

SECTION 309.30.90.

FISCAL YEAR 2012 MEDICAID REIMBURSEMENT
SYSTEM FOR ICFs-MR

(A) As used in this section:

"Capped per diem rate" means the per diem rate calculated for an ICF-MR under paragraph (D) of this section.

"Change of operator" means an entering operator becoming the operator of an intermediate care facility for the mentally retarded in the place of the exiting operator.

(1) Actions that constitute a change of operator include the following:

(a) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(b) A transfer of all the exiting operator's ownership interest in the operation of the facility to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the facility is also transferred;

(c) A lease of the facility to the entering operator or the exiting operator's termination of the exiting operator's lease;

(d) If the exiting operator is a partnership, dissolution of the partnership;

(e) If the exiting operator is a partnership, a change in composition of the partnership unless both of the following apply:

(i) The change in composition does not cause the partnership's dissolution under state law.

(ii) The partners agree that the change in composition does not constitute a change in operator.

(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

(2) The following, alone, do not constitute a change of operator:

(a) A contract for an entity to manage an intermediate care facility for the mentally retarded as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with an intermediate care facility for the mentally retarded if an entering operator does not become the operator in place of an exiting operator;

(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.

"Entering operator" means the person or government entity that will become the operator of an intermediate care facility for the mentally retarded when a change of operator occurs.

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"Exiting operator" means any of the following:

- (1) An operator that will cease to be the operator of an intermediate care facility for the mentally retarded on the effective date of a change of operator;
- (2) An operator that will cease to be the operator of an intermediate care facility for the mentally retarded on the effective date of a facility closure;
- (3) An operator of an intermediate care facility for the mentally retarded that is undergoing or has undergone a voluntary termination.

"Franchise permit fee" means the fee reimbursed to ICFs-MR under section 5101:3-3-82.1 of Attachment 4.19D of the state plan.

"ICF-MR" means an intermediate care facility for the mentally retarded as defined in section 5101:3-3-01 of Attachment 4.19D of the state plan.

"ICF-MR services" means services covered by the Medicaid program that an ICF-MR provides to a Medicaid recipient eligible for the services.

"Medicaid days" means all days during which a resident who is a Medicaid recipient occupies a bed in an ICF-MR that is included in the ICF-MR's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made under section 5101:3-3-16.8 of Attachment 4.19C of the state plan are considered Medicaid days proportionate to the percentage of the ICF-MR's per resident per day rate paid for those days.

"Modified per diem rate" means the per diem rate calculated for an ICF-MR under paragraph (C) of this section.

"Unmodified per diem rate" means the per diem rate calculated for an ICF-MR under Attachment 4.19D of the state plan.

(B) This section applies to each provider of an ICF-MR to which either of the following applies:

- (1) The provider has a valid Medicaid provider agreement for the ICF-MR on June 30, 2011, and a valid Medicaid provider agreement for the ICF-MR during fiscal year 2012.
- (2) The ICF-MR undergoes a change of operator that takes effect during fiscal year 2012, the exiting operator has a valid Medicaid provider agreement for the ICF-MR on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF-MR during fiscal year 2012.

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(C) An ICF-MR's total modified per diem rate for fiscal year 2012 shall be the ICF-MR's total unmodified per diem rate for that fiscal year with the following modifications:

- (1) In place of the inflation adjustment otherwise made under section 5101:3-3-82 of Attachment 4.19D of the state plan, the ICF-MR's desk-reviewed, actual, allowable, per diem other protected costs, excluding the franchise permit fee, from calendar year 2010 shall be multiplied by 1.0123.
- (2) In place of the maximum cost per case-mix unit established for the ICF-MR's peer group under section 5101:3-3-79 of Attachment 4.19D of the state plan, the ICF-MR's maximum costs per case-mix unit shall be the following:
 - (a) In the case of an ICF-MR with more than eight beds, \$108.21;
 - (b) In the case of an ICF-MR with eight or fewer beds, \$102.21.
- (3) In place of the inflation adjustment otherwise calculated under section 5101:3-3-79 of Attachment 4.19D of the state plan, an inflation adjustment of 1.0123 shall be used.
- (4) In place of the maximum rate for indirect care costs established for the ICF-MR's peer group under section 5101:3-3-83 of Attachment 4.19D of the state plan, the maximum rate for indirect care costs for the ICF-MR's peer group shall be the following:
 - (a) In the case of an ICF-MR with more than eight beds, \$68.98;
 - (b) In the case of an ICF-MR with eight or fewer beds, \$59.60.
- (5) In place of the inflation adjustment otherwise calculated under section 5101:3-3-83 of Attachment 4.19D of the state plan, an inflation adjustment of 1.0123 shall be used.
- (6) In place of the efficiency incentive otherwise calculated under section 5101:3-3-83 of Attachment 4.19D of the state plan, the ICF-MR's efficiency incentive for indirect care costs shall be the following:
 - (a) In the case of an ICF-MR with more than eight beds, \$3.69;
 - (b) In the case of an ICF-MR with eight or fewer beds, \$3.19.
- (7) The ICF-MR's efficiency incentive for capital costs, as determined under section 5101:3-3-84.2 of Attachment 4.19D of the state plan, shall be reduced by 50 per cent.

(D) An ICF-MR's total capped per diem rate for fiscal year 2012 shall be the ICF-MR's total unmodified per diem rate for that fiscal year reduced by the percentage by which the mean total unmodified per diem rates for all ICFs-MR in this state for fiscal year 2012, weighted by May 2011 Medicaid days and calculated as of July 1, 2011, exceeds \$282.59.

- (E) Except as otherwise provided by this section, the provider of an ICF-MR to which this section applies shall be paid, for ICF-MR services the ICF-MR provides during fiscal year 2012, a total per diem rate determined as follows:
- (1) Add the ICF-MR's total modified per diem rate to the ICF-MR's total capped per diem rate;
 - (2) Divide the amount determined under paragraph (E)(1) of this section by two.
- (F) If the mean total per diem rate for all ICFs-MR to which this section applies, weighted by May 2011 Medicaid days and determined under paragraph (E) of this section as of July 1, 2011, is other than \$282.59, the Department of Job and Family Services shall adjust, for fiscal year 2012, the total per diem rate for each ICF-MR to which this section applies by a percentage that is equal to the percentage by which the mean total per diem rate is greater or less than \$282.59.
- (G) If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department of Job and Family Services shall reduce the amount it pays providers of ICF-MR services under this section as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.
- (H) The Department of Job and Family Services shall follow this section in determining the rate to be paid providers of ICF-MR services subject to this section notwithstanding anything to the contrary in Attachment 4.19D of the state plan.

SECTION 309.33.10

FISCAL YEAR 2013 MEDICAID REIMBURSEMENT
SYSTEM FOR ICFs-MR

(A) As used in this section:

"Capped per diem rate" means the per diem rate calculated for an ICF-MR under division (D) of this section.

"Change of operator" means an entering operator becoming the operator of an intermediate care facility for the mentally retarded in the place of the exiting operator.

(1) Actions that constitute a change of operator include the following:

(a) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(b) A transfer of all the exiting operator's ownership interest in the operation of the facility to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the facility is also transferred;

(c) A lease of the facility to the entering operator or the exiting operator's termination of the exiting operator's lease;

(d) If the exiting operator is a partnership, dissolution of the partnership;

(e) If the exiting operator is a partnership, a change in composition of the partnership unless both of the following apply:

(i) The change in composition does not cause the partnership's dissolution under state law.

(ii) The partners agree that the change in composition does not constitute a change in operator.

(f) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

(2) The following, alone, do not constitute a change of operator:

(a) A contract for an entity to manage an intermediate care facility for the mentally retarded as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(b) A change of ownership, lease, or termination of a lease of real property or personal property associated with an intermediate care facility for the mentally retarded if an entering operator does not become the operator in place of an exiting operator;

(c) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stock, if the same corporation continues to be the operator.

"Entering operator" means the person or government entity that will become the operator of an intermediate care facility for the mentally retarded when a change of operator occurs.

"Exiting operator" means any of the following:

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- (1) An operator that will cease to be the operator of an intermediate care facility for the mentally retarded on the effective date of a change of operator;
- (2) An operator that will cease to be the operator of an intermediate care facility for the mentally retarded on the effective date of a facility closure;
- (3) An operator of an intermediate care facility for the mentally retarded that is undergoing or has undergone a voluntary termination.

"Franchise permit fee" means the fee reimbursed to ICFs-MR under section 5101:3-3-82.1 of Attachment 4.19D of the state plan.

"ICF-MR" means an intermediate care facility for the mentally retarded as defined in section 5101:3-3-01 of Attachment 4.19D of the state plan.

"ICF-MR services" means services covered by the Medicaid program that an ICF-MR provides to a Medicaid recipient eligible for the services.

"Medicaid days" means all days during which a resident who is a Medicaid recipient occupies a bed in an ICF-MR that is included in the ICF-MR's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made under section 5101:3-3-16.8 of Attachment 4.19C of the state plan are considered Medicaid days proportionate to the percentage of the ICF-MR's per resident per day rate paid for those days.

"Modified per diem rate" means the per diem rate calculated for an ICF-MR under paragraph (C) of this section.

"Unmodified per diem rate" means the per diem rate calculated for an ICF-MR under Attachment 4.19D of the state plan.

(B) This section applies to each provider of an ICF-MR to which either of the following applies:

- (1) The provider has a valid Medicaid provider agreement for the ICF-MR on June 30, 2012, and a valid Medicaid provider agreement for the ICF-MR during fiscal year 2013.
- (2) The ICF-MR undergoes a change of operator that takes effect during fiscal year 2013, the exiting operator has a valid Medicaid provider agreement for the ICF-MR on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF-MR during fiscal year 2013.

(C) An ICF-MR's total modified per diem rate for fiscal year 2013 shall be the ICF-MR's total unmodified per diem rate for that fiscal year with the following modifications:

- (1) In place of the inflation adjustment otherwise made under section 5101:3-3-82 of Attachment 4.19D of the state plan, the ICF-MR's desk-reviewed, actual, allowable, per

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diem other protected costs, excluding the franchise permit fee, from calendar year 2011 shall be multiplied by 1.0123.

(2) In place of the maximum cost per case-mix unit established for the ICF-MR's peer group under section 5101:3-3-79 of Attachment 4.19D of the state plan, the ICF-MR's maximum costs per case-mix unit shall be the following:

(a) In the case of an ICF-MR with more than eight beds, \$108.21;

(b) In the case of an ICF-MR with eight or fewer beds, \$102.21.

(3) In place of the inflation adjustment otherwise calculated under section 5101:3-3-79 of Attachment 4.19D of the state plan, an inflation adjustment of 1.0123 shall be used.

(4) In place of the maximum rate for indirect care costs established for the ICF-MR's peer group under section 5101:3-3-83 of Attachment 4.19D of the state plan, the maximum rate for indirect care costs for the ICF-MR's peer group shall be the following:

(a) In the case of an ICF-MR with more than eight beds, \$68.98;

(b) In the case of an ICF-MR with eight or fewer beds, \$59.60.

(5) In place of the inflation adjustment otherwise calculated under section 5101:3-3-83 of Attachment 4.19D of the state plan, an inflation adjustment of 1.0123 shall be used.

(6) In place of the efficiency incentive otherwise calculated under section 5101:3-3-83 of Attachment 4.19D of the state plan, the ICF-MR's efficiency incentive for indirect care costs shall be the following:

(a) In the case of an ICF-MR with more than eight beds, \$3.69;

(b) In the case of an ICF-MR with eight or fewer beds, \$3.19.

(7) The ICF-MR's efficiency incentive for capital costs, as determined under section 5101:3-3-84.2 of Attachment 4.19D of the state plan, shall be reduced by 50 per cent.

(D) An ICF-MR's total capped per diem rate for fiscal year 2013 shall be the ICF-MR's total unmodified per diem rate for that fiscal year reduced by the percentage by which the mean total unmodified per diem rates for all ICFs-MR in this state for fiscal year 2013, weighted by May 2012 Medicaid days and calculated as of July 1, 2012, exceeds \$282.92.

(E) Except as otherwise provided by this section, the provider of an ICF-MR to which this section applies shall be paid, for ICF-MR services the ICF-MR provides during fiscal year 2013, a total per diem rate determined as follows:

(1) Add the ICF-MR's total modified per diem rate to the ICF-MR's total capped per diem rate;

(2) Divide the amount determined under paragraph (E)(1) of this section by two.

- (F) If the mean total per diem rate for all ICFs-MR to which this section applies, weighted by May 2012 Medicaid days and determined under paragraph (E) of this section as of July 1, 2012, is other than \$282.92, the Department of Job and Family Services shall adjust, for fiscal year 2013, the total per diem rate for each ICF-MR to which this section applies by a percentage that is equal to the percentage by which the mean total per diem rate is greater or less than \$282.92.
- (G) If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department of Job and Family Services shall reduce the amount it pays providers of ICF-MR services under this section as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.
- (H) The Department of Job and Family Services shall follow this section in determining the rate to be paid providers of ICF-MR services subject to this section notwithstanding anything to the contrary in Attachment 4.19D of the state plan.

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Attachment 4.19D
Supplement 2
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"SUNSHINE/KING ROAD FAMILY CARE HOME is an ICF-MR outlier provider on the Medicaid program. SUNSHINE/KING ROAD FAMILY CARE HOME receives a per diem rate of ~~\$442.93~~ \$481.96 per resident per day for each Medicaid resident in lieu of the calculated rate set forth under ICF-MR Supplement 2."

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OS Notification

State/Title/Plan Number: Ohio 11-023
Type of Action: SPA Approval
Required Date for State Notification: June 20, 2012
Fiscal Impact: FY 2011 \$1,499,000
FY 2012 \$4,529,000

Number of Services Provided by Enhanced Coverage, Benefits or Retained Enrollment: 0

Number of Potential Newly Eligible People: 0

Eligibility Simplification: No

Provider Payment Increase: Yes

Delivery System Innovation: No

Number of People Losing Medicaid Eligibility: No

Reduces Benefits: No

Detail: Effective for services on or after July 1, 2011, this amendment revises ICF/MR reimbursement rate setting methodologies for SFYs 2012 and 2013. Specifically, this amendment proposes a rate setting methodology that reflects the average of rates calculated according to two prospective cost based reimbursement methodologies. Additionally, this amendment increases the per diem rate for SFY 2012 for the ICF/MR outlier provider Sunshine/King Road Family Care Home. Funding the non-Federal share of Medicaid payments for ICF/MR services comes from State appropriations and provider tax. The State met public process requirements. There are no issues with the UPL.

Other Considerations: This plan amendment has not generated significant outside interest and we do not recommend the Secretary contact the governor.

Recovery Act Impact: The Regional office has reviewed this state plan amendment in conjunction with the Recovery Act and, based on the available information provided by the State regarding 1) MOE; 2) local match; 3) prompt pay; 4) rainy day funds, and 5) eligible expenditures, the Regional Office believes that the State is not in violation of the Recovery Act requirements noted above.

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National Institutional Reimbursement Team