

NOTICE OF INTENT

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

**Intermediate Care Facilities for Persons with
Intellectual Disabilities
Dedicated Program Funding Pool Payments
(LAC 50:VII.32917)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:VII.32917 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 50 of the 2019 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state providers for rate restorations for home and community-based services and enhancing reimbursements for adult day health services and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). The department elected to carry forward funds for use in State Fiscal Year 2020 to comply with the legislation's directive to allocate the funding in a manner that maximizes the payments to providers to the greatest extent possible.

In compliance with the requirements of Act 50, the department hereby proposes to adopt provisions governing

reimbursement to non-state ICFs/IID to allow one-time, lump sum payments from the dedicated program funding pool.

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

§32917. Dedicated Program Funding Pool Payments

A. Effective for providers active and Medicaid certified as of September 1, 2019; a one-time lump sum payment will be made to intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).

B. Methodology

1. Payment will be based on each provider's specific pro-rated share of an additional dedicated program funding pool totaling \$4,665,635.

2. The pro-rated share for each provider will be determined utilizing the provider's percentage of total annualized program Medicaid days. Annualized program Medicaid days will be calculated utilizing the most recently desk reviewed or audited cost reports as of July 1, 2019.

3. The additional dedicated program funding pool lump sum payments shall not exceed the Medicare upper payment limit in the aggregate for the provider class.

4. The one-time payment will be made on or before June 30, 2020.

5. Payment of the one-time lump sum payment is subject to approval by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS).

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 46:

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 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 permits one-time, lump sum supplemental payments to non-state ICF/IID providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2019.

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 November 12, 2019. 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 November 27, 2019 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 November 12, 2019. 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.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person

Preparing

Statement: Veronica Dent

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Financing

Return P.O. Box 91030

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Rule Title: Intermediate Care Facilities for
Persons with Intellectual
Disabilities
Dedicated Program Funding
Pool Payments

Date Rule Takes Effect: January 20, 2020

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 implementation of this proposed rule will result in estimated state general fund programmatic cost of approximately \$1,567,887 for FY 19-20 but will not result in costs for FY 20-21 and 21-22 as these one-time, lump sum payments will be made from funds appropriated during the 2019 Legislative Session that the department elected to carry forward for use in FY 19-20. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 19-20 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 \$3,098,126 for FY 19-20, but will not result in increases for FY 20-21 and FY 21-22. It is anticipated that \$324 will be collected in FY 19-20 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 OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule adopts provisions governing reimbursement to non-state intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) to allow one-time, lump sum payments from the dedicated program funding pool in compliance with Act 50 of the 2019 Regular Session of the Louisiana Legislature. Qualifying ICFs/IID will benefit from implementation of this proposed rule since it enables the facilities receiving enhanced reimbursement via these one-time, lump sum payments to continue to provide necessary services to Medicaid recipients. It is anticipated that implementation of this proposed Rule will increase Medicaid programmatic expenditures by approximately \$4,665,365 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



Legislative Fiscal Officer
or Designee

10/10/19

Date of Signature



LDH/BHSF Budget Head

10/10/19

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 adopts provisions governing reimbursement to non-state intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) to allow one-time, lump sum payments from the dedicated program funding pool in compliance with Act 50 of the 2019 Regular Session of the Louisiana Legislature.

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

Act 50 of the 2019 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state providers for rate restorations for home and community-based services and enhancing reimbursements for adult day health services and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). The department elected to carry forward funds for use in State Fiscal Year 2020 to comply with the legislation's directive to allocate the funding in a manner that maximizes the payments to providers to the greatest extent possible.

In compliance with the requirements of Act 50, the department hereby proposes to adopt provisions governing reimbursement to non-state ICFs/IID to allow one-time, lump sum payments from the dedicated program funding pool.

- 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 an increase in Medicaid programmatic expenditures by approximately \$4,666,013 for FY 19-20. It is anticipated that \$648 will be expended in FY 19-20 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) X If yes, attach documentation.
(b) If no, provide justification as to why this rule change should be published at this time.

Act 50 of the 2019 Regular Session of the Louisiana Legislature appropriated funds to the Louisiana Department of Health for one-time supplemental payments to non-state intermediate care facilities for individuals with intellectual disabilities and authorized the Department to allocate these funds in a manner that maximizes the payments to providers to the greatest extent possible.

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 19-20	FY 20-21	FY 21-22
PERSONAL SERVICES			
OPERATING EXPENSES	\$648	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$4,665,365	\$0	\$0
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$4,666,013	\$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 increases in expenditures in the Medicaid Program. In FY 19-20, \$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 19-20	FY 20-21	FY 21-22
STATE GENERAL FUND	\$1,567,887	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$3,098,126	\$0	\$0
OTHER (Specify)			
Total	\$4,666,013	\$0	\$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 19-20	FY 20-21	FY 21-22
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$3,098,126	\$0	\$0
LOCAL FUNDS			
Total	\$3,098,126	\$0	\$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.

The amounts reflected above are the estimated increases in federal share of expenditures. In FY 19-20, \$648 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 adopts provisions governing reimbursement to non-state intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) to allow one-time, lump sum payments from the dedicated program funding pool in compliance with Act 50 of the 2019 Regular Session of the Louisiana Legislature.

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

Qualifying ICFs/IID will benefit from implementation of this proposed rule since it enables the facilities receiving enhanced reimbursement via these one-time, lump sum payments to continue to provide necessary services to Medicaid recipients. It is anticipated that implementation of this proposed Rule will increase Medicaid programmatic expenditures by approximately \$4,665,365 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.