

## TO BE RESCINDED

5123:2-7-08

**Intermediate care facilities - coverage of bed-hold days for medical necessity and other limited absences.**

(A) For the purposes of this rule, the following definitions shall apply:

- (1) "Home and community-based services" means services furnished under the provisions of rule 5101:3-1-06 of the Administrative Code, which enable individuals to live in a community setting rather than in an institutional setting such as an intermediate care facility, a nursing facility, or a hospital.
- (2) "Hospitalization" means transfer and admission of a resident to a medical institution as defined in paragraph (A)(11) of this rule.
- (3) "Intermediate care facility admission" means the act that allows an individual who was not considered a resident of any Ohio medicaid certified intermediate care facility during the time immediately preceding their current intermediate care facility residence to officially enter a facility to receive intermediate care facility services. This may include former residents of intermediate care facilities who have exhausted their bed-hold days while in the community and/or hospital. An intermediate care facility admission may be a new admission or a return admission after an official discharge. An intermediate care facility admission is distinguished from the readmission of a resident on bed-hold status.
- (4) "Intermediate care facility bed-hold day," also referred to as "intermediate care facility leave day," means a day for which a bed is reserved for an intermediate care facility resident through medicaid payment while the resident is temporarily absent from the intermediate care facility for hospitalization, therapeutic leave days, or visitation with friends or relatives. Payment for intermediate care facility bed-hold days may be made only if the resident has the intent and ability to return to the same intermediate care facility. A resident on intermediate care facility bed-hold day status is not considered discharged from the intermediate care facility since the facility is reimbursed to hold the bed while the resident is on temporary leave.
- (5) "Intermediate care facility discharge" means the full release of an intermediate care facility resident from the facility, allowing the resident who leaves the facility to no longer be counted in the intermediate care facility's census. Reasons for intermediate care facility discharge include, but are not limited to, the resident's transfer to another facility, exhaustion of intermediate care facility bed-hold days from any pay source, decision to reside in a community-based setting, or death.

- (6) "Intermediate care facility occupied day" means one of the following:
- (a) A day of admission; or
  - (b) A day during which a medicaid eligible resident's stay in an intermediate care facility is eight hours or more, and for which the facility receives the full per resident per day payment directly from medicaid in accordance with Chapter 5123:2-7 of the Administrative Code.
- (7) "Intermediate care facility readmission" means the status of a resident who is readmitted to the same intermediate care facility following a stay in a hospital to which the resident was sent to receive care, or the status of a resident who returns after a therapeutic program or visit with friends or relatives. An intermediate care facility resident can only be readmitted to a facility if that individual was not officially discharged from the facility during that intermediate care facility stay.
- (8) "Intermediate care facility therapeutic leave day" means a day that a resident is temporarily absent from an intermediate care facility with intent and ability to return, and is in a residential setting other than a long-term care facility, hospital, or other entity eligible to receive federal, state, or county funds to maintain a resident, for the purpose of receiving a regimen or program of formal therapeutic services.
- (9) "Intermediate care facility transfer" means the events that occur when a person's place of residence changes from one Ohio medicaid certified intermediate care facility to another, with or without an intervening hospital stay. However, when the person has an intervening institution for mental disease admission, or when the person is discharged from an intermediate care facility during a hospital stay due to exhaustion of available intermediate care facility bed-hold days and is admitted to a different intermediate care facility immediately following that hospital stay, the change of residence is not considered an intermediate care facility transfer.
- (10) "Institution for mental disease" means a hospital, nursing facility, or other institution of more than sixteen beds that is engaged primarily in the diagnosis, treatment, and care of persons with mental diseases, and that provides medical attention, nursing care, and related services. An institution is determined to be an institution for mental disease when its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such.

- (11) "Medical institution" means an institution that meets all of the following criteria:
- (a) The institution is organized to provide medical care, including nursing and convalescent care.
  - (b) The institution has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health care needs of patients on a continuing basis in accordance with accepted standards.
  - (c) The institution is authorized under state law to provide medical care.
  - (d) The institution is staffed by professional personnel who are responsible to the institution for professional medical and nursing services. Professional medical and nursing services shall include all of the following:
    - (i) Adequate and continual medical care and supervision by a physician; and
    - (ii) Registered nurse or licensed practical nurse supervision and services sufficient to meet nursing care needs; and
    - (iii) Nurse aide services sufficient to meet nursing care needs; and
    - (iv) A physician's guidance on the professional aspects of operating the institution.
- (12) "Skilled nursing facility" means a nursing facility certified to participate in the medicare program.

(B) Prohibition of preadmission intermediate care facility bed-hold payment

- (1) The department shall not make payment to reserve a bed for a medicaid-eligible prospective intermediate care facility resident.
- (2) An intermediate care facility shall not accept preadmission bed-hold payments from a medicaid-eligible prospective intermediate care facility resident or from any other source on the prospective resident's behalf as a precondition for intermediate care facility admission.

(C) Determination of intermediate care facility bed-hold day or intermediate care facility occupied day

To determine whether a specific day is payable as an intermediate care facility bed-hold day or an intermediate care facility occupied day, the following criteria shall be used:

- (1) The day of intermediate care facility admission counts as one occupied day; and
- (2) The day of intermediate care facility discharge is not counted as either a bed-hold or an occupied day; and
- (3) When intermediate care facility admission and intermediate care facility discharge occur on the same day, the day is considered a day of admission and counts as one occupied day, even if the day is less than eight hours; and
- (4) A part of a day in an intermediate care facility that is eight hours or more counts as one occupied day for reimbursement purposes. A day begins at twelve a.m. and ends at eleven fifty-nine p.m.

(D) Limits and reimbursement for intermediate care facility bed-hold days

- (1) For a medicaid eligible resident in a certified intermediate care facility, except those described in paragraph (I) of this rule, the department may pay the intermediate care facility to reserve a bed only for as long as the resident has an intermediate care facility level of care determination and intends to return to the same intermediate care facility, but not for more than thirty days in any calendar year unless additional days have been prior authorized by the county department of job and family services as specified in paragraph (E) of this rule.
- (2) Reimbursement for intermediate care facility bed-hold days shall be paid at one-hundred per cent of the intermediate care facility provider's per diem rate.
- (3) Reimbursement for intermediate care facility bed-hold days may be made for the following reasons:

(a) Hospitalization

Intermediate care facility bed-hold days used for hospitalization may be reimbursed only until:

- (i) The day the resident's anticipated level of care at time of discharge from the hospital changes to a level of care that the intermediate care facility is not certified to provide; or
- (ii) The day the resident is discharged from the hospital, including discharge resulting in transfer to an intermediate care facility, a nursing facility, or a skilled nursing facility; or
- (iii) The day the resident decides to go to another intermediate care facility upon discharge from the hospital and notifies the first intermediate care facility; or
- (iv) The day the hospitalized resident dies.

(b) Therapeutic leave days

- (i) Any plan to use therapeutic leave days must be approved in advance by the resident's primary physician and documented in the resident's medical record. The documentation shall be available for viewing by the county department of job and family services and the department.
- (ii) An intermediate care facility shall make arrangements for the resident to receive required care and services while on approved therapeutic leave, but medicaid shall not pay for care and services that are included in medicaid's continued payments, including but not limited to home health care, personal care services, durable medical equipment, and private duty nursing.

(c) Visits with friends or relatives

- (i) Any plan for a limited absence to visit with friends or relatives must be approved in advance by the resident's primary physician or by a qualified intellectual disabilities professional, and must be documented in the resident's medical record or individual habilitation plan. The documentation shall be available for viewing by the county department of job and family services and the department.
- (ii) An intermediate care facility shall make arrangements for the resident to receive required care and services while on approved

visits, but medicaid shall not pay for care and services that are included in medicaid's continued payments, including but not limited to home health care, personal care services, durable medical equipment, and private duty nursing.

(iii) The number of days per visit is flexible within the maximum intermediate care facility bed-hold days, allowing for differences in the resident's physical condition, the type of visit, and travel time.

(4) The number and frequency of intermediate care facility bed-hold days used shall be considered in evaluating the continuing need of a resident for intermediate care facility care.

(E) Requests for additional intermediate care facility bed-hold days

(1) Additional intermediate care facility bed-hold days beyond the original thirty days in a calendar year require prior authorization.

(2) An intermediate care facility shall submit Ohio office of medical assistance form 09402, "ICF-MR/DD Extended Bed Hold Day(s) Prior Authorization" (revised July 2005), to the county department of job and family services. The form shall be submitted before the original thirty leave days are exhausted if it is apparent that additional leave will be needed. The prior authorization part of this form shall be signed by a qualified intellectual disability professional, a medical director, or a primary physician. The request shall be consistent with the goals of the resident's individual habilitation plan and medical records, and shall include all of the following:

(a) Type of leave requested (i.e., hospitalization, therapeutic leave days, or visits with friends or relatives). If the leave is for a trial visit with friends or relatives, descriptions of both a visitation plan and an evaluation plan must be included; and

(b) Projected dates of absence from the intermediate care facility; and

(c) Projected date of return to the intermediate care facility.

(3) The request for additional intermediate care facility bed-hold days shall be received by the county department of job and family services or postmarked to the county department of job and family services office prior to the requested date of additional leave, except in a case of emergency

hospitalization. In the event of emergency hospitalization, prior authorization may be requested after the fact if the request is submitted within one business day of the first day of hospitalization.

- (4) The county department of job and family services shall review requests for additional bed-hold days and issue one of the following:
  - (a) An approval notice, pursuant to rule 5101:6-2-02 of the Administrative Code; or
  - (b) A denial notice, pursuant to rule 5101:6-2-30 of the Administrative Code; or
  - (c) A request for additional information.
- (5) The county department of job and family services shall review prior authorization requests on a case-by-case basis. Conditions under which prior authorization may be denied include but are not limited to the following:
  - (a) Trial visits beyond thirty consecutive days; or
  - (b) Visits with friends or relatives exceeding thirty consecutive days or forty-five total days in a calendar year.
- (6) A maximum of thirty additional consecutive intermediate care facility bed-hold days may be authorized per request.
  - (a) The initial request for an additional thirty consecutive bed-hold days shall be submitted to and reviewed for approval or disapproval by the county department of job and family services.
  - (b) Subsequent requests for an additional thirty consecutive bed-hold days shall be submitted to the county department of job and family services and reviewed for approval or disapproval by the department.
- (7) An approved request for additional bed-hold days is for a particular period of time only. Any unused bed-hold days from an approved request shall not be used at a later time during the calendar year. For example, if a resident receives prior authorization for thirty bed-hold days and only uses fifteen, the remaining fifteen days may not be used at a later date during the calendar year. A new prior authorization request must be submitted if additional

bed-hold days are required during that same calendar year.

- (8) Intermediate care facility bed-hold days beyond the original thirty days that are used but not prior authorized shall be subject to an adjustment of the facility's vendor payment.
- (F) Intermediate care facility readmission after depletion of intermediate care facility bed-hold days
- (1) The first available bed means the first unoccupied bed not being held by a resident (regardless of the source of payment) who has elected to make payment to hold that bed.
  - (2) Intermediate care facility readmission requires that a resident has an intermediate care facility level of care and is eligible for medicaid intermediate care facility services.
- (G) Maximum number of intermediate care facility bed-hold days
- (1) Medicaid payment for covered intermediate care facility bed-hold days is considered reimbursement for reserving bed space for a resident who intends to return to the same intermediate care facility and is able to do so.
  - (2) The number of intermediate care facility inpatient days as defined in rule 5123:2-7-01 of the Administrative Code for the calendar year shall not exceed one hundred per cent of available bed days.
- (H) Residents eligible for payment of intermediate care facility bed-hold days
- (1) Medicaid payment for intermediate care facility bed-hold days is available under the provisions specified in this rule if a resident meets all of the following criteria:
    - (a) Is eligible for medicaid services and has met the patient liability and financial eligibility requirements stated in rule 5101:1-39-24 of the Administrative Code; and
    - (b) Requires an intermediate care facility level of care; and
    - (c) Is not a participant of special medicaid programs or assigned special status as outlined in paragraph (I) of this rule.

- (2) If a resident meets all of the criteria in paragraph (H)(1) of this rule, and is pending approval of a medicaid application and requires bed-hold days, medicaid payment shall be made retroactive to the date the resident became medicaid eligible and approved for medicaid vendor payment, through the date the resident returns from a leave or until the maximum number of bed-hold days are exhausted.

#### (I) Exclusions

Intermediate care facility bed-hold days are not available to medicaid eligible intermediate care facility residents in the following situations:

##### (1) Hospice

A person enrolled in a medicare or medicaid hospice program is not entitled to medicaid covered intermediate care facility bed-hold days. It is the hospice provider's responsibility to contract with and pay the intermediate care facility provider. Hospice program provisions and criteria are stated in Chapter 5101:3-56 of the Administrative Code; or

##### (2) Institution for mental disease

A resident over age twenty-one and under age sixty-five who becomes a patient of an institution for mental disease loses medicaid eligibility and is not entitled to intermediate care facility bed-hold days. An intermediate care facility provider shall not receive bed-hold day reimbursement during the period a person is hospitalized in an institution for mental disease. The county department of job and family services shall issue the appropriate notice of medicaid ineligibility as stated in rule 5101:6-2-05 of the Administrative Code; or

##### (3) Home and community-based services waiver

Intermediate care facility bed-hold days do not apply to a person enrolled in a home and community-based services waiver program who is using the intermediate care facility for short-term respite care as a waiver service. Under the home and community-based services waiver program, a person may not have concurrent active status as both a waiver enrollee and as an intermediate care facility resident approved for intermediate care facility vendor payment. Eligibility criteria for the home and community-based services waiver programs are contained in Chapters 5101:3-12, 5101:3-31, 5101:3-40, 5101:3-41, and 5101:3-42 of the Administrative Code; or

(4) Restricted medicaid coverage

A person who is medicaid eligible but is in a period of restricted medicaid coverage because of an improper transfer of resources is not eligible for intermediate care facility bed-hold days until the period of restricted coverage has been met. The criteria for the determination of restricted medicaid coverage are specified in rule 5101:1-39-07 of the Administrative Code; or

(5) Facility closure and resident relocation

Intermediate care facility bed-hold days are not available to residents who relocate due to a facility's anticipated closure, voluntary withdrawal from participation in the medicaid program, or other events that result in termination of a facility's medicaid provider agreement. No span of bed-hold days shall be approved that ends on a facility's date of closure or termination from participation in the medicaid program.

(J) Compliance

- (1) Without limiting such other remedies provided by law for noncompliance with these rules:
  - (a) The Ohio office of medical assistance may terminate the intermediate care facility's provider agreement; or
  - (b) The department may require the intermediate care facility to submit and implement a corrective action plan on a schedule specified by the department.
- (2) An intermediate care facility shall cooperate with any investigation and shall provide copies of any records requested by the department or the Ohio office of medical assistance.

Effective:

Five Year Review (FYR) Dates: 04/15/2016

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Certification

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Date

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