

5123:2-7-01

Intermediate care facilities - definitions.

For the purposes of rules in Chapter 5123:2-7 of the Administrative Code, the following definitions shall apply unless otherwise provided:

(A) "Allowable costs" are those costs incurred for certified beds in a facility as determined by the department to be reasonable, as set forth under paragraph (K) of this rule, and do not include fines paid under sections 5111.35 to 5111.62, 5111.683, and 5111.99 of the Revised Code. Unless otherwise enumerated in Chapter 5123:2-7 of the Administrative Code, allowable costs are also determined in accordance with the following reference material, as currently issued and updated, in the following priority:

(1) 42 C.F.R. Chapter IV (October 1, 2005);

(2) The centers for medicare and medicaid services provider reimbursement manual (publication 15-1, available at www.cms.hhs.gov/manuals); and

(3) Generally accepted accounting principles in accordance with standards prescribed by the "American Institute of Certified Public Accountants" (available at www.aicpa.org) in effect on the effective date of this rule.

(B) "Date of licensure," for a facility originally licensed as a nursing home under Chapter 3721. of the Revised Code, means the date specific beds were originally licensed as nursing home beds under that chapter, regardless of whether they were subsequently licensed as residential facility beds. For a facility originally licensed as a residential facility, "date of licensure" means the date specific beds were originally licensed as residential facility beds under that section.

(1) If nursing home beds licensed under Chapter 3721. of the Revised Code or residential facility beds licensed under section 5123.19 of the Revised Code were not required by law to be licensed when they were originally used to provide nursing home or residential facility services, "date of licensure" means the date the beds first were used to provide nursing home or residential facility services, regardless of the date the present provider obtained licensure.

(2) If a facility adds nursing home or residential facility beds or in the case of an intermediate care facility with more than eight beds or a nursing facility, it extensively renovates the facility after its original date of licensure, it will have a different date of licensure for the additional beds or for the extensively renovated facility, unless, in the case of the addition of beds, the beds are added in a space that was constructed at the same time as the previously licensed beds but was not licensed under Chapter 3721. or section 5123.19 of the Revised Code at that time. The licensure date for additional beds or facilities which extensively renovate shall be the date the beds are placed into service.

- (C) "Department" means the Ohio department of developmental disabilities.
- (D) "Fiscal year" means the fiscal year of this state, as specified in section 9.34 of the Revised Code.
- (E) "Inpatient days" means all days during which a resident, regardless of payment source, occupies a bed in an intermediate care facility that is included in the facility's certified capacity under Title XIX of the Social Security Act, 49 stat. 620 (1935), 42 U.S.C.A. 301. Therapeutic or hospital leave days for which payment is made under section 5111.33 of the Revised Code are considered inpatient days proportionate to the percentage of the facility's per resident per day rate paid for those days.
- (F) "Intermediate care facility for individuals with intellectual disabilities" (or "intermediate care facility") means an intermediate care facility for the mentally retarded certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1396.
- (G) "Owner" means any person or government entity that has at least five per cent ownership or interest, either directly, indirectly, or in any combination, in an intermediate care facility.
- (H) "Provider" means a person or government entity that operates an intermediate care facility under a provider agreement.
- (I) "Provider agreement" means a contract between the Ohio office of medical assistance and an operator of an intermediate care facility for the provision of intermediate care facility services under the medical assistance program. The signature of the operator or the operator's authorized agent binds the operator to the terms of the agreement.
- (J) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 (2012).
- (K) "Reasonable" means that a cost is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities, including normal standby costs, and that does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider to provider and from time to time for the same provider.
- (L) "Related party" means an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the provider, as detailed below:
- (1) An individual who is a relative of an owner is a related party.

- (2) Common ownership exists when an individual or individuals possess significant ownership or equity in both provider and the other organization. Significant ownership or equity exists when an individual or individuals possess five per cent ownership or equity in both the provider and a supplier. Significant ownership or equity is presumed to exist when an individual or individuals possess ten per cent ownership or equity in both the provider and another organization from which the provider purchases or leases real property.
- (3) Control exists when an individual or organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization.
- (4) An individual or organization that supplies goods or services to a provider shall not be considered a related party if all the following conditions are met:
- (a) A supplier is a separate bona fide organization;
 - (b) A substantial part of the supplier's business activity of the type carried on with the provider is transacted with others than the provider and there is an open, competitive market for the types of goods or services the supplier furnishes;
 - (c) The types of goods or services are commonly obtained by other intermediate care facilities from outside organizations and are not a basic element of patient care ordinarily furnished directly to patients by the facilities; and
 - (d) The charge to the provider is in line with the charge for the goods or services in the open market and no more than the charge made under comparable circumstances to others by the supplier.
- (5) The amount of indirect ownership is determined by multiplying the percentage of ownership interest at each level (e.g., forty per cent interest in corporation "A" which owns fifty per cent of corporation "B" results in a twenty per cent indirect interest in corporation "B").
- (M) "Relative of owner" means a person who is related to an owner of an intermediate care facility by one of the following relationships:
- (1) Spouse;
 - (2) Natural parent, child, or sibling;
 - (3) Adopted parent, child, or sibling;
 - (4) Stepparent, stepchild, stepbrother, or stepsister;

(5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;

(6) Grandparent or grandchild; or

(7) Foster parent, foster child, foster brother, or foster sister.

(N) "Replacement beds" are beds which are relocated to a new building or portion of a building attached to and/or constructed outside of the original licensed structure of an intermediate care facility. Replacement beds may originate from within the licensed structure of an intermediate care facility or from another intermediate care facility. Replacement beds are eligible for the cost of ownership efficiency incentive ceiling which corresponds to the period the beds were replaced.

(O) "Representative" means a person acting on behalf of an individual who is applying for or receiving medical assistance. A representative may be a family member, guardian, attorney, hospital social worker, intermediate care facility social worker, or any other person chosen to act on the individual's behalf.

(P) "State survey agency" means the agency that inspects long-term care facilities for the purposes of survey and certification. The state survey agency in Ohio is the Ohio department of health.

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