

~~5101:3-3-514~~ 5101:3-3-51.4 Nursing facilities (NFs): return on equity.

The Ohio department of ~~human services (ODHS)~~ JOB AND FAMILY SERVICES (ODJFS) shall pay each eligible proprietary NF a return on the facility's net equity computed from the cost report of the calendar year that precedes the fiscal year in which the rate is paid at the rate of one and one-half times the average interest rate on special issues of public debt obligations issued to the federal hospital insurance trust fund for the cost reporting period. No facility's return on net equity shall exceed ~~one dollar~~ FIFTY CENTS per ~~resident~~ INPATIENT day. When calculating the rate for return on net equity, ~~ODHS~~ ODJFS shall use the greater of the facility's inpatient days during the applicable cost reporting period or the number of inpatient days the facility would have had during that period if its occupancy rate had been ninety-five per cent.

Effective Date: \_\_\_\_\_

Review Date: \_\_\_\_\_

Certification: \_\_\_\_\_

\_\_\_\_\_  
Date

Promulgated Under: Chapter 119.  
Statutory Authority: RC Section 5111.02  
Rule Amplifies: RC Sections 5111.01, 5111.02, 5111.25  
Prior Effective Date: 7/1/93 (Emer.), 9/30/93, 12/17/98

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SUPERSEDES  
TN # 98-19 EFFECTIVE DATE 7/1/01

~~5101:3-3-516~~ 5101:3-3-51.6 Notice, escrow, and recovery of excess depreciation paid, change in the medicaid provider agreement, or voluntary termination **CLOSURE OR VOLUNTARY WITHDRAWAL** in FROM 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. **THE TERMS "CLOSURE" AND "VOLUNTARY WITHDRAWAL" FOR PURPOSES OF THIS RULE HAVE THE SAME DEFINITION AS IN RULE 5101:3-3-02 OF THE ADMINISTRATIVE CODE.**
- (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~~ 5101:3-3-51.5 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 JOB AND FAMILY services (~~ODHS~~) (ODJFS) as follows:

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- (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~~, CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM 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
  - (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~~ ODJFS 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~~, CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM. IF THE PROVIDER FAILS TO NOTIFY ODJFS WITHIN THE TIME FRAMES REQUIRED IN THIS RULE BEFORE ENTERING INTO A TRANSACTION THAT CAUSES

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A CHANGE IN THE MEDICAID PROVIDER AGREEMENT, THEN ODJFS SHALL HOLD THE NEXT TWO MONTHLY VENDOR PAYMENTS AFTER ODJFS LEARNS OF THE TRANSACTION, REGARDLESS OF WHETHER THE NEW PROVIDER IS IN POSSESSION OF THE FACILITY. 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, ~~ØDHS~~ ODJFS 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, OR IF THE PROVIDER FAILS, TO PROVIDE PROPER NOTICE AS REQUIRED BY THIS RULE, THEN THE AMOUNT OF THE FIRST MONTHLY PAYMENT MADE TO THE FACILITY AFTER ODJFS LEARNS OF THE TRANSACTION, REGARDLESS OF WHETHER THE NEW PROVIDER IS IN POSSESSION OF THE FACILITY.

If there is no change in the medicaid provider agreement ~~or its participation is not voluntarily terminated,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM after notice is provided to ~~ØDHS~~ ODJFS under this rule, ~~ØDHS~~ ODJFS 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,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM. After written notice is received from a NF that a change in the medicaid provider agreement ~~or voluntary termination,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM will not take place, the NF shall provide notice to ~~ØDHS~~ ODJFS 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~~, CLOSURE OR VOLUNTARILY WITHDRAWS FROM THE MEDICAID PROGRAM ~~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~~, CLOSURE OR VOLUNTARY WITHDRAWAL unless ~~ODHS~~ ODJFS grants a waiver of the final cost report filing requirement. Any waiver granted by ~~ODHS~~ ODJFS 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~~ ODJFS.
- (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~~ ODJFS the amount of excess depreciation paid to the NF by ~~ODHS~~ ODJFS 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

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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 ~~ØDHS~~ ODJFS; and
- (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 ~~ØDHS~~ ODJFS; 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 ~~ØDHS~~ ODJFS. 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 ~~ØDHS~~ ODJFS 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 ~~ØDHS~~ ODJFS has been fully recaptured for all reimbursement periods the provider operated on the medical assistance program and ~~ØDHS~~ ODJFS paid any amount specifically for cost of ownership.

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- (8) If a NF is sold after five or fewer years of operation under a provider agreement, the refund to ~~ODHS~~ ODJFS 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~~ ODJFS 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~~ ODJFS.
- (G) Upon a sale of a NF, the allowable capital asset cost basis, depreciation expense, and interest expense for the new NF ~~provider (buyer)~~ PROVIDER/BUYER shall be determined as follows:
- (1) In order to determine the allowable capital asset cost basis, the new NF ~~provider (buyer)~~ PROVIDER/BUYER shall receive the lower of the new NF ~~provider's (buyer's)~~ 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~~ ODJFS 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)~~ PROVIDER/BUYER purchases only the operating rights to create a

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- 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.
- (b) Upon the sale of a NF, the initial accumulated depreciation for the new NF ~~provider (buyer)~~ 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.

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- (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)~~ PROVIDER/BUYER shall be the lower of the new NF ~~provider's (buyer's)~~ 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)~~ 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~~ ODJFS 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)~~ PROVIDER/BUYER shall receive the lesser of:
    - (a) The new NF ~~provider's (buyer's)~~ 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:

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- (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~~ ODJFS 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) 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,~~ **CLOSES OR VOLUNTARILY WITHDRAWS FROM THE MEDICAID PROGRAM** shall refund any amount ~~ODHS~~ ODJFS properly finds to be due.
- (J) When a change in medicaid provider agreement ~~or voluntary termination of the medicaid provider agreement,~~ **VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM or CLOSURE OF A NF** occurs, ~~ODHS~~ ODJFS shall comply with the following:
  - (1) ~~ODHS~~ ODJFS may impose a penalty of no more than ~~two~~ **THE CURRENT AVERAGE BANK PRIME RATE PLUS FOUR** 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,~~ **CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID**

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PROGRAM as required by paragraph (C) of this rule; ODJFS 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, THE DEPARTMENT SHALL REQUEST A WRITTEN STATEMENT OF THE AVERAGE BANK PRIME RATE FROM THE FEDERAL RESERVE BANK OF CLEVELAND OR THE FEDERAL RESERVE BOARD; and

- (2) Unless the requirement for filing a final cost report has been waived, ~~ØDHS~~ ODJFS 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. ~~ØDHS~~ ODJFS may also audit any other cost report that the NF has filed during the previous three years. ~~ØDHS~~ ODJFS 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 ~~ØDHS~~ ODJFS by the NF; and
- (3) ~~ØDHS~~ ODJFS shall release any money held in escrow to the NF if ~~ØDHS~~ ODJFS does not issue its audit report within the ninety-day period; and
- (4) ~~ØDHS~~ ODJFS 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 ~~ØDHS~~ ODJFS shall be released to the NF and amounts due to ~~ØDHS~~ ODJFS shall be paid to ~~ØDHS~~ ODJFS. If the amounts in escrow are less than the amounts due to ~~ØDHS~~ ODJFS, the balance shall be paid to ~~ØDHS~~ ODJFS within fifteen days after the NF agrees to a settlement. If the audit report is issued within ninety days, ~~ØDHS~~ ODJFS shall retain the escrowed funds until the settlement is adjudicated.

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Review 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, 11/1/95

TN # 01-012 APPROVAL DATE \_\_\_\_\_  
SUPERSEDES  
TN # 95.20 EFFECTIVE DATE 7/1/01

5101:3-3-57 NURSING FACILITIES (NFS) EXPENDITURE LIMITATION

NOTWITHSTANDING RULES 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE, "TOTAL PER DIEM RATE" INCLUDES THE PAYMENTS MADE TO NFS UNDER RULE 5101:3-3-58 OF THE ADMINISTRATIVE CODE RATES PAID TO NFS UNDER THE MEDICAID PROGRAM SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS:

- (A) FOR FISCAL YEAR 2002, THE MEAN TOTAL PER DIEM RATE FOR NFS IN THE STATE, WEIGHTED BY MEDICAID DAYS AND CALCULATED AS OF JULY 1, 2001 EXCLUDING PROVIDERS OF OUTLIER SERVICES, UNDER RULE 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE, SHALL NOT EXCEED ONE HUNDRED FORTY-THREE DOLLARS AND NINETY-TWO CENTS.
- (B) FOR FISCAL YEAR 2003, THE MEAN TOTAL PER DIEM RATE FOR ALL NFS IN THE STATE, WEIGHTED BY MEDICAID DAYS AND CALCULATED AS OF JULY 1, 2002 EXCLUDING PROVIDERS OF OUTLIER SERVICES, UNDER RULE 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE, SHALL NOT EXCEED ONE HUNDRED FIFTY-TWO DOLLARS AND SIXTY-SIX CENTS, PLUS ANY DIFFERENCE BETWEEN ONE HUNDRED FORTY-THREE DOLLARS AND NINETY-TWO CENTS AND THE MEAN TOTAL PER DIEM RATE FOR ALL NFS IN THE STATE FOR FISCAL YEAR 2002, WEIGHTED BY MEDICAID DAYS AND CALCULATED AS OF JULY 1, 2001 EXCLUDING PROVIDERS OF OUTLIER SERVICES, UNDER RULE 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE.
- (C) IF THE MEAN TOTAL PER DIEM RATE FOR ALL NFS IN THE STATE FOR FISCAL YEAR 2002 OR 2003, WEIGHTED BY MEDICAID DAYS AND CALCULATED UNDER RULE 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE AS OF THE FIRST DAY OF JULY OF THE CALENDAR YEAR EXCLUDING PROVIDERS OF OUTLIER SERVICES IN WHICH THE FISCAL YEAR BEGINS, EXCEEDS THE AMOUNT SPECIFIED FOR THAT FISCAL YEAR IN PARAGRAPH (A) OR (B) OF THIS RULE, THE DEPARTMENT OF JOB AND FAMILY SERVICES SHALL REDUCE THE TOTAL PER DIEM RATE FOR EACH NF IN THE STATE BY A PERCENTAGE THAT IS EQUAL TO THE PERCENTAGE BY WHICH THE MEAN TOTAL PER DIEM RATE EXCEEDS THE AMOUNT SPECIFIED IN PARAGRAPH (A) OR (B) OF THIS RULE FOR THE ENTIRE FISCAL YEAR.

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- (D) SUBSEQUENT TO ANY REDUCTION REQUIRED BY PARAGRAPHS (A), (B), OR (C) OF THIS RULE, A NF'S RATE SHALL BE SUBJECT TO ANY ADJUSTMENTS REQUIRED OR AUTHORIZED BY RULE 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE DURING THE REMAINDER OF THE FISCAL YEAR.

EFFECTIVE DATE: \_\_\_\_\_  
REVIEW DATE: \_\_\_\_\_  
CERTIFICATION DATE: \_\_\_\_\_  
\_\_\_\_\_  
DATE

PROMULGATED UNDER: RC CHAPTER 119.  
STATUTORY AUTHORITY: RC SECTION 5111.02  
RULE AMPLIFIES: RC SECTION 5111.02, 5111.20-5111.32, AM.SUB.H.B. 94 SECTION 63.35

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SUPERSEDES  
TN # NEW EFFECTIVE DATE 7/1/01

5101:3-3-58 NURSING FACILITIES (NFS) STABILIZATION FUND:  
METHOD OF ESTABLISHING PAYMENT(S) FROM THE  
STABILIZATION FUND.

THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES (ODJFS) SHALL MAKE PAYMENTS TO EACH NF FROM THE NF STABILIZATION FUND ESTABLISHED UNDER RULE 5101:3-3-49.7 OF THE ADMINISTRATIVE CODE AS FOLLOWS:

- (A) MAKE PAYMENTS TO NFS UNDER RULES 5101:3-3-40 TO 5101:3-3-59 OF THE ADMINISTRATIVE CODE.
- (B) NFS EXEMPT FROM THE FRANCHISE PERMIT FEE (FPF) ASSESSMENT SHALL NOT RECEIVE A PER DIEM RATE ADD-ON FOR FPF. FOR NFS WHICH ARE ASSESSED A FPF, ODJFS SHALL MAKE FPF PAYMENTS TO EACH NF FOR EACH MEDICAID DAY IN FISCAL YEARS 2002 AND 2003 AS FOLLOWS:
  - (1) FOR RATES PAID EFFECTIVE JULY 1, 2001 THROUGH JUNE 30, 2002 CALCULATE A PER DIEM RATE ADD-ON FROM THE NF STABILIZATION FUND AS FOLLOWS:
    - (a) DETERMINE THE NUMBER OF BEDS SUBJECT TO THE FPF AS OF MAY 1, 2001 PURSUANT TO RULE 5101:3-3-49.2 OF THE ADMINISTRATIVE CODE; AND
    - (b) THE FPF ASSESSMENT IS THREE DOLLARS AND THIRTY CENTS PER BED PURSUANT TO 5101:3-3-49.3 OF THE ADMINISTRATIVE CODE; AND
    - (c) THE NUMBER OF DAYS IN FPF BILLING PERIOD IS THREE HUNDRED SIXTY-FIVE DAYS; AND
    - (d) DETERMINE THE TOTAL FPF ASSESSMENT AMOUNT BY MULTIPLYING THE NUMBER OF BEDS SUBJECT TO THE FPF IN PARAGRAPH (B)(1)(a) BY THE FPF PER BED ASSESSMENT IN PARAGRAPH (B)(1)(b) BY THE DAYS IN PARAGRAPH (B)(1)(c); AND

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- (e) ACQUIRE THE NUMBER OF MEDICAID-CERTIFIED BEDS FROM THE MEDICAID-CERTIFIED CALENDAR YEAR 2000 COST REPORT AS OF DECEMBER 31, 2000; AND
- (f) CALCULATE THE MEDICAID-CERTIFIED BEDS RATIO BY DIVIDING THE NUMBER OF CERTIFIED BEDS IN PARAGRAPH (B)(1)(e) OF THIS RULE BY THE NUMBER OF NF LICENSED BEDS IN PARAGRAPH (B)(1)(a) NOT TO EXCEED "ONE" (1.0); AND
- (g) CALCULATE THE ADJUSTED FPF ASSESSMENT AMOUNT FOR MEDICAID-CERTIFIED BEDS BY MULTIPLYING THE TOTAL FPF ASSESSMENT AMOUNT IN PARAGRAPH (B)(1)(d) OF THIS RULE BY THE MEDICAID-CERTIFIED BEDS RATIO IN PARAGRAPH (B)(1)(f) OF THIS RULE; AND
- (h) ACQUIRE THE INPATIENT DAYS FROM THE MEDICAID-CERTIFIED CALENDAR YEAR 2000 COST REPORT; AND
- (i) THE NUMBER OF DAYS IN CALENDAR YEAR 2000 IS THREE HUNDRED SIXTY-SIX; AND
- (j) DETERMINE THE NUMBER OF DAYS THE PROVIDER WAS MEDICAID-CERTIFIED DURING CALENDAR YEAR 2000 ; AND
- (k) DETERMINE THE ANNUALIZED INPATIENT DAYS BY MULTIPLYING THE INPATIENT DAYS IN PARAGRAPH (B)(1)(h) OF THIS RULE BY THE NUMBER OF CALENDAR DAYS IN PARAGRAPH (B)(1)(i) OF THIS RULE AND THEN DIVIDING THE PRODUCT BY THE NUMBER OF DAYS THE PROVIDER WAS MEDICAID-CERTIFIED DURING CALENDAR 2000 IN PARAGRAPH (B)(1)(j) OF THIS RULE; AND

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- (l) DETERMINE THE TOTAL FPF ASSESSMENT COST PER DIEM BY DIVIDING THE ADJUSTED FPF ASSESSMENT AMOUNT IN PARAGRAPH (B)(1)(g) OF THIS RULE BY THE ANNUALIZED INPATIENT DAYS IN PARAGRAPH (B)(1)(k) OF THIS RULE; AND
  - (m) THE STABILIZATION FUND DISTRIBUTION PERCENTAGE IS SIXTY-NINE AND SEVEN TENTHS PERCENT; AND
  - (n) DETERMINE THE TOTAL FPF ADD-ON PER DIEM BY MULTIPLYING THE TOTAL FPF ASSESSMENT COST PER DIEM IN PARAGRAPH (B)(1)(l) OF THIS RULE BY THE STABILIZATION FUND DISTRIBUTION PERCENTAGE IN PARAGRAPH (B)(1)(m) OF THIS RULE.
  - (o) THE FPF PER DIEM RATE ADD-ON IS THE GREATER OF THE TOTAL FPF ADD-ON IN PARAGRAPH (B)(1)(n) OF THIS RULE OR TWO DOLLARS AND THIRTY CENTS. IF THE NF IS ASSESSED AN FPF, AND THERE IS NO CALENDAR YEAR 2000 COST REPORT, THE NF WILL RECEIVE AN FPF PER DIEM RATE ADD-ON OF TWO DOLLARS AND THIRTY CENTS.
- (2) FOR RATES PAID EFFECTIVE JULY 1, 2002 THROUGH JUNE 30, 2003 CALCULATE A PER DIEM RATE ADD-ON FROM THE NF STABILIZATION FUND AS FOLLOWS:
- (a) DETERMINE THE NUMBER OF BEDS SUBJECT TO THE FPF AS OF MAY 1, 2002 PURSUANT TO RULE 5101:3-3-49.2 OF THE ADMINISTRATIVE CODE; AND
  - (b) THE FPF ASSESSMENT IS THREE DOLLARS AND THIRTY CENTS PER BED PURSUANT TO 5101:3-3-49.3 OF THE ADMINISTRATIVE CODE; AND

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- (c) THE NUMBER OF DAYS IN FPF BILLING PERIOD IS THREE HUNDRED SIXTY-FIVE DAYS; AND
  
- (d) DETERMINE THE TOTAL FPF ASSESSMENT AMOUNT BY MULTIPLYING THE NUMBER OF BEDS SUBJECT TO THE FPF IN PARAGRAPH (B)(2)(a) OF THIS RULE BY THE FPF PER BED ASSESSMENT IN PARAGRAPH (B)(2)(b) OF THIS RULE BY THE DAYS IN PARAGRAPH (B)(2)(c) OF THIS RULE; AND
  
- (e) ACQUIRE THE NUMBER OF MEDICAID-CERTIFIED BEDS FROM THE MEDICAID-CERTIFIED CALENDAR YEAR 2001 COST REPORT AS OF DECEMBER 31, 2001; AND
  
- (f) CALCULATE THE MEDICAID-CERTIFIED BEDS RATIO BY DIVIDING THE NUMBER OF CERTIFIED BEDS IN PARAGRAPH (B)(2)(e) OF THIS RULE BY THE NUMBER OF NF LICENSED BEDS IN PARAGRAPH (B)(2)(a) OF THIS RULE NOT TO EXCEED "ONE" (1.0); AND
  
- (g) CALCULATE THE ADJUSTED FPF ASSESSMENT AMOUNT FOR MEDICAID-CERTIFIED BEDS BY MULTIPLYING THE TOTAL FPF ASSESSMENT AMOUNT IN PARAGRAPH (B)(2)(d) OF THIS RULE BY THE MEDICAID-CERTIFIED BEDS RATIO IN PARAGRAPH (B)(2)(f) OF THIS RULE; AND
  
- (h) ACQUIRE THE INPATIENT DAYS FROM THE MEDICAID-CERTIFIED CALENDAR YEAR 2001 COST REPORT; AND
  
- (i) THE NUMBER OF DAYS IN CALENDAR YEAR 2001 IS THREE HUNDRED SIXTY-FIVE; AND

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- (j) DETERMINE THE NUMBER OF DAYS THE PROVIDER WAS MEDICAID-CERTIFIED DURING CALENDAR YEAR 2001 ; AND
- (k) DETERMINE THE ANNUALIZED INPATIENT DAYS BY MULTIPLYING THE INPATIENT DAYS IN PARAGRAPH (B)(2)(h) OF THIS RULE BY THE NUMBER OF CALENDAR DAYS IN PARAGRAPH (B)(2)(i) OF THIS RULE AND THEN DIVIDING THE PRODUCT BY THE NUMBER OF DAYS THE PROVIDER WAS MEDICAID-CERTIFIED DURING CALENDAR 2001 IN PARAGRAPH (B)(1)(j) OF THIS RULE; AND
- (l) DETERMINE THE TOTAL FPF ASSESSMENT COST PER DIEM BY DIVIDING THE ADJUSTED FPF ASSESSMENT AMOUNT IN PARAGRAPH (B)(2)(g) OF THIS RULE BY THE ANNUALIZED INPATIENT DAYS IN PARAGRAPH (B)(2)(k) OF THIS RULE; AND
- (m) THE STABILIZATION FUND DISTRIBUTION PERCENTAGE IS SIXTY-NINE AND SEVEN TENTHS PERCENT; AND
- (n) DETERMINE THE TOTAL FPF ADD-ON PER DIEM BY MULTIPLYING THE TOTAL FPF ASSESSMENT COST PER DIEM IN PARAGRAPH (B)(2)(l) OF THIS RULE BY THE STABILIZATION FUND DISTRIBUTION PERCENTAGE IN PARAGRAPH (B)(2)(m) OF THIS RULE.
- (o) THE FPF PER DIEM RATE ADD-ON IS THE GREATER OF THE TOTAL FPF ADD-ON IN PARAGRAPH (B)(2)(n) OF THIS RULE OR TWO DOLLARS AND THIRTY CENTS. IF THE NF IS ASSESSED AN FPF, AND THERE IS NO CALENDAR YEAR 2001 COST REPORT, THE NF WILL RECEIVE AN FPF PER DIEM RATE ADD-ON OF

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TWO DOLLARS AND THIRTY CENTS.

- (C) FOR RATES PAID EFFECTIVE JULY 1, 2001 THROUGH JUNE 30, 2003, ODJFS SHALL INCREASE THE PER DIEM RATE TO EACH NF IN AN AMOUNT EQUAL TO ONE DOLLAR AND FIFTY CENTS PER MEDICAID DAY FOR THE PURPOSE OF ENHANCING QUALITY OF CARE.

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PROMULGATED UNDER: RC CHAPTER 119.  
STATUTORY AUTHORITY: RC SECTION 5111.02  
RULE AMPLIFIES: RC SECTIONS 3721.53, 3721.56, 5111.02,  
5111.20 TO 5111.33, AM.SUB.H.B.94  
SECTION 63.37

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~~5101:3-3-845~~ 5101:3-3-84.5 Notice, escrow, and recovery of excess depreciation paid, change in the medicaid provider agreement, or voluntary termination CLOSURE OR VOLUNTARY WITHDRAWAL in FROM the medical assistance program, for intermediate care facilities for the mentally retarded (ICFs-MR).

- (A) For purposes of this rule, the sale of an ICF-MR 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 ICF-MR is participating in the medical assistance program. THE TERMS "CLOSURE" AND "VOLUNTARY WITHDRAWAL" FOR PURPOSES OF THIS RULE HAVE THE SAME DEFINITION AS IN RULE 5101:3-3-02 OF THE ADMINISTRATIVE CODE.
- (B) The following circumstances shall result in a change in medicaid provider agreement:
- (1) A sale of an ICF-MR; or
  - (2) In the case of an ICF-MR 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, the lease of all or part of a provider facility that involves an initial lease or a change in lessee; 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 an ICF-MR under a medicaid provider agreement shall provide notice to Ohio department of human JOB AND FAMILY services (~~ODHS~~) (ODJFS) as follows:

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- (1) Any provider that owns and operates an ICF-MR 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 an ICF-MR which anticipates changing its medicaid provider agreement ~~or anticipates voluntary termination of its medicaid provider agreement,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM 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
  - (3) Any provider operating an ICF-MR 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 an ICF-MR 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 an ICF-MR 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~~ ODJFS shall hold in escrow in a bank, trust company, or savings and loan association, the amount of the last two monthly vendor payments to an ICF-MR before a change in the medicaid provider agreement ~~or voluntary termination from the medicaid program,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM. IF THE PROVIDER FAILS TO NOTIFY ODJFS WITHIN THE TIME FRAMES REQUIRED IN THIS RULE BEFORE ENTERING INTO A

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TRANSACTION THAT CAUSES A CHANGE IN THE MEDICAID PROVIDER AGREEMENT, THEN ODJFS SHALL HOLD THE NEXT TWO MONTHLY VENDOR PAYMENTS AFTER ODJFS LEARNS OF THE TRANSACTION, REGARDLESS OF WHETHER THE NEW PROVIDER IS IN POSSESSION OF THE FACILITY. The only exception is that if the amount the ICF-MR will be required to refund under this rule is likely to be less than the amount of the last two monthly vendor payments, ~~ODHS~~ ODJFS shall take one of the following actions instead of withholding the amount of the last two monthly vendor payments:

- (1) In the case of an ICF-MR that owns other ICFs-MR or nursing facilities 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 ICFs-MR, withhold the amount of the last monthly vendor payment to the ICF-MR, OR IF THE PROVIDER FAILS, TO PROVIDE PROPER NOTICE AS REQUIRED BY THIS RULE, THEN THE AMOUNT OF THE FIRST MONTHLY PAYMENT MADE TO THE FACILITY AFTER ODJFS LEARNS OF THE TRANSACTION, REGARDLESS OF WHETHER THE NEW PROVIDER IS IN POSSESSION OF THE FACILITY.

If there is no change in the medicaid provider agreement ~~or its participation is not voluntarily terminated,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM OF THE ICF-MR after notice is provided to ~~ODHS~~ ODJFS under this rule, ~~ODHS~~ ODJFS shall order any payments held in escrow released to the ICF-MR upon receiving written notice from the ICF-MR that there will be no change in the medicaid provider agreement ~~or voluntary termination,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM OF THE ICF-MR. After written notice is received from an ICF-MR that a change in the medicaid provider agreement ~~or voluntary termination,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM OF THE ICF-MR will not take place, the ICF-MR shall provide notice to ~~ODHS~~ ODJFS as set forth under paragraph (C) of this rule.

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