

5101:3-3-16.8

Coverage of bed-hold days for medical necessity and other limited absences from intermediate care facilities for the mentally retarded (ICFs-MR).

(A) Definitions.

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

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008

5101:3-3-16.8

2

- (7) "ICF-MR readmission" means the status of a resident who is readmitted to the same ICF-MR 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 ICF-MR resident can only be readmitted to a facility if that individual was not officially discharged from the facility during that ICF-MR stay.
- (8) "ICF-MR therapeutic leave day" means a day that a resident is temporarily absent from an ICF-MR 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) "ICF-MR transfer" means the events that occur when a person's place of residence changes from one Ohio medicaid certified ICF-MR to another, with or without an intervening hospital stay. However, when the person has an intervening IMD admission, or when the person is discharged from an ICF-MR during a hospital stay due to exhaustion of available ICF-MR bed-hold days and is admitted to a different ICF-MR immediately following that hospital stay, the change of residence is not considered an ICF-MR transfer.
- (10) "Institution for mental disease" (IMD) means a hospital, NF, 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 IMD 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) Is organized to provide medical care, including nursing and convalescent care; and
 - (b) 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; and
 - (c) Is authorized under state law to provide medical care; and
 - (d) 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:

APR 10 2008

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

5101:3-3-16.8

3

(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) Nurses' 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" (SNF) means a nursing facility certified to participate
in the medicare program.

(B) Prohibition of preadmission ICF-MR bed-hold payment.

(1) ODJFS shall not make payment to reserve a bed for a medicaid eligible
prospective ICF-MR resident.

(2) An ICF-MR provider shall not accept preadmission bed-hold payments from a
medicaid eligible prospective ICF-MR resident or from any other source on
the prospective resident's behalf as a precondition for ICF-MR admission.

(C) Determination of ICF-MR bed-hold day or ICF-MR occupied day.

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

(1) The day of ICF-MR admission counts as one occupied day; and

(2) The day of ICF-MR discharge is not counted as either a bed-hold or an occupied
day; and

(3) When ICF-MR admission and ICF-MR 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 ICF-MR that is eight hours or more counts as one occupied
day for reimbursement purposes. A day begins at 12:00 a.m. and ends at
11:59 p.m.

(D) Limits and reimbursement for ICF-MR bed-hold days.

(1) For a medicaid eligible resident in a certified ICF-MR, except those described
in paragraph (I) of this rule, the Ohio department of job and family services
(ODJFS) may pay the ICF-MR to reserve a bed only for as long as the

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008

5101:3-3-16.8

4

resident has an ICF-MR level of care (LOC) determination and intends to return to the same ICF-MR, 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 (CDJFS) staff as specified in paragraph (E) of this rule.

(2) Reimbursement for ICF-MR bed-hold days shall be paid at one-hundred per cent of the ICF-MR provider's per diem rate.

(3) Reimbursement for ICF-MR bed-hold days may be made for the following reasons:

(a) Hospitalization.

ICF-MR bed-hold days used for hospitalization may be reimbursed only until:

(i) The day the resident's anticipated LOC at time of discharge from the hospital changes to a LOC that the ICF-MR provider is not certified to provide; or

(ii) The day the resident is discharged from the hospital, including discharge resulting in transfer to an ICF-MR, a NF, or a SNF; or

(iii) The day the resident decides to go to another ICF-MR upon discharge from the hospital and notifies the first ICF-MR provider; 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 CDJFS and ODJFS staff.

(ii) An ICF-MR provider 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 (DME), and private duty nursing.

(c) Visits with friends or relatives.

(i) Any plan for a limited absence to visit with friends or relatives must

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008

5101:3-3-16.8

5

be approved in advance by the resident's primary physician or by a qualified mental retardation professional (OMRP), and must be documented in the resident's medical record or individual habilitation plan (IHP). The documentation shall be available for viewing by the CDJFS or ODJFS staff.

(ii) An ICF-MR provider 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, DME, and private duty nursing.

(iii) The number of days per visit is flexible within the maximum ICF-MR 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 ICF-MR bed-hold days used shall be considered in evaluating the continuing need of a resident for ICF-MR care.

(E) Requests for additional ICF-MR bed-hold days.

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

(2) An ICF-MR provider shall submit the JFS 09402 "ICF-MR/DD Extended Bed-hold Day(s) Prior Authorization" (rev. 7/2005) to the CDJFS staff. The JFS 09402 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 OMRP, a medical director, or a primary physician. The request shall be consistent with the goals of the resident's IHP 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 ICF-MR; and

(c) Projected date of return to the ICF-MR.

(3) The request for additional ICF-MR bed-hold days shall be received by the CDJFS staff or postmarked to the CDJFS 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

5101:3-3-16.8

6

hospitalization.

(4) The CDJFS staff 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 CDJFS staff 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 ICF-MR 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 CDJFS staff.

(b) Subsequent requests for an additional thirty consecutive bed-hold days shall be submitted to the CDJFS and reviewed for approval or disapproval by ODJFS.

(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) ICF-MR 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) ICF-MR readmission after depletion of ICF-MR bed-hold days.

APR 10 2008

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

5101:3-3-16.8

7

- (1) An ICF-MR licensed by the Ohio department of health (ODH) shall establish and follow a written policy under which a medicaid resident who has expended their annual allotment of thirty ICF-MR bed-hold days and any additional ICF-MR bed-hold days prior authorized by the county department of job and family services (CDJFS) staff, and therefore are no longer entitled to a reserved bed under the medicaid bed-hold limit, shall be readmitted to the first available medicaid certified bed in a semiprivate room.
- (2) 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.
- (3) ICF-MR readmission requires that a resident has an ICF-MR LOC and is eligible for medicaid ICF-MR services.

(G) Maximum number of ICF-MR bed-hold days.

- (1) Medicaid payment for covered ICF-MR bed-hold days is considered reimbursement for reserving bed space for a resident who intends to return to the same ICF-MR and is able to do so.
- (2) The number of ICF-MR inpatient days as defined in rule 5101:3-3-01 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 ICF-MR bed-hold days.

- (1) Medicaid payment for ICF-MR 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 ICF-MR LOC; and
 - (c) Is not a participant of special medicaid programs or assigned special status as outlined in paragraph (I) of this rule.

(2) Medicaid pending.

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

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008

5101:3-3-16.8

8

bed-hold days are exhausted.

(I) Exclusions.

ICF-MR bed-hold days are not available to medicaid eligible ICF-MR residents in the following situations:

(1) Hospice.

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

(2) IMD.

A resident over age twenty-one and under age sixty-five who becomes a patient of an IMD loses medicaid eligibility and is not entitled to ICF-MR bed-hold days. An ICF-MR provider shall not receive bed-hold day reimbursement during the period a person is hospitalized in an IMD. The CDJFS staff shall issue the appropriate notice of medicaid ineligibility as stated in rule 5101:6-2-05 of the Administrative Code; or

(3) HCBS waiver.

ICF-MR bed-hold days do not apply to a person enrolled in a HCBS waiver program who is using the ICF-MR for short-term respite care as a waiver service. Under the HCBS waiver program, a person may not have concurrent active status as both a HCBS enrollee and as an ICF-MR resident approved for ICF-MR vendor payment. Eligibility criteria for the HCBS 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 ICF-MR 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.

ICF-MR bed-hold days are not available to residents who relocate due to a facility's anticipated closure, voluntary withdrawal from participation in the

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008

5101:3-3-16.8

9

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, ODJFS may do one of the following:
 - (a) Terminate the ICF-MR provider agreement; or
 - (b) Require the provider to submit and implement a corrective action plan on a schedule specified by ODJFS.
- (2) An ICF-MR provider shall cooperate with any investigation and shall provide copies of any records requested by ODJFS.

TNS#07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008

5101:3-3-16.8

10

Replaces: 5101:3-3-92

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5111.02
Rule Amplifies: 3721.16, 5111.33
Prior Effective Dates: 4/7/77, 8/8/77, 9/19/77, 12/30/77, 1/1/79, 3/23/79,
1/1/80, 7/1/80, 11/10/83, 4/1/87, 7/7/89 (Emer),
9/23/89, 1/1/95, 7/1/97, 9/1/02

TNS# 07-011 Approval Date 00/00/08
Supersedes
TNS# 02-021 Effective Date 07/01/07

APR 10 2008