

NOTICE OF INTENT

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

**Intermediate Care Facilities for
Persons with Intellectual Disabilities
Reimbursement Methodology
(LAC 50:VII.32903)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32903 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 1 of the 2020 First Extraordinary Session of the Louisiana Legislature directed the Department of Health, Bureau of Health Services Financing to increase reimbursement rates for non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) that downsized from over 100 beds to less than 35 beds prior to December 31, 2010, without the benefit of a cooperative endeavor agreement. In compliance with Act 1, the department promulgated an Emergency Rule which amended the provisions governing reimbursement for non-state ICFs/IID to increase the reimbursement rates to qualifying facilities (*Louisiana Register*, Volume 46, Number 9). This proposed Rule is being promulgated in order to continue the provisions of the Emergency Rule adopted on August 25, 2020.

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

§32903. Rate Determination

A. - M. ...

N. Pursuant to the provisions of Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature, effective for dates of service on or after July 1, 2020, private ICF/IID facilities that downsized from over 100 beds to less than 35 beds prior to December 31, 2010 without the benefit of a cooperative endeavor agreement (CEA) or transitional rate and who incurred excessive capital costs, shall have their per diem rates (excluding provider fees) increased by a percent equal to the percent difference of per diem rates (excluding provider fees) they were paid as of June 30, 2019. See chart below with the applicable percentages:

	Intermittent	Limited	Extensive	Pervasive
1-8 beds	6.2 percent	6.2 percent	6.2 percent	6.1 percent
9-15 beds	3.2 percent	6.2 percent	6.2 percent	6.1 percent
16-32 beds	N/A	N/A	N/A	N/A
33+ beds	N/A	N/A	N/A	N/A

1. The applicable differential shall be applied anytime there is a change to the per diem rates (for example, during rebase, rate reductions, inflationary changes, or special legislative appropriations). This differential shall not extend beyond December 31, 2024.

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 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), LR 37:3028 (October 2011), LR 39:1780 (July 2013), LR 39:2766 (October 2013), LR 41:539 (March 2015), amended by the Department of Health, Bureau of Health Services Financing, 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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it ensures the continuation of service options for families who may be experiencing difficulty caring for impacted recipients and allows those recipients to continue receiving appropriate care in the appropriate settings.

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 increases payments to providers.

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 January 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 January 11, 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 January 28, 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 January 11, 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: PO Box 91030 Rule Title: Intermediate Care Facilities for
Baton Rouge, LA Persons with Intellectual Disabilities
Reimbursement Methodology
Date Rule Takes Effect: August 25, 2020

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 will result in increased state costs of approximately \$344,117 for FY 20-21, \$386,150 for FY 21-22 and \$386,150 for FY 22-23. 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 increase federal revenue collections by approximately \$740,051 for FY 20-21, \$798,054 for FY 21-22, and \$798,054 for FY 22-23. 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)

This proposed rule, in compliance with Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature, continues the provisions of the Emergency Rule adopted on August 25, 2020 which amended the provisions governing reimbursement for non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) to increase reimbursement rates for facilities that downsized from over 100 beds to less than 35 beds prior to December 31, 2010, without the benefit of a cooperative endeavor agreement. This proposed Rule will be beneficial to recipients whose families may be experiencing difficulty caring for them by ensuring the continuation of service options and allowing them to continue receiving appropriate care in the appropriate settings. Qualifying ICFs/IID will benefit from implementation of this proposed Rule as it increases reimbursement rates. It is anticipated that implementation of this proposed Rule will increase expenditures for ICFs/IID by approximately \$1,083,628 for FY 20-21, \$1,184,204 for FY 21-22, and \$1,184,204 for 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

12-10-2020
Date of Signature


Legislative Fiscal Officer or Designee

12/10/20
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).

This proposed rule, in compliance with Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature, continues the provisions of the Emergency Rule adopted on August 25, 2020 which amended the provisions governing reimbursement for non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) to increase reimbursement rates for facilities that downsized from over 100 beds to less than 35 beds prior to December 31, 2010, without the benefit of a cooperative endeavor agreement.

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

Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature directed the Department of Health, Bureau of Health Services Financing to increase reimbursement rates for non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) that downsized from over 100 beds to less than 35 beds prior to December 31, 2010, without the benefit of a cooperative endeavor agreement. In compliance with Act 1, the department promulgated an Emergency Rule which amended the provisions governing reimbursement for non-state ICFs/IID to increase the reimbursement rates to qualifying facilities (*Louisiana Register*, Volume 46, Number 9). This proposed Rule is being promulgated in order to continue the provisions of the Emergency Rule adopted on August 25, 2020.

- 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.

Yes. It is anticipated that implementation of this proposed rule will result in increased programmatic costs of approximately \$1,084,168 for FY 20-21, \$1,184,204 for FY 21-22, and \$1,184,204 for FY 22-23. 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) X NO. If no, provide justification as to why this rule change should be published at this time

Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature directed the Department of Health to adjust the reimbursement rates for certain non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID), and thereby, authorizes the expenditure of these funds. Qualifying ICFs/IID will benefit from implementation of this proposed Rule as it increases reimbursement rates.

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?

COSTS	FY 21	FY 22	FY 23
Personal Services			
Operating Expenses	\$540	\$0	\$0
Professional Services			
Other Charges	\$1,083,628	\$1,184,204	\$1,184,204
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,084,168	\$1,184,204	\$1,184,204
POSITIONS (#)			

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.

The expenses reflected above are the estimated increases in expenditures in the Medicaid program. In FY 20-21, \$540 is included 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.

SOURCE	FY 21	FY 22	FY 23
State General Fund	\$344,117	\$386,150	\$386,150
Agency Self-Generated			
Dedicated			
Federal Funds	\$740,051	\$798,054	\$798,054
Other (Specify)			
TOTAL	\$1,084,168	\$1,184,204	\$1,184,204

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 through the enhanced FMAP.

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	\$740,051	\$798,054	\$798,054
Local Funds			
TOTAL	\$740,051	\$798,054	\$798,054

*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.

The amounts reflected above are the estimated increase in the federal share of programmatic expenditures for the Medicaid program. 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.

This proposed rule, in compliance with Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature, continues the provisions of the Emergency Rule adopted on August 25, 2020 which amended the provisions governing reimbursement for non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) to increase reimbursement rates for facilities that downsized from over 100 beds to less than 35 beds prior to December 31, 2010, without the benefit of a cooperative endeavor agreement. This proposed Rule will be beneficial to recipients whose families may be experiencing difficulty caring for them by ensuring the continuation of service options and allowing them to continue receiving appropriate care in the appropriate settings.

- 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.

Qualifying ICFs/IID will benefit from implementation of this proposed Rule as it increases reimbursement rates. It is anticipated that implementation of this proposed Rule will increase expenditures for ICFs/IID by approximately \$1,083,628 for FY 20-21, \$1,184,204 for FY 21-22, and \$1,184,204 for 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.