

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
TN 02-020

2. STATE
Ohio

FOR: CENTERS FOR MEDICAID AND MEDICAID SERVICES

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID) Title XIX

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 1, 2002

5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
Section 902 (a)(13)(A) of the Social Security Act

7. FEDERAL BUDGET IMPACT:
a. FFY 2002 (\$ 9,453)
b. FFY 2003 (\$37,844)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.19D rule: 5101:3-3-52.1

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

Attachment 4.19D rule: 5101:3-3-521

10. SUBJECT OF AMENDMENT:

The rule contained in this amendment was reviewed in accordance with Section 119.032 of the Ohio Revised Code which requires the review of all state agency rules within a five-year period and determines whether a rule should be continued without amendment, be amended, or be rescinded taking into consideration the rule's purpose and scope.

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT x OTHER, AS SPECIFIED:
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Thomas J. Hayes RB

13. TYPED NAME:

Thomas J. Hayes

14. TITLE:

Director

15. DATE SUBMITTED:

August 30, 2002

16. RETURN TO:

Becky Jackson
Bureau of Health Plan Policy
Ohio Department of Job and Family Services
30 East Broad Street, 27th floor
Columbus, Ohio 43215-3414

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

SEP 10 2002

18. DATE APPROVED:

September 22, 2002

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

JULY 1, 2002

20. SIGNATURE OF REGIONAL OFFICIAL:

Charlene Brown

21. TYPED NAME:

Charlene Brown

22. TITLE:

Deputy Director, OHSO

23. REMARKS:

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 1

To Mark Cooley
Dept./Agency NIRT/CMSO

From Dell Gist
Phone # 312-353-1117

410-786-5882

Fax # 312-353-3806

RECEIVED

SEP 10 2002

DMCH - IL/IN/CA

ACTION: FINAL
FILED

DATE: 06/20/2002
11:26 AM

5101:3-3-52.1 Exception review process for nursing facilities (NFs).

(A) Definitions: The terms used in this rule have the same meaning as in rule 5101:3-3-40 of the Administrative Code, or are defined below:

(1) "Exception review" is a review conducted at selected nursing facilities (NFs) by registered nurses and other appropriate licensed or certified health professionals employed by or under contract with the Ohio department of ~~human services (ODHS)~~, job and family services (ODJFS) for purposes of identifying any patterns or trends related to resident assessments submitted in accordance with rule 5101:3-3-40 of the Administrative Code, which could result in inaccurate case mix scores used to calculate the direct care rate. Exception review includes the issuance of a written summary of the exception review findings to the provider.

(2) "Effective date of the rate" is the first day of the payment quarter.

(3) "Exception review tolerance level" is the level of variance between the facility and ~~ODHS/ODJFS~~ in MDS 2.0 assessment item responses affecting the resource utilization groups, version III/RUG-III (RUG III) classification of a facility's residents. Two kinds of tolerance levels have been established for exception reviews: initial sample tolerance level, and expanded review tolerance level.

(a) "Initial sample tolerance level" is the percentage of unverifiable records found ~~in the initial sample of resident records~~ during the first phase/initial sample of an exception review, below which no further review will be pursued for the same payment quarter. The ~~exception review~~ initial sample tolerance level for the initial sample of reviewed records ~~from the most recent reporting quarter shall be either less than fifteen per cent of the entire sample, or fifteen per cent of the number of residents in the sample grouped in any major category of resident types, as set forth in paragraph (B) of rule 5101:3-3-41 of the Administrative Code, except that:~~

~~The initial sample tolerance level will not be calculated solely on the basis of a major category of resident types if the total number of reviewed records is less than the minimum sample size specified in appendix A of this rule.~~

NOV 22 2002

TN # 02-020 APPROVAL DATE _____

SUPERSEDES _____

TN # 98-10 EFFECTIVE DATE 7/1/02

5101:3-3-52.1

2

(b) "Expanded review tolerance level" is an acceptable level of variance in the calculation of a NF's quarterly facility average case mix score or an acceptable per cent of the records ~~used for rate settings~~ sampled at exception review that were unverifiable. ~~The case mix score variance is calculated as a percentage difference between the score based on exception review findings compared to the score based on the NF's submitted assessment records for that quarter.~~

~~(i) For an exception review of the most recent reporting quarter conducted before the effective date of the rate, the exception review tolerance level shall be either a two per cent difference between the quarterly facility average case mix score based on exception review findings and the quarterly facility average case mix score from the NF's submitted MDS2.0 records or twenty per cent of the records used for rate setting were unverifiable.~~

~~(ii) For an exception review of a given reporting quarter conducted after the effective date of the rate, the exception review tolerance level shall be either a three per cent difference between the quarterly facility average case mix score based on exception review findings and the quarterly facility average case mix score from the NF's submitted MDS2.0 records or twenty per cent of the records used for rate setting were unverifiable.~~

(c) "Targeted review" is an exception review that targets records in nursing rehabilitation/restorative care or one of the seven mutually exclusive RUG III major categories identified in rule 5101:3-3-41 of the Administrative Code. Nursing rehabilitation/restorative care includes records grouped in the following RUG III classifications: RLB, RLA, IB2, IA2, BB2, BA2, PE2, PD2, PC2, PB2, and PA2 as identified in rule 5101:3-3-41 of the Administrative Code.

(d) The "variance" is the percentage difference between the quarterly facility average case mix score based on exception review findings and the quarterly facility average case mix score from the NF's submitted MDS2.0 records.

(i) For an exception review of the most recent reporting quarter conducted before the effective date of the rate, the exception review tolerance level shall be either less than a two per cent difference between the quarterly facility average case mix score based on exception review findings and the quarterly facility average case mix score from the NF's submitted MDS2.0 records or less than twenty per cent of the records sampled at exception review were unverifiable.

TN #~~02-020~~ APPROVAL DATE NOV 22 2002

SUPERSEDES

TN #98-10 EFFECTIVE DATE 7/1/02

5101:3-3-52.1

3

(ii) For an exception review of a given reporting quarter conducted after the effective date of the rate, the exception review tolerance level shall be either less than a three per cent difference between the quarterly facility average case mix score based on exception review findings and the quarterly facility average case mix score from the NF's submitted MDS2.0 records or less than twenty per cent of the records sampled at exception review were unverifiable.

(4) A "verifiable MDS2.0 record" is a NF's completed MDS2.0 assessment form, based on facility-supplied MDS2.0 assessment data, submitted to the state for a resident for a specific reporting quarter, which upon examination by ~~ODHS~~ODJFS during an exception review, has been determined to accurately represent the aspects of the resident's condition, during the specified assessment time frame, that affect the correct classification of that record into the (RUG III) case mix payment system. ~~Verification activities include reviewing resident assessment forms and supporting documentation, conducting interviews, and observing residents.~~ An "unverifiable MDS2.0 record" is one which, upon examination, has been determined to result in the resident's inaccurate classification into the RUG III system.

(5) An "unverifiable MDS2.0 record" is a NF's completed MDS2.0 assessment form, based on facility-supplied MDS2.0 assessment data, submitted to the state for a resident for a specific reporting quarter which, upon examination by ODJFS, has been determined to inaccurately represent the aspects of the resident's condition, during the specified assessment time frame, that affect the classification of that record and results in the resident's inaccurate classification into the RUG III case mix payment system.

(B) All exception reviews will comply with the applicable ~~rules prescribed pursuant to Title XVIII and Title XIX of the Social Security Act~~provisions of the medicare and medicaid programs.

(C) NFs may be selected for an exception review by ~~ODHS~~ODJFS based on any of the following:

- (1) The findings of a certification survey conducted by the Ohio department of health that may indicate that the facility is not accurately assessing residents, which may result in the resident's inaccurate classification into the RUG III system;
- (2) A risk analysis profile of ~~NFs with that may include one or more of the following:~~ a sudden or drastic change in the frequency distribution of their

TN #02-020 APPROVAL DATE NOV 22 2002

SUPERSEDES

TN #98-10 EFFECTIVE DATE 7/1/02

5101:3-3-52.1

4

~~residents in the major RUG III categories, the frequency distribution of residents in the major RUG III categories that exceeds statewide averages, or a sudden or drastic change in the facility average case mix score; or NFs for which information indicates that the assessment record submitted by the facility may not result in accurate classification of the facility's residents in the RUG III system.~~

- (3) Prior resident assessment performance of the provider, including, but not limited to, ongoing problems with assessment submission deadlines, error rates, and incorrect assessment dates.
- (D) Exception reviews shall be conducted at the facility by registered nurses and other licensed or certified health professionals under contract with or employed by ~~ODHS~~ODJFS. When a team of ~~ODHS~~ODJFS reviewers conducts an on-site exception review, the team shall be led by a registered nurse. Persons conducting exception reviews on behalf of ~~ODHS~~ODJFS shall meet the following conditions:
- (1) During the period of their professional employment with ~~ODHS~~ODJFS, reviewers must neither have nor be committed to acquire any direct or indirect financial interest in the ownership, financing, or operation of a NF which they review in Ohio.
 - (2) ~~Reviewers shall not review any facility that has been a client of the reviewer.~~ Reviewers shall not review any facility where a member of their family is a current resident.
 - (3) ~~Reviewers shall not review any facility that has been an employer of the reviewer.~~ Reviewers shall not review any facility that has been a client of the reviewer.
 - (4) Employment of a member of a health professional's family by a NF that the professional does not review does not constitute a direct or indirect financial interest in the ownership, financing, or operation of a NF.
 - (5) Reviewers shall not review any facility that has been an employer of the reviewer.
- (E) Prior notice: ~~ODHS~~ODJFS shall notify the facility by telephone at least two working days prior to the review. At the time of notification, ~~ODHS~~ODJFS shall discuss the findings reasons that led the department to decide to conduct an exception review except in the case of a referral to ODJFS. ~~The facility may be able to satisfactorily resolve the department's concerns at this point and avert an on-site review.~~

NOV 22 2002

TN # 02-020 APPROVAL DATE _____
 SUPERSEDES
 TN # 98-10 EFFECTIVE DATE 7/1/02

5101:3-3-52.1

5

(F) Scheduling/rescheduling: Exception reviews of the most recent reporting quarter may be scheduled for any working day of the processing quarter, ~~including the time between that reporting period end date and the filing date.~~ ODHSODJFS shall notify the NF prior to the ~~previously~~ scheduled time if reviewers are unable to visit the NF at the arranged time. At the discretion of ~~ODHSODJFS~~, the review team may reschedule the review if appropriate key personnel of the facility would be unavailable on the ~~originally~~ scheduled date of on-site review.

(G) Facilities selected for exception reviews must provide ~~ODHSODJFS~~ reviewers with reasonable access to residents, professional and nonlicensed direct care staff, the facility assessors, and completed resident assessment instruments as well as other documentation regarding the residents' care needs and treatments. Facilities must also provide ~~ODHSODJFS~~ with sufficient information to be able to contact the resident's attending or consulting physicians, other professionals from all disciplines who have observed, evaluated or treated the resident, such as contracted therapists, and the resident's family/significant others. These sources of information may help to validate information provided on the resident assessment instrument ~~and~~ submitted to the state. Verification activities include reviewing resident assessment forms and supporting documentation, conducting interviews, and observing residents.

(H) An exception review shall ~~initially~~ be conducted of a random, targeted, ~~or combination, or a combination of random and targeted samples~~ of completed resident assessment instruments from the most recent reporting quarter. The initial sample size shall be greater than or equal to the minimum sample size presented in appendix A of this rule. ~~The initial sample can be adjusted during the review based on preliminary findings. The expanded sample is based on the initial sample findings. The expanded sample size is presented in appendix B of this rule.~~

(I) Results from review of the initial sample shall be used to decide if further action by ~~ODHSODJFS~~ is warranted. If the initial sample is to be expanded for further review, ~~ODHSODJFS~~ reviewers shall hold a conference with facility representatives advising them of the next steps of the review and discussing the initial sample findings. If the sample of reviewed records exceeds the initial sample tolerance level described in paragraph (A)(3)(a) of this rule, ~~ODHSODJFS~~

(1) ~~Shall first expand the sample size for the same reporting quarter and continue the review process up to and including one hundred per cent of the records for the same quarter. May subsequently expand the exception review process to review MDS2.0 assessments submitted for no more than two quarters previous to the most recent reporting quarter as follows:~~

(a) If the initial sample was a targeted review, the expanded sample size shall

TN # ~~02-020~~ APPROVAL DATE NOV 22 2002

SUPERSEDES

TN # 98-10 EFFECTIVE DATE 7/1/02

5101:3-3-52.1

6

be the lesser of the remaining records in the targeted category or the applicable minimum expanded sample size presented in appendix B of this rule.

(b) If the initial sample was a random review, the expanded sample size shall be at least the applicable minimum sample size as presented in appendix B of this rule.

(i) The expanded sample may consist of the remaining records in the random review or may include other records in a targeted category.

(ii) ODJFS may subsequently expand the sample size for the same reporting quarter up to and including one hundred per cent of the records and continue the review process.

(2) May subsequently expand the exception review process to review MDS2.0 assessments submitted for no more than two quarters previous to the most recent reporting quarter.

(J) At the conclusion of the on-site portion of the exception review process, ~~ODHS~~ODJFS reviewers shall hold an exit conference with facility representatives. Reviewers will share preliminary findings and/or concerns about verification or failure to verify RUG III classification for reviewed records. Reviewers will give NF representatives one written preliminary copy of the exception review findings indicating whether the facility was under or over the established tolerance levels.

(K) All exception reviews shall include a final written summary of findings including the final facility tolerance level calculations. ~~ODHS~~ODJFS shall ~~send~~email a copy of the final written summary of findings and final facility tolerance level calculations to the NF.

(L) All exception review reports shall be retained by ~~ODHS~~ODJFS for at least six years.

(M) If the expanded review tolerance level is exceeded, ~~ODHS~~ODJFS shall use the exception review findings to calculate or recalculate resident case mix scores, quarterly facility average case mix scores and annual facility average case mix scores ~~and adjust the facility's direct care component of the rate accordingly.~~ Calculations or recalculations shall apply only to records actually reviewed by ~~ODHS~~ODJFS and shall not be based on extrapolations to unreviewed records of findings from reviewed records. For example, ~~ODHS~~ODJFS shall recalculate a quarterly facility average case mix score by replacing resident case mix scores of reviewed records and not changing the resident case mix scores of unreviewed records.

TN #02-020 APPROVAL DATE _____
SUPERSEDES

TN #98-10 EFFECTIVE DATE 7/1/02

NOV 22 2002

5101:3-3-52.1

7

(N) ~~ODHSODJFS~~ shall use the quarterly and annual facility average case mix scores based on exception review findings which exceed the exception review tolerance level to calculate or recalculate the facility's rate for direct care costs for the appropriate calendar quarter or quarters. However, scores recalculated based on exception review findings shall not be used to override any assignment of a quarterly facility average case mix score or a facility cost per case mix unit made in accordance with rule 5101:3-3-42 of the Administrative Code as a result of the facility's failure to submit, or submission of incomplete or inaccurate resident assessment information, unless the recalculation results in a lower quarterly facility average case mix score or cost per case mix unit than the one to be assigned.

(1) If the exception review of a specific reporting quarter is conducted before the effective date of the rate for the corresponding payment quarter, and the review results in findings that exceed the tolerance level, ~~ODHSODJFS~~ shall use the recalculated quarterly facility average case mix scores to calculate the facility's rate for direct care costs for that payment quarter. Calculated rates based on exception review findings may result in a rate increase or rate decrease compared to the rate based on the facility's submission of assessment information.

(2) If the exception review of a specific reporting quarter is conducted after the effective date of the rate for a corresponding payment quarter, and the review results in findings that exceed the exception review tolerance level and indicate the facility received a lower rate than it was entitled to receive, ~~ODHSODJFS~~ shall increase the direct care rate prospectively for the remainder of the payment quarter, beginning one month after the first day of the month after the exception review is completed.

(3) If the exception review of a specific reporting quarter is conducted after the effective date of the rate for a corresponding payment quarter, and the review results in findings that exceed the exception review tolerance level and indicate the facility received a higher rate than it was entitled to receive, ~~ODHSODJFS~~ shall reduce the direct care rate and apply it to the periods when the provider received the incorrect rate to determine the amount of the overpayment. Overpayments are payable in accordance with rule 5101:3-3-22 of the Administrative Code.

(O) Except for additional information submitted to ~~ODHSODJFS~~ as part of the processes set forth in paragraphs (P) and (Q) of this rule, the ~~ODHSODJFS~~ exception review determination for any resident case mix score shall be considered final ~~and the NF may not correct or amend the MDS2.0 data or submit any additional information for that individual record after exception reviewers have concluded the on site review.~~ A NF may, however, continue to submit current changes/corrections for

NOV 22 2002
TN #02-020 APPROVAL DATE

SUPERSEDES

TN #98-10 EFFECTIVE DATE 7/1/02