

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Individuals with Intellectual Disabilities—Public Facilities Transitional Rate Extension (LAC 50:VII.32915 and 32969)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32915 and §32969 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 amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to extend the period of transitional rates for large facilities that provide continuous nursing coverage to medically fragile populations for an additional year (*Louisiana Register*, Volume 44, Number 1). The department promulgated an Emergency Rule which amended the provisions governing intermediate care facilities for individuals with intellectual disabilities to extend the period of transitional rates for two additional years, and to amend the provisions governing ICFs/IID to align the Rule language with the language currently used in the Medicaid State Plan amendment

approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (*Louisiana Register*, Volume 44, Number 10). This proposed Rule is being promulgated in order to continue the provisions of the October 11, 2018 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Individuals with Intellectual Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32915. Complex Care Reimbursements

A. Private (non-state) intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) may receive an add-on payment to the per diem rate for providing complex care to Medicaid recipients who require such services. The add-on rate adjustment shall be a flat fee amount and may consist of payment for any one of the following components:

1. - 7. ...

B. Private (non-state) owned ICFs/IID may qualify for an add-on rate for recipients meeting documented major medical or behavioral complex care criteria. This must be documented on the complex support need screening tool provided by the department. All medical documentation indicated by the screening tool form

and any additional documentation requested by the department must be provided to qualify for the add-on payment.

C. - I.3.e. ...

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, Bureau of Health Services Financing, LR 42:276 (February 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 44:1447 (August 2018), LR 45:

Subchapter C. Public Facilities

§32969. Transitional Rates for Public Facilities

A. - B. ...

1. The department may extend the period of transition up to September 30, 2020, if deemed necessary, for an active CEA facility that is:

B.1.a. - G. ...

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, Bureau of Health Services Financing, LR 39:326 (February 2013), amended LR 40:2588 (December 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 44:60 (January 2018), LR 44:772 (April 2018), LR 45:

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.

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.

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.

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, no direct or indirect cost to the provider to provide the same level of service, and will have

no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

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Rule Title: Intermediate Care Facilities for
Individuals with Intellectual
Disabilities-Public Facilities
Transitional Rate Extension

Date Rule Takes Effect: October 11, 2018

SUMMARY

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 summary statements, based on the attached worksheets, 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 the implementation of this proposed rule will result in estimated state general fund programmatic savings of approximately \$9,949 for FY 18-19 and \$13,193 for FY 19-20. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 in FY 19-20.

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

It is anticipated that the implementation of this proposed rule will decrease revenue collections by \$18,435 for FY 18-19 and \$25,373 for FY 19-20. It is anticipated that \$270 will be collected in FY 18-19 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 in FY 19-20.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the October 11, 2018 Emergency Rule which amended the provisions governing the reimbursement methodology for public intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) that are being privatized in order to extend the period of transitional rates for a large facility that provides continuous nursing coverage to medically fragile populations for two additional years (one facility impacted). The Emergency Rule also revised the rule language to make technical changes to align with the language currently used in the Medicaid State Plan amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. There is one ICF/IID which may be impacted by the implementation of this proposed rule due to the extension of transitional rates. It is anticipated that implementation of this proposed rule will decrease Medicaid programmatic expenditures for ICFs/IID services by approximately \$28,924 for FY 18-19 and \$38,566 for FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee



LDH/BHSF Budget Head



Legislative Fiscal Officer
or Designee

11/9/18

Date of Signature

11/09/18

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 deliberations 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 the provisions of the October 11, 2018 Emergency Rule which amended the provisions governing the reimbursement methodology for public intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) to extend the period of transitional rates for a large facility that provides continuous nursing coverage to medically fragile populations for two additional years. The Emergency Rule also revised the rule language to make technical changes to align with the language currently used in the Medicaid State Plan amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

The Department of Health, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) in order to extend the period of transitional rates for large facilities that provide continuous nursing coverage to medically fragile populations for an additional year (Louisiana Register, Volume 44, Number 1). The department promulgated an Emergency Rule which amended the provisions governing intermediate care facilities for individuals with intellectual disabilities to extend the period of transitional rates for two additional years, and to amend the provisions governing ICFs/IID to align the Rule language with the language currently used in the Medicaid State Plan amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (Louisiana Register, Volume 44, Number 10). This proposed Rule is being promulgated in order to continue the provisions of the October 11, 2018 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. This proposed rule will result in a decrease in Medicaid programmatic expenditures for ICFs/IID by approximately \$28,384 for FY 18-19 and \$38,566 for FY 19-20. It is anticipated that \$540 will be expended in FY 18-19 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) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 18-19	FY 19-20	FY 20-21
PERSONAL SERVICES			
OPERATING EXPENSES	\$540	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	(\$28,924)	(\$38,566)	
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	(\$28,384)	(\$38,566)	\$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 estimated decreases in expenditures in the Medicaid Program. In FY 18-19, \$540 will be spent 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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND	(\$9,949)	(\$13,193)	\$0
SELF-GENERATED			
FEDERAL FUND	(\$18,435)	(\$25,373)	\$0
OTHER (Specify)			
Total	(\$28,384)	(\$38,566)	\$0

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 THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment 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.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	(\$18,435)	(\$25,373)	\$0
LOCAL FUNDS			
Total	(\$18,435)	(\$25,373)	\$0

*Specify the particular fund being impacted

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

In FY 18-19, \$270 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule continues the provisions of the October 11, 2018 Emergency Rule which amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) to extend the period of transitional rates for a large facility that provides continuous nursing coverage to medically fragile populations for two additional years (one facility impacted). The Emergency Rule also revised the rule language to make technical changes to align with the language used in the current Medicaid State Plan amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

There is one ICF/IID which may be impacted by the implementation of this proposed rule due to the extension of transitional rates. It is anticipated that implementation of this proposed rule will decrease Medicaid programmatic expenditures for ICFs/IID services by approximately \$28,924 for FY 18-19 and \$38,566 for FY 19-20.

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.