

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Dallas Regional Office  
1301 Young Street, Suite 833  
Dallas, Texas 75202



**DIVISION OF MEDICAID & CHILDREN'S HEALTH - REGION VI**

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November 30, 2015

Ms. Ruth Kennedy, Director  
Bureau of Health Services Financing  
Department of Health and Hospitals  
Post Office Box 91030  
Baton Rouge, Louisiana 70821-9030

RE: Louisiana 15-0025

Dear Ms. Kennedy:

We have reviewed the proposed State plan amendment (SPA) to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 15-0025. The purpose of this amendment is to allow for new supplemental payments to qualifying private owned Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID). Effective for dates of service on or after August 1, 2015, monthly supplemental payments shall be made to qualifying privately-owned ICFs/ID.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act (the Act) and the regulations at 42 Code of Federal Regulations (CFR) 447 Subpart C. Before we can continue processing this amendment, we need additional or clarifying information.

The regulation at 42 CFR 447.252(b) requires that the State plan include a comprehensive description of the methods and standards used to set payment rates. Section 6002 of the State Medicaid Manual explains further that the State plan must be comprehensive enough to determine the required level of Federal Financial Participation (FFP) and to allow interested parties to understand the rate setting process and the items and services that are paid through these rates. Further, since the plan is the basis for FFP, it is important that the plan's language be clear and unambiguous. Therefore, we have the following questions/concerns regarding TN 15-0025:

**FORM-179**

1. Form 179, Block 7 – Please provide a detailed analysis of how the FFP determination was made and provide supporting documentation of the calculation for Federal Fiscal Year (FFY) 2016 and 2017. Also, please include the number of providers that are expected to participate in the new supplemental payments for private ICF/IIDs.

## **EFFICIENCY, ECONOMY, AND QUALITY OF CARE**

2. SPA amendment LA15-0025 proposes to establish a new supplemental payment methodology for private ICF/IID facilities that have a lease arrangement for state-owned ICF/IID beds. Section 1902(a) (30) (A) of the Act requires that payment rates must be consistent with “efficiency, economy and quality of care.” Please justify how the establishment of these new supplemental payments is consistent with the principles of “efficiency, economy, and quality of care.”

## **SIMPLICITY OF ADMINISTRATION**

3. Section 1902(a) (19) of the Act requires that care and services will be provided with “simplicity of administration and the best interest of the recipients.” Please explain why this amendment is consistent with simplicity of administration and in the best interest of the nursing home recipients.

## **LEGISLATION**

4. Please clarify if the State, Parish, or a Hospital Service District has issued any proposals or enacted any legislation to support the new supplemental payments methodology for private ICF/IID facilities have a lease arrangement for state-owned ICF/IID beds. Please submit that documentation for our review.

## **STATE PLAN LANGUAGE – 4.19-D**

5. Please note that this methodology is not comprehensive. To comply with regulations at 42 CFR 447.252(b), the State plan methodology must be comprehensive enough to determine the required level of payment and the FFP to allow interested parties to understand the rate setting process and the items and services that are paid through these rates. Claims for federal matching funds cannot be based upon estimates or projections.

Currently, the methodology is too broad based. CMS suggests the following changes:

- a. Please send us a list of providers and their address on who is eligible for the new supplemental payments.
- b. Please clarify how a private ICF/IID qualifies for the supplemental payments. Please include specific language on Attachment 4.19-D page 20.
- c. As you are aware, CMS must have copies of all signed standard Cooperative Endeavor Agreements (CEAs) and leases, agreements and leases under active consideration, templates of CEAs and leases being considered, management agreements, MOUs, management contracts, loan agreements, and any other agreements that would present the possibility of a transfer of value between the two entities. Please send us signed copies for our review.

CMS has concerns over a private ICF/IID leasing state-owned beds. CMS has concerns that such financial arrangements meet the definition of non-bona fide provider donations as described in federal statute and regulations. Detailed information needs to be provided to determine whether the dollar value of the contracts between private and public entities had any fair market valuation. There can be no transfer of value or a return or reduction of payments reflected in these agreements.

Additionally, whether the State is a party to the financial arrangement or not, the State is ultimately responsible to ensure that the funding is appropriate. The State would be responsible for refunding any FFP if CMS finds the funding source inappropriate.

- d. Please clarify why the state needs to make a monthly supplemental payment as specified in 4.19-D page 20. See below:

*Effective for dates of service on or after August 1, 2015, monthly supplemental payments shall be made to qualifying privately-owned ICFs/ID.*

- e. Please clarify how the monthly supplemental payment will be calculated. Will the State perform a reconciliation? Please include specific language on Attachment 4.19-D page 20.
6. CMS wants the State's assurance regarding financial transactions. The following sentence should be included in the reimbursement methodology:

“No payment under this section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity.”

7. Did the State receive any feedback or complaints from the public regarding the current proposal or about the changes to future ICF/IID arrangements? If so, what were the concerns and how were they addressed and resolved?

**Please clarify the additional questions related to the new supplemental payments:**

8. Please justify why Louisiana needs to pay supplemental payments to private ICF/IID facilities that have a lease arrangement for state-owned ICF/IID beds. Will all of the supplemental payment be made to and retained by the private facility?
9. Why do these payments need to be made to these specific providers?
10. Why has Louisiana decided to target these particular providers to the exclusion of other providers of the same services?
11. Does the state expect that these payments will positively impact access to care or quality of care?
12. If it is to improve access, please provide data that shows there is an access issue.

13. What outcome does the state hope to achieve by targeting payments to private ICF/IID providers that have a lease arrangement for state-owned ICF/IID beds?
14. How will the state monitor the impact of the supplemental payments with respect to the expected outcomes?
15. How will the state measure if targeting payments resulted in the desired outcome?
16. How do the supplemental payments compare to the base payments?

### **PRIVATE ICF/IID PROVIDERS**

17. How many private ICF/IID providers have any lease or management arrangements with state-owned ICF/IID?
18. Will there be any arrangements, agreements and/or MOUs with the Hospital Service District?
19. Please describe the arrangement(s) how the private ICF/IID currently operates.
20. Do any of the private ICF/IID facilities have any management arrangements with State, Parish, or any other local government?
21. Please disclose all entities with which the State is in discussions concerning the actions proposed under this SPA and the intended outcome of such discussions.
22. Please explain how the lease arrangements will be operationalized. Will a portion of beds or all beds be leased from a specific facility? How many beds does the state intend to offer for lease in years 1, 2, and 3 of this program? How will the beds be staffed and who will receive the per diem reimbursement?
23. Will these lease arrangements allow for private ICF/IID providers to purchase the state-owned ICF/IID facilities?
24. What powers are authorized to the private ICF/IID and the state-owned ICF/IID? Please provide documentation from the state or parish legislation to support their authorities.
25. What are the private ICF/IID and the state-owned ICF/IID main functions and responsibilities?
26. Do the state-owned ICF/IID have taxing authority or the authority to issue bonds/debt?
27. Please provide example(s) completed or proposed cost reports for an ICF/IID that is or will be operated or owned by a private ICF/IID provider.
28. Who will maintain the license of the ICF/IIF bed?
29. Will another entity own the property and equipment of the state-owned ICF/IID facility?

30. Will any management companies also own the property and equipment of the ICF/IID facility?
31. Are any of the management companies affiliated with or related to the state-owned ICF/IID or the entity that owns the license of the ICF/IID?
32. Please confirm that any costs booked on the ICF/IID cost reports are not duplicated on any other providers cost reports.
33. How will the State monitor the cost reports to assure that there is no duplication of costs? What systems are in place to prevent duplication of costs?
34. Please provide example audited financial statements of the private ICF/IID and the state-owned ICF/IID facilities.
35. Please explain which entity is the enrolled Medicaid provider with the State. For example, is the private ICF/IID provider the one that will bill for the State-owned beds?
36. Will there be any management and/or consulting agreements between these two entities. Please provide an example of these agreements.

#### **UPPER PAYMENT LIMIT (UPL)**

37. Please note CMS has recently received the ICF/IID UPL demonstration for SFY 2015. CMS has concerns that there may not be enough room in the UPL demonstration to allow for the additional FFP of approximately \$6 million under this proposed plan amendment. Regulations at 42 CFR 447.272 require that payments in the aggregate will not exceed a reasonable estimate of what Medicare would pay for similar services.

Please confirm the UPL ownership bucket from which Louisiana intends to make the payment, and explain why Louisiana believes that is the appropriate bucket

Please provide an UPL demonstration applicable to the payments for the future rate period (i.e. SFY 2016 and SFY 2017) for all classes (state government, non-state government, and private).

The UPL demonstrations should include a comprehensive narrative description of the methodology (step by step) used to determine the UPL. The demonstration should also include a spreadsheet with provider specific information that starts with the source data and identifies the numerical result of each step of the UPL calculation. All source data should be clearly referenced (i.e., cost report year, W/S line, columns, and claims reports, etc...) in the demonstration. The State should also keep all source documentation on file for review.

In accordance with our guidelines to State Medicaid Directors dated January 2, 2001, if we have not received the State's response to our request for additional information within 90 days from the date of this letter, we will initiate disapproval action on the amendment.

We are requesting this additional/clarifying information under provisions of section 1915(f) of the Social Security Act (added by PL 97-35). This has the effect of stopping the 90-day clock for CMS to take action on the material. A new 90-day clock will not begin until we receive your response to this request.

Please submit your response to the following address:

Centers for Medicare and Medicaid Services  
Division of Medicaid and Children's Health Operations  
Dallas Regional Office  
Attention: Bill Brooks  
1301 Young Street, Suite 833  
Dallas, Texas 75202

If you have any questions, please contact Tamara Sampson, of my staff, at (214) 767-6431 or by e-mail at [Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)

Sincerely,

A handwritten signature in black ink that reads "Bill Brooks". The signature is written in a cursive, slightly slanted style.

Bill Brooks  
Associate Regional Administrator  
Division of Medicaid and Children's Health Operations