

NOTICE OF INTENT

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

**Intermediate Care Facilities for Persons
with Intellectual Disabilities
Rate Determination
(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.

Private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) receive a reimbursement rate based on utilization and resident acuity. These rates are calculated using cost components appropriate for an economic and efficient ICFs/IID providing quality service. The resident per diem rates represent the best judgment of the state to provide reasonable and adequate reimbursement required to cover the costs of economic and efficient operation of ICFs/IID.

The existing provision allowed private 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 (CEA) or transitional rate and that incurred excessive capital costs, to have their per diem rates (excluding provider

fees) increased by a percent equal to the percent difference of per diem rates (excluding provider fees and dental pass through). The applicable differential was scheduled to expire on December 31, 2024. The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule amending provisions governing ICFs/IID to eliminate the expiration date. This change allows more time to address the needs of private ICFs/IID that rely on this variance, ensuring uninterrupted services to the residents of these facilities (*Louisiana Register*, Volume 51, Number 1). This proposed Rule is being promulgated to continue the provisions of the December 30, 2024 Emergency Rule.

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

§32903. Rate Determination

A. - M. ...

N. Effective for dates of service on or after July 1, 2020, private 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 (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 and dental pass through) 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.

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 47:370 (March 2021), LR 49:687 (April 2023), LR 51:

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 a 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, and will have no impact on the total direct and indirect cost to the provider to provide the same level of service, but will enable providers to provide the same level of service as described in HCR 170 since this proposed Rule continues the current per diem rates for qualifying facilities.

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 March 24, 2025.

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 March 12, 2025. 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 March 27, 2025 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 March 12, 2025. 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.

Michael Harrington, MBA, MA

Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

Person Preparing Statement:	<u>Lyrica Johnson</u>	Dept.:	<u>Health</u>
Phone:	<u>342-6375</u>	Office:	<u>Bureau of Health Services Financing</u>
Return Address:	<u>P.O. Box 91030</u>	Rule Title:	<u>Intermediate Care Facilities for Individuals with Intellectual Disabilities</u>
	<u>Baton Rouge, LA</u>	Date Rule Takes Effect:	<u>Rate Determination</u> <u>December 30, 2024</u>

SUMMARY
(Use complete sentences)

In accordance with Section 961 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 costs that are currently allocated in the budget and continue an existing fee. The cost to the state will be approximately \$207,748 for FY 24-25, \$417,055 for FY 25-26, and \$427,713 for FY 26-27. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 24-25 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule continues a December 30th, 2024, Emergency Rule which eliminates the expiration date on a per diem rate increase for qualified intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). This increased rate applies to private 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 (CEA) or transitional rate and that incurred excessive capital costs.

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


It is anticipated that the implementation of this proposed rule will result in federal revenue collections that are currently allocated in the budget and continue an existing fee. The anticipated federal revenue collections are approximately \$442,317 for FY 24-25, \$881,777 for FY 25-26, and \$904,312 for FY 26-17. It is anticipated that \$324 will be collected in FY 24-25 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 continues a December 30th, 2024, Emergency Rule which eliminates the expiration date on a per diem rate increase for qualified intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). This increased rate applies to private 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 (CEA) or transitional rate and that incurred excessive capital costs. The proposed rule will be beneficial to providers by continuing the rate that they currently receive, allowing them to continue providing the current level of services to recipients. It is anticipated that the cost as a result of this proposed rule will be approximately \$649,417 for FY 24-25, \$1,298,832 for FY 25-26, and \$1,332,025 for FY 26-27.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.



Signature of Head or Designee

Kimberly Sullivan, JD
Medicaid Executive Director

Typed Name & Title of Agency Head or Designee

02/07/2025

Date of Signature



Legislative Fiscal Officer or Designee

2/10/2025

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 continues a December 30th, 2024, Emergency Rule which eliminates the expiration date on a per diem rate increase for qualified intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). This increased rate applies to private 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 (CEA) or transitional rate and that incurred excessive capital costs.

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

Private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) receive a reimbursement rate based on utilization and resident acuity. These rates are calculated using cost components appropriate for an economic and efficient ICFs/IID providing quality service. The resident per diem rates represent the best judgment of the state to provide reasonable and adequate reimbursement required to cover the costs of economic and efficient operation of ICFs/IID. The existing provision allowed private 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 (CEA) or transitional rate and that incurred excessive capital costs, to have their per diem rates (excluding provider fees) increased by a percent equal to the percent difference of per diem rates (excluding provider fees and dental pass through). The applicable differential was scheduled to expire on December 31, 2024. The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule amending provisions governing ICFs/IID to eliminate the expiration date. This change allows more time to address the needs of private ICFs/IID that rely on this variance, ensuring uninterrupted services to the residents of these facilities (*Louisiana Register*, Volume 51, Number 1). This proposed rule is being promulgated to continue the provisions of the December 30, 2024 Emergency Rule.

- 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.

No.

- (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) _____ NO. If no, provide justification as to why this rule change should be published at this time

**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 25	FY 26	FY 27
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$648	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	\$649,417	\$1,298,832	\$1,332,025
EQUIPMENT	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
TOTAL	\$650,065	\$1,298,832	\$1,332,025
POSITIONS (#)	0	0	0

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 anticipated expenditures in the Medicaid program. In FY 24-25, \$648 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 25	FY 26	FY 27
STATE GENERAL FUND	\$207,748	\$417,055	\$427,713
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$442,317	\$881,777	\$904,312
OTHER (Specify)	\$0	\$0	\$0
TOTAL	\$650,065	\$1,298,832	\$1,332,025

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, this is already included in the budget.

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 25	FY 26	FY 27
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$442,317	\$881,777	\$904,312
LOCAL FUNDS	\$0	\$0	\$0
TOTAL	\$442,317	\$881,777	\$904,312

*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 federal share of programmatic expenditures for the Medicaid program. In FY 24-25, \$324 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 continues a December 30th, 2024, Emergency Rule which eliminates the expiration date on a per diem rate increase for qualified intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). This increased rate applies to private 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 (CEA) or transitional rate and that incurred excessive capital costs. The proposed rule will be beneficial to providers by continuing the rate that they currently receive, allowing them to continue providing the current level of services to recipients.

- 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.

It is anticipated that the cost as a result of this proposed rule will be approximately \$649,417 for FY 24-25, \$1,298,832 for FY 25-26, and \$1,332,025 for FY 26-27. However, since this is continuing an existing rate that is accounted for in the budget.

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 proposed rule has no known effect on competition and employment.