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**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

Proposed Rule
LSA Document #02-207

DIGEST

Amends 405 IAC 5-19-3 and 405 IAC 5-31-4 and adds 405 IAC 5-24-13 to add all legend and nonlegend water products, including, but not limited to, sterile water and saline, to the facility's per diem rate. Effective on the first day of the calendar quarter following the thirtieth day after filing with the secretary of state.

405 IAC 5-19-3

405 IAC 5-24-13

405 IAC 5-31-4

SECTION 1. 405 IAC 5-19-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-19-3 Reimbursement parameters for durable medical equipment

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 3. (a) Medicaid reimbursement is available for the rental or purchase of DME subject to the restrictions listed in this rule.

(b) DME and associated repair costs, including, but not limited to:

- (1) ice bags;
- (2) bed rails;
- (3) canes;
- (4) walkers;
- (5) crutches;
- (6) standard wheelchairs;
- (7) traction equipment; or
- (8) oxygen and equipment and supplies for its delivery, **including legend and nonlegend solutions used for humidification, irrigation, and replacement fluids;**

for the usual care and treatment of recipients in long term care facilities are reimbursed in the facility's per diem rate and may not be billed **separately** to Medicaid by the facility, pharmacy, or other provider. Nonstandard or custom/special equipment and associated repair costs require prior authorization by the office and may be billed separately to Medicaid, when authorized. Facilities cannot require recipients to purchase or rent such equipment with their personal funds.

(c) Reimbursement of DME is based upon Medicare's fee schedule for fiscal year 1993 and classes of DME. The established Medicaid rates will be reviewed annually and adjusted as necessary. A separate fee schedule will be established for each of the following six (6) classes:

- (1) Capped rental items.
- (2) Inexpensive and other routinely purchased DME.
- (3) Items requiring frequent and substantial servicing.
- (4) Customized items.
- (5) Prosthetic and orthotic devices.

(6) Oxygen and oxygen equipment.

(d) DME reimbursed at less than one hundred fifty dollars (\$150) or other amount as defined by the office will not be subject to the capped rental payment, but rather be reimbursed on a rental or lump sum purchase with prior authorization. The total payment for the rental period may not exceed the purchase price.

(e) Items identified by the office that require frequent or substantial servicing will be paid on a rental basis only. No purchase payment will be made.

(f) All DME must be ordered in writing by a physician. The written order must be kept on file for audit purposes. (*Office of the Secretary of Family and Social Services; 405 IAC 5-19-3; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3329; filed Sep 27, 1999, 8:55 a.m.: 23 IR 313; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

SECTION 2. 405 IAC 5-24-13 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-24-13 Legend and nonlegend solutions for nursing facility residents

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 13. The cost of legend and nonlegend water products, in all forms and for all uses, including, but not limited to, sterile water and saline, are included in the per diem rate for nursing facilities. When these drugs are furnished to a nursing facility resident, they are not separately reimbursable by Medicaid and are not to be billed separately to Medicaid by either the nursing facility or another Medicaid provider furnishing the products. (*Office of the Secretary of Family and Social Services; 405 IAC 5-24-13*)

SECTION 3. 405 IAC 5-31-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-31-4 Per diem services

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 4. Those services and products furnished by the facility for the usual care and treatment of patients are reimbursed in the per diem rate in accordance with ~~405 IAC 14-6~~. **405 IAC 1-14.6**. The per diem rate for nursing facilities includes the following services:

(1) Room and board (room accommodations, all dietary services, and laundry services). The per diem rate includes accommodations for semiprivate rooms. Medicaid reimbursement is available for medically necessary private rooms. Private rooms will be considered medically necessary only under one (1) or both of the following circumstances:

(A) The recipient's condition requires isolation for health reasons, such as communicable disease.

(B) The recipient exhibits behavior that is or may be physically harmful to self or others in the facility.

(2) Nursing care.

(3) The cost of all medical and nonmedical supplies and equipment, which includes those items generally required to assure adequate medical care and personal hygiene of patients, is included in the nursing facility per diem.

(4) Durable medical equipment (DME), and associated repair costs, routinely required for the care of patients, including, but not limited to:

(A) ice bags;

(B) bed rails;

(C) canes;

(D) walkers;

(E) crutches;

(F) standard wheelchairs; ~~and~~

(G) traction equipment; **and**

(H) oxygen and equipment and supplies for its delivery, including humidification and solutions used for humidification;

are covered in the per diem rate and may not be billed to Medicaid by the facility, an outside pharmacy, or any other provider. Nonstandard items of DME and associated repair costs that have received prior authorization must be billed

to Medicaid directly by the DME provider. Facilities may not require recipients to purchase or rent such equipment with their personal funds. DME purchased with Medicaid funds becomes the property of the office of Medicaid policy and planning. The county office of family and children must be notified when the recipient no longer needs the equipment.

(5) Medically necessary and reasonable therapy services, which include physical, occupational, respiratory, and speech pathology services.

(6) Transportation to vocational/habilitation service programs.

(7) The cost of both legend and nonlegend water products, in all forms, including, but not limited to, sterile water and saline; and for all uses, including, but not limited to, humidification, irrigation, and replacement fluids.

(Office of the Secretary of Family and Social Services; 405 IAC 5-31-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3361; filed Sep 27, 1999, 8:55 a.m.: 23 IR 322; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 4. For purposes of including legend and nonlegend water products in nursing facility per diem rates, new per diem rates for all nursing facilities shall include costs for legend and nonlegend water products based on Medicaid claims payment data for claims incurred in the most recent state fiscal year. For per diem rates that shall be effective after the next reporting year end, nursing facility providers' costs for legend and nonlegend water products shall be reported on the annual cost report and included in the rate calculation.

SECTION 5. Effective on the first day of the calendar quarter following the thirtieth day after filing with the secretary of state.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 22, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to include the cost of legend and nonlegend solutions in the per diem rate for Medicaid enrolled nursing facilities when these products are furnished to a nursing facility resident.

Further, in accordance with the public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP) publishes this notice of proposed revisions to the Medicaid reimbursement formula for Medicaid enrolled nursing facilities.

This change is intended to create an incentive for nursing facilities to better monitor utilization of water products by their residents, and to contain costs in the Medicaid program. It is expected that payments to pharmacies will be reduced because they will no longer be permitted to bill Medicaid directly for water products furnished to nursing facility residents. This reduction is expected to result in shifting of those payments to nursing facilities. On average, nursing facility payments are expected to increase by approximately \$0.35 per patient day. However, actual usage and reporting by the facility will determine the specific impact on an individual facility. Some facilities may see no increase in their rate; others may see increases up to a few dollars per patient day. On an annualized basis, this shift from pharmacy to nursing home payments for water products is expected to be approximately \$3.5 million (state and federal funds). The overall fiscal impact to the Medicaid program is expected to be neutral, or to result in slight savings resulting from better management of water product usage.

Written comments concerning this change may be sent to: MS27 IFSSA, Attention: Catherine Rudd, 402 West Washington Street, Room W451, Indianapolis, Indiana 46204. Correspondence should be identified in the following manner: "COMMENTS RE: LSA DOCUMENT #02-207." Written comments will be made available for public display at the address below of the Family and Social Services Administration. Also, copies of these rules and this public notice are now on file and open for public inspection by contacting the director of the local county division of family and children office, except in Marion County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services