



## Ohio Revised Code

### Section 5165.158 Private room incentive payment.

Effective: July 4, 2023

Legislation: House Bill 33 - 135th General Assembly

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(A) As used in this section:

(1) "Category one private room" means a private room that has unshared access to a toilet and sink.

(2) "Category two private room" means a private room that has shared access to a toilet and sink.

(B) Beginning six months following approval by the United States centers for medicare and medicaid services or on the effective date of applicable department of medicaid rules, whichever is later, but not sooner than April 1, 2024, the total per medicaid day payment rate for nursing facility services provided on or after that date in private rooms approved by the department of medicaid under division (C) of this section shall be the sum of both of the following:

(1) The total per medicaid day payment rate determined for the nursing facility under section 5165.15 of the Revised Code;

(2) The private room incentive payment. The private room incentive payment shall be thirty dollars per day for a category one private room and twenty dollars per day for a category two private room, beginning in state fiscal year 2024. The department may increase the payment amount for subsequent fiscal years.

(C)(1) The department shall approve rooms in nursing facilities to qualify for the rate described in division (B) of this section. A nursing facility provider shall apply for approval of its private rooms by submitting an application in the form and manner prescribed by the department. The department shall begin accepting applications for approval of category one private rooms on January 1, 2024, and category two private rooms on March 1, 2024. The department may specify evidence that an applicant must supply to demonstrate that a room meets the definition of a private room under section 5165.01 of the Revised Code and may conduct an on-site inspection of the room to verify that it meets the definition. Subject to division (C)(2) of this section, the department shall approve an



application if the rooms included in the application meet the definition of a private room under section 5165.01 of the Revised Code.

(2) The department shall only consider applications that meet the following criteria:

(a) Private rooms that are in existence on July 1, 2023, in facilities where all of the licensed beds are in service on the application date;

(b) Private rooms created by surrendering licensed beds from its licensed capacity, or, if the facility does not hold a license, surrendering beds that have been certified by CMS. A nursing facility where the beds are owned by a county and the facility is operated by a person other than the county may satisfy this requirement by removing beds from service.

(c) Private rooms created by adding space to the nursing facility or renovating nonbedroom space, without increasing the total licensed bed capacity;

(d) A nursing facility licensed after July 1, 2023, in which all licensed beds are in service on the application date or in which private rooms were created by surrendering licensed beds from its licensed capacity.

(3) The department may specify evidence that an applicant must supply to demonstrate that it meets the conditions specified in division (C)(2) of this section and may conduct an on-site inspection to verify that the conditions are met.

(4) The department may deny an application if the department determines that any of the following circumstances apply:

(a) The rooms included in the application do not meet the definition of a private room under section 5165.01 of the Revised Code;

(b) The rooms included in the application do not meet the criteria specified in division (C)(2) of this section;



- (c) The applicant created private rooms by reducing the number of available beds without surrendering the beds, and surrender of the beds is required by this section;
- (d) Approval of the room would cause projected expenditures for private room incentive payments under this section for the fiscal year to exceed forty million dollars in fiscal year 2024 or one hundred sixty million dollars in fiscal year 2025 or subsequent fiscal years. In projecting expenditures for private room incentive payments, the department shall use a medicaid utilization percentage of fifty per cent. If the department determines that there are more approvable eligible applications submitted than can be accommodated within the applicable spending limit specified in this division, the department shall prioritize category one private rooms.
- (e) On the application date, the nursing facility is listed on table A or table D of the SFF list, as defined in section 5165.01 of the Revised Code or is designated as having a one-star overall rating in the United States centers for medicare and medicaid services nursing facility five-star quality rating system known as care compare.
- (5) Beginning July 1, 2025, to retain eligibility for private room rates, a nursing facility must do both of the following:
- (a) Have a policy in place to prioritize placement in a private room based on the medical and psychosocial needs of the resident;
- (b) Participate in the resident or family satisfaction survey performed pursuant to section 173.47 of the Revised Code.
- (6) The department shall hold all applications for a private room incentive payment in a pending status until the United States centers for medicare and medicaid services approves private room incentive payments and the department determines a facility is qualified for the payment. An application in pending status shall be included in the payment cap described in division (C)(4)(d) of this section as if the application were approved.
- (7) An applicant may request reconsideration of a denial under division (C) of this section.