

Jason Kander
Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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ADMINISTRATIVE RULES

COPY

Rule Number 13 CSR 70-10.030

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Billie Waite Phone 573-751-6922 FAX 573-751-6564

Email address Danielle.M.Rubino@dss.mo.gov

Data Entry Danielle Rubino Phone 573-751-6922 FAX 573-751-6564

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Interagency mailing address 615 Howerton Court, Jefferson City, MO 65109

TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date
- Proposed Rulemaking
- Withdrawal Rule Action Notice In Addition Rule Under Consideration
- Request for Non-Substantive Change
- Statement of Actual Cost
- Order of Rulemaking

Effective Date for the Order _____

Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? NO

YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD
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JOINT COMMITTEE ON
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 *Missouri Department of*
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JEREMIAH W. (JAY) NIXON, GOVERNOR • BRIAN KINKADE, DIRECTOR

MO HEALTHNET DIVISION

P.O. BOX 6500 • JEFFERSON CITY, MO 65102-6500

WWW.DSS.MO.GOV • 573-751-3425

August 15, 2016

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the enclosed is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Department of Social Services, MO HealthNet Division.

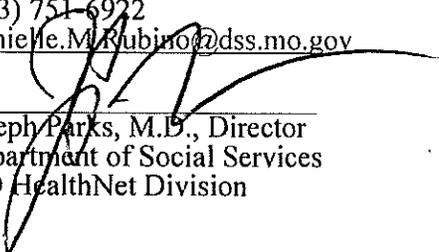
The Department of Social Services, MO HealthNet Division has determined and hereby certifies that this proposed rulemaking will have an economic impact on small businesses. A small business impact statement is attached. The Department of Social Services, MO HealthNet Division further certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo, regarding user fees.

The Department of Social Services, MO HealthNet Division has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: Section 208.159, RSMo 2000, and sections 208.153 and 208.201, RSMo Supp. 2013.

If there are any questions regarding the content of this proposed rulemaking, please contact:

Billie A. Waite
MO HealthNet Division
615 Howerton Court
Jefferson City, MO 65109
(573) 751-6922
Danielle.M.Rubino@dss.mo.gov


Joseph Parks, M.D., Director
Department of Social Services
MO HealthNet Division

Interpretive services are available by calling the Participant Services Unit at 1-800-392-2161.
Prevodilačke usluge su dostupne pozivom odjela koji učestvuje u ovom servisu na broj 1-800-392-2161.
Servicios Intrepretative están disponibles llamando a la unidad de servicios de los participantes al 1-800-392-2161.

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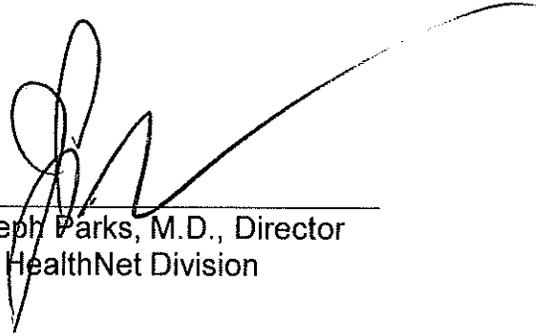
August 15, 2016

Cindy Kadlec, Director
Joint Committee on Administrative Rules
Capitol Building, Room 8-B
Jefferson City, MO 65101

Dear Ms. Kadlec:

Enclosed is an accurate and complete copy of the proposed amendment regarding 13 CSR 70-10.030, which is to be submitted to the Secretary of State on August 15, 2016.

Statutory authority: section 208.159, RSMo 2000, and sections 208.153 and 208.201, RSMo Supp. 2013.



Joseph Parks, M.D., Director
MO HealthNet Division

JP:mb

Enclosure:
Proposed Amendment 13 CSR 70-10.030

FOR HEARING A Interpretive services are available by calling the Participant Services Unit at 1-800-392-2161.
Prevodilačke usluge su dostupne pozivom odjela koji učestvuje u ovom servisu na broj 1-800-392-2161.
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PUBLIC COST

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

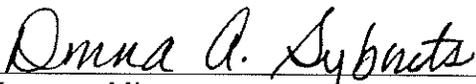
I, Brian Kinkade, Director of the Department of Social Services, first being duly sworn, on my oath, state that it is my opinion that the attached fiscal note for the proposed amendment to 13 CSR 70-10.030 is a reasonably accurate estimate.



Brian Kinkade for
Director
Department of Social Services

Subscribed and sworn to before me this 15 day of August, 2016. I am
commissioned as a notary public within the County of Cole
State of Missouri and my commission expires
on March 5, 2019.

DONNA A. SYBOUTS
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: March 05, 2019
Commission Number: 15633724



Notary public

**Title 13 - DEPARTMENT OF SOCIAL SERVICES
Division 70 – MO HealthNet Division
Chapter 10 - Nursing Home Program**

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ADMINISTRATIVE RULES

PROPOSED AMENDMENT

COPY

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/[MR]/IID Services. The division is changing the terminology of the services addressed in this regulation throughout the regulation and adding subparagraphs (4)(A)1.O. and (4)(A)1.P.

PURPOSE: This amendment changes the terminology of the services addressed in this regulation from "nonstate-operated intermediate care facility/mentally retarded (ICF/MR) services" to "nonstate-operated intermediate care facility for individuals with intellectual disabilities (ICF/IID) services" and provides for trend factors to be applied to adjust per diem rates for nonstate-operated ICF/IID facilities participating in the MO HealthNet program.

PURPOSE: This rule establishes a payment plan for nonstate-operated intermediate care facility/[mentally retarded] for individuals with intellectual disabilities services. The plan describes principles to be followed by Title XIX intermediate care facility/[mentally retarded] for individuals with intellectual disabilities providers in making financial reports and presents the necessary procedures for setting rates, making adjustments, and auditing the cost reports.

(1) Objectives. This rule establishes a payment plan for nonstate-operated intermediate care facility/[mentally retarded] for individuals with intellectual disabilities (ICF/[MR]/IID) services.

(2) General Principles.

(A) The MO HealthNet program shall reimburse qualified providers of ICF/[MR]/IID services based solely on the individual MO HealthNet participant's days of care (within benefit limitations) multiplied by the facility's Title XIX per diem rate less any payments made by participants.

(B) Effective November 1, 1986, the Title XIX per diem rate for all ICF/[MR]/IID facilities participating on or after October 31, 1986, shall be the lower of—

1. The average private pay charge;

2. The Medicare per diem rate, if applicable;

3. The rate paid to a facility on October 31, 1986, as adjusted by updating its base year to its 1985 fiscal year. Facilities which do not have a full twelve- (12-) month 1985 fiscal year shall not have their base years updated to their 1985 fiscal years. Changes in ownership, management, control, operation, leasehold interests by whatever form for any facility previously certified for participation in the MO HealthNet program at any time that results in increased capital costs for the successor owner, management, or leaseholder shall not be recognized for purposes of reimbursement; and

4. However, any provider who does not have a rate on October 31, 1986, and whose facility meets the definition in subsection (3)(J) of this rule, will be exempt from paragraph (2)(B)3. and the rate shall be determined in accordance with applicable provisions of this rule.

(3) Definitions.

(H) ICF/[MR]/IID. Nonstate-operated facilities certified to provide intermediate care for [the mentally retarded] individuals with intellectual disabilities under the Title XIX program.

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(L) Providers. A provider under the Prospective Reimbursement Plan is a nonstate-operated ICF/[MR]IID facility with a valid participation agreement, in effect on or after October 31, 1986, with the Missouri Department of Social Services for the purpose of providing long-term care (LTC) services to Title XIX-eligible participants. Facilities certified to provide intermediate care services to *[the mentally retarded]* **individuals with intellectual disabilities** under the Title XIX program may be offered a MO HealthNet participation agreement on or after January 1, 1990, only if 1) the facility has no more than fifteen (15) beds for *[mentally retarded]* **individuals with intellectual disabilities** residents, and 2) there is no other licensed residential living facility for *[mentally retarded]* **individuals with intellectual disabilities** within a radius of one-half (1/2) mile of the facility seeking participation in the MO HealthNet program.

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/[MR]IID services certified to participate in Missouri's MO HealthNet program.

1. ICF/[MR]IID facilities.

A. Except in accordance with other provisions of this rule, the MO HealthNet program shall reimburse providers of these LTC services based on the individual MO HealthNet-participant days of care multiplied by the Title XIX prospective per diem rate less any payments collected from participants. The Title XIX prospective per diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per diem rate. Facilities with less than a full twelve- (12-) month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per diem rate paid to both state- and nonstate-operated ICF/[MR]IID facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/[MR]IID facilities on June 1, 1988, shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/[MR]IID facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF/[MR]IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents (\$6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per diem rates paid to nonstate-operated ICF/[MR]IID facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents (\$131.93).

F. State FY-99 trend factor. All nonstate-operated ICF/[MR]IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents (\$4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/[MR]IID facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents (\$148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF/[MR]IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents (\$4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/[MR]IID facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents (\$154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF//*MR*/IID facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents (\$4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents (\$160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF//*MR*/IID facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for state fiscal year 2007 and thereafter. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on June 30, 2006.

J. State FY-2008 trend factor. Effective for dates of service beginning July 1, 2007, all nonstate-operated ICF//*MR*/IID facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on June 30, 2007.

K. State FY-2009 trend factor. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF//*MR*/IID facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on June 30, 2008.

L. State FY-2009 catch up increase. Effective for dates of service beginning July 1, 2008, all nonstate-operated ICF//*MR*/IID facilities shall be granted an increase to their per diem rates of thirteen and ninety-five hundredths percent (13.95%). This adjustment is equal to thirteen and ninety-five hundredths percent (13.95%) of the per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on June 30, 2008. This increase is intended to provide compensation to providers for the years (2003, 2004, 2005, and 2006) where no trend factor was given. The catch up increase was based on the CMS PPS Skilled Nursing Facility Input Price Index (4 quarter moving average).

M. State FY-2012 trend factor. Effective for dates of service beginning October 1, 2011, all nonstate-operated ICF//*MR*/IID facilities shall be granted an increase to their per diem rates of one and four tenths percent (1.4%) for the trend factor. This adjustment is equal to one and four tenths percent (1.4%) of the per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on September 30, 2011.

N. State FY-2014 trend factor. Effective for dates of service beginning January 1, 2014, all nonstate-operated ICF//*MR*/IID facilities shall be granted an increase to their per diem rates of three percent (3%) for the trend factor. This adjustment is equal to three percent (3%) of the per diem rate paid to nonstate-operated ICF//*MR*/IID facilities on December 31, 2013.

O. State FY-2016 trend factor. Effective for dates of service beginning February 1, 2016, all nonstate-operated ICF/IID facilities shall be granted an increase to their per diem rates of one percent (1%) for the trend factor. This adjustment is equal to one percent (1%) of the per diem rate paid to nonstate-operated ICF/IID facilities on January 31, 2016.

P. State FY-2017 trend factor. Effective for dates of service beginning September 1, 2016, all nonstate-operated ICF/IID facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF/IID facilities on August 31, 2016.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented, or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented, or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the MO HealthNet agency to impose a rate adjustment in the case of fraudulent, misrepresented, or inaccurate information in any way shall affect the MO HealthNet agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented, or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the MO HealthNet agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's MO HealthNet reimbursement rate is higher than either its private pay rate or its Medicare rate, the MO HealthNet rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control, and the circumstances are not experienced by the nursing home or ICF/[MR]IID industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes, and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

(B) In the case of newly constructed nonstate-operated ICF/[MR]IID facilities entering the MO HealthNet program after October 31, 1986, and for which no rate has previously been set, the director or his/her designee may set an initial rate for the facility as in his/her discretion s/he deems appropriate. The initial rate shall be subject to review by the advisory committee under the provisions of section (6) of this rule.

(5) Covered Services and Supplies.

(A) ICF/[MR]IID services and supplies covered by the per diem reimbursement rate under this plan, and which must be provided, as required by federal or state law or rule and include, among other services, the regular room, dietary and nursing services, or any other services that are required for standards of participation or certification. Also included are minor medical and surgical supplies and the use of equipment and facilities. These items include, but are not limited to, the following:

1. All general nursing services including, but not limited to, administration of oxygen and related medications, hand-feeding, incontinency care, tray service, and enemas;

2. Items which are furnished routinely and relatively uniformly to all participants, for example, gowns, water pitchers, soap, basins, and bed pans;

3. Items such as alcohol, applicators, cotton balls, bandaids, and tongue depressors;

4. All nonlegend antacids, nonlegend laxatives, nonlegend stool softeners, and nonlegend vitamins. Any nonlegend drug in one (1) of these four (4) categories must be provided to residents as needed and no additional charge may be made to any party for any of these drugs. Facilities may not elect which nonlegend drugs in any of the four (4) categories to supply; all must be provided as needed within the existing per diem rate;

5. Items which are utilized by individual participants but which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable, nondepreciable medical equipment;

6. Additional items as specified in the appendix to this plan when required by the patient;

7. Special dietary supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet, including dietary supplements written as a prescription item by a physician;

8. All laundry services except personal laundry which is a noncovered service;

9. All general personal care services which are furnished routinely and relatively uniformly to all participants for their personal cleanliness and appearance shall be covered services, for example, necessary clipping and cleaning of fingernails and toenails, basic hair care, shampoos, and shaves to the extent necessary for reasonable personal hygiene. The provider shall not bill the patient or his/her responsible party for this type of personal service;

10. All consultative services as required by state or federal law or regulation or for proper operation by the provider. Contracts for the purchase of these services must accompany the provider cost report. Failure to do so will result in the penalties specified in section (9) of this rule;

11. Semiprivate room and board and private room and board when necessary to isolate a participant due to a medical or social condition, such as contagious infection, irrational loud speech, and the like. Unless a private room is necessary due to a medical or social condition, a private room is a noncovered service, and a MO HealthNet participant or responsible party may therefore pay the difference between a facility's semiprivate charge and its charge for a private room. MO HealthNet participants may not be placed in private rooms and charged any additional amount above the facility's MO HealthNet per diem unless the participant or responsible party in writing specifically requests a private room prior to placement in a private room and acknowledges that an additional amount not payable by MO HealthNet will be charged for a private room;

12. Twelve (12) days per any period of six (6) consecutive months during which a participant is on a temporary leave of absence from the facility. Temporary leave of absence days must be specifically provided for in the participant's plan of care. Periods of time during which a participant is away from the facility because s/he is visiting a friend or relative are considered temporary leaves of absence; and

13. Days when participants are away from the facility overnight on facility-sponsored group trips under the continuing supervision and care of facility personnel.

(6) Rate Determination. All nonstate-operated ICF/[MR]IID providers of LTC services under the MO HealthNet program who desire to have their rates changed or established must apply to the MO HealthNet Division. The department may request the participation of the Department of Mental Health in the analysis for rate determination. The procedure and conditions for rate reconsideration are as follows:

(E) Rate Adjustments. The department may alter a facility's per diem rate based on—

1. Court decisions;
2. Administrative Hearing Commission decisions;
3. Determination through desk audits, field audits, and other means, which establishes misrepresentations in or the inclusion of unallowable costs in the cost report used to establish the per diem rate. In these cases, the adjustment shall be applied retroactively; or
4. Adjustments determined by the department without the advice of the rate advisory committee.

A. Prospective payment adjustment (PPA). A FY-92 PPA will be provided prior to the end of the state fiscal year for nonstate-operated ICF/[MR]IID facilities with a current provider agreement on file with the MO HealthNet Division as of October 1, 1991.

(I) For providers which qualify, the PPA shall be the lesser of—

(a) The provider's facility peer group factor (FPGF) times the projected patient days (PPD) covered by the adjustment year times the prospective payment adjustment factor (PPAF) times the nonstate-operated intermediate care facility for *[the mentally retarded]* individuals with intellectual disabilities ceiling (ICF/[MR]IIDC) on October 1, 1991 ($FPGF \times PPD \times PPAF \times ICF/[MR]IIDC$). For example: A provider having nine hundred twenty (920) paid days for the period May 1991 to July 1991 out of a total paid days for this same period of twenty-eight thousand five hundred sixty-one (28,561) represents an FPGF of three and twenty-two hundredths percent (3.22%). So using the FPGF of 3.22% $\times 114,244 \times 24.5\% \times \$156.01 = \$140,659$; or

(b) The provider FPGF times one hundred forty-five percent (145%) of the amount credited to the intermediate care revenue collection center (ICRCC) of the State Title XIX Fund (STF) for the period October 1, 1991 through December 31, 1991.

(II) FPGF—is determined by using each ICF/[MR]IID facility's paid days for the service dates in May 1991 through July 1991 as of September 20, 1991, divided by the sum of the paid days for the same service dates for all provider's qualifying as of the determination date of October 16, 1991.

(III) ICF/[MR]IIDC—is one hundred fifty-six dollars and one cent (\$156.01) on October 1, 1991.

(IV) PPAF—is equal to twenty-four and five-tenths percent (24.5%) for fiscal year 1992 which includes an adjustment for economic trends.

(V) PPD—is the projection of one hundred fourteen thousand two hundred forty-four (114,244) patient days made on October 1, 1991, for the adjustment year;

5. FY-92 trend factor and Workers' Compensation. All facilities with either an interim rate or a prospective per diem rate in effect on September 1, 1992, shall be granted an increase to their per diem rate effective September 1, 1992, of eight dollars and eighty-six cents (\$8.86) per patient day related to the continuation of the FY-92 trend factor and the Workers' Compensation adjustment. This adjustment is equal to seven and one-half percent (7.5%) of the March 1992 weighted average per diem rate of one hundred eighteen dollars and fourteen cents (\$118.14) for all nonstate-operated ICF//MR/IID facilities; or

6. FY-93 negotiated trend factor. All facilities with either an interim rate or prospective per diem rate in effect on September 1, 1992, shall be granted an increase to their per diem rate effective September 1, 1992, of one dollar and sixty-six cents (\$1.66) per patient day for the negotiated trend factor. This adjustment is equal to one and four-tenths percent (1.4%) of the March 1992 weighted average per diem rate of one hundred eighteen dollars and fourteen cents (\$118.14) for all nonstate-operated ICF//MR/IID facilities; and

(7) Allowable Cost Areas.

(N) Utilization Review. Incurred cost for the performance of required utilization review for ICF//MR/IID is an allowable cost area. The expenditures must be for the purpose of providing utilization review on behalf of a Title XIX participant. Utilization review costs incurred for Title XVIII and Title XIX must be apportioned on the basis of reimbursable participant days recorded for each program during the reporting period.

(R) Apportionment of Costs to MO HealthNet Participant Residents.

1. Provider's allowable cost areas shall be apportioned between MO HealthNet program participant residents and other patients so that the share borne by the MO HealthNet program is based upon actual services received by program participants.

2. To accomplish this apportionment, the ratio of participant residents' charges to total patient charges for the service of each ancillary department may be applied to the cost of this department. To this shall be added the cost of routine services for MO HealthNet program participant residents determined on the basis of a separate average cost per diem for general routine care areas or at the option of the provider on the basis of overall routine care area.

3. So that its charges may be allowable for use in apportioning costs under the program, each provider shall have an established charge structure which is applied uniformly to each patient as services are furnished to the patient and which is reasonable and consistently related to the cost of providing these services.

4. Average cost per diem for general routine services means the amount computed by dividing the total allowable patient costs for routine services by the total number of patient days of care rendered by the provider in the cost-reporting period.

5. A patient day of care is that period of service rendered a patient between the census-taking hours on two (2) consecutive days, including the twelve (12) temporary leave of absence days per any period of six (6) consecutive months as specifically covered under section (5) of this rule, the day of discharge being counted only when the patient was admitted the same day. A census log shall be maintained in the facility for documentation purposes. Census shall be taken daily at midnight. A day of care includes those overnight periods when a participant is away from the facility on a facility-sponsored group trip and remains under the supervision and care of facility personnel.

6. ICF//MR/IID facilities that provide intermediate care services to MO HealthNet participants may establish distinct part cost centers in their facility provided that adequate accounting and statistical data required to separately determine the nursing care cost of each distinct part is maintained. Each distinct part may share the common services and facilities, such as management services, dietary, housekeeping, building maintenance, and laundry.

7. In no case may a provider's allowable costs allocated to the MO HealthNet program include the cost of furnishing services to persons not covered under the MO HealthNet program.

AUTHORITY: section 208.159, RSMo 2000, and sections 208.153 and 208.201, RSMo Supp. 2013. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, Effective Nov. 11, 1982. For intervening history please consult the Code of State Regulations. Amended: Filed August 15, 2016.

PUBLIC ENTITY COST: This proposed amendment will cost public entities or political subdivisions approximately \$205,996 for SFY 2017.

PRIVATE ENTITY COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Small Business Regulatory Fairness Board

Small Business Impact Statement

Date: August 15, 2016

Rule Number: 13 CSR 70-10.030

Name of Agency Preparing Statement: Department of Social Services

Name of Person Preparing Statement: Billie Waite

Phone Number: (573) 751-6922

Email: Danielle.M.Rubino@dss.mo.gov

Name of Person Approving Statement: Joseph Parks, M.D.

Please describe the methods your agency considered or used to reduce the impact on small businesses (examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique).

This proposed amendment provides for a one percent (1.0%) increase to nonstate-operated ICF/IID facilities per diem rates effective for dates of service beginning February 1, 2016 and a two percent (2%) increase for dates of service beginning September 1, 2016. These increases will be automatically added to the per diem rates and requires no action for the providing facilities.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The Division has worked with the Department of Mental Health to determine the proposed amendment. Also, the proposed amendment will be filed with the Secretary of State's office and published in the Missouri Register where it will be open for comments for 30 days before a final rule will be published.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

No fees will be collected in conjunction with the implementation of this rule. This proposed amendment results in an increase to the reimbursement for nonstate-operated ICF/IID facilities.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

This is an increase to reimbursement for nonstate-operated ICF/IID facilities and there will be no private entity cost. The ICF/IID facilities are to use the rate increase for the increased cost of providing quality ICF/IID services but there are not any specific requirements to comply with relating to how the additional reimbursement is to be used.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

This is an increase to reimbursement for nonstate-operated ICF/IID facilities and there will be no private entity cost.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Nonstate-operated ICF/IID facilities will directly benefit from the proposed amendment.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes ___ No X

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 10 - Nursing Home Program

Rule Number and Name:	13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/IID Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services MO HealthNet Division	Estimated cost for SFY 2017: \$205,996 Estimated Ongoing Annual Cost = \$200,642

III. WORKSHEET

Description	Trend Increase
<u>SFY 2016 - 1% Trend Factor</u>	
Estimated Annual Paid Days: SFY 2016	28,180
Rate Effective February 2016 (5 months of SFY 2016)	5/12
Estimated Patient Days Impacted during SFY 2016	11,742
x Average Per Diem Rate Increase	\$2.36
Total Estimated Impact for SFY 2016 trend to be paid in SFY 2017	\$27,710
<u>SFY 2016 - 1% Trend Factor</u>	
Estimated Annual Paid Days: SFY 2017	28,180
x Average Per Diem Rate Increase	\$2.36
Total Estimated Impact for SFY 2016 trend to be paid in SFY 2017	\$66,505
<u>SFY 2017 - 2% Trend Factor</u>	
Estimated Annual Paid Days: SFY 2017	28,180
Rate Effective September 2016 (10 months of year)	10/12
Estimated Patient Days Impacted during SFY 2017	23,483
x Average Per Diem Rate Increase	\$4.76
Total Estimated Impact for SFY 2017 trend	\$111,781
Total Estimated Impact for SFY 2017	\$205,996
State Share (36.772%)	\$75,749
Federal Share (63.228%)	\$130,354
<u>Ongoing Annual Cost</u>	
Estimated Annual Paid Days	28,180
x Average Per Diem Rate Increase	\$7.12
Total Estimated Annual Impact	\$200,642

IV. ASSUMPTIONS

Estimated Paid Days:

ICF/IID Facility:

The estimated paid days for SFY 2016 and SFY 2017 are based on the actual Medicaid days paid for nonstate-operated ICF/IID facility services paid during SFY 2015. There are seven (7) facilities which operate close to full occupancy and the number of patient days has been constant each year.