

**As Re-Referred by the House Rules and Reference Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Sub. H. B. No. 461**

**Representative Carruthers**

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**A BILL**

To amend sections 5165.01 and 5165.15 and to enact 1  
section 5165.27 of the Revised Code regarding 2  
nursing facility Medicaid payments for private 3  
rooms. 4

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

**Section 1.** That sections 5165.01 and 5165.15 be amended 5  
and section 5165.27 of the Revised Code be enacted to read as 6  
follows: 7

**Sec. 5165.01.** As used in this chapter: 8

(A) "Affiliated operator" means an operator affiliated 9  
with either of the following: 10

(1) The exiting operator for whom the affiliated operator 11  
is to assume liability for the entire amount of the exiting 12  
operator's debt under the medicaid program or the portion of the 13  
debt that represents the franchise permit fee the exiting 14  
operator owes; 15

(2) The entering operator involved in the change of 16  
operator with the exiting operator specified in division (A) (1) 17  
of this section. 18

(B) "Allowable costs" are a nursing facility's costs that 19  
the department of medicaid determines are reasonable. Fines paid 20  
under sections 5165.60 to 5165.89 and section 5165.99 of the 21  
Revised Code are not allowable costs. 22

(C) "Ancillary and support costs" means all reasonable 23  
costs incurred by a nursing facility other than direct care 24  
costs, tax costs, or capital costs. "Ancillary and support 25  
costs" includes, but is not limited to, costs of activities, 26  
social services, pharmacy consultants, habilitation supervisors, 27  
qualified intellectual disability professionals, program 28  
directors, medical and habilitation records, program supplies, 29  
incontinence supplies, food, enterals, dietary supplies and 30  
personnel, laundry, housekeeping, security, administration, 31  
medical equipment, utilities, liability insurance, bookkeeping, 32  
purchasing department, human resources, communications, travel, 33  
dues, license fees, subscriptions, home office costs not 34  
otherwise allocated, legal services, accounting services, minor 35  
equipment, maintenance and repairs, help-wanted advertising, 36  
informational advertising, start-up costs, organizational 37  
expenses, other interest, property insurance, employee training 38  
and staff development, employee benefits, payroll taxes, and 39  
workers' compensation premiums or costs for self-insurance 40  
claims and related costs as specified in rules adopted under 41  
section 5165.02 of the Revised Code, for personnel listed in 42  
this division. "Ancillary and support costs" also means the cost 43  
of equipment, including vehicles, acquired by operating lease 44  
executed before December 1, 1992, if the costs are reported as 45  
administrative and general costs on the nursing facility's cost 46  
report for the cost reporting period ending December 31, 1992. 47

(D) "Applicable calendar year" means the calendar year 48  
immediately preceding the calendar year that precedes the first 49

of the state fiscal years for which a rebasing is conducted. 50

(E) For purposes of calculating a critical access nursing 51  
facility's occupancy rate and utilization rate under this 52  
chapter, "as of the last day of the calendar year" refers to the 53  
occupancy and utilization rates during the calendar year 54  
identified in the cost report filed under section 5165.10 of the 55  
Revised Code. 56

(F) (1) "Capital costs" means the actual expense incurred 57  
by a nursing facility for all of the following: 58

(a) Depreciation and interest on any capital assets that 59  
cost five hundred dollars or more per item, including the 60  
following: 61

(i) Buildings; 62

(ii) Building improvements; 63

(iii) Except as provided in division (D) of this section, 64  
equipment; 65

(iv) Transportation equipment. 66

(b) Amortization and interest on land improvements and 67  
leasehold improvements; 68

(c) Amortization of financing costs; 69

(d) Lease and rent of land, buildings, and equipment. 70

(2) The costs of capital assets of less than five hundred 71  
dollars per item may be considered capital costs in accordance 72  
with a provider's practice. 73

(G) "Capital lease" and "operating lease" shall be 74  
construed in accordance with generally accepted accounting 75  
principles. 76

(H) "Case-mix score" means a measure determined under	77
section 5165.192 of the Revised Code of the relative direct-care	78
resources needed to provide care and habilitation to a nursing	79
facility resident.	80
(I) "Change of operator" means an entering operator	81
becoming the operator of a nursing facility in the place of the	82
exiting operator.	83
(1) Actions that constitute a change of operator include	84
the following:	85
(a) A change in an exiting operator's form of legal	86
organization, including the formation of a partnership or	87
corporation from a sole proprietorship;	88
(b) A transfer of all the exiting operator's ownership	89
interest in the operation of the nursing facility to the	90
entering operator, regardless of whether ownership of any or all	91
of the real property or personal property associated with the	92
nursing facility is also transferred;	93
(c) A lease of the nursing facility to the entering	94
operator or the exiting operator's termination of the exiting	95
operator's lease;	96
(d) If the exiting operator is a partnership, dissolution	97
of the partnership;	98
(e) If the exiting operator is a partnership, a change in	99
composition of the partnership unless both of the following	100
apply:	101
(i) The change in composition does not cause the	102
partnership's dissolution under state law.	103
(ii) The partners agree that the change in composition	104

does not constitute a change in operator.	105
(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.	106 107 108 109 110
(2) The following, alone, do not constitute a change of operator:	111 112
(a) A contract for an entity to manage a nursing facility as the operator's agent, subject to the operator's approval of daily operating and management decisions;	113 114 115
(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with a nursing facility if an entering operator does not become the operator in place of an exiting operator;	116 117 118 119
(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.	120 121 122 123
(J) "Cost center" means the following:	124
(1) Ancillary and support costs;	125
(2) Capital costs;	126
(3) Direct care costs;	127
(4) Tax costs.	128
(K) "Custom wheelchair" means a wheelchair to which both of the following apply:	129 130
(1) It has been measured, fitted, or adapted in	131

consideration of either of the following:	132
(a) The body size or disability of the individual who is to use the wheelchair;	133 134
(b) The individual's period of need for, or intended use of, the wheelchair.	135 136
(2) It has customized features, modifications, or components, such as adaptive seating and positioning systems, that the supplier who assembled the wheelchair, or the manufacturer from which the wheelchair was ordered, added or made in accordance with the instructions of the physician of the individual who is to use the wheelchair.	137 138 139 140 141 142
(L) (1) "Date of licensure" means the following:	143
(a) In the case of a nursing facility that was required by law to be licensed as a nursing home under Chapter 3721. of the Revised Code when it originally began to be operated as a nursing home, the date the nursing facility was originally so licensed;	144 145 146 147 148
(b) In the case of a nursing facility that was not required by law to be licensed as a nursing home when it originally began to be operated as a nursing home, the date it first began to be operated as a nursing home, regardless of the date the nursing facility was first licensed as a nursing home.	149 150 151 152 153
(2) If, after a nursing facility's original date of licensure, more nursing home beds are added to the nursing facility, the nursing facility has a different date of licensure for the additional beds. This does not apply, however, to additional beds when both of the following apply:	154 155 156 157 158
(a) The additional beds are located in a part of the	159

nursing facility that was constructed at the same time as the 160  
continuing beds already located in that part of the nursing 161  
facility; 162

(b) The part of the nursing facility in which the 163  
additional beds are located was constructed as part of the 164  
nursing facility at a time when the nursing facility was not 165  
required by law to be licensed as a nursing home. 166

(3) The definition of "date of licensure" in this section 167  
applies in determinations of nursing facilities' medicaid 168  
payment rates but does not apply in determinations of nursing 169  
facilities' franchise permit fees. 170

(M) "Desk-reviewed" means that a nursing facility's costs 171  
as reported on a cost report submitted under section 5165.10 of 172  
the Revised Code have been subjected to a desk review under 173  
section 5165.108 of the Revised Code and preliminarily 174  
determined to be allowable costs. 175

(N) "Direct care costs" means all of the following costs 176  
incurred by a nursing facility: 177

(1) Costs for registered nurses, licensed practical 178  
nurses, and nurse aides employed by the nursing facility; 179

(2) Costs for direct care staff, administrative nursing 180  
staff, medical directors, respiratory therapists, and except as 181  
provided in division (N) (8) of this section, other persons 182  
holding degrees qualifying them to provide therapy; 183

(3) Costs of purchased nursing services; 184

(4) Costs of quality assurance; 185

(5) Costs of training and staff development, employee 186  
benefits, payroll taxes, and workers' compensation premiums or 187

costs for self-insurance claims and related costs as specified	188
in rules adopted under section 5165.02 of the Revised Code, for	189
personnel listed in divisions (N) (1), (2), (4), and (8) of this	190
section;	191
(6) Costs of consulting and management fees related to	192
direct care;	193
(7) Allocated direct care home office costs;	194
(8) Costs of habilitation staff (other than habilitation	195
supervisors), medical supplies, emergency oxygen, over-the-	196
counter pharmacy products, physical therapists, physical therapy	197
assistants, occupational therapists, occupational therapy	198
assistants, speech therapists, audiologists, habilitation	199
supplies, and universal precautions supplies;	200
(9) Costs of wheelchairs other than the following:	201
(a) Custom wheelchairs;	202
(b) Repairs to and replacements of custom wheelchairs and	203
parts that are made in accordance with the instructions of the	204
physician of the individual who uses the custom wheelchair.	205
(10) Costs of other direct-care resources that are	206
specified as direct care costs in rules adopted under section	207
5165.02 of the Revised Code.	208
(O) "Dual eligible individual" has the same meaning as in	209
section 5160.01 of the Revised Code.	210
(P) "Effective date of a change of operator" means the day	211
the entering operator becomes the operator of the nursing	212
facility.	213
(Q) "Effective date of a facility closure" means the last	214

day that the last of the residents of the nursing facility 215  
resides in the nursing facility. 216

(R) "Effective date of an involuntary termination" means 217  
the date the department of medicaid terminates the operator's 218  
provider agreement for the nursing facility. 219

(S) "Effective date of a voluntary withdrawal of 220  
participation" means the day the nursing facility ceases to 221  
accept new medicaid residents other than the individuals who 222  
reside in the nursing facility on the day before the effective 223  
date of the voluntary withdrawal of participation. 224

(T) "Entering operator" means the person or government 225  
entity that will become the operator of a nursing facility when 226  
a change of operator occurs or following an involuntary 227  
termination. 228

(U) "Exiting operator" means any of the following: 229

(1) An operator that will cease to be the operator of a 230  
nursing facility on the effective date of a change of operator; 231

(2) An operator that will cease to be the operator of a 232  
nursing facility on the effective date of a facility closure; 233

(3) An operator of a nursing facility that is undergoing 234  
or has undergone a voluntary withdrawal of participation; 235

(4) An operator of a nursing facility that is undergoing 236  
or has undergone an involuntary termination. 237

(V) (1) Subject to divisions (V) (2) and (3) of this 238  
section, "facility closure" means either of the following: 239

(a) Discontinuance of the use of the building, or part of 240  
the building, that houses the facility as a nursing facility 241

that results in the relocation of all of the nursing facility's residents; 242  
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(b) Conversion of the building, or part of the building, that houses a nursing facility to a different use with any necessary license or other approval needed for that use being obtained and one or more of the nursing facility's residents remaining in the building, or part of the building, to receive services under the new use. 244  
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(2) A facility closure occurs regardless of any of the following: 250  
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(a) The operator completely or partially replacing the nursing facility by constructing a new nursing facility or transferring the nursing facility's license to another nursing facility; 252  
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(b) The nursing facility's residents relocating to another of the operator's nursing facilities; 256  
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(c) Any action the department of health takes regarding the nursing facility's medicaid certification that may result in the transfer of part of the nursing facility's survey findings to another of the operator's nursing facilities; 258  
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(d) Any action the department of health takes regarding the nursing facility's license under Chapter 3721. of the Revised Code. 262  
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(3) A facility closure does not occur if all of the nursing facility's residents are relocated due to an emergency evacuation and one or more of the residents return to a medicaid-certified bed in the nursing facility not later than thirty days after the evacuation occurs. 265  
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(W) "Franchise permit fee" means the fee imposed by sections 5168.40 to 5168.56 of the Revised Code.	270 271
(X) "Inpatient days" means both of the following:	272
(1) All days during which a resident, regardless of payment source, occupies a licensed bed in a nursing facility;	273 274
(2) Fifty per cent of the days for which payment is made under section 5165.34 of the Revised Code.	275 276
(Y) "Involuntary termination" means the department of medicaid's termination of the operator's provider agreement for the nursing facility when the termination is not taken at the operator's request.	277 278 279 280
(Z) "Low resource utilization resident" means a medicaid recipient residing in a nursing facility who, for purposes of calculating the nursing facility's medicaid payment rate for direct care costs, is placed in either of the two lowest resource utilization groups, excluding any resource utilization group that is a default group used for residents with incomplete assessment data.	281 282 283 284 285 286 287
(AA) "Maintenance and repair expenses" means a nursing facility's expenditures that are necessary and proper to maintain an asset in a normally efficient working condition and that do not extend the useful life of the asset two years or more. "Maintenance and repair expenses" includes but is not limited to the costs of ordinary repairs such as painting and wallpapering.	288 289 290 291 292 293 294
(BB) "Medicaid-certified capacity" means the number of a nursing facility's beds that are certified for participation in medicaid as nursing facility beds.	295 296 297

(CC) "Medicaid days" means both of the following:	298
(1) All days during which a resident who is a medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's medicaid-certified capacity;	299 300 301 302
(2) Fifty per cent of the days for which payment is made under section 5165.34 of the Revised Code.	303 304
(DD) (1) "New nursing facility" means a nursing facility for which the provider obtains an initial provider agreement following medicaid certification of the nursing facility by the director of health, including such a nursing facility that replaces one or more nursing facilities for which a provider previously held a provider agreement.	305 306 307 308 309 310
(2) "New nursing facility" does not mean a nursing facility for which the entering operator seeks a provider agreement pursuant to section 5165.511 or 5165.512 or (pursuant to section 5165.515) section 5165.07 of the Revised Code.	311 312 313 314
(EE) "Nursing facility" has the same meaning as in the "Social Security Act," section 1919(a), 42 U.S.C. 1396r(a).	315 316
(FF) "Nursing facility services" has the same meaning as in the "Social Security Act," section 1905(f), 42 U.S.C. 1396d(f).	317 318 319
(GG) "Nursing home" has the same meaning as in section 3721.01 of the Revised Code.	320 321
(HH) "Occupancy rate" means the percentage of licensed beds that, regardless of payer source, are either of the following:	322 323 324
(1) Reserved for use under section 5165.34 of the Revised	325

Code;	326
(2) Actually being used.	327
(II) "Operator" means the person or government entity responsible for the daily operating and management decisions for a nursing facility.	328 329 330
(JJ) (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:	331 332 333 334
(a) The land on which the nursing facility is located;	335
(b) The structure in which the nursing facility is located;	336 337
(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 nursing facility is located;	338 339 340
(d) Any lease or sublease of the land or structure on or in which the nursing facility is located.	341 342
(2) "Owner" does not mean a holder of a debenture or bond related to the nursing facility and purchased at public issue or a regulated lender that has made a loan related to the nursing facility unless the holder or lender operates the nursing facility directly or through a subsidiary.	343 344 345 346 347
(KK) "Per diem" means a nursing facility's actual, allowable costs in a given cost center in a cost reporting period, divided by the nursing facility's inpatient days for that cost reporting period.	348 349 350 351
(LL) <u>"Private room" means a room with permanent walls that</u>	352

contains one licensed or certified bed that is occupied by one 353  
individual, with direct unshared access to a hallway, and direct 354  
unshared access to a toilet and sink shared by not more than one 355  
other private room, and that meets all applicable licensure or 356  
other standards pertaining to furniture, fixtures, and 357  
temperature control. 358

(MM) "Private room capacity" means the total number of 359  
private rooms in a nursing facility, as calculated and adjusted 360  
according to section 5165.27 of the Revised Code. 361

(NN) "Provider" means an operator with a provider 362  
agreement. 363

~~(MM)~~ (OO) "Provider agreement" means a provider agreement, 364  
as defined in section 5164.01 of the Revised Code, that is 365  
between the department of medicaid and the operator of a nursing 366  
facility for the provision of nursing facility services under 367  
the medicaid program. 368

~~(NN)~~ (PP) "Purchased nursing services" means services that 369  
are provided in a nursing facility by registered nurses, 370  
licensed practical nurses, or nurse aides who are not employees 371  
of the nursing facility. 372

~~(OO)~~ (QQ) "Reasonable" means that a cost is an actual cost 373  
that is appropriate and helpful to develop and maintain the 374  
operation of patient care facilities and activities, including 375  
normal standby costs, and that does not exceed what a prudent 376  
buyer pays for a given item or services. Reasonable costs may 377  
vary from provider to provider and from time to time for the 378  
same provider. 379

~~(PP)~~ (RR) "Rebasing" means a redetermination of each of 380  
the following using information from cost reports for an 381

applicable calendar year that is later than the applicable	382
calendar year used for the previous rebasing:	383
(1) Each peer group's rate for ancillary and support costs	384
as determined pursuant to division (C) of section 5165.16 of the	385
Revised Code;	386
(2) Each peer group's rate for capital costs as determined	387
pursuant to division (C) of section 5165.17 of the Revised Code;	388
(3) Each peer group's cost per case-mix unit as determined	389
pursuant to division (C) of section 5165.19 of the Revised Code;	390
(4) Each nursing facility's rate for tax costs as	391
determined pursuant to section 5165.21 of the Revised Code.	392
<del>(QQ)</del> <u>(SS)</u> "Related party" means an individual or	393
organization that, to a significant extent, has common ownership	394
with, is associated or affiliated with, has control of, or is	395
controlled by, the provider.	396
(1) An individual who is a relative of an owner is a	397
related party.	398
(2) Common ownership exists when an individual or	399
individuals possess significant ownership or equity in both the	400
provider and the other organization. Significant ownership or	401
equity exists when an individual or individuals possess five per	402
cent ownership or equity in both the provider and a supplier.	403
Significant ownership or equity is presumed to exist when an	404
individual or individuals possess ten per cent ownership or	405
equity in both the provider and another organization from which	406
the provider purchases or leases real property.	407
(3) Control exists when an individual or organization has	408
the power, directly or indirectly, to significantly influence or	409

direct the actions or policies of an organization.	410
(4) An individual or organization that supplies goods or	411
services to a provider shall not be considered a related party	412
if all of the following conditions are met:	413
(a) The supplier is a separate bona fide organization.	414
(b) A substantial part of the supplier's business activity	415
of the type carried on with the provider is transacted with	416
others than the provider and there is an open, competitive	417
market for the types of goods or services the supplier	418
furnishes.	419
(c) The types of goods or services are commonly obtained	420
by other nursing facilities from outside organizations and are	421
not a basic element of patient care ordinarily furnished	422
directly to patients by nursing facilities.	423
(d) The charge to the provider is in line with the charge	424
for the goods or services in the open market and no more than	425
the charge made under comparable circumstances to others by the	426
supplier.	427
<del>(RR)</del> <u>(TT)</u> "Relative of owner" means an individual who is	428
related to an owner of a nursing facility by one of the	429
following relationships:	430
(1) Spouse;	431
(2) Natural parent, child, or sibling;	432
(3) Adopted parent, child, or sibling;	433
(4) Stepparent, stepchild, stepbrother, or stepsister;	434
(5) Father-in-law, mother-in-law, son-in-law, daughter-in-	435
law, brother-in-law, or sister-in-law;	436

(6) Grandparent or grandchild;	437
(7) Foster caregiver, foster child, foster brother, or foster sister.	438 439
<del>(SS)</del> <u>(UU)</u> "Residents' rights advocate" has the same meaning as in section 3721.10 of the Revised Code.	440 441
<del>(TT)</del> <u>(VV)</u> "Skilled nursing facility" has the same meaning as in the "Social Security Act," section 1819(a), 42 U.S.C. 1395i-3(a).	442 443 444
<del>(UU)</del> <u>(WW)</u> "State fiscal year" means the fiscal year of this state, as specified in section 9.34 of the Revised Code.	445 446
<del>(VV)</del> <u>(XX)</u> "Sponsor" has the same meaning as in section 3721.10 of the Revised Code.	447 448
<del>(WW)</del> <u>(YY)</u> "Tax costs" means the costs of taxes imposed under Chapter 5751. of the Revised Code, real estate taxes, personal property taxes, and corporate franchise taxes.	449 450 451
<del>(XX)</del> <u>(ZZ)</u> "Title XIX" means Title XIX of the "Social Security Act," 42 U.S.C. 1396 et seq.	452 453
<del>(YY)</del> <u>(AAA)</u> "Title XVIII" means Title XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq.	454 455
<del>(ZZ)</del> <u>(BBB)</u> "Voluntary withdrawal of participation" means an operator's voluntary election to terminate the participation of a nursing facility in the medicaid program but to continue to provide service of the type provided by a nursing facility.	456 457 458 459
<b>Sec. 5165.15.</b> Except as otherwise provided by sections 5165.151 to 5165.157 and 5165.34 of the Revised Code, the total per medicaid day payment rate that the department of medicaid shall pay a nursing facility provider for nursing facility	460 461 462 463

services the provider's nursing facility provides during a state	464
fiscal year shall be determined as follows:	465
(A) Determine the sum of all of the following:	466
(1) The per medicaid day payment rate for ancillary and	467
support costs determined for the nursing facility under section	468
5165.16 of the Revised Code;	469
(2) The per medicaid day payment rate for capital costs	470
determined for the nursing facility under section 5165.17 of the	471
Revised Code;	472
(3) The per medicaid day payment rate for direct care	473
costs determined for the nursing facility under section 5165.19	474
of the Revised Code;	475
(4) The per medicaid day payment rate for tax costs	476
determined for the nursing facility under section 5165.21 of the	477
Revised Code;	478
(5) If the nursing facility qualifies as a critical access	479
nursing facility, the nursing facility's critical access	480
incentive payment paid under section 5165.23 of the Revised	481
Code;	482
<u>(6) If the nursing facility is providing services to a</u>	483
<u>medicaid recipient in a private room, the private room per day</u>	484
<u>rate determined under section 5165.27 of the Revised Code.</u>	485
(B) To the sum determined under division (A) of this	486
section, add sixteen dollars and forty-four cents.	487
(C) From the sum determined under division (B) of this	488
section, subtract one dollar and seventy-nine cents.	489
(D) To the sum determined under division (C) of this	490

section, add, for state fiscal year 2022 and for state fiscal 491  
year 2023, the per medicaid day quality incentive payment rate 492  
determined for the nursing facility under section 5165.26 of the 493  
Revised Code. 494

Sec. 5165.27. (A) In accordance with this section and 495  
section 5165.15 of the Revised Code, the department of medicaid 496  
shall pay a private room per day rate to each nursing facility 497  
provider that provides, or has provided, services to a medicaid 498  
recipient in a private room on or after July 1, 2022. 499

(B) A nursing facility's private room per day rate for 500  
state fiscal year 2023 is twenty-five dollars. The department 501  
shall determine the private room per day rate for subsequent 502  
fiscal years. 503

(C) For purposes of this section, a nursing facility's 504  
private room capacity means the total number of private rooms in 505  
the facility, calculated pursuant to this division. After the 506  
initial calculation, a facility's private room capacity may 507  
change only if the facility removes licensed beds from their 508  
licensed capacity or, if the facility does not hold a license, 509  
the facility surrenders beds that have been certified by the 510  
U.S. centers for medicare and medicaid services. A nursing 511  
facility's private room capacity for a fiscal year shall be 512  
calculated as follows: 513

(1) Determine the number of resident rooms in the nursing 514  
facility that are occupied or that are available to be occupied 515  
by a resident during the fiscal year; 516

(2) Determine the number of licensed beds for that nursing 517  
facility during the fiscal year, or, if the facility is not 518  
licensed, the number of certified beds; 519

(3) Subtract the sum determined under division (C) (1) of 520  
this section from the sum determined under division (C) (2) of 521  
this section; 522

(4) Subtract the sum determined under division (C) (3) of 523  
this section from the sum determined under division (C) (1) of 524  
this section. 525

(D) A nursing facility provider shall not bill the 526  
department for more private rooms in one day than the facility's 527  
private room capacity. The department may recoup the excess 528  
amount paid to a nursing facility provider for any private room 529  
days billed that exceed the facility's private room capacity and 530  
may use vendor offsets to recoup the payments. 531

(E) Not later than sixty days after the effective date of 532  
this section, the department shall calculate the initial private 533  
room capacity for each nursing facility in this state. In the 534  
case of a new nursing facility, the department shall calculate 535  
the facility's initial private room capacity not later than 536  
sixty days after the date the facility is certified as a nursing 537  
facility by the U.S. centers for medicare and medicaid services. 538  
Each nursing facility provider shall submit, and the department 539  
shall collect, the number of rooms occupied and available for 540  
occupancy, in the manner prescribed by the department. 541

(1) If a nursing facility provider removes medicaid beds 542  
licensed by the department of health or surrenders beds that 543  
were certified by the U.S. centers for medicare and medicaid 544  
services, the provider shall notify the department of medicaid 545  
of the number of beds removed or surrendered and the effective 546  
date of the change. Upon receiving such a notice, the department 547  
of medicaid shall do all of the following: 548

(a) Verify the number of beds removed and the effective 549  
date of the removal with the department of health, if 550  
applicable; 551

(b) Not later than sixty days after receipt of the 552  
notification, adjust the facility's private room capacity in 553  
accordance with division (C) of this section; 554

(c) Amend the facility's provider agreement. 555

(2) The department of medicaid shall include in a 556  
facility's private room per day rate the adjusted private room 557  
capacity for the facility calculated pursuant to division (E) (1) 558  
of this section beginning on the later of the following: 559

(a) The date the beds were removed or surrendered; 560

(b) The date the department received the notice of the 561  
removal or surrender under division (E) (1) of this section. 562

**Section 2.** That existing sections 5165.01 and 5165.15 of 563  
the Revised Code are hereby repealed. 564