

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 amend 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 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID). In compliance with Act 199, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement to ICFs/IID in order to allow a one-time, lump sum payment from the dedicated program funding pool (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the July 31, 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

§32917. Dedicated Program Funding Pool Payments

A. - B.5. ...

C. Effective for providers active and Medicaid certified as of July 1, 2022, a one-time, lump sum payment will be made to non-state, non-public intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).

1. Methodology

a. Payment will be based on each provider's specific pro-rated share of an additional dedicated program funding pool totaling \$27,974,178.

b. The pro-rated share for each provider will be determined utilizing the provider's percentage of program Medicaid days for dates of service in a three consecutive month period selected by the department occurring between January 1, 2022 and December 31, 2022.

c. If the additional dedicated program funding pool lump sum payments exceed the Medicare upper payment limit in the aggregate for the provider class, the department shall

recoup the overage using the same means of distribution in §32917.C.1.b above.

d. The one-time payment will be made on or before June 30, 2023.

e. All facilities receiving payment shall be open and operating as an ICF/IID at the time the payment is made.

f. Payment of the one-time, lump sum payment is subject to approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid 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 46:28 (January 2020, 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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring continued provider participation in the Medicaid Program.

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 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 increases payments to providers for the services they already render.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 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 October 10, 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 October 27, 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 October 10, 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: Veronica Dent Dept.: Health
Phone: 324-3228 Office: Bureau of Health Services Financing
Return
Address: P.O. Box 91030 Rule
Baton Rouge, LA Title: Intermediate Care Facilities for
Persons with Intellectual Disabilities
Dedicated Program Funding Pool
Payments
Date Rule
Takes Effect: July 31, 2022

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 have state programmatic fiscal costs of approximately \$19,308,102 for FY 22-23, but will not result in costs for FY 23-24 and FY 24-25, as these one-time, lump sum payments will be made from funds appropriated during the 2022 Legislative Session. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 22-23 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 \$8,666,724 for FY 22-23, but will not result in increases for FY 23-24 and FY 24-25. It is anticipated that \$324 will be collected in FY 22-23 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)

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the July 31, 2022 Emergency Rule, which amended the reimbursement methodology for non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to allow a one-time, lump sum payment from the dedicated program funding pool. This proposed rule will enable qualifying ICFs/IID that receive enhanced reimbursement via these one-time, lump sum payments to continue to provide necessary services to Medicaid beneficiaries. It is anticipated that implementation of this proposed rule will result in increased expenditures for ICF/IID services of approximately \$27,974,178 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc

Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

September 6, 2022
Date of Signature

Alan M. Brodeur

Legislative Fiscal Officer or Designee

9/6/22
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).

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the July 31, 2022 Emergency Rule, which amended the reimbursement methodology for non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to allow a one-time, lump sum payment from the dedicated program funding pool

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

Act 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID). In compliance with Act 199, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement to ICFs/IID in order to allow a one-time, lump sum payment from the dedicated program funding pool (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the July 31, 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 programmatic costs to the Medicaid program of approximately \$27,974,826 in FY 22-23. In FY 22-23, \$648 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) X Yes. If yes, attach documentation.

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

Act 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) and thereby, authorizes the expenditure of these funds. Implementation of this proposed rule will enable qualifying ICFs/IID that receive one-time, lump sum payments from the dedicated funding pool to continue to provide necessary services to Medicaid beneficiaries.

**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 23	FY 24	FY 25
Personal Services			
Operating Expenses	\$648	\$0	\$0
Professional Services			
Other Charges	\$27,974,178	\$0	\$0
Equipment			
Major Repairs & Constr.			
TOTAL	\$27,974,826	\$0	\$0
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 programmatic expenditures in the Medicaid program. In FY 22-23, \$648 will be spent for the state's administrative expense for promulgation of this proposed rule and final rule.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 23	FY 24	FY 25
State General Fund	\$19,308,102	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds	\$8,666,724	\$0	\$0
Other (Specify)			
TOTAL	\$27,974,826	\$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 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 government 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?

<u>REVENUE INCREASE/DECREASE</u>	<u>FY 23</u>	<u>FY 24</u>	<u>FY 25</u>
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$8,666,724	\$0	\$0
Local Funds			
TOTAL	\$8,666,724	\$0	\$0

*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 increases in the federal share of programmatic expenditures for the Medicaid Program. In FY 22-23, \$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.

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the July 31, 2022 Emergency Rule, which amended the reimbursement methodology for non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to allow a one-time, lump sum payment from the dedicated program funding pool. This proposed rule will enable qualifying ICFs/IID that receive enhanced reimbursement via these one-time, lump sum payments to continue to provide necessary services to Medicaid beneficiaries.

- 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 result in increased expenditures for ICF/IID services of approximately \$27,974,178 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.

This rule has no known effect on competition and employment.