

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

**Intermediate Care Facilities for  
Persons with Intellectual Disabilities  
Reimbursement Methodology  
Direct Care Floor Recoupment  
(LAC 50:VII.32901)**

The Department of Health, Bureau of Health Services Financing proposes to amend the LAC 50:VII.32901 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 proposes to amend the provisions governing reimbursement for non-state intermediate care facilities for persons with intellectual disabilities in order to establish an effective date for the remittance of funds owed to the department by facilities that fail to meet the required direct care floor and specify that filing an administrative appeal does not suspend or delay the imposition of this recoupment.

**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**

**§32901. Cost Reports**

A. - B.2. ...

C. Direct Care Floor

1. - 4. ...

5. Upon completion of desk reviews or audits, facilities will be notified by the bureau of any changes in amounts due based on audit or desk review adjustments.

a. Direct care floor recoupment as a result of a facility not meeting the required direct care per diem floor is considered effective 30 days from the issuance of the original notice of determination. Should an informal reconsideration be requested, the recoupment will be considered effective 30 days from the issuance of the results of an informal hearing. The filing of a timely and adequate notice of an administrative appeal does not suspend or delay the imposition of a recoupment(s).

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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2252 (September 2005), amended LR 33:461 (March 2007),

amended by the Department of Health, Bureau of Health Services Financing, LR 44:1446 (August 2018), LR 46:28 (January 2020), LR 47:

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.

#### **Family Impact Statement**

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.

#### **Poverty Impact Statement**

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.

#### **Small Business Statement**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule

on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

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 increase the direct or indirect cost to provide the same level of service as described in HCR 170 for facilities that fail to meet the required direct care floor.

#### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on June 29, 2021.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton

Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on June 9, 2021. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on June 24, 2021 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after June 9, 2021. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person Preparing Statement: Veronica Dent Dept.: Health  
Phone: 342-3238 Office: Bureau of Health Services Financing  
Return Address: P.O. Box 91030 Rule Title: Intermediate Care Facilities for Persons  
Baton Rouge, LA with Intellectual Disabilities  
Reimbursement Methodology  
Direct Care Floor Recoupment  
Date Rule Takes Effect: August 20, 2021

SUMMARY  
(Use complete sentences)

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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule may have an indeterminable savings to the state for FY 20-21, FY 21-22, and FY 22-23, since it establishes a timeframe for intermediate care facilities that fail to meet the required direct care floor to remit funds owed to the department. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 20-21 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 the implementation of this proposed rule will have no impact on revenue collections for FY 20-21, FY 21-22, and FY 22-23, as it will result in a reduction in future payments to recoup monies owed from providers that fail to meet the required direct care floor. It is anticipated that \$270 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule amends the provisions governing reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to establish an effective date for the remittance of funds owed to the department by facilities that fail to meet the required direct care floor and specify that filing an administrative appeal does not suspend or delay the imposition of this recoupment. This proposed Rule will impact ICFs/IID since it will implement a 30-day effective date for the direct care floor recoupment. It is anticipated that implementation of this proposed Rule may result in an indeterminable cost to ICFs/IID that have a recoupment imposed in FY 20-21, FY 21-22, and FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head or Designee

Tara A. LeBlanc, Interim Medicaid Executive Director  
Typed Name & Title of Agency Head or Designee

May 5, 2021  
Date of Signature



Legislative Fiscal Officer or Designee

5/6/21  
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 deliberation 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).

The proposed rule amends the provisions governing reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to establish an effective date for the remittance of funds owed to the department by facilities that fail to meet the required direct care floor and specify that filing an administrative appeal does not suspend or delay the imposition of this recoupment.

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

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing reimbursement for non-state intermediate care facilities for persons with intellectual disabilities in order to establish an effective date for the remittance of funds owed to the department by facilities that fail to meet the required direct care floor and specify that filing an administrative appeal does not suspend or delay the imposition of this recoupment.

- 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.

Implementation of this proposed rule will have indeterminable savings to the state for FY 20-21, FY 21-22, and FY 22-23, since it establishes a timeframe for intermediate care facilities that fail to meet the required direct care floor to remit funds owed to the department. In FY 20-21, \$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) \_\_\_\_\_ Yes. If yes, attach documentation.

(b) \_\_\_\_\_ NO. If no, provide justification as to why this rule change should be published at this time

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

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

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

| <b>COSTS</b>            | <b>FY 21</b>     | <b>FY 22</b>     | <b>FY 23</b>     |
|-------------------------|------------------|------------------|------------------|
| Personal Services       |                  |                  |                  |
| Operating Expenses      | \$540            | \$0              | \$0              |
| Professional Services   |                  |                  |                  |
| Other Charges           | See Below        | See Below        | See Below        |
| Equipment               |                  |                  |                  |
| Major Repairs & Constr. |                  |                  |                  |
| <b>TOTAL</b>            | <b>See Below</b> | <b>See Below</b> | <b>See Below</b> |
| <b>POSITIONS (#)</b>    |                  |                  |                  |

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.

Savings associated with the rule are indeterminable. In FY 20-21, \$540 will be spent 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.

| <b>SOURCE</b>         | <b>FY 21</b>     | <b>FY 22</b>     | <b>FY 23</b>     |
|-----------------------|------------------|------------------|------------------|
| State General Fund    | See Below        | See Below        | See Below        |
| Agency Self-Generated |                  |                  |                  |
| Dedicated             |                  |                  |                  |
| Federal Funds         | See Below        | See Below        | See Below        |
| Other (Specify)       |                  |                  |                  |
| <b>TOTAL</b>          | <b>See Below</b> | <b>See Below</b> | <b>See Below</b> |

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. Savings associated with the rule are indeterminable.

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

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments 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.

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

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

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

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

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

| REVENUE INCREASE/DECREASE | FY 21            | FY 22            | FY 23            |
|---------------------------|------------------|------------------|------------------|
| State General Fund        |                  |                  |                  |
| Agency Self-Generated     |                  |                  |                  |
| Dedicated Funds*          |                  |                  |                  |
| Federal Funds             | See Below        | See Below        | See Below        |
| Local Funds               |                  |                  |                  |
| <b>TOTAL</b>              | <b>See Below</b> | <b>See Below</b> | <b>See Below</b> |

\*Specify the particular fund being impacted.

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

Implementation of this proposed rule will have no impact on revenue collections for FY 20-21, FY 21-22, and FY 22-23, as it will result in a reduction in future payments to recoup monies owed from providers that fail to meet the required direct care floor. In FY 20-21, \$270 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

**III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS**

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

The proposed rule amends the provisions governing reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to establish an effective date for the remittance of funds owed to the department by facilities that fail to meet the required direct care floor and specify that filing an administrative appeal does not suspend or delay the imposition of this recoupment. This proposed Rule will impact ICFs/IID since it will implement a 30-day effective date for the direct care floor recoupment.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed Rule may result in an indeterminable cost to ICFs/IID that have a recoupment imposed in FY 20-21, FY 21-22, and FY 22-23.

**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.

This rule has no known effect on competition and employment.