DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Intellectual Disabilities
Evacuation and Temporary Sheltering Costs
(LAC 50:VII.33103 and §33105)

The Department of Health, Bureau of Health Services Financing amends LAC 50:VII.33103 and adopts §33105 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) to establish reimbursement for complex care services provided to Medicaid recipients residing in non-state ICFs/ID (*Louisiana Register*, Volume 42, Number 2).

The Department of Health, Bureau of Health Services Financing now proposes to amend the provisions governing the reimbursement methodology for ICFs/ID to establish provisions governing evacuation and temporary sheltering costs incurred

during a declared disaster or emergency event to ensure evacuating ICFs/ID continue to receive vendor payments while providing essential care and services to residents at a host site when they are displaced. This action is being taken to avoid imminent peril to the public health, safety or welfare of ICF/ID residents by ensuring continued access to services during declared disasters. It is estimated that implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program in state fiscal year 2016-2017.

Effective October 13, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing intermediate care facilities for persons with intellectual disabilities to establish provisions governing evacuation and temporary sheltering costs during a declared disaster or emergency event.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long-Term Care Services
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/~~MR~~ ID will not interrupt the monthly vendor payment to the ICF/~~MR~~ID, provided the following conditions are met:

1. the ICF/~~MR~~ ID keeps a bed available for the client's return; and

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

a. …

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

i.-v. …

NOTE: Elopements and unauthorized absences under the 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/~~MR~~ ID has not discharged the client.

3. …

4. a period of 24 continuous hours or more shall be considered an absence. Likewise, a temporary leave of absence for hospitalization or a home visit is broken only if the client returns to the ICF/~~MR~~ID for 24 hours or longer;

5. upon admission, a client must remain in the ICF/~~MR~~ ID at least 24 continuous hours in order for the ICF/~~MR~~ ID to submit a payment claim for a day of service or reserve a bed;

EXAMPLE: A client admitted to an ICF/~~MR~~ ID in the morning and transferred to the hospital that afternoon would not be eligible for any vendor payment for ICF/~~MR~~ ID services.

6. …

7. the ICF/~~MR~~ ID shall promptly notify DHH of absences beyond the applicable 30- or seven-day limitations. Payment to the ICF/MR shall be terminated from the thirty-first 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/~~MR~~ ID for 30 consecutive days;

8. the limit on Title XIX payment for leave days does not mean that further leave days are prohibited when provided for in the individual habilitation plan. After the Title XIX payment limit is met, further leave days may be arranged between the ICF/~~MR~~ ID and the client, family or responsible party. Such arrangements may include the following options.

a. The ICF/~~MR~~ ID may charge the client, family or responsible party an amount not to exceed the Title XIX daily rate.

b. The ICF/~~MR~~ ID may charge the client, family or responsible party a portion of the Title XIX daily rate.

c. The ICF/~~MR~~ ID may absorb the cost into its operation costs.

B. Temporary Absence of the Client Due to Evacuations. When local conditions require evacuation of ICF/~~MR~~ID residents, the following ~~payment~~ procedures apply.

1. ~~When clients are evacuated for less than 24 hours, the monthly vendor payment is not interrupted~~When clients are evacuated to a family's or friend's home at the ICF/ID's request, the ICF/MR shall not submit a claim for a day of service or leave day, and the client's liability shall not be collected.

2. ~~When staff is sent with clients to the evacuation site, the monthly vendor payment is not interrupted~~When clients go home at the family's request or on their own initiative, a leave day shall be charged.

3. ~~When clients are evacuated to a family's or friend's home at the ICF/MR's request, the ICF/MR shall not submit a claim for a day of service or leave day, and the client's liability shall not be collected~~When clients are

admitted to the hospital for the purpose of evacuation of the ICF/ID, Medicaid payment shall not be made for hospital charges.

~~4. When clients go home at the family's request or on their own initiative, a leave day shall be charged.~~

~~5. When clients are admitted to the hospital for the purpose of evacuation of the ICF/MR, Medicaid payment shall not be made for hospital charges.~~B.4. - B.5. Repealed.

C. Payment Policy in regard to Date of Admission, Discharge, or Death

1. Medicaid (Title XIX) payments shall be made effective as of the admission date to the ICF/~~MR~~ID. If the client is medically certified as of that date and if either of the following conditions is met:

a. the client is eligible for Medicaid benefits in the ICF/~~MR~~ ID (excluding the medically needy); or

b. the client was in a continuous institutional living arrangement (nursing home, hospital, ICF/~~MR~~ID, or a combination of these institutional living arrangements) for 30 consecutive days; the client must also be determined financially eligible for Medical Assistance.

2. The continuous stay requirement is:

a. ...

b. not interrupted by the client's absence from the ICF/~~MR~~ ID when the absence is for hospitalization or leave

of absence which is part of the written individual habilitation plan.

3. The client's applicable income is applied toward the ICF/~~MR~~ ID fee effective with the date Medicaid payment is to begin.

4. - 5. ...

NOTE: The ICF/~~MR~~ ID shall promptly notify ~~DHH~~LDH/BHSF of admissions, death, and/or all discharges.

D. Advance Deposits

1. An ICF/~~MR~~ ID shall neither require nor accept an advance deposit from an individual whose Medicaid (Title XIX) eligibility has been established.

EXCEPTION: An ICF/~~MR~~ ID may require an advance deposit for the current month only on that part of the total payment which is the client's liability.

2. ...

E. Retroactive Payment. When individuals enter an ICF/~~MR~~ ID before their Medicaid (Title XIX) eligibility has been established payment for ICF/~~MR~~ ID services is made retroactive to the first day of eligibility after admission.

F. Timely Filing for Reimbursements. Vendor payments cannot be made if more than 12 months have elapsed between the month of initial services and submittal of a claim for these

services. Exceptions for payments of claims over 12 months old can be made with authorization from ~~DHH~~LDH/BHSF only.

G. Refunds to Clients

1. When the ICF/~~MR~~ID receives vendor payments, it shall refund any fees for services collected from clients, family or responsible party by the end of the month in which vendor payment is received.

2. Advance payments for a client's liability (applicable income) shall be refunded promptly if he/she leaves the ICF/~~MR~~ID.

3. The ICF/~~MR~~ID shall adhere to the following procedures for refunds:

a. The proportionate amount for the remaining days of the month shall be refunded to the client, family, or the responsible party no later than 30 days following the date of discharge. If the client has not yet been certified, the procedures spelled out in ~~Paragraph 1~~§33103.G.1 above shall apply.

b. No penalty shall be charged to the client, family, or responsible party even if the circumstances surrounding the discharge occurred as follows:

i. - ii. ...

iii. within some other "minimum stay" period established by the ICF/~~MR~~ID.

c. ...

H. ICF/~~MR~~ID Refunds to the Department

1. Nonparticipating ICF/~~MR~~ID. Vendor payments made for services performed while an ICF/~~MR~~ID is in a nonparticipating status with the Medicaid Program shall be refunded to the ~~Office of Management and Financing, Post Office Box 629, Baton Rouge, LA 70821-0629. The refund shall be made payable to the "Department of Health and Hospitals-Medicaid Program."~~department.

2. Participating ICF/~~MR~~ID. A currently participating Title XIX, ICF/~~MR~~ID shall correct billing or payment errors by use of appropriate adjustment void or Patient Liability (PLI) adjustment forms.

I. Sitters. An ICF/~~MR~~ID will neither expect nor require a client to have a sitter. However, the ICF/~~MR~~ID shall permit clients, families, or responsible parties directly to employ and pay sitters when indicated, subject to the following limitations:

1. The use of sitters will be entirely at the client's, family's, or responsible party's discretion. However, the ICF/~~MR~~ID shall have the right to approve the selection of a sitter. If the ICF/~~MR~~ID disapproves the selection of the sitter, the ICF/~~MR~~ID will provide written notification to the client, family, and/or responsible party, and to the ~~Department~~

department ~~of Health and Hospitals~~ stating the reasons for disapproval.

2. - NOTE ...

3. Payment to sitters is the direct responsibility of the ICF/~~MR~~ ID facility when:

a. - c. ...

4. A sitter will be expected to abide by the ICF/~~MR's~~ ID's rules, including health standards and professional ethics.

5. The presence of a sitter does not absolve the ICF/~~MR~~ ID of its full responsibility for the client's care.

6. The ICF/~~MR~~ ID is not responsible for providing a sitter if one is required while the resident is on home leave.

J. Tips. The ICF/~~MR~~ ID shall not permit tips for services rendered by its employees.

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 42:

§33105. Evacuation and Temporary Sheltering Costs

A. Intermediate care facilities for persons with intellectual disabilities required to participate in an evacuation, as directed by the appropriate parish or state official, or which act as a host shelter site may be entitled to reimbursement of its documented and allowable evacuation and temporary sheltering costs.

1. The expense incurred must be in excess of any existing or anticipated reimbursement from any other sources, including the Federal Emergency Management Agency (FEMA) or its successor.

2. ICFs/ID must first apply for evacuation or sheltering reimbursement from all other sources and request that the department apply for FEMA assistance on their behalf.

3. ICFs/ID must submit expense and reimbursement documentation directly related to the evacuation or temporary sheltering of Medicaid residents to the department.

B. Eligible Expenses. Expenses eligible for reimbursement must occur as a result of an evacuation and be reasonable, necessary, and proper. Eligible expenses are subject to audit at the department's discretion and may include the following.

1. Evacuation Expenses. Evacuation expenses include expenses from the date of evacuation to the date of arrival at a temporary shelter or another ICF/ID. Evacuation expenses include:

a. resident transportation and lodging expenses during travel;

b. nursing staff expenses when accompanying residents, including:

i. transportation;

ii. lodging; and

iii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented:

(a). the direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department;

c. any additional allowable costs that are directly related to the evacuation and that would normally be allowed under the ICF/ID rate methodology.

2. Non-ICF/ID Facility Temporary Sheltering Expenses. Non-ICF/ID facility temporary sheltering expenses include expenses from the date the Medicaid residents arrive at a non-ICF/ID facility temporary shelter to the date all Medicaid

residents leave the shelter. A non-ICF/ID facility temporary shelter includes shelters that are not part of a licensed ICF/ID and are not billing for the residents under the ICF/ID reimbursement methodology or any other Medicaid reimbursement system. Non-ICF/ID facility temporary sheltering expenses may include:

a. additional nursing staff expenses including:

i. lodging; and

ii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented:

(a). the direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department;

b. care-related expenses incurred in excess of care-related expenses prior to the evacuation;

c. additional medically necessary equipment such as beds and portable ventilators that are not available from the evacuating nursing facility and are rented or purchased specifically for the temporary sheltered residents; and

i. these expenses will be capped at a daily rental fee not to exceed the total purchase price of the item;

ii. the allowable daily rental fee will be determined by the department;

d. any additional allowable costs as determined by the department and that are directly related to the temporary sheltering and that would normally be allowed under the ICF/ID reimbursement methodology.

3. Host ICF/ID Temporary Sheltering Expenses. Host ICF/ID temporary sheltering expenses include expenses from the date the Medicaid residents are admitted to a licensed ICF/ID to the date all temporary sheltered Medicaid residents are discharged from the ICF/ID, not to exceed a six-month period.

a. The host ICF/ID shall bill for the residents under Medicaid's ICF/ID reimbursement methodology.

b. Additional direct care expenses may be submitted when a direct care expense increase of 10 percent or more is documented.

i. The direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department.

C. Payment of Eligible Expenses

1. For payment purposes, total eligible Medicaid expenses will be the sum of nonresident-specific eligible

expenses multiplied by the facility's Medicaid occupancy percentage plus Medicaid resident-specific expenses.

a. If Medicaid occupancy is not easily verified using the evacuation resident listing, the Medicaid occupancy from the most recently filed cost report will be used.

2. Payments shall be made as quarterly lump-sum payments until all eligible expenses have been submitted and paid. Eligible expense documentation must be submitted to the department by the end of each calendar quarter.

3. All eligible expenses documented and allowed under §33105 will be removed from allowable expenses when the ICF/ID's Medicaid cost report is filed. These expenses will not be included in the allowable cost used to set ICF/ID reimbursement rates in future years.

a. Equipment purchases that are reimbursed on a rental rate under §33105.B.2c may have their remaining basis included as allowable cost on future costs reports provided that the equipment is in the ICF/ID and being used. If the remaining basis requires capitalization then depreciation will be recognized.

4. Payments shall remain under the upper payment limit cap for ICFs/ID.

D. When an ICF/ID resident is evacuated to a temporary sheltering site (an unlicensed sheltering site or a licensed

ICF/ID) for less than 24 hours, the Medicaid vendor payment to the evacuating facility will not be interrupted.

E. When an ICF/ID resident is evacuated to a temporary sheltering site (an unlicensed sheltering site or a licensed NF) for greater than 24 hours, the evacuating ICF/ID may submit the claim for Medicaid vendor payment for a maximum of five days, provided that the evacuating ICF/ID provides sufficient staff and resources to ensure the delivery of essential care and services to the resident at the temporary shelter site.

F. When an ICF/ID resident is evacuated to a temporary shelter site, which is an unlicensed sheltering site, for greater than five days, the evacuating ICF/ID may submit the claim for Medicaid vendor payment for up to an additional 15 days, provided that the evacuating ICF/ID:

1. has received an extension to stay at the unlicensed shelter site; and

2. provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

G. When an ICF/ID resident is evacuated to a temporary shelter site, which is a licensed ICF/ID, for greater than five days, the evacuating ICF/ID may submit the claim for Medicaid vendor payment for an additional period, not to exceed 55 days, provided that:

1. the host/receiving ICF/ID has sufficient licensed and certified bed capacity for the resident, or the host/receiving ICF/ID has received departmental and/or CMS approval to exceed the licensed and certified bed capacity for a specified period; and

2. the evacuating ICF/ID provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

H. If an ICF/ID resident is evacuated to a temporary shelter site which is a licensed ICF/ID, the receiving/host ICF/ID may submit claims for Medicaid vendor payment under the following conditions:

1. beginning day 2 and continuing during the "sheltering period" and any extension period, if the evacuating nursing home does not provide sufficient staff and resources to ensure the delivery of essential care and services to the resident and to ensure the needs of the residents are met;

2. upon admission of the evacuated residents to the host/receiving ICF/ID; or

3. upon obtaining approval of a temporary hardship exception from the department, if the evacuating ICF/ID is not submitting claims for Medicaid vendor payment.

I. Only one ICF/ID may submit the claims and be reimbursed by the Medicaid Program for each Medicaid resident for the same date of service.

J. An ICF/ID may not submit claims for Medicaid vendor payment for non-admitted residents beyond the expiration of its extension to exceed licensed (and/or certified) bed capacity or expiration of its temporary hardship exception.

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 42:

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.

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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH

Secretary