



Ohio Administrative Code

Rule 5160-21-02.2 Medicaid covered reproductive health services: permanent contraception/sterilization services and hysterectomy.

Effective: January 1, 2012

(A) Definitions.

- (1) For the purposes of this rule, "hysterectomy" means, in accordance with 42 C.F.R. 441.251 (October 1, 2010 edition), a medical procedure or operation for the purpose of removing the uterus.

- (2) For the purposes of this rule, "institutionalized individual" means, in accordance with 42 C.F.R. 441.251 (October 1, 2010 edition), an individual who is:
 - (a) Involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or
 - (b) Confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

- (3) For the purposes of this rule, "mentally incompetent individual" means, in accordance with 42 C.F.R. 441.251 (October 1, 2010 edition), an individual who has been declared mentally incompetent by a federal, state, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

- (4) For the purposes of this rule, "sterilization" means, in accordance with 42 C.F.R. 441.251 (October 1, 2010 edition), any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

- (5) For the purposes of this chapter, "permanent pregnancy prevention" has the same meaning as "sterilization."

(B) Sterilization.



(1) Medicaid covered sterilization services include:

(a) Management and evaluation (office) visits and consultations for the purpose of providing sterilization services;

(b) Health education and counseling visits for the purpose of providing sterilization services;

(c) Medical/surgical services/procedures covered in accordance with appendix DD to rule 5101:3-1-60 of the Administrative Code and provided in association with the provision of sterilization services;

(d) Laboratory tests and procedures provided in accordance with Chapter 5101:3-11 of the Administrative Code and in association with the provision of sterilization services;

(e) Drugs administered in accordance with Chapter 5101:3-4 of the Administrative Code and in association with the provision of sterilization services; and

(f) Supplies provided in accordance with appendix A to rule 5101:3-10-03 of the Administrative Code and associated with the provision of sterilization services.

(2) The department will reimburse medicaid providers for sterilization services only if all the requirements of this rule and 42 C.F.R. part 441 subpart F (October 1, 2010 edition), are met:

(a) The individual is at least twenty-one years old at the time consent is obtained;

(b) The individual is not a mentally incompetent individual;

(c) The individual is not institutionalized;

(d) The individual has voluntarily given informed consent in accordance with paragraph (B)(3) of this rule;



(e) At least thirty days, but not more than one hundred eighty days, have passed between the date of the informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of a premature delivery or emergency abdominal surgery, if at least seventy-two hours have passed since he or she gave informed consent for the sterilization. In the case of premature delivery, the informed consent must have been given at least thirty days before the expected date of delivery; and

(f) The medicaid provider requesting payment for the sterilization submits to the department a copy of the consent form, completed in accordance with paragraph (B)(3) of this rule.

(3) Informed consent for sterilization.

(a) For the purposes of this rule, an individual has given informed consent only if:

(i) The person who obtained consent for the sterilization procedure has:

(a) Offered to answer any questions the individual to be sterilized may have had concerning the procedure;

(b) Provided a copy of one of the following to the individual to be sterilized:

(i) "Consent for Sterilization," HHS-687 (5/2010), available at www.hhs.gov/forms/HHS-687.pdf;

(ii) "CONSENTIMIENTO PARA LA ESTERILIZACION," HHS-687-1 (11/2006), available at www.hhs.gov/forms/HHS-687-1.pdf;

(iii) "Consent for Sterilization Form," JFS 03198 (rev. 7/2009), available at www.odjfs.state.oh.us/forms/inter.asp, which may be used for consent forms signed during the period from July 1, 2009 through June 30, 2012 by the individual to be sterilized; or

(iv) "Consent for Sterilization Form," JFS 03198 (rev. 2/2003), which may be used for consent forms signed before July 1, 2010 by the individual to be sterilized, if the person obtaining consent has copies of this form available.



(c) Provided orally all the following information or advice to the individual to be sterilized:

(i) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally-funded program benefits to which the individual might be otherwise entitled;

(ii) A description of available alternative methods of family planning and birth control;

(iii) Advice that the sterilization procedure is considered to be irreversible;

(iv) A thorough explanation of the specific sterilization procedure to be performed;

(v) A full description of the discomforts and risks that may accompany or follow the performance of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(vi) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(vii) Advice that the sterilization will not be performed for at least thirty days, except under the circumstances specified in paragraph (B)(2)(e) of this rule;

(ii) Suitable arrangements were made to insure that the information specified in paragraph (B)(3)(a)(i) of this rule was effectively communicated to any individual who is blind, deaf, or otherwise handicapped;

(iii) An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent;

(iv) The individual to be sterilized was permitted to have a witness of his or her choice present when consent was obtained;



(v) The consent form requirements of this rule and of 42 C.F.R. 441.258 (October 1, 2010 edition) were met; and

(vi) Any additional requirement of state or local law for obtaining consent, except a requirement for spousal consent, was followed.

(b) For the purposes of this rule, informed consent may not be obtained while the individual to be sterilized is:

(i) In labor or childbirth; or

(ii) Seeking to obtain or obtaining an abortion; or

(iii) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(c) Informed consent must be documented on one of the forms specified in paragraph (B)(3)(a)(i)(b) of this rule.

(i) The consent form must be signed and dated by:

(a) The individual to be sterilized;

(b) The interpreter, if one was provided;

(c) The person who obtained the consent; and

(d) The physician who performed the sterilization procedure.

(ii) The person securing the consent must certify, by signing the consent form, that:

(a) Before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no federal benefits may be withdrawn because of the decision not to be sterilized;



(b) He or she explained orally to the individual to be sterilized the requirements for informed consent as set forth in this rule and on the consent form; and

(c) To the best of his or her knowledge and belief, the individual to be sterilized appeared to the person securing the consent to be mentally competent and knowingly and voluntarily consented to be sterilized.

(iii) The physician performing the sterilization must certify, by signing the consent form, that:

(a) Shortly before the performance of sterilization, he or she advised the individual to be sterilized that no federal benefits may be withdrawn because of the decision not to be sterilized;

(b) He or she explained orally to the individual to be sterilized the requirements for informed consent as set forth in this rule and on the consent form;

(c) To the best of his or her knowledge and belief, the individual to be sterilized appeared to the physician to be mentally competent and knowingly and voluntarily consented to be sterilized; and

(d) In the case of premature delivery or emergency abdominal surgery (except for induced abortion in the first trimester of pregnancy) performed within thirty days of consent, the physician must certify that the sterilization was performed less than thirty days, but not less than seventy-two hours after informed consent was obtained because of premature delivery or emergency abdominal surgery and:

(i) In the case of premature delivery, must state the expected date of delivery; or

(ii) In the case of abdominal surgery, must describe the emergency.

(iv) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally and read the consent form and explained its contents to the individual to be sterilized and that, to the best of the interpreter's knowledge and belief, the individual understood what the interpreter told him or her.



(C) Hysterectomy.

(1) The department will not reimburse medicaid providers for hysterectomy if:

(a) The hysterectomy was performed solely for the purpose of rendering an individual permanently incapable of reproducing;

(b) There was more than one purpose to the hysterectomy, and it would not have been performed but for the purpose of rendering the individual permanently incapable of reproducing; or

(c) The requirements of this rule and 42 C.F.R. part 441 subpart F (October 1, 2010 edition) are not met.

(2) The department will reimburse medicaid providers for hysterectomy only if:

(a) All the requirements of this rule and 42 C.F.R. part 441 subpart F (October 1, 2010 edition) are met; and

(b) The medicaid provider requesting payment for the hysterectomy submits a copy of the JFS 01399, completed in accordance with paragraph (C)(3) of this rule, with the claim to the department.

(c) For a hysterectomy performed during a period of an individual's retroactive medicaid eligibility, the physician who performed the hysterectomy certifies in writing that:

(i) The individual was informed before the operation that the hysterectomy would make her permanently incapable of reproducing; or

(ii) The conditions of paragraph (C)(3)(a)(ii) of this rule were met.

(3) Informed consent for hysterectomy.

For the purposes of this rule, an individual has given informed consent only if:



- (a) The person who secures authorization to perform the hysterectomy has:
- (i) Informed the individual and her representative, if any, orally and in writing that the hysterectomy will make the individual permanently incapable of reproducing;
 - (ii) Offered to answer any questions the individual to have the hysterectomy may have concerning the procedure;
 - (iii) Offers the individual to have the hysterectomy a copy of one of the following:
 - (a) "Acknowledgement of Hysterectomy Information," JFS 03199 (rev. 04/2011), available at www.odjfs.state.oh.us/forms/inter.asp, which may be used for consent forms signed by the individual on or after January 1, 2012;
 - (b) "Acknowledgement of Hysterectomy Information," JFS 03199 (rev. 7/2009), which may be used for consent forms signed by the individual on and after July 1, 2009 but before June 30, 2012 if the person obtaining consent has copies of this form available; or
 - (c) "Acknowledgement of Hysterectomy Information," JFS 03199 (rev. 7/2003), which may be used for consent forms signed by the individual before July 1, 2010 if the person obtaining consent has copies of this form available; and
- (b) The individual to have the hysterectomy or her representative, if any, has signed the JFS 01399 as a written acknowledgment of receipt of the information specified in paragraph (C)(3)(a)(i) of this rule unless the individual:
- (i) Was already sterile before the hysterectomy; or
 - (ii) Requires a hysterectomy because of a life-threatening emergency situation in which the physician determines that prior acknowledgment is not possible.
- (D) Claims.



(1) Claims for sterilization and hysterectomy procedures must be submitted to the department with either an original or a copy of the appropriate consent form.

For dual eligibles, the JFS 03199 must not be attached to the medicare claim, but must be forwarded separately to the department. If the claim is rejected by medicare, the provider should submit a separate invoice to the department with the medicare rejection attached. The date that the JFS 03199 form was sent to the department should be entered in the provider remarks section of the medicaid claim.

(2) The department will not reimburse medicaid providers for services, procedures, and supplies associated with the provision of sterilization or hysterectomy services that do not meet the requirements of this rule.