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

**Proposed Rule**  
LSA Document #05-294

**DIGEST**

Adds 405 IAC 5-4-4 to specify criteria for the Office of Medicaid Policy and Planning to enter into a provider agreement with a nursing facility and conditions for reimbursement when an existing provider makes changes in certified beds. Effective 30 days after filing with the Secretary of State.

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**

This rule will limit the availability of Medicaid reimbursement for additional nursing facility beds when such beds are not needed to ensure access to services. Currently, the average statewide occupancy rate for Medicaid-certified beds is 66%. Because of the increased reimbursement available to nursing facilities due to the quality assessment, the nursing home industry may expand its capacity. In order to encourage providers to develop community-based, rather than institutional, services, this rule is being proposed to limit capacity of Medicaid reimbursable beds to no more than what is necessary to serve the eligible population truly in need of nursing facility services.

There are approximately 462 nursing facilities enrolled in the Medicaid program. According to 2003 cost reports, 85 Medicaid-enrolled nursing facilities are actively engaged in business in Indiana and maintain principal places of business in Indiana, employ fewer than 100 FTEs, and have gross annual receipts under \$5 million. None of these facilities are affiliated with chains, so it is assumed that they are independently owned and operated and thus may meet the definition of "small business" in IC 4-22-2.1-4. The rule is expected to result in total savings to the state of \$9.9 million annually. It is not possible to quantify what portion of the savings might be attributable to small businesses.

If a small business provider seeks to obtain reimbursement for an increase in its Medicaid-certified beds and it meets the requirements in the rule, complying with the rule should not be unduly burdensome because the information required should be readily available to the provider. In identifying the kinds of information needed for review, the Office of Medicaid Policy and Planning considered the minimum information required to assist it in determining whether there was a need for additional Medicaid nursing home beds as well as the information that should be readily available to the provider. Thus, it is not expected that small business will incur significant additional costs to comply. A provider can avoid any cost of compliance by not seeking reimbursement for an increase in the number of Medicaid-certified beds in its facility.

**405 IAC 5-4-4**

SECTION 1. 405 IAC 5-4-4 IS ADDED TO READ AS FOLLOWS:

**405 IAC 5-4-4 Enrollment of a nursing facility; conditions for reimbursement for certified beds**

**Authority:** IC 12-8-6-5; IC 12-15-1-10; IC 12-15-11

**Affected:** IC 12-15; IC 23-2-4

**Sec. 4. (a) As used in this rule, "geographic region" or "geographic region of the state" means an area served by one (1) of Indiana's area agencies on aging.**

**(b) The office shall rely on information obtained from the Indiana state department of health to determine the following:**

- (1) The number of Medicaid-certified beds that exist in a geographic region of the state as well as statewide.**
- (2) The overall occupancy rate in a geographic region.**

**(c) The office may enter into a Medicaid nursing facility provider agreement only if one (1) or more of the following circumstances exists:**

- (1) An existing nursing facility undergoes a change in ownership that does not result in an increase in the number of**

**Medicaid-certified beds eligible for reimbursement.**

**(2) An existing nursing facility closes a building and replaces it with a new building containing not more Medicaid-certified beds than were contained in the previous building.**

**(3) The overall occupancy rate for all facilities in the geographic region is equal to or greater than ninety-five percent (95%).**

**(4) The nursing facility is owned by the state of Indiana.**

**(5) The nursing facility is under development on December 15, 2005, to add, construct, or convert certified beds. For purposes of this rule, in determining whether the facility is under development on December 15, 2005, the office shall consider the following:**

**(A) Whether:**

**(i) architectural plans have been completed;**

**(ii) funding has been received;**

**(iii) zoning requirements have been met; and**

**(iv) construction plans for the project have been approved by the Indiana state department of health and the department of fire and building safety.**

**(B) Any other evidence that the office determines is an indication that the nursing facility is under development.**

**(6) The nursing facility is part of a continuing care retirement community that is required to file a disclosure statement under IC 23-2-4.**

**(d) Unless the provider satisfies one (1) of the exceptions listed in subsection (c), Medicaid reimbursement is not available to a Medicaid-enrolled nursing facility for Medicaid-certified beds that:**

**(1) have been added after December 15, 2005; or**

**(2) were converted from noncertified beds or acute care beds after December 15, 2005.**

*(Office of the Secretary of Family and Social Services; 405 IAC 5-4-4)*

#### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on March 23, 2006 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments concerning criteria for entering into Medicaid provider agreements with nursing facilities.*

*In accordance with public notice requirements established at IC 4-22-2-24(d), the Office does not anticipate that providers subject to this rule will incur any significant costs to comply. Providers who seek to enter into a provider agreement will be required to submit information that is already within their possession that will demonstrate whether a nursing facility was under development on December 15, 2005.*

*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.*

E. Mitchell Roob Jr.

Secretary

Office of the Secretary of Family and Social Services