last two monthly vendor payments if a NF fails to provide notice of a change in medicaid provider agreement or voluntary termination of the medicaid provider agreement as required by paragraph (C) of this rule; and
 - (2) Unless the requirement for filing a final cost report has been waived, ODHS shall, within ninety days following the filing of the final cost report, audit the final cost report and issue an audit report to the NF. ODHS may also audit any other cost report that the NF has filed during the previous three years. ODHS shall state its findings in the audit report and the amount of any money owed including any amount due under paragraph (F) of this rule to ODHS by the NF; and

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- (3) ODHS shall release any money held in escrow to the NF if ODHS does not issue its audit report within the ninety-day period; and
- (4) ODHS shall issue the findings of the audit report subject to adjudication conducted in accordance with Chapter 119. of the Revised Code. No later than fifteen days after the NF agrees to a settlement, any funds held in escrow less any amounts due to ODHS shall be released to the NF and amounts due to ODHS shall be paid to ODHS. If the amounts in escrow are less than the amounts due to ODHS, the balance shall be paid to ODHS within fifteen days after the NF agrees to a settlement. If the audit report is issued within ninety days, ODHS shall retain the escrowed funds until the settlement is adjudicated.

Effective date: _____

Certification: _____

Date

Promulgated under: RC Chapter 119.

Statutory authority: RC section 5111.02

Rule amplifies: RC sections 5111.01, 5111.02, 5111.25

Prior effective dates: 7/1/80, 9/30/93 (Emer.), 12/30/93 (Emer.), 3/31/94 (Emer.), 8/21/94

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5101:3-3-517 HOLD HARMLESS PROVISIONS FOR THE CAPITAL COSTS COMPONENT OF THE PROSPECTIVE RATE FOR NURSING FACILITIES (NFS).

- (A) IF A NF WOULD RECEIVE A LOWER RATE FOR THE FISCAL YEAR BEGINNING JULY 1, 1993, FOR CAPITAL COSTS UNDER RULE 5101:3-3-51 OF THE ADMINISTRATIVE CODE THAN IT WOULD HAVE RECEIVED UNDER FORMER SECTION 5111.25 OF THE REVISED CODE AS AMENDED BY AMENDED SUBSTITUTE HOUSE BILL 298 (AM. SUB. H. B. 298), THE NF SHALL BE HELD HARMLESS AND THEREBY RECEIVE THE RATE IT WOULD HAVE RECEIVED UNDER THE FORMER SECTION FOR EACH FISCAL YEAR BEGINNING ON OR AFTER JULY 1, 1993, UNTIL THE RATE IT WOULD RECEIVE UNDER RULE 5101:3-3-51 OF THE ADMINISTRATIVE CODE EXCEEDS THE RATE IT WOULD HAVE RECEIVED UNDER THE FORMER SECTION. IF A NF DOES NOT QUALIFY FOR THE HOLD HARMLESS PROVISION FOR FISCAL YEAR BEGINNING JULY 1, 1993, THE NF SHALL NOT QUALIFY FOR THE HOLD HARMLESS PROVISION IN ANY SUBSEQUENT FISCAL YEARS.
- (B) IF A FACILITY IS HELD HARMLESS PURSUANT TO PARAGRAPH (A) OF THIS RULE, THE RATE FOR CAPITAL COSTS FOR ASSETS ACQUIRED AFTER JUNE 30, 1993 SHALL BE CALCULATED IN ACCORDANCE WITH RULE 5101:3-3-51 OF THE ADMINISTRATIVE CODE. THESE ASSETS SHALL NOT BE INCLUDED IN THE CALCULATION UNDER PARAGRAPH (A) OF THIS RULE.
- (C) FACILITIES WITH DATES OF LICENSURE ON OR AFTER JULY 1, 1993 SHALL NOT QUALIFY FOR THE HOLD HARMLESS PROVISION UNDER PARAGRAPH (A) OF THIS RULE.
- (D) FACILITIES THAT QUALIFY FOR THE HOLD HARMLESS PROVISION UNDER PARAGRAPH (A) OF THIS RULE AND CHANGE OWNERSHIP AND/OR CONTROL ON OR AFTER JULY 1, 1993 SHALL NO LONGER QUALIFY AS A HOLD HARMLESS FACILITY.
- (E) FACILITIES THAT QUALIFY FOR THE HOLD HARMLESS PROVISION UNDER PARAGRAPH (A) OF THIS RULE AND TERMINATE PARTICIPATION IN THE MEDICAID PROGRAM FOR ANY REASON SHALL NO LONGER QUALIFY FOR THE HOLD HARMLESS PROVISION UNDER PARAGRAPH (A) OF THIS RULE.

TNS # 94-07 APPROVAL DATE JUN 28 1994
SUPERSEDES
TNS # 93-024 EFFECTIVE DATE 10/1/94

EFFECTIVE DATE: _____

CERTIFICATION: _____

DATE

PROMULGATED UNDER: CHAPTER 119.
STATUTORY AUTHORITY: RC SECTION 5111.02
RULE AMPLIFIES: RC SECTIONS 5111.01, 5111.02, 5111.25

TNS # 94-07 APPROVAL DATE JUN 26 1994
SUPERSEDES
TNS # 93-024 EFFECTIVE DATE 10/1/94