



Michael R. Pence, Governor
State of Indiana

Office of General Counsel
402 W. WASHINGTON STREET, ROOM W451, MS27
INDIANAPOLIS, IN 46204-2744

REQUEST FOR RULEMAKING AND FAMILY IMPACT CERTIFICATION

PURPOSE FOR RULE

- In 2013, FSSA promulgated administrative rules that modified previously implemented Medicaid reimbursement rate reductions that are set to expire on June 30, 2015. These modifications will need to remain in place through at least the next state biennium, until June 30, 2017.
- FSSA also proposes to amend its rules concerning the nursing facility quality assessment fee ("QAF") to ensure the Medicaid administrative rules are consistent with state law concerning the nursing facility QAF.
- FSSA anticipates an effective date for this rule of July 1, 2015.

REQUESTED RESPONSE TIME

Given this effective date, FSSA respectfully requests a response to this submission on or before **January 23, 2015**.

Thank you for your attention to this matter. Should you have any questions regarding this submission, please feel free to contact me at kim.crawford@fssa.in.gov or Joy Heim at joy.heim@fssa.in.gov.





Michael R. Pence, Governor
State of Indiana

Indiana Family and Social Services Administration

402 W. WASHINGTON STREET, P.O. BOX 7083
INDIANAPOLIS, IN 46207-7083

John J. Wernert, M.D., Secretary

TO: Christopher D. Atkins, Director
Office of Management and Budget

RE: Request to proceed with rulemaking—Continued Rate Reductions for Inpatient and Outpatient Hospital Services, Home Health Services, Nursing Facility Services, Intermediate Care Facilities for Individuals with Intellectual Disabilities Services, and the Continuation of the \$3.90 Pharmacy Dispensing Fee; Changes to Comprehensive Rehabilitative Management Needs Facility (CRMNF) Reimbursement; Changes to the Physician Surgery Policy; and Extension of the Nursing Facility (NF) Quality Assessment Fee (QAF) through June 30, 2017 along with the NF QAF Enhanced Reimbursement.

DATE: January 21, 2015

FROM: John J. Wernert, M.D., Secretary

The Indiana Family and Social Services Administration's ("FSSA") Office of Medicaid Policy and Planning ("OMPP") intends to adopt a rule that continues the current reductions to Medicaid reimbursement to various Medicaid provider types that are referenced above. These Medicaid rate reductions were previously codified pursuant to LSA Document # 13-422. That rule included time limits of these rate reductions, and in order for these rate reductions to continue, FSSA must promulgate these amended administrative rules. In addition, the proposed rule will reduce the Medicaid reimbursement rate paid to privately (nonstate) owned intermediate care facilities for the mentally retarded (ICFs/MR) that are licensed as a comprehensive rehabilitative management needs facility (CRMNF), and will update the list of procedure codes exempt from the global surgery policy.

Additionally, FSSA proposes to amend its rules concerning the nursing facility quality assessment fee ("QAF"), nursing facility change of ownership requirements, and nursing facility per diem items to ensure the Medicaid administrative rules are consistent with state law concerning the nursing facility QAF and federal regulations regarding nursing facility change in ownership, as well as clarify existing policy regarding certain products being included in the nursing facility per diem rate or being reimbursed through the Medicaid pharmacy program benefit.



Pursuant to Executive Order 13-03 (“Executive Order”) and the Financial Management Circular 2013-01, FSSA is requesting that the Office of Management and Budget (“OMB”) Director approve its request to proceed with rulemaking pursuant to the exceptions listed in subsection 6.f and 6.g.

Background

In 2013, FSSA promulgated administrative rules that modified previously implemented Medicaid reimbursement rate reductions that are set to expire on June 30, 2015. It has been determined that these modifications will need to remain in place through at least the next state biennium, until June 30, 2017. FSSA has been in close consultation with the State Budget Agency in determining the specific details of this promulgation.

The nursing facility QAF was initially authorized by Section 70 of P.L. 224-2003 and has been reauthorized by the General Assembly since its initial passage. This rule amendment will bring the administrative rules into conformity with the authorized time limit of the enabling statute for the QAF program.

State reduction exception

Section 6.f. of the Executive Order excepts any rule from the rulemaking moratorium that “reduce[s] State spending.” The purpose of the proposed rule amendments is to maintain the currently reduced Medicaid reimbursement rates for certain Medicaid providers effective July 1, 2015. The proposed amendments extend the reduced Medicaid reimbursement rates through July 1, 2017. The specific reimbursement rate reductions include:

- Three percent (3%) reduction for inpatient and outpatient hospital services.
- Three percent (3%) reduction for home health services.
- One percent (1%) reduction for intermediate care facility services for the mentally retarded.
- Three percent (3%) reduction for nursing facility services.
- Setting the pharmacy dispensing fee at \$3.90.

The proposed rule amendments will also reduce the Medicaid reimbursement rate paid to privately (nonstate) owned intermediate care facilities for the mentally retarded (ICFs/MR) that are licensed as a comprehensive rehabilitative management needs facility (CRMNF). The purpose of these amendments is to allow the FSSA to operate within its budget. It is FSSA’s opinion that the proposed rule meets the “reduced state spending” exception outlined in the Executive Order.

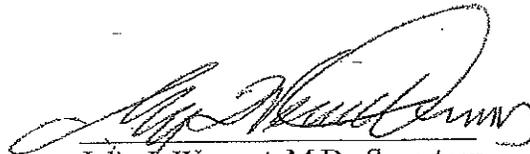
Health or Safety Exception

Section 6.g. of the Executive Order excepts any rule from the rulemaking moratorium “whose predominate purpose and effect are to address matters of emergency or health or safety....” The proposed rule amendments will update the list of procedure codes exempt from the global

surgery policy by adding delivery CPT codes 59614 and 59622. The purpose of this amendment is to clarify and maintain a consistent reimbursement policy to enable FSSA to continue providing appropriate healthcare to its beneficiaries to maintain their health. Additionally, the extension of the collection of the nursing facility QAF as well as the enhanced reimbursement is necessary for the administrative rules to comply with Indiana statute.

Accordingly, FSSA believes that the proposed rule amendments meet the foregoing exception to the rulemaking moratorium and requests that OMB approve FSSA's request to proceed with the rulemaking necessary to implement this change. Should OMB like to further discuss this proposed rule before making any decision, FSSA would be happy to make a program contact available at OMB's convenience.

Office of the Secretary of Family and
Social Services



John J. Wernert, M.D., Secretary

CC: Joy Heim, Yvonne Burke, Derris Harrison, Brandon Shirley, Keenan Buoy (Myers and Stauffer), Kris Knerr (Myers and Stauffer), Douglas Jenkins (Myers and Stauffer), Brian Musial





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Indiana Family and Social Services Administration

402 W. WASHINGTON STREET, P.O. BOX 7083
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John J. Wernert, M.D., Secretary

FSSA's Family Impact Statement for Continued Rate Reductions for Inpatient and Outpatient Hospital Services, Home Health Services, Nursing Facility Services, Intermediate Care Facilities for Individuals with Intellectual Disabilities Services, and the Continuation of the \$3.90 Pharmacy Dispensing Fee; Changes to Comprehensive Rehabilitative Management Needs Facility (CRMNF) Reimbursement; Changes to the Physician Surgery Policy; and Extension of the Nursing Facility (NF) Quality Assessment Fee (QAF) through June 30, 2017 along with the NF QAF Enhanced Reimbursement

Executive Order 13-05 ("Order") requires the Family and Social Services Administration ("FSSA") to assess a policy or proposed rule's impact on family formation and general well-being and to certify its compliance with the Order. FSSA hereby submits this certification that it has assessed the proposed rule's impact on family formation and general well-being pursuant to the enumerated considerations listed in the Order.

Background and summary of the rule

The proposed rule amendments continue the reduced Medicaid reimbursement rates for certain Medicaid providers effective July 1, 2015 through June 30, 2017. These specific reductions in rates were originally modified, effective January 1, 2014, and include:

- Three percent (3%) reduction for inpatient and outpatient hospital services.
- Three percent (3%) reduction for home health services.
- One percent (1%) reduction for intermediate care facility services for the mentally retarded.
- Three percent (3%) reduction for nursing facility services.
- Setting the pharmacy dispensing fee at \$3.90.

The proposed rule amendments also make the following changes:

- Revise the Medicaid reimbursement rate paid to privately (nonstate) owned intermediate care facilities for the mentally retarded (ICFs/MR) that are licensed as a comprehensive rehabilitative management needs facility (CRMNF) from \$639.18 to \$626.26 per resident day.
- Update the list of procedure codes exempt from the global surgery policy.
- Extends the collection of the nursing facility Quality Assessment Fee (QAF) through June 30, 2017.
- Extends the nursing facility QAF enhanced reimbursement through June 30, 2017.

Impact of the proposed rule on the family well-being or family formation



FSSA assessed the proposed rule's impact on family formation and well-being in light of the six (6) considerations enumerated in the Order. Overall, FSSA expects that the proposed rule will have a **neutral** impact on family formation and family well-being. FSSA is submitting this certification to the OMB that it has considered the requisite criteria in the Order in developing the proposed rule. FSSA's response to the enumerated measures is as follows:

- 1) **Whether or not this action by government strengthens or erodes the stability of the family and the marital commitment.**

Response: FSSA does not expect the proposed rule amendments to destabilize the family or marital commitment. The rate reimbursement provisions are administrative in nature and do not impact family well-being or family formation. In fact, the proposed rule amendments primarily concern the relationship between the Medicaid program and the payment to the above-referenced participating Medicaid providers

- 2) **Whether or not this action encourages or discourages non-marital childbearing.**

Response: The rate reimbursement provisions are administrative in nature and primarily concern the relationship between the Medicaid program and the payment to the above-referenced participating Medicaid providers. For these reasons, the proposed rule amendments neither encourage nor discourage non-marital childbearing.

- 3) **Whether or not this action respects or inhibits the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.**

Response: The rate reimbursement provisions are administrative in nature and primarily concern the relationship between the Medicaid program and the payment to the above-referenced participating Medicaid providers. For these reasons, the proposed rule amendments do not impact the rights of parents to raise their children.

- 4) **Whether or not this action increases or decreases private family earnings or the incentive for parents to provide materially and emotionally for their children.**

Response: The rate reimbursement provisions are administrative in nature and primarily concern the relationship between the Medicaid program and the payment to the above-referenced participating Medicaid providers. Thus, FSSA does not expect the proposed rule amendments to provide a disincentive for parents to provide for their children or reduce family earnings.

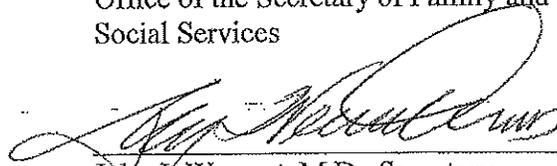
- 5) **What message, intended or otherwise, does this program send to the public concerning the status of the family?**

Response: The proposed rule amendments do not send a positive or negative message concerning the status of the family.

- 6) **What message does the action send to children about the relationship between their present choices and their future well-being?**

Response: The proposed rule amendments do not send a positive or negative message concerning the relationship between their present choices and their future well-being.

Office of the Secretary of Family and
Social Services



John J. Wernert, M.D., Secretary



Family Impact Assessment

Documentation of new Policies and Rules

Pursuant to Section 2(a)-(f) of Executive Order 13-05:

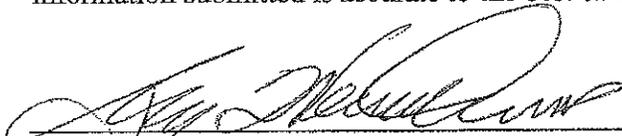
In formulating and implementing policies and rules that may have a significant impact on family formation and general well-being, the agencies listed in Section 1 of Executive Order 13-05 shall assess such measures in light of the following considerations:

- 1) Whether or not this action by government strengthens or erodes the stability of the family and the marital commitment.
- 2) Whether or not this action encourages or discourages non-marital childbearing.
- 3) Whether or not this action respects or inhibits the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.
- 4) Whether or not this action increases or decreases private family earnings or the incentive for parents to provide materially and emotionally for their children.
- 5) What message, intended or otherwise, does this program send to the public concerning the status of the family?
- 6) What message does the action send to children about the relationship between their present choices and their future well-being?

These assessments should be answered on a separate document attached to this submission form and clearly marked as answers to considerations 1-6. If an agency does not think that a consideration applies to their proposal, the agency must include an explanation of why the consideration does not apply. Additionally, if the proposal contains a potentially negative impact on family well-being or family formation, the agency must include an explanation of why the proposal is necessary.

This submission form and the agency assessments should be submitted simultaneously with the proposed policy or rule to the Office of Management and Budget.

By signing below, the agency head certifies that they are aware of the Family Impact Assessment, and all information submitted is accurate to the best of their knowledge.



John J. Wernert, M.D., Secretary

1/20/2015

Date

FSSA

Continued Rate Reductions for Inpatient and Outpatient Hospital Services, Home Health Services, Nursing Facility Services, Intermediate Care Facilities for Individuals with Intellectual Disabilities Services, and the Continuation of the \$3.90 Pharmacy Dispensing Fee; Changes to Comprehensive Rehabilitative Management Needs Facility (CRMNF) Reimbursement; Changes to the Physician Surgery Policy; and Extension of the Nursing Facility (NF) Quality Assessment Fee (QAF) through June 30, 2017 along with the NF QAF Enhanced Reimbursement

