

NOTICE OF INTENT**Department of Health
Bureau of Health Services Financing**

Intermediate Care Facilities for Persons with
Intellectual Disabilities
Dedicated Program Funding Pool 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.

Act 50 of the 2019 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state providers for rate restorations for home and community-based services and enhancing reimbursements for adult day health services and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). The department elected to carry forward funds for use in State Fiscal Year 2020 to comply with the legislation's directive to allocate the funding in a manner that maximizes the payments to providers to the greatest extent possible.

In compliance with the requirements of Act 50, the department hereby proposes to adopt provisions governing reimbursement to non-state ICFs/IID to allow one-time, lump sum payments from the dedicated program funding pool.

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. Dedicated Program Funding Pool Payments**

A. Effective for providers active and Medicaid certified as of September 1, 2019; a one-time lump sum payment will be made to intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).

B. Methodology

1. Payment will be based on each provider's specific pro-rated share of an additional dedicated program funding pool totaling \$4,665,635.

2. The pro-rated share for each provider will be determined utilizing the provider's percentage of total annualized program Medicaid days. Annualized program Medicaid days will be calculated utilizing the most recently desk reviewed or audited cost reports as of July 1, 2019.

3. The additional dedicated program funding pool lump sum payments shall not exceed the Medicare upper payment limit in the aggregate for the provider class.

4. The one-time payment will be made on or before June 30, 2020.

5. Payment of the one-time lump sum payment is subject to approval by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS).

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 46:

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 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 permits one-time, lump sum supplemental payments to non-state ICF/IID providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2019.

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 November 12, 2019. 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 November 27, 2019 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 November 12, 2019. 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Intermediate Care Facilities for Persons with Intellectual Disabilities Dedicated Program Funding Pool Payments

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

It is anticipated that implementation of this proposed rule will result in estimated state general fund programmatic cost of approximately \$1,567,887 for FY 19-20 but will not result in costs for FY 20-21 and 21-22 as these one-time, lump sum payments will be made from funds appropriated during the 2019 Legislative Session that the department elected to carry forward for use in FY 19-20. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 19-20 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 increase federal revenue collections by approximately \$3,098,126 for FY 19-20, but will not result in increases for FY 20-21 and FY 21-22. It is anticipated that \$324 will be collected in FY 19-20 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 NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule adopts provisions governing reimbursement to non-state intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) to allow one-time, lump sum payments from the dedicated program funding pool in compliance with Act 50 of the 2019 Regular Session of the Louisiana Legislature. Qualifying ICFs/IID will benefit from implementation of this proposed rule since it enables the facilities receiving enhanced reimbursement via these one-time, lump sum payments to continue to provide necessary services to Medicaid recipients. It is anticipated that implementation of this proposed Rule will increase Medicaid programmatic expenditures by approximately \$4,665,365 for FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1910#070

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

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

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 intermediate care facilities for persons with intellectual disabilities in order to correct an invalid citation in the direct care floor language and ensure that these provisions are appropriately promulgated in the *Louisiana Administrative Code*.

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. A facility wide direct care floor may be enforced upon deficiencies related to direct care staffing requirements cited during the HSS annual review or resulting from an HSS complaint investigation.

2. - 5. ...

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:

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

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