

5101:3-3-04.1      **Payment to nursing facilities (NFs) and intermediate care facilities for the mentally retarded (ICFs-MR) during the survey agency's administrative appeals process.**

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

- (1) "State survey agency" means for the purpose of medicaid certification, the Ohio department of health (ODH).
- (2) "Effective date of termination" means the date set by the state survey agency or the United States department of health and human services for the termination of certification.
- (3) For ICFs-MR "effective date of expiration" means date of expiration originally specified in the provider agreement, or the later date specified, if the provider agreement is extended by the Ohio department of ~~jobs~~ job and family services (ODJFS), pursuant to a request by the state survey agency in accordance with federal regulations.

(4) For ICFs-MR "informal reconsideration" is the process by which facilities may refute in writing, prior to the termination or non-renewal of medicaid certification, the state survey agency's findings on which the termination or ~~nonrenewal~~ non-renewal is based. The facility must receive a written response to the informal reconsideration request which either affirms or reverses the survey decisions. An "informal reconsideration" is a process independent of the formal appeal. The facility may or may not choose to utilize the "informal reconsideration."

(B) When medicaid certification is either terminated or ~~nonrenewed~~ not renewed, ODJFS must also either terminate or not renew the medicaid provider agreement.

(C) The following requirements are specific to NFs:

- (1) During the appeals process provided by the state survey agency for the proposed termination or ~~nonrenewal~~ non-renewal of certification, payment for covered services provided to eligible residents is available if:
  - (a) Payment is for those residents admitted prior to the effective date of an order issued under sections 5111.46, 5111.48, 5111.51, and 5111.57 of the Revised Code, placing a ban on admissions to medicaid eligible residents and/or for certain diagnostic groups with specialized care needs; and

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(b) The appeal is conducted prior to the effective date of termination or ~~nonrenewal~~ non-renewal.

(2) If the NF appeal process results in an adjudication order that upholds the ODH action or if the administrative hearing is not completed prior to the certification termination/~~nonrenewal~~ non-renewal date, payment for services provided to eligible residents may be available for an additional thirty days if:

(a) The eligible resident was admitted prior to the termination/~~nonrenewal~~ non-renewal date and prior to any ban on admissions as described in paragraph (C)(1)(a) of this rule; and

(b) The NF cooperates with the state, local, and federal entities in the effort to transfer residents to other NFs, institutions, or community programs that can meet the residents' needs.

(3) If a NF's appeal of the termination or ~~nonrenewal~~ non-renewal of its certification is upheld, payment for covered services provided to eligible residents is resumed. If the appeal decision is reached after the termination/~~nonrenewal~~ non-renewal date, payment is made retroactive to the date of termination.

(D) The following sections are specific to ICFs-MR:

(1) In addition to or in conjunction with the appeals process, the ICF-MR may request an "informal reconsideration." If the "informal reconsideration" results in an affirmation of the original survey findings, the appeals process moves forward to the administrative hearing if one was requested. If the "informal reconsideration" results in a reversal of the original survey findings, the state agency's termination/~~nonrenewal~~ non-renewal action, based on those original findings, is dismissed.

(2) During the appeals process provided by the state survey agency for the proposed termination, and/or ~~nonrenewal~~ non-renewal of medicaid certification for an ICF-MR, payment under regulations for covered services provided to eligible residents shall continue through the earlier of the following:

(a) The date of issuance of a final order of adjudication that upholds the state survey agency's termination or ~~nonrenewal~~ non-renewal action; or

(b) The one hundred twentieth day after the effective date of termination of

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the ~~ICF's-MR~~ ICF-MR's provider agreement, or if the ICF-MR provider agreement is not terminated, the one hundred twentieth day after the effective date of expiration, as defined in paragraph (A) of this rule.

- (3) Payment may be provided up to an additional thirty days following either the cessation of payment on the one hundred twentieth day post termination or ~~nonrenewal~~ non-renewal date; or after the issuance of an adjudication order that upholds the ODH termination or ~~nonrenewal~~ non-renewal action. Payment will be available if both of the following conditions are met:

- (a) Payment is for residents admitted to the ICF-MR before the effective date of termination or ~~nonrenewal~~ non-renewal; and
- (b) The ICF-MR cooperates with the state, local, and federal entities in the effort to transfer residents to other ICFs-MR, institutions, or community programs that can meet the residents' needs.

(E) The following apply to both NFs and ICFs-MR:

- (1) When ODJFS acts under instructions from the United States department of health and human services, payment ends on the date specified by that agency.
- (2) When the state survey agency certifies that there is jeopardy to residents' health and safety by issuing an order under Chapter 5111. of the Revised Code, or when it fails to certify that there is no jeopardy, payment will end on the effective date of termination, or in the case of an ICF-MR, if it is earlier, the expiration of the provider agreement.

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Certification

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Date

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