



## Ohio Administrative Code

### Rule 5160-3-01 Nursing facilities (NFs): definitions.

Effective: September 22, 2018

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Except as otherwise provided in Chapter 5160-3 of the Administrative Code, and in addition to the definitions in section 5165.01 of the Revised Code:

(A) "Allowable costs" has the same meaning as in section 5165.01 of the Revised Code and are determined in accordance with the following reference material, in the following priority:

(1) Title 42 Code of Federal Regulations (C.F.R.) Chapter IV (October 1, 2017).

(2) The centers for medicare and medicaid services (CMS) publication 15-1 entitled "The Provider Reimbursement Manual - Part 1" (rev. 9/21/17).

(3) Generally accepted accounting principles in accordance with standards prescribed by the "American Institute of CPAs" (AICPA) as in effect June 26, 2018.

(B) "Intermediate care facility for individuals with intellectual disabilities" (ICF-IID) has the same meaning as in section 5124.01 of the Revised Code.

(C) "Minimum data set" (MDS) is the resident assessment instrument approved by CMS as described in rule 5160-3-43.1 of the Administrative Code. The MDS provides the resident assessment data that is used to classify a resident into a resource utilization group in the RUG case mix classification system as described in rule 5160-3-43.2 of the Administrative Code.

(D) "Patient" includes resident or individual.

(E) "Quarterly facility average case mix score" is a facility average case mix score based on data submitted for one reporting quarter.

(F) "Related party" has the same meaning as in section 5165.01 of the Revised Code.



In cases of a change of provider (CHOP), the following apply:

(1) The amount of indirect ownership is determined by multiplying the percentage of ownership interest at each level (e.g., forty per cent interest in corporation "A" which owns fifty per cent of corporation "B" results in a twenty per cent indirect interest in corporation "B").

(2) If a provider transfers an interest or leases an interest in a facility to another provider who is a related party, the capital cost basis shall be adjusted for a sale of a facility to or a lease to a provider that is not a related party if all of the following conditions are met:

(a) For a NF transfer:

(i) The related party is a relative of owner.

(ii) The provider making the transfer retains no interest in the facility except through the exercise of the creditor's rights in the event of default.

(iii) ODM determines that the transfer is an arm's length transaction if all the following apply:

(a) Once the transfer goes into effect, the provider that made the transfer has no direct or indirect interest in the provider that acquires the facility or the facility itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a creditor. If the provider making the transfer maintains an interest as a creditor, the interest rate of the creditor shall not exceed the lesser of:

(i) The prime rate, as published by the "Wall Street Journal" (June 26, 2018) on the first business day of the calendar year, plus four per cent; or

(ii) Fifteen per cent.

(b) The provider that made the transfer does not reacquire an interest in the facility except through the exercise of a creditor's rights in the event of a default. If the provider reacquires an interest in the



facility in this manner, ODM shall treat the facility as if the transfer never occurred when ODM calculates its reimbursement rates for capital costs.

(c) The provider transferring their facility shall provide ODM with certified appraisal(s) at least ninety days prior to the actual change of provider agreement(s). The certified appraisal(s) shall be conducted no earlier than one hundred eighty days prior to the actual change of provider agreement(s) for each facility transferred to a related party.

(iv) Except in the case of hardship caused by a catastrophic event, as determined by ODM, or in the case of a provider making the transfer who is at least sixty-five years of age, not less than twenty years have elapsed since, for the same facility, the capital cost basis was determined or adjusted most recently; or actual, allowable cost of ownership was determined most recently.

(b) For a NF lease:

(i) The related party is a relative of the owner.

(ii) The lessor retains an ownership interest in only real property and any improvements on the real property except when a lessor retains ownership interest through the exercise of a lessor's rights in the event of default.

(iii) ODM determines that the lease is an arm's length transaction if all the following apply:

(a) Once the lease goes into effect, the lessor has no direct or indirect interest in the lessee or, except as provided in this rule, the facility itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a lessor.

(b) The lessor does not reacquire an interest in the facility except through the exercise of a lessor's rights in the event of a default. If the lessor reacquires an interest in the facility in this manner, ODM shall treat the facility as if the lease never occurred when ODM calculates its reimbursement rates for capital costs.

(c) A lessor that proposes to lease a facility to a relative of owner shall obtain a certified appraisal(s)



for each facility leased. The lessor of the facility shall provide ODM with certified appraisal(s) at least ninety days prior to the actual change of provider agreement(s). The certified appraisal(s) shall be conducted no earlier than one hundred eighty days prior to the actual change of provider agreement(s) for each facility leased to a related party.

(iv) Except in the case of hardship caused by a catastrophic event, as determined by ODM, or in the case of a lessor who is at least sixty-five years of age, not less than twenty years have elapsed since, for the same facility, the capital cost basis was determined or adjusted most recently; or actual, allowable cost of ownership was determined most recently.

(v) The provisions set forth in this paragraph do not apply to leases of specific items of equipment.

(c) The provider shall notify ODM in writing and shall supply sufficient documentation demonstrating compliance with the provisions of this rule no less than ninety days before the anticipated date of completion of the transfer or lease. If the provider does not supply any of the required information, the provider shall not qualify for a rate adjustment. ODM shall issue a written decision determining whether the transfer meets the requirements of this rule within sixty days after receiving complete information as determined by ODM.

(d) Any rate adjustments which result from the provisions contained in paragraph (G)(2) of this rule shall take effect as specified in rule 5160-3-24 of the Administrative Code, following a determination by ODM that the requirements of paragraph (G)(2) of this rule are met.

(G) "Replacement beds" are beds that are relocated to a new building or portion of a building attached to and/or constructed outside of the original licensed structure of a NF. Replacement beds may originate from within the licensed structure of a NF or from another NF.

(H) "RUG" is the resource utilization groups system of classifying NF residents into case mix groups as described in rule 5160-3-43.2 of the Administrative Code.