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- (E) When an ICF-MR changes its medicaid provider agreement ~~or voluntarily terminates its medicaid provider agreement~~, CLOSES OR VOLUNTARILY WITHDRAWS FROM THE MEDICAID PROGRAM, the ICF-MR 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 FROM THE MEDICAID PROGRAM unless ~~ØDHS~~ 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 ICFs-MR 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 ~~ØDHS~~ ODJFS.
- (F) In accordance with paragraph (I)(4) of this rule, after the date on which a transaction of a sale of an ICF-MR is closed, the ICF-MR shall refund to ~~ØDHS~~ ODJFS the amount of excess depreciation paid to the ICF-MR by ~~ØDHS~~ 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 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

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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 ~~TDHS~~ 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 ~~TDHS~~ ODJFS; and
- (4) Subtract from the balance determined under paragraph (F)(3) of this rule the allowable actual interest expense, rent and lease expense, and amortization of financing costs per diems reimbursed by ~~TDHS~~ ODJFS. The balance is considered depreciation paid to the ICF-MR by ~~TDHS~~ ODJFS; and
- (5) Multiply the depreciation paid to the ICF-MR by ~~TDHS~~ 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 ICF-MR by ~~TDHS~~ ODJFS has been fully recaptured for all reimbursement periods the provider operated on the medical assistance program and ~~TDHS~~ ODJFS paid any amount specifically for cost of ownership.
- (8) Multiply the depreciation paid to the ICF-MR calculated under paragraph (F)(7) of this rule by the applicable percentage determined below:

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- (a) One hundred per cent if a sale of an ICF-MR occurred prior to the beginning of the sixth year of participation in the medical assistance program.
 - (b) Eighty per cent if a sale of an ICF-MR occurred prior to the beginning of the seventh year of participation in the medical assistance program.
 - (c) Sixty per cent if a sale of an ICF-MR occurred prior to the beginning of the eighth year of participation in the medical assistance program.
 - (d) Forty per cent if a sale of an ICF-MR occurred prior to the beginning of the ninth year of participation in the medical assistance program.
 - (e) Twenty per cent if a sale of an ICF-MR occurred prior to the beginning of the tenth year of participation in the medical assistance program.
- (G) Upon a sale of an ICF-MR, the allowable capital asset cost basis, depreciation expense, and interest expense for the new ICF-MR ~~provider (buyer)~~ PROVIDER/BUYER shall be the new ~~icf-mr~~ ICF-MR ~~provider's (buyer's)~~ PROVIDER'S/BUYER'S actual depreciation and interest expense subject to the ceilings set forth under 5101:3-3-842 of the Administrative Code. If the operating rights 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 this paragraph. If a new ICF-MR ~~provider (buyer)~~ PROVIDER/BUYER purchases only the operating rights to the ICF-MR and uses the operating rights to create a new ICF-MR or add beds to an existing ICF-MR, the purchase price of the operating rights shall be added to the capital asset cost basis of the new ICF-MR building or the additional beds.
- (1) Upon the sale of an ICF-MR, the initial accumulated depreciation for the new ICF-MR ~~provider (buyer)~~ PROVIDER/BUYER shall be recalculated starting at zero; and

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- (2) 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.
- (H) An ICF-MR that changes medicaid provider agreements ~~or voluntarily terminates its medicaid provider agreement,~~ CLOSES OR VOLUNTARILY WITHDRAWS FROM THE MEDICAID PROGRAM shall refund any amount ~~ØDHS~~ ODJFS properly finds to be due.
- (I) When a change in medicaid provider agreement ~~or voluntary termination of the medicaid provider agreement,~~ CLOSURE OR VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM OF AN ICF-MR occurs, ~~ØDHS~~ ODJFS shall comply with the following:
- (1) ~~ØDHS~~ 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 an ICF-MR fails to provide notice of a change in medicaid provider agreement ~~or voluntary termination of the medicaid provider agreement,~~ VOLUNTARY WITHDRAWAL FROM THE MEDICAID PROGRAM OR CLOSURE OF AN ICF-MR 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 ICF-MR. ~~ØDHS~~ ODJFS may also audit any other cost report that the ICF-MR has filed during the previous three years. ~~ØDHS~~ ODJFS shall

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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 ODJFS by the ICF-MR; and

- (3) ODHS ODJFS shall release any money held in escrow ~~to the ICF-MR~~ if ODHS ODJFS does not issue its audit report within the ninety-day period; and
- (4) ODHS 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 ICF-MR agrees to a settlement, any funds held in escrow less any amounts due to ODHS ODJFS shall be released ~~to the ICF-MR~~ and amounts due to ODHS ODJFS shall be paid to ODHS ODJFS. If the amounts in escrow are less than the amounts due to ODHS ODJFS, the balance shall be paid to ODHS ODJFS within fifteen days after the ICF-MR agrees to a settlement. If the audit report is issued within ninety days, ODHS ODJFS shall retain the escrowed funds until the settlement is adjudicated.

Effective date: _____

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

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LEGAL NOTICE
STATE OF OHIO
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
COLUMBUS, OHIO

PURSUANT TO SECTIONS 3721.58, 5111.02, AND CHAPTER 119. OF THE REVISED CODE AND SECTION 1902(a)(13)(A) OF THE SOCIAL SECURITY ACT, THE DIRECTOR OF THE DEPARTMENT OF JOB AND FAMILY SERVICES GIVES FINAL NOTICE OF THE DEPARTMENT'S RESCISSION OF RULES 5101:3-3-49.2, 5101:3-3-49.3, 5101:3-3-49.4, 5101:3-3-49.5, 5101:3-3-49.6, AND 5101:3-3-49.7, ADOPTION OF RULES 5101:3-3-49.2, 5101:3-3-49.3, 5101:3-3-49.7, 5101:3-3-57, AND 5101:3-3-58, AND AMENDMENT OF RULES 5101:3-3-01, 5101:3-3-02, 5101:3-3-20.1, 5101:3-3-45, 5101:3-3-49.1, 5101:3-3-49.8, 5101:3-3-49.9, 5101:3-3-51.4, 5101:3-3-51.6 AND 5101:3-3-84.5 OF THE ADMINISTRATIVE CODE.

The Department of Job and Family Services had recently proposed certain amendments to the Ohio Revised Code that impacted the way nursing facilities (NF) and intermediate care facilities for mentally retarded (ICF-MR) are reimbursed for services rendered to Medicaid recipients. The proposals were included in the executive budget for FY 2002 and 2003. The changes proposed by the department were intended to conform reimbursement policies for long term care facilities to current and anticipated market conditions. Among other things, the changes were intended to reduce incentives for maintenance of excess nursing facility capacity in a period of relative decline in demand for nursing facility services, and to assure that payment is more aligned with costs attributable to serving Medicaid eligible patients. Proposed changes were also intended to contain the rate of increase in long term care facility reimbursement rates in light of the resources available to the State and the competing demands for the use of those resources, including alternative approaches to meeting health care needs of elderly and disabled. The proposed changes had been developed with attention to the need to assure sufficient capacity to meet the need for quality care for those in need of services. The department's proposals were the subject of much debate in the General Assembly. After this debate concluded in the General Assembly, and in consideration of the issues raised by the department, the changes were made to the Medicaid long term care facility reimbursement system in Am. Sub. H.B. 94 (SFY 02 and 03 Budget Bill) and in Am. Sub. H. B. 299 and took effect for services provided on and after July 1, 2001. On July 18, 2001 the department issued notice proposing the following rule activity to conform existing rules with the changes made in Am. Sub. H. B. 94 and Am. Sub. H. B. 299.

5101:3-3-01 entitled "Definitions" sets forth the definitions which apply to nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR) under Chapter 5101:3-3 of the Administrative Code. This rule was proposed for permanent amendment in accordance with Section 63.36 of Am. Sub. H. B. 94 and Section 3 of Am. Sub. H. B. 299 to change the imputed occupancy percentage for indirect costs set forth in paragraph (V)(1) from seventy-five percent to eighty-two percent effective SFY 2002. For SFY 2003 the imputed occupancy percentage for indirect costs set forth in paragraph (V)(1) reverts to eighty-five percent. This rule was also proposed for permanent amendment to change the imputed occupancy percentage for capital costs set forth in paragraph (V)(2) from eighty-five percent to eighty-eight percent effective SFY 2002. For SFY 2003 the imputed occupancy percentage for capital costs set forth in paragraph (V)(2) reverts to ninety-five percent. This rule was also being proposed for permanent amendment to correct grammatical errors, rule number references, and acronym references. The department estimated that these changes would decrease annual aggregate expenditures by \$12.6 million.

5101:3-3-02 entitled "Provider Agreements: NFs and ICFs-MR" sets forth the provider agreement requirements for Medicaid NFs and ICF-MR. This rule was proposed for permanent amendment in accordance with Section 119.032 of the Revised Code to add definitions of terminology in paragraph (A), to clarify NF and ICF-MR responsibilities for providing notification of closures or voluntary withdrawal from the Medicaid program in paragraphs (C) and (D), to delete payment time-frame requirements in paragraph (E), and to integrate new statutory requirements concerning the responsibility of the provider to admit or retain persons who are or may become Medicaid eligible in "failure to pay" circumstances in paragraph (J).

5101:3-3-20.1 entitled "Chart of Accounts for Nursing Facilities (NFs) and Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)" sets forth the cost report chart of accounts for NFs and ICFs-MR. This rule was proposed for permanent amendment in accordance with Section 63.37 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to clarify franchise permit fee reimbursement for NFs. Cost report account 6090 has been changed to include the "Stabilization Fund Assessment". Cost report account 6091 has been changed to clarify references to franchise permit fee rules 5101:3-3-49.2 to 5101:3-3-49.9 and 5101:3-3-82.2 to 5101:3-3-82.7 and to specify the cost reporting criteria for NFs and ICFs-MR during SFYs 2002-2003.

5101:3-3-45 entitled "Purchased Nursing Services Reimbursement for Nursing Facilities (NFs)" sets forth the purchased nursing reimbursement for NFs. This rule was proposed for permanent amendment in accordance with Section 5111.262 of the Revised Code as amended by Am. Sub. H. B. 94 to change the purchased nursing allowance. For costs incurred in CY 2000 and thereafter, costs for purchased nursing services shall be allowable direct care costs up to 20% of a nursing facility's costs specified in the cost report for services provided that year by registered nurses, licensed practical nurses and nurse aides who are employees of the facility, plus one half of the amount by which reported costs for purchased nursing services exceed 20%. The department estimated that this change would increase annual aggregate expenditures by \$1.5 million.

5101:3-3-51.4 entitled "Nursing Facilities (NFs): Return on Equity" sets forth the return on equity calculation for NFs. This rule was proposed for permanent amendment in accordance with Section 5111.25 of the Revised Code as amended by Am. Sub. H.B. 94 to reduce the maximum amount of return on net equity available to eligible proprietary NFs from \$1.00 per day to \$.50 per day. The department estimated that this change would decrease annual aggregate expenditures by \$ 4 million.

5101:3-3-51.6 entitled "Notice, Escrow, Recovery of Excess Depreciation Paid, Change in the Medicaid Provider Agreement, or Voluntary Termination in the Medical Assistance Program for Nursing Facilities (NFs)" sets forth the notice, escrow, recovery of excess depreciation paid, change in the Medicaid provider agreement, or voluntary termination in the Medical assistance program for NFs. This rule was proposed for permanent amendment in accordance with Sections 5111.25 and 5111.28 of the Revised Code as amended by Am. Sub. H.B. 94 to correct the rule number to include a decimal point, to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services throughout the rule, to replace the term "voluntary termination" with the term "closure and voluntary withdrawal" throughout the rule, to add language in paragraph (A) to identify where the definition of "closure and voluntary withdrawal" can be found in the Administrative Code, to add language in paragraph (D) regarding the withholding of monthly vendor payments in escrow if the provider fails to notify ODJFS within the time frames required by this rule, to change the penalty in paragraph (J)(1) if a NF fails to provide notice of a change in provider agreement from the current average bank prime rate plus two percent to the current average

bank prime rate plus four percent, and to add language to paragraphs (J)(3) and (J)(4) regarding the release of vendor payments held in escrow.

5101:3-3-57 entitled "Nursing Facilities (NFs) Expenditure Limitation" sets forth the Medicaid nursing facility (NF) expenditure limitation. This rule was proposed for permanent adoption in accordance with Section 63.35 of Am. Sub. H. B. 94 to establish NF expenditure limitations which specify that rates paid to NFs under the Medicaid program shall be subject to total per diem rate limitations for SFYs 2002-2003. The department estimated that this provision would decrease annual aggregate expenditures by \$25 million in SFY 02 and \$11.3 million in SFY 03.

5101:3-3-58 entitled "Nursing Facilities (NFs) Stabilization Fund: Method of Establishing Payment from the Stabilization Fund" sets forth the method of establishing payment from the NF stabilization fund. This rule was proposed for permanent adoption in accordance with Section 63.37 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to set forth the method of establishing payment from the NF stabilization fund. The department provided for a \$1.50 per Medicaid day payment for the purpose of enhancing quality of care. The department estimated that this change would increase annual aggregate expenditures by \$30 million per year. Also, Section 63.37 of the bill requires the department to make payments to each NF in SFY 02 and 03 for each Medicaid day equal to the amount of the increase in franchise fee paid divided by the NF's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins. This adjustment is provided to reflect the additional Medicaid allocable cost to the NF resulting from the increase in the franchise fee. This section of the bill further requires that the costs associated with the increase in franchise fee not be reported on the cost report as other protected costs. The department estimated that annual aggregate expenditures will increase by \$ 53.4 million as a result of these payments. These estimated increases, however, could be limited by the rate limitation described above.

5101:3-3-84.5 entitled "Notice, Escrow, Recovery of Excess Depreciation Paid, Change in the Medicaid Provider Agreement, or Voluntary Termination in the Medical Assistance Program for Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) sets forth the notice, escrow, recovery of excess depreciation paid, change in the Medicaid provider agreement, or voluntary termination in the Medical assistance program for ICFs-MR. This rule was proposed for permanent amendment in accordance with Sections 5111.251 and 5111.28 of the Revised Code as amended by Am. Sub. H.B. 94 to correct the rule number to include a decimal point, to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services throughout the rule, to replace the term "voluntary termination" with the term "closure and voluntary withdrawal" throughout the rule, to add language in paragraph (A) to identify where the definition of "closure and voluntary withdrawal" can be found in the Administrative Code, to add language in paragraph (D) regarding the withholding of monthly vendor payments in escrow if the provider fails to notify ODJFS within the time frames required by this rule, to change the penalty in paragraph (I)(1) if a NF fails to provide notice of a change in provider agreement from the current average bank prime rate plus two percent to the current average bank prime rate plus four percent, and to add language to paragraphs (I)(3) and (I)(4) regarding the release of vendor payments held in escrow.

TREATMENT OF INCREASED FRANCHISE FEE COSTS- Am. Sub. H.B. 94 amended Section 3721.51 by increasing the amount of the nursing home franchise fee from \$1.00 per day to \$3.30 per day for SFY 02 and 03. The following rules were changed to reflect this legislation and changes pursuant to Section 119.032 of the Revised Code:

5101:3-3-49.1 entitled "Nursing Facilities (NFs): Method for Establishing Reimbursement for the Franchise Permit Fee" sets forth the method for establishing reimbursement for the franchise permit fee for NFs. This rule was proposed for permanent amendment in accordance with Section 63.37 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to change the title to include "reported in account 6091" and to clarify change in NF operators in paragraph (B).

5101:3-3-49.2 entitled "Nursing Facilities (NFs): Franchise Permit Fee" set forth the franchise permit fee for NFs. This rule was proposed for permanent rescission in conjunction with the adoption of a new rule by the same number.

5101:3-3-49.2 entitled "Identification of Nursing Facility (NF) and Hospital Beds Subject to the Franchise Permit Fee (FPF)" sets forth the components of the identification of nursing home and hospital beds subject to the FPF, beds not subject to the FPF, provides for exemptions from the FPF and places limits on the number of exemptions to be granted. This rule was proposed for permanent adoption in accordance with Section 119.032 of the Revised Code to combine into one rule the identification of all beds subject the FPF, beds not subjects to the FPF, exemptions from the FPF, and limits to the number of exemptions that may be granted. The department's name was updated from the Ohio Department of Human Services to the Ohio Department of Job and Family Services.

5101:3-3-49.3 entitled "Calculation of Franchise Permit Fee" set forth the calculation of the franchise permit fee assessment for NFs. This rule was proposed for permanent rescission in conjunction with the adoption of a new rule by the same number.

5101:3-3-49.3 entitled "Calculation, Billing, Collection, and Appeals Process for the Franchise Permit Fee (FPF)" sets forth components of the requirements for the calculation of the FPF, the billing to the responsible facilities, the collection of the FPF, and the appeals process to be utilized by the facilities if errors in the franchise permit fee calculation occur. This rule was proposed for permanent adoption in accordance with Sections 3721.51 and 3721.56 of Am. Sub. H. B. 94 to consolidate the criteria for the calculation, billing, collection, and appeal of the franchise permit fee for specifically defined nursing home and hospital beds.

5101:3-3-49.4 entitled "Method for Exempting Nursing Facilities from the Franchise Permit Fee" set forth the method for exempting nursing facilities from the franchise permit fee. This rule was proposed for permanent rescission in conjunction with the adoption of new rule 5101:3-3-49.2.

5101:3-3-49.5 entitled "Identification of Beds Subject to Franchise Permit Fee" set forth the identification of beds subject to the franchise permit fee assessment. This rule was proposed for permanent rescission in conjunction with the adoption of new rules 5101:3-3-49.2 and 5101:3-3-49.3.

5101:3-3-49.6 entitled "Appealing the Franchise Permit Fee Assessments" set forth the process for appealing the franchise permit fee assessment. This rule was proposed for permanent rescission in conjunction with the adoption of new rules 5101:3-3-49.2 and 5101:3-3-49.3.

5101:3-3-49.7 entitled "Method of Distribution of Funds Deposited in the Home and Community-Based Services for the Aged Fund" set forth the method of distribution of funds deposited in the Home and Community-Based Services for the Aged Fund. This rule was proposed for permanent rescission in conjunction with the adoption of a new rule by the same number.

5101:3-3-49.7 entitled "Method of Distribution of Franchise Permit Fee Proceeds" sets forth the identification of programs which are to receive funding from the franchise permit fee assessments, the percent of proceeds to go into each fund and the increase in the FPF assessments for fiscal years 2002 and 2003. This rule was proposed for permanent adoption in accordance with Section 3721.56 of Am. Sub. H. B. 94 to integrate the statutory requirements for an increase in the franchise permit fee for FY 2002 and 2003 and to address changes in the disbursement of the funds.

5101:3-3-49.8 entitled "Enforcement of Franchise Permit Fee Program" sets forth the rights of the Ohio Department of Job and Family Services to conduct investigations and to utilize the Attorney General's Office to enforce the franchise permit fee rules and explains the responsibility of the NF for the franchise permit fee when the facility changes providers or closes. This rule was proposed for permanent amendment in accordance with Section 119.032 of the Revised Code to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services and to delete references to rules proposed for permanent rescission.

5101:3-3-49.9, entitled "Procedure for Terminating the Franchise Permit Fee Program for Nursing Facilities (NFs) and Hospitals" sets forth the components of the process to be initiated by both the department and facilities if the United States Health Care Financing Administration determines that the franchise permit fee is an impermissible health care related tax. This rule was proposed for permanent amendment in accordance with Section 119.032 of the Revised Code to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services and to provide consistency in use of the term franchise permit fee.

INDIVIDUAL RATE IMPACT- On or about August 10, 2001, each facility received hard-copy of the FY 2002 annual rate-setting calculation. To obtain further information regarding a facility's rate you can call the Bureau of Long Term Care Facilities, Reimbursement Section at (614) 466-8460.

A public hearing on the proposed rules described above was held on August 21, 2001 at 10:00 a. m. in room 1823, 30 East Broad Street, Columbus, Ohio. The proposed rules were heard before the Joint Committee on Agency Rule Review (JCARR) on September 10, 2001 at 1:30 p. m. in the State House Hearing Room 121. Please be advised that for the reasons described above with respect to the original rule proposals, the department will final-file the proposed rules to become effective on or before September 30, 2001.

LEGAL NOTICE
STATE OF OHIO
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
COLUMBUS, OHIO

PURSUANT TO SECTION 1902(a)(13)(A) OF THE SOCIAL SECURITY ACT, THE DIRECTOR OF THE DEPARTMENT OF JOB AND FAMILY SERVICES GIVES NOTICE OF THE DEPARTMENT'S INTENT TO MODIFY PROVISIONS RELATING TO THE REIMBURSEMENT OF NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAID PROGRAM, AND A PUBLIC INPUT PROCESS THEREON.

The Department of Job and Family Services had recently proposed certain amendments to the Ohio Revised Code that impacted the way nursing facilities (NF) and intermediate care facilities for mentally retarded (ICF-MR) are reimbursed for services rendered to Medicaid recipients. On or about March 1, 2001, the department issued notice starting a public process for discussion of those changes. The proposals were included in the executive budget for FY 2002 and 2003. The changes proposed at that time were intended to conform reimbursement policies for long term care facilities to current and anticipated market conditions. Among other things, the changes were intended to reduce incentives for maintenance of excess nursing facility capacity in a period of relative decline in demand for nursing facility services, and to assure that payment is more aligned with costs attributable to serving Medicaid eligible patients. Proposed changes were also intended to contain the rate of increase in long term care facility reimbursement rates in light of the resources available to the State and the competing demands for the use of those resources, including alternative approaches to meeting health care needs of elderly and disabled. The proposed changes had been developed with attention to the need to assure sufficient capacity to meet the need for quality care for those in need of services. The department's proposals were the subject of much debate in the General Assembly. After this debate concluded in the General Assembly, and in consideration of the issues raised by the department, the following changes to the Medicaid long term care facility reimbursement system emerged in Am. Sub. H.B. 94 (SFY 02 and 03 Budget Bill) and will take effect for services provided on and after July 1, 2001:

IMPUTED OCCUPANCY- Section 63.36 of Am. Sub. H.B. 94 provides, as impacted by the Governor's line item veto, for the use of the following divisor of Indirect Care costs and Capital costs to arrive at per diem rates:

INDIRECT CARE- For SFY 02 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy had been 82%. For SFY 03 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy had been 87%. These factors will also be used to establish the indirect care cost ceiling in rebasing years.

CAPITAL COSTS- For SFY 02 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy had been 88%. For SFY 03 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy rate had been 95%.

The department estimates that these changes will result in a decrease in annual aggregate

expenditures of \$12.6 million.

RETURN ON NET EQUITY- Sections 5111.25 of the Revised Code has been amended in Am. Sub. H.B. 94 to reduce the maximum amount of return on net equity available to an eligible proprietary NF from \$1.00 per day to \$.50 per day. The department estimates that this change will result in a decrease in annual aggregate expenditures of \$ 4 million.

PURCHASED NURSING COSTS- Am. Sub. H.B. 94 has amended Section 5111.262 of the Revised Code regarding the allowability of purchased nursing services. For costs incurred in CY 2000 and thereafter, costs for purchased nursing services shall be allowable direct care costs up to 20% of a nursing facility's costs specified in the cost report for services provided that year by registered nurses, licensed practical nurses and nurse aides who are employees of the facility, plus one half of the amount by which reported costs for purchased nursing services exceed 20%. The department estimates that this change will result in an increase in annual aggregate expenditures of \$1.5 million.

TREATMENT OF INCREASED FRANCHISE FEE COSTS- Am. Sub. H.B. 94 amended Section 3721.51 by increasing the amount of the nursing home franchise fee from \$1.00 per day to \$3.30 per day for SFY 02 and 03. Section 63.37 of the bill requires the department to make payments to each NF in SFY 02 and 03 for each Medicaid day equal to the amount of the increase in franchise fee paid divided by the NF's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins. This adjustment is provided to reflect the additional Medicaid allocable cost to the NF resulting from the increase in the franchise fee. This section of the bill further requires that the costs associated with the increase in franchise fee not be reported on the cost report as other protected costs. The department estimates that annual aggregate expenditures will increase by \$ 53.4 million as a result of these payments.

RATE LIMITATION.- Section 63.35 of Am. Sub. H.B. 94 provides for a rate limitation in SFY 02 and 03. If the mean total NF per diem rate, when weighted by Medicaid days, exceeds \$143.92 in SFY 02, or \$152.66 in SFY 03, rates otherwise calculated for those fiscal years are reduced by the percentage that is equal to the percentage by which the mean total per diem exceeds \$143.92 (SFY02) or \$152.66 (SFY03). The department estimates that this provision decreases annual aggregate expenditures by \$25 million in SFY 02 and \$11.3 million in SFY 03.

EXTREME CIRCUMSTANCES RATE ADJUSTMENTS-Am. Sub. H.B. 94 amended Section 5111.29 by removing the following reasons as grounds for an extreme circumstances rate adjustment for NFs: change of ownerships resulting from bankruptcies, foreclosures or findings of violations of Medicaid certification requirements by the department of health.

CHANGE OF PROVIDER PROCESS- Am. Sub. H.B. 94 amended Sections 5111.25; 5111.251 and 5111.28 dealing with the change of provider process for NFs and ICF-MRs. These sections of the code have been amended to allow the department to enforce warrant escrow provisions against a subsequent provider if a NF or ICF-MR fail to timely notify the department of the change. The amendments also increase the amount of the fine for failure to notify the department of a change from 2% of the last two monthly payments to the current average bank prime rate plus 4% of the last two monthly payments.

RATE ADD-ON-While the above referenced changes are scheduled to take effect for services rendered on and after July 1, 2001, debate is still being had with respect to an additional item. Consideration is being given to an additional \$1.50 per Medicaid day rate add-on to enhance the provision of quality care. The department estimates that this change would increase annual aggregate expenditures by \$30 million per year. This estimated increase, however, could be limited by the rate limitation described above.

INDIVIDUAL RATE IMPACT- It is not feasible for the department to specify the precise affect of these changes on the reimbursement rate of each NF or ICF-MR because such rates depend on the cost report data used in calculating rates that is now being finalized by the department. However individual facilities should be able to estimate the impact of the proposed changes on their specific rates based on the information and descriptions provided above for each change. If you need help in determining the impact of these changes on your rate please contact the Bureau of Long Term Care Facilities, Reimbursement Section at (614) 466-8460. Also, on or about August 1, 2001 the department will have specific facility rates available. To obtain information about a facility's rate you can call the Reimbursement Section on and after August 1, 2001.

PUBLIC PROCESS - As indicated above the department initiated a public process with respect to changes to Medicaid long term care reimbursement on or about March 1, 2001. If you have comments regarding the changes that have now emerged please submit them in writing on or before June 28, 2001. Comments regarding the changes should be submitted in writing to Office of Ohio Health Plans, Ohio Department of Job and Family Services, 30 East Broad Street, 31st Fl., Columbus, Ohio 43215 . Those interested in reviewing the comments received, or who want to obtain a copy of the proposed changes should contact the Office of Ohio Health Plans at the above address or at (614) 644-0140. Copies of these proposed changes are also available for review at each County Department of Job and Family Services.

LEGAL NOTICE
STATE OF OHIO
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
COLUMBUS, OHIO

PURSUANT TO SECTIONS 3721.58, 5111.02, AND CHAPTER 119. OF THE REVISED CODE AND SECTION 1902(a)(13)(A) OF THE SOCIAL SECURITY ACT, THE DIRECTOR OF THE DEPARTMENT OF JOB AND FAMILY SERVICES GIVES NOTICE OF THE DEPARTMENT'S INTENT TO RESCIND RULES 5101:3-3-49.2, 5101:3-3-49.3, 5101:3-3-49.4, 5101:3-3-49.5, 5101:3-3-49.6, AND 5101:3-3-49.7, ADOPT RULES 5101:3-3-49.2, 5101:3-3-49.3, 5101:3-3-49.7, 5101:3-3-57, AND 5101:3-3-58, AND AMEND RULES 5101:3-3-01, 5101:3-3-02, 5101:3-3-20.1, 5101:3-3-45, 5101:3-3-49.1, 5101:3-3-49.8, 5101:3-3-49.9, 5101:3-3-51.4, 5101:3-3-51.6 AND 5101:3-3-84.5 OF THE ADMINISTRATIVE CODE ON A PROPOSED PERMANENT BASIS, AND OF A PUBLIC HEARING UPON THE PROPOSED PERMANENT RESCISSIONS, ADOPTIONS, AND AMENDMENTS.

The Department of Job and Family Services had recently proposed certain amendments to the Ohio Revised Code that impacted the way nursing facilities (NF) and intermediate care facilities for mentally retarded (ICF-MR) are reimbursed for services rendered to Medicaid recipients. On or about March 1, 2001, the department issued notice starting a public process for discussion of those changes. The proposals were included in the executive budget for FY 2002 and 2003. The changes proposed at that time were intended to conform reimbursement policies for long term care facilities to current and anticipated market conditions. Among other things, the changes were intended to reduce incentives for maintenance of excess nursing facility capacity in a period of relative decline in demand for nursing facility services, and to assure that payment is more aligned with costs attributable to serving Medicaid eligible patients. Proposed changes were also intended to contain the rate of increase in long term care facility reimbursement rates in light of the resources available to the State and the competing demands for the use of those resources, including alternative approaches to meeting health care needs of elderly and disabled. The proposed changes had been developed with attention to the need to assure sufficient capacity to meet the need for quality care for those in need of services. The department's proposals were the subject of much debate in the General Assembly. After this debate concluded in the General Assembly, and in consideration of the issues raised by the department, the following changes to the Medicaid long term care facility reimbursement system emerged in Am. Sub. H.B. 94 (SFY 02 and 03 Budget Bill) and in Am. Sub. H. B. 299 will take effect for services provided on and after July 1, 2001. The department is now changing the Administrative Code pursuant to this legislation as follows:

5101:3-3-01 entitled "Definitions" sets forth the definitions which apply to nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR) under Chapter 5101:3-3 of the Administrative Code. This rule is being proposed for permanent amendment in accordance with Section 63.36 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to change the imputed occupancy percentage for indirect costs set forth in paragraph (V)(1) from seventy-five percent to eighty-two percent effective SFY 2002. For SFY 2003 the imputed occupancy percentage for indirect costs set forth in paragraph (V)(1) reverts to eighty-five percent. This rule is also being proposed for permanent amendment to change the imputed occupancy percentage for capital costs set forth in paragraph (V)(2) from eighty-five percent to eighty-eight percent effective SFY 2002. For SFY 2003 the imputed occupancy percentage for capital costs set forth in paragraph (V)(2) reverts to ninety-five percent. This rule is also being proposed for permanent amendment to correct grammatical

errors, rule number references, and acronym references. The department estimates that these changes will result in a decrease in annual aggregate expenditures of \$12.6 million.

5101:3-3-02 entitled "Provider Agreements: NFs and ICFs-MR" sets forth the provider agreement requirements for Medicaid NFs and ICF-MR. This rule is being proposed for permanent amendment in accordance with Section 119.032 of the Revised Code to add definitions of terminology in paragraph (A), to clarify NF and ICF-MR responsibilities for providing notification of closures or voluntary withdrawal from the Medicaid program in paragraphs (C) and (D), to delete payment time-frame requirements in paragraph (E), and to integrate new statutory requirements concerning the responsibility of the provider to admit or retain persons who are or may become Medicaid eligible in "failure to pay" circumstances in paragraph (J).

5101:3-3-20.1 entitled "Chart of Accounts for Nursing Facilities (NFs) and Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)" sets forth the cost report chart of accounts for NFs and ICFs-MR. This rule is being proposed for permanent amendment in accordance with Section 63.37 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to clarify franchise permit fee reimbursement for NFs. Cost report account 6090 has been changed to include the "Stabilization Fund Assessment". Cost report account 6091 has been changed to clarify references to franchise permit fee rules 5101:3-3-49.2 to 5101:3-3-49.9 and 5101:3-3-82.2 to 5101:3-3-82.7 and to specify the cost reporting criteria for NFs and ICFs-MR during SFYs 2002-2003.

5101:3-3-45 entitled "Purchased Nursing Services Reimbursement for Nursing Facilities (NFs)" sets forth the purchased nursing reimbursement for NFs. This rule is being proposed for permanent amendment in accordance with Section 5111.262 of the Revised Code as amended by Am. Sub. H. B. 94 to change the purchased nursing allowance. For costs incurred in CY 2000 and thereafter, costs for purchased nursing services shall be allowable direct care costs up to 20% of a nursing facility's costs specified in the cost report for services provided that year by registered nurses, licensed practical nurses and nurse aides who are employees of the facility, plus one half of the amount by which reported costs for purchased nursing services exceed 20%. The department estimates that this change will result in an increase in annual aggregate expenditures of \$1.5 million.

5101:3-3-51.4 entitled "Nursing Facilities (NFs): Return on Equity" sets forth the return on equity calculation for NFs. This rule is proposed for permanent amendment in accordance with Section 5111.25 of the Revised Code as amended by Am. Sub. H.B. 94 to reduce the maximum amount of return on net equity available to eligible proprietary NFs from \$1.00 per day to \$.50 per day. The department estimates that this change will result in a decrease in annual aggregate expenditures of \$ 4 million.

5101:3-3-51.6 entitled "Notice, Escrow, Recovery of Excess Depreciation Paid, Change in the Medicaid Provider Agreement, or Voluntary Termination in the Medical Assistance Program for Nursing Facilities (NFs)" sets forth the notice, escrow, recovery of excess depreciation paid, change in the Medicaid provider agreement, or voluntary termination in the Medical assistance program for NFs. This rule is being proposed for permanent amendment in accordance with Sections 5111.25 and 5111.28 of the Revised Code as amended by Am. Sub. H.B. 94 to correct the rule number to include a decimal point, to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services throughout the rule, to replace the term "voluntary termination" with the term "closure and voluntary withdrawal" throughout the rule, to add language in paragraph (A) to identify where the definition of "closure and voluntary withdrawal" can be found