

NOTICE OF INTENT

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

**Intermediate Care Facilities for
Persons with Intellectual Disabilities
Temporary Reimbursement for Private Facilities
(LAC 50:VII.32904)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32904 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 promulgated an Emergency Rule which amended the provisions governing temporary reimbursement for private non-state intermediate care facilities for persons with intellectual disabilities in order to include a direct care add-on for increased cost related to retaining and hiring direct care staff and to establish a minimum hourly wage for direct care workers (*Louisiana Register*, Volume 48, Number 4). This proposed Rule is being promulgated to continue the provisions of the April 1, 2022 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

Subchapter A. Non-State Facilities

§32904. Temporary Reimbursement for Private Facilities

A. - D.4. ...

E. The Medicaid daily rate will include a direct care \$12 add-on to reimburse providers for increased cost related to retaining and hiring direct care staff. This add-on will be discontinued upon the next rebase, or at the discretion of the department.

NOTE: Medicaid providers have up to a year from the date of service to bill Medicaid for their claims. The provisions of this Subsection will apply to claims effective for dates of service on or after January 1, 2022.

1. Effective April 1, 2022, the minimum hourly wage floor paid to directly employed (non-contracted) non-nursing/physician direct care worker shall be \$9 per hour.

a. Directly employed non-nursing/physician direct care workers will include any employee whose wage expense is reported on sch H - expenses lines A.2. - A.8. on the Medicaid cost report.

b. Providers shall submit to the department or its representatives all requested documentation to verify compliance with the direct care wage floor.

i. This documentation may include, but is not limited to, payroll records, wage and salary documents, payroll check stubs and supplemental cost report schedules.

ii. Providers shall produce the required documentation upon request and within the time frame indicated by the department, or the provider may be subject to sanctions, full recoupment of add-on payments received, and/or disenrollment in the Medicaid Program.

c. Providers with directly employed non-nursing/physician direct care worker(s) that is (are) identified as not meeting the minimum hourly wage floor requirement shall be subject to a recoupment that is calculated as the differential between the minimum hourly wage floor and the actual hourly wage paid for all hours worked during the reporting period by the specific employee(s) that did not meet the minimum hourly wage floor requirement. This recoupment shall not exceed the total amount paid to the provider for the \$12 direct care add-on in a state fiscal year. This penalty is not mutually exclusive of any other direct care floor or related penalty. Additionally, any recoupment as a result of the wage floor will not impact any other direct care floor recoupment calculation.

i. The hourly wage of a directly employed non-nursing/physician direct care worker will be calculated as

the total regular (non-overtime) wage expense (exclusive of bonus, benefits, etc.) divided by the total regular (non-overtime) hours worked during the reporting period.

2. Effective April 1, 2022, a facility wide direct care floor is established at 75 percent of the per diem for direct care payment and at 100 percent of the \$12 direct care add-on payment for year. In no case shall a facility receiving this add-on payment have total facility payments reduced to less than 104 percent of the total facility cost as a result of imposition of the direct care floor. For facilities that also receive add-on payments related to complex care or pervasive plus, the greater of the direct care floors will be applicable.

a. If the direct care cost the facility incurred on a per diem basis, plus add-on, is less than the appropriate facility direct care floor, the facility shall remit to the bureau the difference between these two amounts times the number of facility Medicaid days paid during the cost reporting period. This remittance shall be payable to the bureau upon submission of the cost report.

b. Upon completion of desk reviews or audits, facilities will be notified by the bureau of any changes in amounts due based on audit or desk review adjustments.

c. Direct care floor recoupment as a result of a facility not meeting the required direct care per diem floor

is considered effective 30 days from the issuance of the original notice of determination. Should an informal reconsideration be requested, the recoupment will be considered effective 30 days from the issuance of the results of an informal hearing. The filing of a timely and adequate notice of an administrative appeal does not suspend or delay the imposition of a recoupment(s).

d. The direct care floor recoupment is not mutually exclusive of any penalty related to not meeting the minimum direct care wage floor or any other penalty.

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 47:593 (May 2021), amended LR 48:

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 positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973, as it will increase the ability of ICFs to recruit and retain direct care staff.

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 reduce the total direct or 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 for the same services they already render.

Public Comments

Interested persons may submit written comments to Patrick Gilles, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gilles is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on June 29, 2022.

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 June 9, 2022. 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 June 29, 2022 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 June 9, 2022. 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: <u>Veronica Dent</u>	Dept.: <u>Health</u>
Phone: <u>324-3228</u>	Office: <u>Bureau of Health Services Financing</u>
Return Address: <u>P.O. Box 91030</u> <u>Baton Rouge, LA</u>	Rule Title: <u>Intermediate Care Facilities for</u> <u>Persons with Intellectual Disabilities</u> <u>Temporary Reimbursement for</u> <u>Private Facilities</u>
	Date Rule Takes Effect: <u>April 1, 2022</u>

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 estimated programmatic costs of approximately \$1,816,585 for FY 21-22, \$5,468,210 for FY 22-23 and \$5,468,210 for FY 23-24. It is anticipated that \$864 (\$432 SFG and \$432 FED) will be expended in FY 21-22 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 implementation of this proposed rule will increase federal revenue collections by approximately \$5,188,339 for FY 21-22, \$11,341,534 for FY 22-23 and \$11,341,534 for FY 23-24. It is anticipated that \$432 will be collected in FY 21-22 for the federal share of the expense of 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 the provisions of the April 1, 2022 emergency rule which amended the provisions governing temporary reimbursement for private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to include a direct care add-on for increased cost related to retaining and hiring direct care staff and to establish a minimum hourly wage for direct care workers. The proposed rule will be beneficial to ICFs/IID as it will increase their ability to recruit and retain direct care staff. It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid program by \$7,004,060 for FY 21-22, \$16,809,744 for FY 22-23, and \$16,809,744 for FY 23-24.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.



Signature of Agency Head or Designee

Patrick Gilles, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

5/9/2022
Date of Signature



Legislative Fiscal Officer or Designee

5/9/22
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, which continues the provisions of the April 1, 2022 emergency rule, amends the provisions governing temporary reimbursement for private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to include direct care add-on for increased cost related to retaining and hiring direct care staff and to establish a minimum hourly wage for direct care workers.

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

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing temporary reimbursement for private non-state intermediate care facilities for persons with intellectual disabilities in order to include a direct care add-on for increased cost related to retaining and hiring direct care staff and to establish a minimum hourly wage for direct care workers (*Louisiana Register*, Volume 48, Number 4). This proposed Rule is being promulgated to continue the provisions of the April 1, 2022 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.

Yes, it is anticipated that implementation of this proposed rule will result in increased programmatic costs to the Medicaid program of approximately \$7,004,924 for FY 21-22, \$16,809,744 for FY 22-23, and \$16,809,744 for FY 23-24. In FY 21-22, \$864 will be expended 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 119 of the 2021 Regular Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. This proposed rule will be beneficial to intermediate care facilities for persons with intellectual disabilities as it will increase the provider's ability to recruit and retain direct care staff.

**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 22	FY 23	FY 24
Personal Services			
Operating Expenses	\$864	\$0	\$0
Professional Services			
Other Charges	\$7,004,060	\$16,809,744	\$16,809,744
Equipment			
Major Repairs & Constr.			
TOTAL	\$7,004,924	\$16,809,744	\$16,809,744
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 the expenditures in the Medicaid program. In FY 21-22 \$864 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 22	FY 23	FY 24
State General Fund	\$1,816,585	\$5,468,210	\$5,468,210
Agency Self-Generated			
Dedicated			
Federal Funds	\$5,188,339	\$11,341,534	\$11,341,534
Other (Specify)			
TOTAL	\$7,004,924	\$16,809,744	\$16,809,744

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.

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 22	FY 23	FY 24
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$5,188,339	\$11,341,534	\$11,341,534
Local Funds			
TOTAL	\$5,188,339	\$11,341,534	\$11,341,534

*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 21-22, \$432 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 the provisions of the April 1, 2022 emergency rule which amended the provisions governing temporary reimbursement for private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to include a direct care add-on for increased cost related to retaining and hiring direct care staff and to establish a minimum hourly wage for direct care workers. The proposed rule will be beneficial to ICFs/IID as it will increase their ability to recruit and retain direct care staff.

- 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 implementation of this proposed rule will increase expenditures in the Medicaid program by \$7,004,060 for FY 21-22, \$16,809,744 for FY 22-23, and \$16,809,744 for FY 23-24.

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.

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.