

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Intermediate Care Facilities for Persons
with Intellectual Disabilities
Supplemental Payments
(LAC 50:VII.32917)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:VII.32917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing provides Medicaid reimbursement to non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for services rendered to Medicaid recipients.

The Department of Health and Hospitals, Bureau of Health Services Financing, promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID in order to adopt provisions to establish supplemental Medicaid payments for services provided to Medicaid recipients residing in privately-owned facilities that enter into a cooperative endeavor agreement with the department (*Louisiana Register*, Volume 41, Number 8).

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the

August 1, 2015 Emergency Rule to establish upper payment limits for supplemental payments to private intermediate care facilities entering into a cooperative endeavor agreement with the department to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center, hereafter referred to as Pinecrest (*Louisiana Register*, Volume 42, Number 7). This proposed Rule is being promulgated to continue the provisions of the August 1, 2015 and July 20, 2016 Emergency Rules.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32917. Supplemental Payments

A. Effective for dates of service on or after August 1, 2015, monthly supplemental payments shall be made to qualifying privately-owned intermediate care facilities for persons with intellectual disabilities.

1. In order to qualify for the supplemental payment, the private entity must enter into a cooperative endeavor agreement with the department.

B. Effective for dates of service on or after August 1, 2016, monthly supplemental payments shall be made to qualifying privately-

owned intermediate care facilities for persons with intellectual disabilities (ICFs/ID) to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center.

1. In order to qualify for the supplemental payment, the private entity must enter into a cooperative endeavor agreement with the department to provide a privately operated living setting, with an end goal of increased community placement opportunities, to residents of Pinecrest who desire to discharge and have been deemed ready for discharge by their interdisciplinary teams, and meet the admission protocol/criteria of the contracted party but have not been successful in securing a placement with a private provider.

C. Supplemental payments for services rendered to Medicaid recipients shall not exceed the facility's upper payment limit (UPL) pursuant to 42 CFR 447.272. The UPL will be based on the Centers for Medicare and Medicaid Services' approved ICF transitional rate of \$329.26 including provider fee.

D. The supplemental payment will be the difference between the actual Medicaid payment and what would have been paid if the ICF/ID was paid up to the UPL amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent

upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule establishes supplemental payments

to providers for the same services they already render.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, February 27, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person

Preparing

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Rule Title: Intermediate Care Facilities for
Persons with Intellectual
Disabilities Supplemental Payment

Date Rule Takes Effect: August 1, 2015

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS
(SUMMARY)

I. *It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic increase of approximately \$2,421,106 for FY 16-17 and \$2,821,871 for FY 17-18 and \$2,821,871 for FY 18-19. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 16-17 for the state's administrative expense for promulgation of this proposed rule and the final rule.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS
(Summary)

It is anticipated that federal revenue collections will increase by approximately \$3,993,944 for FY 16-17, \$4,875,541 for FY 17-18 and \$4,875,541 for FY 18-19. It is anticipated that \$270 will be collected in FY 16-17 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR
NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule is being promulgated to continue the provisions of the August 1, 2015 Emergency Rule which amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) in order to establish supplemental Medicaid payments for services provided to Medicaid recipients residing in privately-owned facilities that enter into a cooperative endeavor agreement with the department. This proposed Rule also continues the provisions of the July 20, 2016 Emergency Rule which established upper payment limits for supplemental payments to private intermediate care facilities entering into a cooperative endeavor agreement with the department to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center. It is anticipated that implementation of this proposed rule will increase programmatic expenditures for services rendered by intermediate care facilities for persons with intellectual disabilities by approximately \$6,414,510 for FY 16-17, \$7,697,412 for FY 17-18 and \$7,697,412 for FY 18-19.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation may have a positive effect on employment as it will increase payments for ICF/ID services. The increase in payments may improve the financial standing of providers and could possibly cause an increase in employment opportunities.



Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee



LDH/BHSF Budget Head



Legislative Fiscal Officer
or Designee

01/10/2017

Date of Signature

01/10/17

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule is being promulgated to continue the provisions of the August 1, 2015 Emergency Rule which amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) in order to establish supplemental Medicaid payments for services provided to Medicaid recipients residing in privately-owned facilities that enter into a cooperative endeavor agreement with the department. This proposed Rule also continues the provisions of the July 20, 2016 Emergency Rule which established upper payment limits for supplemental payments to private intermediate care facilities entering into a cooperative endeavor agreement with the department to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health, Bureau of Health Services Financing provides Medicaid reimbursement to non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for services rendered to Medicaid recipients.

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The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the August 1, 2015 Emergency Rule to establish upper payment limits for supplemental payments to private intermediate care facilities entering into a cooperative endeavor agreement with the department to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center, hereafter referred to as Pinecrest (Louisiana Register, Volume 42, Number 7). This proposed Rule is being promulgated to continue the provisions of the August 1, 2015 and July 20, 2016 Emergency Rules.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

Yes, this proposed rule will result in an increase in programmatic expenditures in the Medicaid Program by approximately \$6,415,050 for FY 16-17, \$7,697,412 for FY 17-18 and \$7,697,412 for FY 18-19. In FY 16-17, \$540 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) If yes, attach documentation.
(b) If no, provide justification as to why this rule change should be published at this time.

Act 17 of the 2016 Regular Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and thereby authorizes the expenditure of these funds. This rule should be published at this time to ensure continued access to intermediate care facilities services throughout the state.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 16-17	FY 17-18	FY 18-19
PERSONAL SERVICES			
OPERATING EXPENSES	\$540	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$6,414,510	\$7,697,412	\$7,697,412
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$6,415,050	\$7,697,412	\$7,697,412

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The expenses reflected above are the estimated increases in programmatic expenditures in the Medicaid program. In FY 16-17, \$540 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 16-17	FY 17-18	FY 18-19
STATE GENERAL FUND	\$2,421,106	\$2,821,871	\$2,821,871
SELF-GENERATED			
FEDERAL FUND	\$3,993,944	\$4,875,541	\$4,875,541
OTHER (Specify)			
Total	\$6,415,050	\$7,697,412	\$7,697,412

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 16-17	FY 17-18	FY 18-19
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$3,993,944	\$4,875,541	\$4,875,541
LOCAL FUNDS			
Total	\$3,993,944	\$4,875,541	\$4,875,541

**Specify the particular fund being impacted*

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

The amounts reflected above are the estimated increases in the federal share of programmatic expenditures for the Medicaid Program. In FY 16-17, \$270 is included for the federal expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule is being promulgated to continue the provisions of the August 1, 2015 Emergency Rule which amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) in order to establish supplemental Medicaid payments for services provided to Medicaid recipients residing in privately-owned facilities that enter into a cooperative endeavor agreement with the department. This proposed Rule also continues the provisions of the July 20, 2016 Emergency Rule which established upper payment limits for supplemental payments to private intermediate care facilities entering into a cooperative endeavor agreement with the department to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule will increase programmatic expenditures for inpatient hospital services by approximately \$6,414,510 for FY 16-17, \$7,697,412 for FY 17-18 and \$7,697,412 for FY 18-19.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a positive effect on employment as it will increase payments for ICF/ID services. The increase in payments may improve the financial standing of providers and could possibly cause an increase in employment opportunities.