

## **NOTICE OF INTENT**

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

#### **Intermediate Care Facilities for Persons with Intellectual Disabilities Leave of Absence Days (LAC 50:VII.33103)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50: VII.33103 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 proposes to amend the provisions governing leave of absence days for intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to increase the total leave days for ICF/IID clients from 45 to 60 and from 30 consecutive days in any single occurrence to 45 consecutive days.

#### **Title 50 PUBLIC HEALTH-MEDICAL ASSISTANCE Part VII. Long Term Care Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities**

#### **Chapter 331. Vendor Payments**

#### **§33103. Payment Limitations**

A. Temporary Absence of the Client. A client's temporary absence from an ICF/ID will not interrupt the monthly vendor payment to the ICF/ID, provided the following conditions are met:

1. ...

2. the absence is for one of the following reasons:

a. hospitalization, which does not exceed seven days per hospitalization for treatment of an acute condition; or

b. leave of absence. A temporary stay outside the ICF/ID provided for in the client's written individual habilitation plan. A leave of absence will not exceed ~~45~~60 days per fiscal year (July 1 through June 30) and will not exceed ~~30~~45 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual ~~45~~60-day limit as long as the leave does not exceed the ~~30~~45-consecutive day limit and is included in the written individual habilitation plan.

These exceptions are as follows:

i. - iii. ...

vi. trial discharge leave - 14 days per occurrence;

v. - v.i.(a) ...

c. the following leaves of absence will be excluded from both the annual ~~45~~60-day limit and the ~~30~~45-

consecutive day limit as long as the leave of absence is included in the written individual habilitation plan:

i. ...

NOTE: Elopements and unauthorized absences under the written individual habilitation plan count against allowable leave days. However, Title XIX eligibility is not affected if the absence does not exceed 30 consecutive days and if the ICF/ID has not discharged the client.

3. - 6. ...

7. the ICF/ID shall promptly notify DHH of absences beyond the applicable ~~thirty~~forty-five- or seven-day limitations. Payment to the ICF/MR shall be terminated from the ~~thirty-first~~forty-sixth or eighth day, depending upon the leave of absence. Payment will commence after the individual has been determined eligible for Title XIX benefits and has remained in the ICF/ID for 30 consecutive days;

A.8. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:682 (April 1999), LR 31:1082 (May 2005),

repromulgated LR 31:2257 (September 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 43:325 (February 2017), LR 44:61 (January 2018), amended by the House of Representatives, 2020 Second Extraordinary Session, LR 46:1640 (November 2020), LR 50:

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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, by allowing ICF/IID clients to spend additional time with their families away from the facility.

#### **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 Analysis**

In compliance with the Small Business Protection Act, 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.

#### **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 direct or indirect cost to the provider, and may have a negative impact on the provider's ability to provide the same level of service as described in HCR 170, if the additional leave days results in a reduction in Medicaid payments which adversely impacts the provider's financial standing.

#### **Public Comments**

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The

deadline for submitting written comments is at 4:30 p.m. on January 2, 2024.

### **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 December 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on December 28, 2023 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 December 11, 2023. 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.

Stephen R. Russo, JD

Secretary