

5123-7-14

Intermediate care facilities for individuals with intellectual disabilities - debt estimation, debt summary report, and successor liability agreements for change of operator, facility closure, involuntary termination, or voluntary termination.

(A) Purpose

This rule sets forth procedures for estimating the debt an exiting operator of an intermediate care facility for individuals with intellectual disabilities (ICFIID) owes the department and the federal centers for medicare and medicaid services at the time of a change of operator, facility closure, involuntary termination, or voluntary termination.

(B) Definitions

For the purposes of this rule, the following definitions shall apply:

- (1) "Change of operator" has the same meaning as in section 5124.01 of the Revised Code.
- (2) "Exiting operator" has the same meaning as in section 5124.01 of the Revised Code.
- (3) "Facility closure" has the same meaning as in section 5124.01 of the Revised Code.
- (4) "Involuntary termination" has the same meaning as in section 5124.01 of the Revised Code.
- (5) "Voluntary termination" has the same meaning as in section 5124.01 of the Revised Code.

(C) Debt estimation

- (1) The Ohio department of medicaid shall use the debt estimation methodology set forth in this rule to estimate an exiting operator's actual and potential debts to the department and the centers for medicare and medicaid services under the medicaid program.
- (2) The Ohio department of medicaid shall total the value of all of the following that are determined applicable in calculating the debt estimate:
 - (a) Overpayments due to the department pursuant to section 5124.41 of the Revised Code, including:

- (i) Overpayments owed for adjudicated final fiscal audit periods.
- (ii) Overpayments identified in proposed adjudication orders that have been issued but not adjudicated.
- (iii) Overpayment amounts for any outstanding periods where a final fiscal audit has not yet been issued. Such amounts are estimated by generating preliminary reports of amounts owed by the exiting operator for the applicable periods.
- (b) Monies owed to the department and the centers for medicare and medicaid services resulting from penalties authorized by federal and state law, including but not limited to:

 - (i) Penalties assessed pursuant to section 5124.42 of the Revised Code for:

 - (a) Lack of proper notice of a change of operator, facility closure, or voluntary termination from the medicaid program; or
 - (b) Failure to furnish invoices or other documentation that the department requests during an audit.
 - (ii) Late cost report filing penalties assessed pursuant to rule 5123-7-12 of the Administrative Code.
- (c) Penalties assessed pursuant to section 5124.99 of the Revised Code for violation of cost reporting provisions or provider agreement obligations.
- (d) Interest monies owed to the department pursuant to section 5124.41 of the Revised Code and to the centers for medicare and medicaid services pursuant to 42 C.F.R. 488.442, as in effect on the effective date of this rule.
- (e) Monies owed to the department and the centers for medicare and medicaid services pursuant to sections 5124.52 and 5124.525 of the Revised Code, including a final fiscal audit for the last fiscal year or portion thereof that the exiting operator participated in the medicaid program.
- (f) Franchise permit fee owed to the department pursuant to section 5168.63 of the Revised Code which shall include unpaid franchise permit fee for:

- (i) Amounts due for periods assessed or to be assessed but for which payment is not yet required pursuant to section 5168.63 of the Revised Code.
 - (ii) Amounts due that are certified to the Ohio attorney general's office for collection, including penalties assessed pursuant to section 5168.63 of the Revised Code for failure to pay the full amount when due.
- (g) Monies owed for recapture of excess depreciation.
- (h) Monies owed due to a credit balance.
- (i) Monies owed pursuant to successor liability or assumption of liability agreements the exiting operator entered into.
- (j) Other amounts the department determines are applicable.
- (3) The sum of the amounts determined owed, or estimated to be owed, to the department and the centers for medicare and medicaid services pursuant to paragraphs (C)(2)(a) to (C)(2)(j) of this rule shall be the total estimated debt.
- (4) The Ohio department of medicaid may release a portion of funds withheld pursuant to division (A) of section 5124.521 of the Revised Code if the funds withheld are materially greater than the debt calculated by the department in the initial debt summary report issued pursuant to section 5124.525 of the Revised Code.

(D) Provision of debt estimate

For the purposes of division (C) of section 5124.52 of the Revised Code, the debt estimate is considered provided by the Ohio department of medicaid on the date of mailing or date of personal service.

(E) Initial debt summary report

- (1) Whenever the Ohio department of medicaid issues an initial debt summary report pursuant to section 5124.525 of the Revised Code, the Ohio department of medicaid shall give notice to the affected party informing the affected party of the affected party's right to request a review. Notice shall be given by registered mail, return receipt requested, and shall include:
 - (a) A statement informing the affected party that the affected party is entitled to request a review of the initial debt summary report.

- (b) A statement informing the affected party that if a request for review of the initial debt summary report is not submitted on or before thirty calendar days after the mailing of the initial debt summary report, the initial debt summary report becomes the final debt summary report thirty-one calendar days after the mailing of the initial debt summary report, and that the affected party may request, in accordance with Chapter 119. of the Revised Code, an adjudication hearing regarding a finding in the final debt summary report that pertains to an audit or alleged overpayment made under the medicaid program to the exiting operator. The adjudication shall be consolidated with any other uncompleted adjudication that concerns a matter addressed in the final debt summary report.
- (2) The Ohio department of medicaid shall also mail a copy of the notice to the affected party's attorney or other representative of record. To qualify as an attorney or representative of record, the affected party or the attorney or representative must notify the Ohio department of medicaid, in writing, that the attorney or representative is to be designated the attorney or representative of record for purposes of receiving notice of an initial debt summary report. The notification must include the address where the Ohio department of medicaid should mail the notice to the attorney or representative of record. The mailing of notice to the affected party's attorney or representative is not deemed to perfect service of the notice. Failure to mail a copy of the notice to the attorney or representative of record will not result in failure of otherwise perfected service upon the affected party. In those instances where an affected party is a corporation doing business in Ohio or is incorporated in Ohio, the mailing of notice to the corporation's statutory agent pursuant to sections 1701.07 and 1703.19 of the Revised Code will perfect service.
- (3) When any notice of an initial debt summary report sent by registered mail pursuant to this rule is returned because the affected party fails to claim the notice, the Ohio department of medicaid shall send the notice by ordinary mail to the affected party at the affected party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.
- (4) When any notice of an initial debt summary report sent by registered mail or ordinary mail is returned for failure of delivery, the Ohio department of medicaid shall make personal delivery of the notice by an employee or agent of the Ohio department of medicaid. An employee or agent of the Ohio department of medicaid may make personal delivery of the notice upon a party at any time.

- (5) Refusal of delivery of an initial debt summary report by personal service or by mail is not failure of delivery and service is deemed to be complete at the time of personal refusal or at the time of receipt by the Ohio department of medicaid of the refused mail as evidenced by the Ohio department of medicaid date and time stamp. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired.
- (6) Any request for a review made as the result of notice of an initial debt summary report issued pursuant to this rule must be made in writing and mailed or delivered to the Ohio department of medicaid office and address identified in the initial debt summary report within thirty calendar days of the following, as applicable:
- (a) The time of mailing the notice if notice is given pursuant to paragraph (E)(1) of this rule.
 - (b) The date that service is complete if notice is given pursuant to paragraph (E)(3) or (E)(5) of this rule.
 - (c) The date of personal service.
- (7) If a request for review is mailed to the Ohio department of medicaid office and address identified in the initial debt summary report, the request is deemed to have been made:
- (a) If the request for review is mailed by certified mail, as of the date stamped by the United States postal service on its receipt form.
 - (b) If the request for review is mailed by regular United States mail, as of the date of the postmark appearing upon the envelope containing the request.
 - (c) If the request for review is mailed by regular United States mail and the postmark is illegible or fails to appear on the envelope, as of the date of its receipt by the Ohio department of medicaid office identified in the initial debt summary report as evidenced by that office's date and time stamp.
- (8) If a request for review is made by electronic mail to the office identified in the initial debt summary report, the request is deemed to have been made as of the date of its receipt as evidenced by the date of receipt shown in the source code of the electronic mail received by the office identified in the initial debt summary report.

- (9) If a request for review is mailed, personally delivered, or made by electronic mail to a party or address other than the proper office identified in the initial debt summary report, the request is deemed to have been made as of the date of its receipt by the office identified in the initial debt summary report as evidenced by that office's date and time stamp.
- (10) If a request for review is personally delivered to the office identified in the initial debt summary report, the request is deemed to have been made as of the date of its receipt as evidenced by that office's date and time stamp.
- (11) All requests for review must clearly identify both the affected party involved and the initial debt summary report that is being contested.

(F) Revised debt summary report

- (1) Whenever the Ohio department of medicaid issues a revised debt summary report pursuant to section 5124.525 of the Revised Code, the Ohio department of medicaid shall give notice to the affected party informing the affected party of the affected party's right to submit additional information. Notice shall be given by registered mail, return receipt requested, and shall include:
- (a) A statement informing the affected party that the affected party is entitled to submit additional information.
- (b) A statement informing the affected party that if additional information is not submitted on or before thirty calendar days after the mailing of the revised debt summary report, the revised debt summary report becomes the final debt summary report thirty-one calendar days after the mailing of the revised debt summary report, and that the affected party may request, in accordance with Chapter 119. of the Revised Code, an adjudication hearing regarding a finding in the final debt summary report that pertains to an audit or alleged overpayment made under the medicaid program to the exiting operator. The adjudication shall be consolidated with any other uncompleted adjudication that concerns a matter addressed in the final debt summary report.
- (2) The Ohio department of medicaid shall also mail a copy of the notice to the affected party's attorney or other representative of record. To qualify as an attorney or representative of record, the affected party or the attorney or representative must notify the Ohio department of medicaid, in writing, that the attorney or representative is to be designated the attorney or representative of record for purposes of receiving notice of a revised debt summary report. The notification must include the address where the Ohio department of medicaid

should mail the notice to the attorney or representative of record. The mailing of notice to the affected party's attorney or representative is not deemed to perfect service of the notice. Failure to mail a copy of the notice to the attorney or representative of record will not result in failure of otherwise perfected service upon the affected party. In those instances where an affected party is a corporation doing business in Ohio or is incorporated in Ohio, the mailing of notice to the corporation's statutory agent pursuant to sections 1701.07 and 1703.19 of the Revised Code will perfect service.

- (3) When any notice of a revised debt summary report sent by registered mail pursuant to this rule is returned because the affected party fails to claim the notice, the Ohio department of medicaid shall send the notice by ordinary mail to the affected party at the affected party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.
- (4) When any notice of a revised debt summary report sent by registered mail or ordinary mail is returned for failure of delivery, the Ohio department of medicaid shall make personal delivery of the notice by an employee or agent of the Ohio department of medicaid. An employee or agent of the Ohio department of medicaid may make personal delivery of the notice upon a party at any time.
- (5) Refusal of delivery of a revised debt summary report by personal service or by mail is not failure of delivery and service is deemed to be complete at the time of personal refusal or at the time of receipt by the Ohio department of medicaid of the refused mail as evidenced by the Ohio department of medicaid date and time stamp. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired.
- (6) Any submission of additional information made as the result of notice of a revised debt summary report issued pursuant to this rule must be made in writing and mailed or delivered to the Ohio department of medicaid office and address identified in the revised debt summary report within thirty calendar days of the following, as applicable:

 - (a) The time of mailing the notice if notice is given pursuant to paragraph (F)(1) of this rule.
 - (b) The date that service is complete if notice is given pursuant to paragraph (F)(3) or (F)(5) of this rule.
 - (c) The date of personal service.

- (7) If a submission of additional information is mailed to the Ohio department of medicaid office and address identified in the revised debt summary report, the request is deemed to have been made:
- (a) If the submission of additional information is mailed by certified mail, as of the date stamped by the United States postal service on its receipt form.
 - (b) If the submission of additional information is mailed by regular United States mail, as of the date of the postmark appearing upon the envelope containing the request.
 - (c) If the submission of additional information is mailed by regular United States mail and the postmark is illegible or fails to appear on the envelope, as of the date of its receipt by the Ohio department of medicaid office identified in the revised debt summary report as evidenced by that office's date and time stamp.
- (8) If a submission of additional information is made by electronic mail to the office identified in the revised debt summary report, the submission is deemed to have been made as of the date of its receipt as evidenced by the date of receipt shown in the source code of the electronic mail received by the office identified in the revised debt summary report.
- (9) If a submission of additional information is mailed, personally delivered, or made by electronic mail to a party or address other than the proper office identified in the revised debt summary report, the submission is deemed to have been made as of the date of its receipt by the office identified in the revised debt summary report as evidenced by that office's date and time stamp.
- (10) If a submission of additional information is personally delivered to the office identified in the revised debt summary report, the submission is deemed to have been made as of the date of its receipt as evidenced by that office's date and time stamp.
- (11) All submissions of additional information must clearly identify both the affected party involved and the revised debt summary report that is being contested.

(G) Final debt summary report

Rule 5101:6-50-03 of the Administrative Code shall apply if an affected party timely submits a request for review and additional information in response to a revised debt summary report, and the Ohio department of medicaid issues a final debt summary report pursuant to section 5124.525 of the Revised Code. An adjudication on a final debt summary report shall be conducted only with respect to findings in the final

debt summary report that pertain to an audit or alleged overpayment made under the medicaid program to the exiting operator. The adjudication shall be consolidated with any other uncompleted adjudication that concerns a matter addressed in the final debt summary report.

(H) Computation of time deadlines

Section 1.14 of the Revised Code controls the computing of time deadlines imposed by this rule. The time within which an act is required by law to be completed is computed by excluding the first day and including the last day. When the last day falls on a Saturday, Sunday, or legal holiday, the act may be completed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. When the last day to perform an act that is required by law is to be performed in a public office and that public office is closed to the public for the entire day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

(I) Successor liability agreements

- (1) Successor liability agreements entered into pursuant to section 5124.521 of the Revised Code are subject to approval by the Ohio department of medicaid.
- (2) Successor liability agreements must be signed by the exiting operator, the Ohio department of medicaid, and the entity assuming liability pursuant to section 5124.521 of the Revised Code.

Replaces: 5123:2-7-14
Effective: 12/16/2019
Five Year Review (FYR) Dates: 12/16/2024

CERTIFIED ELECTRONICALLY

Certification

12/06/2019

Date

Promulgated Under: 119.03
Statutory Authority: 5123.04, 5124.03
Rule Amplifies: 5123.04, 5124.03, 5124.41, 5124.42, 5124.52,
5124.521, 5124.525, 5124.99, 5168.63
Prior Effective Dates: 01/10/2013