As Introduced

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Representatives Yuko, McGregor

Cosponsors: Representatives Garland, Murray, Gardner, Foley, Blair, Sears, Boyd, Schuring, Snitchler, Antonio, Okey, Lundy, DeGeeter, Ashford, Pillich, Balderson, Adams, J., Letson, Hottinger, Hackett, Gentile, Barnes, Weddington, Slaby, Mallory

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A BILL

To amend section 5111.20 and to enact section 5111.205 of the Revised Code to revise the types of costs included in determining nursing facilities' Medicaid reimbursement rates. 1 2 3 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5111.20 be amended and section 5111.205 of the Revised Code be enacted to read as follows: 5 6

Sec. 5111.20. As used in sections 5111.20 to 5111.34 of the Revised Code: 7 8

(A) "Allowable costs" are those costs determined by the department of job and family services to be reasonable and do not include fines paid under sections 5111.35 to 5111.61 and section 5111.99 of the Revised Code. 9 10 11 12

(B) "Ancillary and support costs" means all reasonable costs incurred by a nursing facility other than direct care costs or capital costs. "Ancillary and support costs" includes, but is not 13 14 15

limited to, costs of activities, social services, pharmacy 16
consultants, habilitation supervisors, qualified mental 17
retardation professionals, program directors, medical and 18
habilitation records, program supplies, incontinence supplies, 19
food, enterals, dietary supplies and personnel, laundry, 20
housekeeping, security, administration, medical equipment, 21
utilities, liability insurance, bookkeeping, purchasing 22
department, human resources, communications, travel, dues, license 23
fees, subscriptions, home office costs not otherwise allocated, 24
legal services, accounting services, minor equipment, ~~wheelchairs,~~ 25
~~resident transportation,~~ maintenance and repairs, help-wanted 26
advertising, informational advertising, start-up costs, 27
organizational expenses, other interest, property insurance, 28
employee training and staff development, employee benefits, 29
payroll taxes, and workers' compensation premiums or costs for 30
self-insurance claims and related costs as specified in rules 31
adopted by the director of job and family services under section 32
5111.02 of the Revised Code, for personnel listed in this 33
division. "Ancillary and support costs" also means the cost of 34
equipment, including vehicles, acquired by operating lease 35
executed before December 1, 1992, if the costs are reported as 36
administrative and general costs on the facility's cost report for 37
the cost reporting period ending December 31, 1992. 38

(C) "Capital costs" means costs of ownership and, in the case 39
of an intermediate care facility for the mentally retarded, costs 40
of nonextensive renovation. 41

(1) "Cost of ownership" means the actual expense incurred for 42
all of the following: 43

(a) Depreciation and interest on any capital assets that cost 44
five hundred dollars or more per item, including the following: 45

(i) Buildings; 46

(ii) Building improvements that are not approved as nonextensive renovations under section 5111.251 of the Revised Code; 47 48 49

(iii) Except as provided in division (B) of this section, equipment; 50 51

(iv) In the case of an intermediate care facility for the mentally retarded, extensive renovations; 52 53

(v) Transportation equipment. 54

(b) Amortization and interest on land improvements and leasehold improvements; 55 56

(c) Amortization of financing costs; 57

(d) Except as provided in division (K) of this section, lease and rent of land, building, and equipment. 58 59

The costs of capital assets of less than five hundred dollars per item may be considered capital costs in accordance with a provider's practice. 60 61 62

(2) "Costs of nonextensive renovation" means the actual expense incurred by an intermediate care facility for the mentally retarded for depreciation or amortization and interest on renovations that are not extensive renovations. 63 64 65 66

(D) "Capital lease" and "operating lease" shall be construed in accordance with generally accepted accounting principles. 67 68

(E) "Case-mix score" means the measure determined under section 5111.232 of the Revised Code of the relative direct-care resources needed to provide care and habilitation to a resident of a nursing facility or intermediate care facility for the mentally retarded. 69 70 71 72 73

(F)(1) "Date of licensure," for a facility originally licensed as a nursing home under Chapter 3721. of the Revised Code, means the date specific beds were originally licensed as 74 75 76

nursing home beds under that chapter, regardless of whether they were subsequently licensed as residential facility beds under section 5123.19 of the Revised Code. For a facility originally licensed as a residential facility under section 5123.19 of the Revised Code, "date of licensure" means the date specific beds were originally licensed as residential facility beds under that section. 77 78 79 80 81 82 83

If nursing home beds licensed under Chapter 3721. of the Revised Code or residential facility beds licensed under section 5123.19 of the Revised Code were not required by law to be licensed when they were originally used to provide nursing home or residential facility services, "date of licensure" means the date the beds first were used to provide nursing home or residential facility services, regardless of the date the present provider obtained licensure. 84 85 86 87 88 89 90 91

If a facility adds nursing home beds or residential facility beds or extensively renovates all or part of the facility after its original date of licensure, it will have a different date of licensure for the additional beds or extensively renovated portion of the facility, unless the beds are added in a space that was constructed at the same time as the previously licensed beds but was not licensed under Chapter 3721. or section 5123.19 of the Revised Code at that time. 92 93 94 95 96 97 98 99

(2) The definition of "date of licensure" in this section applies in determinations of the medicaid reimbursement rate for a nursing facility or intermediate care facility for the mentally retarded but does not apply in determinations of the franchise permit fee for a nursing facility or intermediate care facility for the mentally retarded. 100 101 102 103 104 105

(G) "Desk-reviewed" means that costs as reported on a cost report submitted under section 5111.26 of the Revised Code have been subjected to a desk review under division (A) of section 106 107 108

5111.27 of the Revised Code and preliminarily determined to be 109
allowable costs. 110

(H) "Direct care costs" means all of the following: 111

(1)(a) Costs for registered nurses, licensed practical 112
nurses, and nurse aides employed by the facility; 113

(b) Costs for direct care staff, administrative nursing 114
staff, medical directors, respiratory therapists, and except as 115
provided in division (H)(2) of this section, other persons holding 116
degrees qualifying them to provide therapy; 117

(c) Costs of purchased nursing services; 118

(d) Costs of quality assurance; 119

(e) Costs of training and staff development, employee 120
benefits, payroll taxes, and workers' compensation premiums or 121
costs for self-insurance claims and related costs as specified in 122
rules adopted by the director of job and family services in 123
accordance with Chapter 119. of the Revised Code, for personnel 124
listed in divisions (H)(1)(a), (b), and (d) of this section; 125

(f) Costs of consulting and management fees related to direct 126
care; 127

(g) Allocated direct care home office costs. 128

(2) In addition to the costs specified in division (H)(1) of 129
this section, for nursing facilities only, direct care costs 130
include costs of habilitation staff (other than habilitation 131
supervisors), medical supplies, emergency oxygen, ~~over-the-counter~~ 132
~~pharmacy products, physical therapists, physical therapy~~ 133
~~assistants, occupational therapists, occupational therapy~~ 134
~~assistants, speech therapists, audiologists,~~ prescription drugs, 135
habilitation supplies, and universal precautions supplies. 136

(3) In addition to the costs specified in division (H)(1) of 137
this section, for intermediate care facilities for the mentally 138

retarded only, direct care costs include both of the following: 139

(a) Costs for physical therapists and physical therapy assistants, occupational therapists and occupational therapy assistants, speech therapists, audiologists, habilitation staff (including habilitation supervisors), qualified mental retardation professionals, program directors, social services staff, activities staff, off-site day programming, psychologists and psychology assistants, and social workers and counselors; 140 141 142 143 144 145 146

(b) Costs of training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims and related costs as specified in rules adopted under section 5111.02 of the Revised Code, for personnel listed in division (H)(3)(a) of this section. 147 148 149 150 151

(4) Costs of other direct-care resources that are specified as direct care costs in rules adopted under section 5111.02 of the Revised Code. 152 153 154

(I) "Fiscal year" means the fiscal year of this state, as specified in section 9.34 of the Revised Code. 155 156

(J) "Franchise permit fee" means the following: 157

(1) In the context of nursing facilities, the fee imposed by sections 3721.50 to 3721.58 of the Revised Code; 158 159

(2) In the context of intermediate care facilities for the mentally retarded, the fee imposed by sections 5112.30 to 5112.39 of the Revised Code. 160 161 162

(K) "Indirect care costs" means all reasonable costs incurred by an intermediate care facility for the mentally retarded other than direct care costs, other protected costs, or capital costs. "Indirect care costs" includes but is not limited to costs of habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, 163 164 165 166 167 168

food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims and related costs as specified in rules adopted under section 5111.02 of the Revised Code, for personnel listed in this division. Notwithstanding division (C)(1) of this section, "indirect care costs" also means the cost of equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's cost report for the cost reporting period ending December 31, 1992. 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186

(L) "Inpatient days" means all days during which a resident, regardless of payment source, occupies a bed in a nursing facility or intermediate care facility for the mentally retarded that is included in the facility's certified capacity under Title XIX. Therapeutic or hospital leave days for which payment is made under section 5111.33 of the Revised Code are considered inpatient days proportionate to the percentage of the facility's per resident per day rate paid for those days. 187 188 189 190 191 192 193 194

(M) "Intermediate care facility for the mentally retarded" means an intermediate care facility for the mentally retarded certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX. 195 196 197 198 199

(N) "Maintenance and repair expenses" means, except as 200

provided in division (BB)(2) of this section, expenditures that 201
are necessary and proper to maintain an asset in a normally 202
efficient working condition and that do not extend the useful life 203
of the asset two years or more. "Maintenance and repair expenses" 204
includes but is not limited to the cost of ordinary repairs such 205
as painting and wallpapering. 206

(O) "Medicaid days" means all days during which a resident 207
who is a ~~Medicaid~~ medicaid recipient eligible for nursing facility 208
services occupies a bed in a nursing facility that is included in 209
the nursing facility's certified capacity under Title XIX. 210
Therapeutic or hospital leave days for which payment is made under 211
section 5111.33 of the Revised Code are considered ~~Medicaid~~ 212
medicaid days proportionate to the percentage of the nursing 213
facility's per resident per day rate paid for those days. 214

(P) "Nursing facility" means a facility, or a distinct part 215
of a facility, that is certified as a nursing facility by the 216
director of health in accordance with Title XIX and is not an 217
intermediate care facility for the mentally retarded. "Nursing 218
facility" includes a facility, or a distinct part of a facility, 219
that is certified as a nursing facility by the director of health 220
in accordance with Title XIX and is certified as a skilled nursing 221
facility by the director in accordance with Title XVIII. 222

(Q) "Operator" means the person or government entity 223
responsible for the daily operating and management decisions for a 224
nursing facility or intermediate care facility for the mentally 225
retarded. 226

(R) "Other protected costs" means costs incurred by an 227
intermediate care facility for the mentally retarded for medical 228
supplies; real estate, franchise, and property taxes; natural gas, 229
fuel oil, water, electricity, sewage, and refuse and hazardous 230
medical waste collection; allocated other protected home office 231
costs; and any additional costs defined as other protected costs 232

in rules adopted under section 5111.02 of the Revised Code. 233

(S)(1) "Owner" means any person or government entity that has at least five per cent ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility or intermediate care facility for the mentally retarded: 234 235 236 237 238

(a) The land on which the facility is located; 239

(b) The structure in which the facility is located; 240

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the facility is located; 241 242 243

(d) Any lease or sublease of the land or structure on or in which the facility is located. 244 245

(2) "Owner" does not mean a holder of a debenture or bond related to the nursing facility or intermediate care facility for the mentally retarded and purchased at public issue or a regulated lender that has made a loan related to the facility unless the holder or lender operates the facility directly or through a subsidiary. 246 247 248 249 250 251

(T) "Patient" includes "resident." 252

(U) Except as provided in divisions (U)(1) and (2) of this section, "per diem" means a nursing facility's or intermediate care facility for the mentally retarded's actual, allowable costs in a given cost center in a cost reporting period, divided by the facility's inpatient days for that cost reporting period. 253 254 255 256 257

(1) When calculating indirect care costs for the purpose of establishing rates under section 5111.241 of the Revised Code, "per diem" means an intermediate care facility for the mentally retarded's actual, allowable indirect care costs in a cost reporting period divided by the greater of the facility's 258 259 260 261 262

inpatient days for that period or the number of inpatient days the facility would have had during that period if its occupancy rate had been eighty-five per cent. 263 264 265

(2) When calculating capital costs for the purpose of establishing rates under section 5111.251 of the Revised Code, "per diem" means a facility's actual, allowable capital costs in a cost reporting period divided by the greater of the facility's inpatient days for that period or the number of inpatient days the facility would have had during that period if its occupancy rate had been ninety-five per cent. 266 267 268 269 270 271 272

(V) "Provider" means an operator with a provider agreement. 273

(W) "Provider agreement" means a contract between the department of job and family services and the operator of a nursing facility or intermediate care facility for the mentally retarded for the provision of nursing facility services or intermediate care facility services for the mentally retarded under the medicaid program. 274 275 276 277 278 279

(X) "Purchased nursing services" means services that are provided in a nursing facility by registered nurses, licensed practical nurses, or nurse aides who are not employees of the facility. 280 281 282 283

(Y) "Reasonable" means that a cost is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities, including normal standby costs, and that does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider to provider and from time to time for the same provider. 284 285 286 287 288 289

(Z) "Related party" means an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the provider. 290 291 292 293

(1) An individual who is a relative of an owner is a related party. 294 295

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in both the provider and the other organization. Significant ownership or equity exists when an individual or individuals possess five per cent ownership or equity in both the provider and a supplier. Significant ownership or equity is presumed to exist when an individual or individuals possess ten per cent ownership or equity in both the provider and another organization from which the provider purchases or leases real property. 296 297 298 299 300 301 302 303 304

(3) Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization. 305 306 307

(4) An individual or organization that supplies goods or services to a provider shall not be considered a related party if all of the following conditions are met: 308 309 310

(a) The supplier is a separate bona fide organization. 311

(b) A substantial part of the supplier's business activity of the type carried on with the provider is transacted with others than the provider and there is an open, competitive market for the types of goods or services the supplier furnishes. 312 313 314 315

(c) The types of goods or services are commonly obtained by other nursing facilities or intermediate care facilities for the mentally retarded from outside organizations and are not a basic element of patient care ordinarily furnished directly to patients by the facilities. 316 317 318 319 320

(d) The charge to the provider is in line with the charge for the goods or services in the open market and no more than the charge made under comparable circumstances to others by the supplier. 321 322 323 324

(AA) "Relative of owner" means an individual who is related to an owner of a nursing facility or intermediate care facility for the mentally retarded by one of the following relationships: 325 326 327

(1) Spouse; 328

(2) Natural parent, child, or sibling; 329

(3) Adopted parent, child, or sibling; 330

(4) Stepparent, stepchild, stepbrother, or stepsister; 331

(5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; 332 333

(6) Grandparent or grandchild; 334

(7) Foster caregiver, foster child, foster brother, or foster sister. 335 336

(BB) "Renovation" and "extensive renovation" mean: 337

(1) Any betterment, improvement, or restoration of an intermediate care facility for the mentally retarded started before July 1, 1993, that meets the definition of a renovation or extensive renovation established in rules adopted by the director of job and family services in effect on December 22, 1992. 338 339 340 341 342

(2) In the case of betterments, improvements, and restorations of intermediate care facilities for the mentally retarded started on or after July 1, 1993: 343 344 345

(a) "Renovation" means the betterment, improvement, or restoration of an intermediate care facility for the mentally retarded beyond its current functional capacity through a structural change that costs at least five hundred dollars per bed. A renovation may include betterment, improvement, restoration, or replacement of assets that are affixed to the building and have a useful life of at least five years. A renovation may include costs that otherwise would be considered maintenance and repair expenses if they are an integral part of 346 347 348 349 350 351 352 353 354

the structural change that makes up the renovation project. "Renovation" does not mean construction of additional space for beds that will be added to a facility's licensed or certified capacity. 355 356 357 358

(b) "Extensive renovation" means a renovation that costs more than sixty-five per cent and no more than eighty-five per cent of the cost of constructing a new bed and that extends the useful life of the assets for at least ten years. 359 360 361 362

For the purposes of division (BB)(2) of this section, the cost of constructing a new bed shall be considered to be forty thousand dollars, adjusted for the estimated rate of inflation from January 1, 1993, to the end of the calendar year during which the renovation is completed, using the consumer price index for shelter costs for all urban consumers for the north central region, as published by the United States bureau of labor statistics. 363 364 365 366 367 368 369 370

The department of job and family services may treat a renovation that costs more than eighty-five per cent of the cost of constructing new beds as an extensive renovation if the department determines that the renovation is more prudent than construction of new beds. 371 372 373 374 375

(CC) "Title XIX" means Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396, as amended. 376 377

(DD) "Title XVIII" means Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as amended. 378 379

Sec. 5111.205. (A) Except as provided in division (B) of this section, when the provider of a nursing facility is responsible for paying a person for dispensing a prescription drug to a resident of the nursing facility who is a medicaid recipient, the provider shall do both of the following: 380 381 382 383 384

(1) Pay the person the medicaid fee-for-service payment rate plus the medicaid fee-for-service dispensing fee for the prescription drug; 385 386 387

(2) Pay the person the full amount required by division (A)(1) of this section not later than thirty days after the person dispenses the prescription drug. 388 389 390

(B) Division (A) of this section does not apply when the person who dispenses the prescription drug is an employee of the provider who, as part of the employee's employment duties, dispenses the prescription drug. 391 392 393 394

Section 2. That existing section 5111.20 of the Revised Code is hereby repealed. 395 396