

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 60 days per fiscal year (July 1 through June 30) and will not exceed 45 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 60-day limit as long as the leave does not exceed the 45-consecutive day limit and is included in the written individual habilitation plan. These exceptions are as follows:
 - i. - iii. ...
 - iv. trial discharge leave—14 days per occurrence;
 - v. - v.i.(a). ...
 - c. the following leaves of absence will be excluded from both the annual 60-day limit and the 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 forty-five- or seven-day limitations. Payment to the ICF/MR shall be terminated from the 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:

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.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Intermediate Care Facilities for Persons with Intellectual Disabilities—Leave of Absence Days

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

It is anticipated that implementation of this proposed rule may result in estimated programmatic savings to the state of approximately \$29,934 for FY 23-24, \$30,939 for FY 24-25, and \$30,939 for FY 25-26. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule amends 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 which will allow ICF/IIDs to bill up to 60 leave days per fiscal year and up to 45 consecutive days.

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

It is anticipated that the implementation of this proposed rule may decrease revenue collections by approximately \$65,754 for FY 23-24, \$65,505 for FY 24-25, and \$65,505 for FY 25-26. It is anticipated that that \$378 will be collected in FY 23-24 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 NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends 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 which will allow ICF/IIDs to bill up to 60 leave days per fiscal year and up to 45 consecutive days. The proposed rule will benefit ICF/IID clients by allowing them to spend additional time with their families away from the facility. Implementation of this proposed rule may reduce Medicaid program expenditures by approximately \$96,444 for FY 23-24, \$96,444 for FY 24-25, and \$96,444 for FY 25-26, if ICF/IID clients utilize the additional leave days and payments to facilities are reduced.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule may impact-staffing ratios and possibly cause a reduction in total hours worked.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
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Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office