

**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.

**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. ...
  - vi. 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: Eloperments 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:

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**

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 Persons with Intellectual Disabilities</u>
	<u>Baton Rouge LA</u>		<u>Leave of Absence Days</u>
		Date Rule Takes Effect:	<u>February 20, 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 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)**

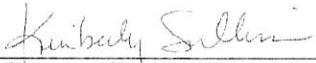
It is anticipated that the implementation of this proposed rule may decrease revenue collections by approximately \$65,754 for FY 23-24, \$65,505 for FY 24-25, and \$65,505 for FY 25-26. It is anticipated that that \$378 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL 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.

  
\_\_\_\_\_  
Signature of Head or Designee

Kimberly Sullivan, JD  
Interim Medicaid Executive Director  
Typed Name & Title of Agency Head or Designee

11/09/2023  
Date of Signature

  
\_\_\_\_\_  
Patrice Thomas, Deputy Fiscal Officer

Legislative Fiscal Officer or Designee

11/09/2023  
\_\_\_\_\_  
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 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.

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 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.

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. It is anticipated that implementation of this proposed rule will result in a reduction in program expenditures in the Medicaid Program of approximately \$95,688 for FY 23-24, \$96,444 for FY 24-25, and \$96,444 for FY 25-26. In FY 23-24, \$756 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) \_\_\_\_\_ 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 24	FY 25	FY 26
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$756	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	(\$96,444)	(\$96,444)	(\$96,444)
EQUIPMENT	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
<b>TOTAL</b>	<b>(\$95,688)</b>	<b>(\$96,444)</b>	<b>(\$96,444)</b>
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 estimated reductions in expenditures in the Medicaid Program for ICF/IID services. In FY 23-24, \$756 is included for the state's administrative expense for promulgation of this proposed rule and the final rule

SOURCE	FY 24	FY 25	FY 26
STATE GENERAL FUND	(\$29,934)	(\$30,939)	(\$30,939)
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	(\$65,754)	(\$65,505)	(\$65,505)
OTHER (Specify)	\$0	\$0	\$0
<b>TOTAL</b>	<b>(\$95,688)</b>	<b>(\$96,444)</b>	<b>(\$96,444)</b>

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 government.

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 24	FY 25	FY 26
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	(\$65,754)	(\$65,505)	(\$65,505)
LOCAL FUNDS	\$0	\$0	\$0
<b>TOTAL</b>	<b>(\$65,754)</b>	<b>(\$65,505)</b>	<b>(\$65,505)</b>

\*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 reductions in the federal share of Medicaid Program expenditures for ICF/IID services. In FY 23-24, \$378 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 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.

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.

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