



**TED STRICKLAND**  
GOVERNOR  
STATE OF OHIO

## **Executive Order 2009 – 12S**

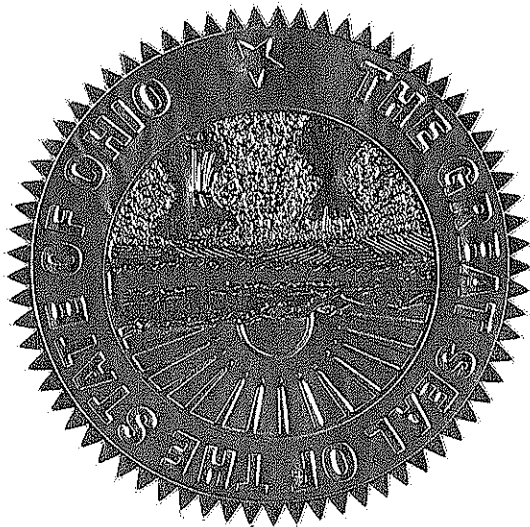
### **Immediate Amendment of Rules Regarding Medicaid Reimbursement to Nursing Facilities**

- 1. Reimbursement for Certain Medicaid Services for Nursing Facility Residents.** The Ohio Department of Job and Family Services (“ODJFS”), through Ohio’s Medicaid program, provides for services to nursing facility (“NF”) residents including the provision of oxygen; custom wheelchairs and repair; physical, occupational, and speech language pathology/audiology therapy; medical transportation; and certain over-the-counter drugs (“Medicaid services”). Prior to the passage of Ohio’s new two-year budget law effective last Friday, July 17, 2009, ODJFS reimbursed fee-for-service providers directly for these Medicaid services.
- 2. Ohio is Facing Significant Economic Challenges.** The national economic recession has imposed many hardships on the people of Ohio. Declining tax revenues realized by the State have made it more and more challenging for the State to provide the educational, health, and other services its people deserve. Difficult decisions have been made by the General Assembly. One such decision is to change the way the Ohio Medicaid program reimburses these Medicaid services when provided to NF residents.
- 3. Making the Amendment of Rules Effective on July 31, 2009.** Ohio’s new two-year budget law became effective Friday, July 17, 2009. That law changed how ODJFS will reimburse Medicaid services provided to NF residents by requiring NFs to pay for these services, rather than having ODJFS pay a range of service providers on a fee-for-service basis. Under the new approach, NFs will be reimbursed through a daily expense allowance associated with the provision of these services. Requiring the NFs to be responsible for providing these services to their Medicaid NF residents is expected to increase the coordination and efficiency of the delivery of these services, thus reducing the cost associated with providing them. New implementing rules need to be effective immediately in

order to assure continuity of this critical care and to avoid the duplication of payment for these services while also allowing ODJFS to stay within spending levels in the new law associated with the daily expense allowances, as opposed to fee-for-service reimbursements.

4. **Procedure for Immediate Enactment of Rule Changes.** Section 119.03(F) of the Ohio Revised Code authorizes the Governor, on the request of a state agency, to suspend the normal rule-making procedures with respect to a specific rule when an emergency exists necessitating the immediate adoption, amendment, or rescission of the rule. When such a determination is made, the agency may immediately adopt, amend, or rescind that rule, but the rule is valid for only ninety (90) days.
5. **Determination of an Emergency.** I believe that an emergency exists justifying the suspension of the normal rule-making process when the failure to act immediately would negatively impact the citizens of Ohio. ODJFS has asked me to determine, and I have determined, that the failure to amend, adopt, and rescind rules regarding the administration of the Medicaid program as it relates to the provision of these services will require the state, over the next two fiscal years, to spend funds on these programs at a rate which would exceed the amount appropriated for them by the General Assembly and would also jeopardize continuity of care. Spending at that rate would result in available funds for these Medicaid services running out before the end of the two-year state budget period, causing an abrupt, unacceptable elimination of services to Ohioans before the end of that two-year period. Therefore, an emergency exists necessitating the immediate amendment, adoption, and rescission of administrative rules in this regard.
6. **Authorization for Immediate Rule Implementation.** Accordingly, the normal rule-making procedures are suspended with respect to the amendment of Rules 5101:3-1-05; 5101:3-1-05.3; 5101:3-3-19, 5101:3-9-03, 5101:3-10-03, 5101:3-10-08, 5101:3-10-13.1, 5101:3-10-16, 5101:3-15-02.8, and 5101:3-34-01.3; adoption of Rules 5101:3-3-19.1 and 5101:3-3-64.1; and rescission of Rules 5101:3-3-46, 5101:3-3-46.1, 5101:3-3-46.2, and 5101:3-3-46.3 of the Ohio Administrative Code. These rules will be electronically filed by ODJFS with the Ohio Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review. ODJFS may, therefore, amend, adopt, and rescind these rules immediately.

7. I signed this Executive Order on July 30, 2009. It will expire at the end of the ninetieth day it is in effect, October 28, 2009.



*Ted Strickland*  
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Ted Strickland, Governor

ATTEST:

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Jennifer Brunner, Secretary of State