the NF upon receiving written notice from the NF that there will be no change in the medicaid provider agreement, closure or voluntary withdrawal from the medicaid program. After written notice is received from a NF that a change in the medicaid provider agreement, closure or voluntary withdrawal from the medicaid program will not take place, the NF shall provide notice to ODJFS as set forth under paragraph (C) of this rule.

(E) When a NF changes its medicaid provider agreement, closes or voluntarily withdraws from the medicaid program, 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, closure or voluntary withdrawal unless ODJFS grants a waiver of the final cost report filing requirement. Any waiver granted by 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 shah 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 ODJFS.

(F) In accordance with paragraph (J)(4) of this rule, after the date on which a action of a sale of a NF is closed, the NF shall refund to ODJFS the amount of excess depreciation paid to the NF by 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 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 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 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 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 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 ODJFS has been fully recaptured for all reimbursement periods the provider operated on the medical assistance program and ODJFS paid any amount specifically for cost of ownership.

(8) If a NF is sold after five or fewer years of operation under a provider agreement, the refund to 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 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 NF is sold after ten or more years of operation under a provider agreement, the owner shall not refund any excess depreciation to 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 shall be determined as follows:

(1) In order to determine the allowable capital asset cost basis, the new NF provider/buyer shall receive the lower of the new NF provider's/buyer's actual cost, or the seller's allowable historical capital asset cost basis for each asset that is transferred to the buyer increased by the lesser of:

(a) One-half of the change in construction costs during the time that the transferor held the asset, as calculated by 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.

<u>(2) In order for a new NF operator to include capital improvements made to a NF during the term of a lease and paid for by the prior lessee of the new NF, the new NF operator must provide financial documentation of the historical allowable capital asset cost basis of the leasehold improvements made by the prior lessee.</u>

~~(2)~~<u>(3)</u> 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~~<u>pargraphs</u> (G)(1) <u>and (G)(2)</u> of this rule. If a new NF provider/buyer purchases only the operating rights to create a new NF or an ICF-MR and uses the operating rights to create a new NF or add beds to an existing NF, the purchase price of the operating rights shall be added to the capital asset cost basis of the new NF building or the additional beds.

~~(3)~~<u>(4)</u> Depreciation expense shall be based on the allowable cost basis as determined under ~~paragraph~~ <u>paragraphs</u> (G)(1) <u>and (G)(2)</u> 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 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)~~(5) 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 ~~paragraph~~ paragraphs (G)(1) and (G)(2) of this rule. Any interest expense related to debt in excess of the maximum allowable amount shall be considered a nonallowable expense.

~~(5)~~(6) Any debt or asset in excess of the maximum allowable amount determined under ~~paragraph~~ paragraphs (G)(1) and (G)(2) of this rule is not included when computing equity capital.

~~(6)~~(7) 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)~~(8) For subsequent sales of a NF, the allowable capital asset cost basis of the new NF provider/buyer shall be the lower of the new NF provider's/buyer's actual cost or the previous buyer's allowable cost basis determined under ~~paragraph~~ paragraphs (G)(1) and (G)(2) of this rule for each asset that is transferred to the new NF provider/buyer increased by the lesser of:

(a) One-half of the change in construction costs during the time that the transferor held the asset, as calculated by 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 shall receive the lesser of:

(a) The new NF provider's/buyer's actual depreciation and interest expense; or

(b) The old lease payment at the inception of the lease adjusted by the lesser of the following:

(i) One-half of the change in construction costs from the first year of the last lease agreement prior to the sale of the NF between the same parties to the date of sale as calculated by 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 shall be calculated as set forth under paragraph (G) of this rule.

(I) A NF that changes medicaid provider agreements, closes or voluntarily withdraws from the medicaid program shall refund any amount ODJFS properly finds to be due.

(J) When a change in medicaid provider agreement, voluntary withdrawal from the medicaid program or closure of a NF occurs, ODJFS shall comply with the following:

(1) ODJFS may impose a penalty of no more than 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, closure or voluntary withdrawal from the medicaid 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, 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. ODJFS may also audit any other cost report that the NF has fried during the previous three years. 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 ODJFS by the NF; and

(3) ODJFS shall release any money held in escrow if ODJFS does not issue its audit report within the ninety-day period; and

(4) 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 ODJFS shall be released and amounts due to ODJFS shall be paid to ODJFS. If the amounts in escrow are less than the amounts due to ODJFS, the balance shall be paid to ODJFS within fifteen days after the NF agrees to a settlement. If the audit report is issued within ninety days, ODJFS shall retain the escrowed funds until the settlement is adjudicated.

Effective: 01/01/2003

R.C. 119.032 review dates: 10/07/2002 and 01/01/2008

CERTIFIED ELECTRONICALLY

Certification

12/12/2002

Date

Promulgated Under: 119.03
Statutory Authority: 5111.02
Rule Amplifies: 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, 9/30/01

5101:3-3-84.2 **Cost of ownership and efficiency incentive for ~~intermediate~~ care facilities for the mentally retarded (ICFs-MR).**

The desk-reviewed, actual, allowable, per diem cost of ownership established in this rule is subject to the provisions set forth under rule 5101:3-3-84 of the Administrative Code. The costs of ownership directly attributable to the purchase, rent, or lease of property and equipment costs from one related party to another through common ownership or control as defined under rule 5101:3-3-01 of the Administrative Code shall be based upon the lesser of the actual purchase, rent, or lease of property and equipment costs or the actual costs of the related party.

(A) The desk-reviewed, actual, allowable, per diem cost of ownership is based upon certified beds for property costs and equipment set forth under paragraphs (A)(1) to (A)(3) of this rule for the calendar year preceding the fiscal year in which the rate will be paid, except as otherwise specified under rules 5101:3-3-84.5 and 5101:3-3-86 of the Administrative Code. The desk-reviewed actual, allowable, per diem cost of ownership includes:

(1) The costs of ownership directly related to purchasing or acquiring capital assets include:

(a) Except as otherwise required by rules 5101:3-3-84.5 and 5101:3-3-86 of the Administrative Code, depreciation expense for the cost of building(s) equal to the actual cost depreciated under rule 5101:3-3-84.1 of the Administrative Code. The provider is not to change the accumulated depreciation that has been previously reported. This accumulated depreciation will be carried forward as previously reported and audited. The current depreciation will then be added to accumulated depreciation as recognized.

(b) Except as otherwise required by rules 5101:3-3-84.5 and 5101:3-3-86 of the Administrative Code, depreciation expense for major components of property and fixed equipment equal to the actual cost depreciated under rule 5101:3-3-84.1 of the Administrative Code. The provider is not to change the accumulated depreciation that has been previously reported. This accumulated depreciation will be carried forward as previously reported and audited. The current depreciation will then be added to accumulated depreciation as recognized.

(c) Except as otherwise required by rules 5101:3-3-84.5 and 5101:3-3-86 of the Administrative Code, depreciation expense for major movable equipment equal to the actual cost depreciated under rule 5101:3-3-84.1 of the Administrative Code. The provider is not to change the accumulated depreciation that has been previously reported. This accumulated depreciation will be carried forward as previously reported and audited. The current depreciation will then be added to accumulated depreciation as recognized.

(d) Interest expense incurred on money borrowed for construction or the purchase of real property, major components of that property, and equipment.

(e) Depreciation expense for costs paid or reimbursed by any government agency, if that part of the prospective per diem rate is used to reimburse the government agency and a loan provides for repayment over a time-limited period.

(f) Amortization expense of financing costs.

(2) The costs of ownership directly related to renting or leasing capital assets is the desk-reviewed, actual, allowable rent or lease expense of property and equipment.

(3) The costs of ownership directly related to the amortization of leasehold improvements. These costs shall be expensed over the lesser of the remaining life of the lease, but not less than five years, or the useful life of the improvement as specified under rule 5101:3-3-84.1 of the Administrative Code. If the useful life of the improvement is less than five years, it may be amortized over its useful life. Options on leases will not be considered. Effective July 1, 1993, lessees who report leasehold improvements and who leave the program before the minimum amortization period is complete, as set forth under paragraph (A)(3) of this rule, will not receive reimbursement for the balance of unamortized costs.

(B) Cost of ownership payments to ICFs-MR with more than eight beds shall not exceed the following ceilings based upon each facility's own specific date of licensure and cost of construction updated for inflation under paragraph (E) of this rule:

(1) For facilities with dates of licensure prior to January 1, 1958, two dollars and fifty cents per resident day;

(2) For facilities with dates of licensure after December 31, 1957, but prior to January 1, 1968:

(a) Three dollars and fifty cents per resident day if the cost of construction was three thousand five hundred dollars or more per bed;

(b) Two dollars and fifty cents per resident day if the cost of construction was less than three thousand five hundred dollars per bed.

(3) For facilities with dates of licensure after December 31, 1967, but prior to January 1, 1976:

(a) Four dollars and fifty cents per resident day if the cost of construction was five thousand one hundred fifty dollars or more per bed;

(b) Three dollars and fifty cents per resident day if the cost of construction was less than five thousand one hundred fifty dollars per bed, but exceeded three thousand five hundred dollars per bed;

(c) Two dollars and fifty cents per resident day if the cost of construction was three thousand five hundred dollars or less per bed.

(4) For facilities with dates of licensure after December 31, 1975, but prior to January 1, 1979:

(a) Five dollars and fifty cents per resident day if the cost of construction was six thousand eight hundred dollars or more per bed;

(b) Four dollars and fifty cents per resident day if the cost of construction was less than six thousand eight hundred dollars per bed but exceeded five thousand one hundred fifty dollars per bed;

(c) Three dollars and fifty cents per resident day if the cost of construction was five thousand one hundred fifty dollars or less per bed, but exceeded three thousand five hundred dollars per bed;

(d) Two dollars and fifty cents per resident day if the cost of construction was three thousand five hundred dollars or less per bed.

(5) For facilities with dates of licensure after December 31, 1978, but prior to January 1, 1980:

(a) Six dollars per resident day if the cost of construction was seven thousand six hundred twenty-five dollars or more per bed;

(b) Five dollars and fifty cents per resident day if the cost of construction was