

2020 Second Extraordinary Session

HOUSE CONCURRENT RESOLUTION NO. 29

BY REPRESENTATIVES BUTLER AND BAGLEY

EXCEP PERSON/DEV DISABLE: Amends administrative rules regarding leave of absence days for clients of intermediate care facilities (Items #28 and 29)

1 A CONCURRENT RESOLUTION

2 To amend the Louisiana Department of Health rule, LAC 50:VII.33103(A)(2), which  
3 provides for leaves of absence for residents of intermediate care facilities for persons  
4 with intellectual and developmental disabilities, to provide for retroactive and  
5 prospective application of the amendments, and to direct the office of the state  
6 register to print the amendments in the Louisiana Administrative Code.

7 WHEREAS, intermediate care facilities for persons with intellectual and  
8 developmental disabilities, known commonly as ICF/DD and ICF/ID, are residential  
9 facilities at which children and adults with special needs receive individualized health care  
10 and rehabilitation services; and

11 WHEREAS, these facilities are regulated under the provisions of Part VI-E of  
12 Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950 (R.S. 40:2180 et seq.) and  
13 Subpart 3 of Part VII of the Louisiana Administrative Code (LAC 50:VII.30101 et seq.); and

14 WHEREAS, state regulations concerning Medicaid funding of ICF/ID care, which  
15 provide for a system of per diem payments to these facilities, prohibit the state Medicaid  
16 program, with limited exceptions, from covering more than forty-five leave of absence days  
17 for any ICF/ID resident in any state fiscal year (July 1 through June 30); and

18 WHEREAS, the effect of these regulations is to make families liable for paying the  
19 per diem to the ICF/ID for their loved ones' leaves of absence for the number of days  
20 exceeding forty-five days in total in a state fiscal year; and

1 WHEREAS, during Louisiana's state of public health emergency that was first  
2 declared on March 11, 2020, in response to the COVID-19 pandemic, and which continues  
3 as of the date of filing of this Resolution, many families have chosen to provide care for  
4 extended periods in their own homes for their loved ones who are ICF/ID clients; and

5 WHEREAS, in these most challenging of times, these families have made difficult  
6 decisions and great sacrifices to protect the best interests of their most fragile family  
7 members who cannot care for themselves; and

8 WHEREAS, many of these families now face financial hardship because their loved  
9 ones have exceeded the number of Medicaid-covered ICF/ID leave of absence days allowed  
10 by state regulations; and

11 WHEREAS, the provisions of R.S. 49:969 authorize the legislature, by concurrent  
12 resolution, to suspend, amend, or repeal any rule or regulation adopted by a state department,  
13 agency, board, or commission.

14 THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC  
15 50:VII.33103(A)(2) is hereby amended to read as follows:

16 §33103. Payment Limitations

17 A. Temporary Absence of the Client. A client's temporary absence from an  
18 ICF/ID will not interrupt the monthly vendor payment to the ICF/ID, provided the  
19 following conditions are met:

20 \* \* \*

21 2. the absence is for one of the following reasons:

22 a. hospitalization, which does not exceed seven days per hospitalization; or

23 b. leave of absence. A temporary stay outside the ICF/ID which, except for  
24 any leave of absence during a declared state of public health emergency, shall be  
25 provided for in the client's written individual habilitation plan. A leave of absence  
26 will not exceed 45 days per fiscal year (July 1 through June 30) ~~and~~. Except for any  
27 leave of absence during a declared state of public health emergency, a leave of  
28 absence will not exceed 30 consecutive days in any single occurrence. ~~Certain~~ The  
29 following leaves of absence will be excluded from the annual 45-day limit ~~as long~~

1 ~~as the leave does not~~ and, except for any leave of absence during a declared state of  
2 public health emergency, shall not exceed the 30-consecutive day limit and ~~is~~ shall  
3 be included in the written individual habilitation plan. These exceptions are as  
4 follows:

- 5 i. Special Olympics;
- 6 ii. roadrunner-sponsored events;
- 7 iii. Louisiana planned conferences;
- 8 iv. trial discharge leave;
- 9 v. official state holidays; ~~and~~
- 10 vi. any leave of absence during a declared state of public health emergency;

11 and

- 12 vii. vi. two days for bereavement of close family members.

13 (a). Close Family Members—parent, step-parent, child, step-child, brother,  
14 step-brother, sister, step-sister, spouse, mother-in-law, father-in-law, grand-parent,  
15 or grandchild.

16 (b). Declared State of Public Health Emergency—a state of public health  
17 emergency declared by executive order or proclamation of the governor in  
18 accordance with the provisions of R.S. 29:766.

19 \* \* \*

20 BE IT FURTHER RESOLVED that the provisions of this Resolution shall be given  
21 prospective and retroactive application and shall be applied retroactively to March 11, 2020.

22 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
23 office of the state register and the secretary of the Louisiana Department of Health.

24 BE IT FURTHER RESOLVED that the office of the state register is hereby directed  
25 to have the amendments to LAC 50:VII.33103(A)(2) printed and incorporated into the  
26 Louisiana Administrative Code.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HCR 29 Original

2020 Second Extraordinary Session

Butler

Amends present administrative rule limiting Medicaid coverage of intermediate care facility clients' leave of absence days, with certain exceptions, to provide an exception for leaves of absence during a declared state of public health emergency.

Applies prospectively and retroactively to March 11, 2020.

(Amends LAC 50:VII.33103(A)(2))