



Michael R. Pence, Governor
State of Indiana

Office of General Counsel
402 W. WASHINGTON STREET, ROOM W451, MS27
INDIANAPOLIS, IN 46204-2744

REQUEST FOR RULEMAKING AND FAMILY IMPACT CERTIFICATION

PURPOSE FOR RULE

- FSSA intends to amend portions of the Indiana Administrative Code concerning hospice services to differentiate payments for routine home care based on the beneficiary's length of stay and implement a service intensity add-on payment.
- These changes are in accordance with federal regulations (as published in 80 FR 47142 and affecting 42 CFR 418).
- The change to Medicare hospice payments rates by the Centers for Medicare and Medicaid Services for Medicare hospice payments rates are budget neutral. As a result, the implementation of these changes to the Medicaid hospice payment rates is also budget neutral.

REQUESTED RESPONSE TIME

FSSA anticipates an effective date for these changes of January 1, 2016. Given the urgent nature of this proposed rule, FSSA respectfully requests a response to this submission on or before **November 2, 2015.**

Thank you for your attention to this matter. Should you have any questions regarding this submission, please feel free to contact me at (317) 232-1244 or kim.crawford@fssa.in.gov.

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Indiana Family and Social Services Administration
402 W. WASHINGTON STREET, P.O. BOX 7083
INDIANAPOLIS, IN 46207-7083

John J. Wernert, M.D., Secretary

TO: Micah Vincent, Director
Office of Management and Budget

FROM: John J. Wernert, M.D., Secretary

RE: Request to Proceed with Rulemaking – Revision to Reimbursement for Hospice Services

DATE: October 20, 2015

The Indiana Family and Social Services Administration (“FSSA”) Office of Medicaid Policy and Planning (“OMPP”) intends to adopt a rule that will differentiate payments for routine home care based on the beneficiary’s length of stay and implement a service intensity add-on payment in accordance with federal regulations. Pursuant to Executive Order 13-03 (“Executive Order”) and the Financial Management Circular 2013-01, FSSA submits this justification and asks that the Office of Management and Budget (“OMB”) Director approve its request to proceed with rulemaking.

Background

The proposed rule amends portions of the Indiana Administrative Code to differentiate payments for routine home care based on the beneficiary’s length of stay and implement a service intensity add-on payment in accordance with federal regulations (as published in 80 FR 47142 and affecting 42 CFR 418). These changes are being implemented by the Centers for Medicare and Medicaid Services (“CMS”) for Medicare hospice payments rates to be budget neutral as required by Section 1814(i)(6)(D)(ii) of the Social Security Act. As Indiana uses the Medicare hospice payment rates adjusted by a wage index for Indiana to determine the Medicaid hospice payment rates, the implementation of this change is also budget neutral.

Health or Safety Exception

Section 6.g. of the Executive Order excepts any rule from the rulemaking moratorium “whose predominate purpose and effect are to address matters of emergency or health or safety....” The proposed rule will update hospice reimbursement rules so that Indiana can continue to use Medicare’s hospice reimbursement as the basis for determining Medicaid hospice reimbursement.



The proposed rule is necessary to ensure that Medicaid members continue to receive hospice services and Medicaid providers receive reimbursement for those services provided. These services are vital to the health and well-being of Hoosiers enrolled in Medicaid who are terminally ill and wish to continue their life with minimal disruption to their normal activities while primarily remaining in their home environment.

Federal Mandate Exception

Section 6.c. of the Executive Order excepts any rule from the rulemaking moratorium that “implements a federal mandate and no waiver is permitted.” The proposed rule differentiates payments for routine home care based on the beneficiary’s length of stay and implements a service intensity add-on payment in accordance with federal regulations. There is no waiver or exception permitted to these federal requirements.

Accordingly, FSSA believes that the proposed rule meets the foregoing exceptions to the rulemaking moratorium and asks that the OMB Director approve FSSA’s request to proceed with the rulemaking. Should the OMB Director like to discuss this proposed rule further before making any decision, FSSA would be happy to make a subject matter expert available at the Director’s convenience.

Office of the Secretary of Family and
Social Services



John J. Wernert, M.D., Secretary

CC: Chris Fletcher, Office of Medicaid Policy of Planning
Derris Harrison, Office of Medicaid Policy of Planning
Susan Hartman, Office of Medicaid Policy of Planning
Allison Taylor, FSSA General Counsel
Douglas Jenkins (Myers and Stauffer)



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FSSA's Family Impact Statement for Hospice Services

Executive Order 13-05 ("Order") requires the Family and Social Services Administration ("FSSA") to assess a policy or proposed rule's impact on family formation and general well-being and to certify its compliance with the Order. FSSA, with the Office of Medicaid Policy and Planning ("OMPP"), hereby submits this certification that it has assessed the proposed rule's impact on family formation and general well-being pursuant to the enumerated considerations listed in the Order.

Background and Summary of the Rule

The Indiana Family and Social Services Administration ("FSSA") Office of Medicaid Policy and Planning ("OMPP") intends to amend portions of the Indiana Administrative Code to differentiate payments for routine home care based on the beneficiary's length of stay and implement a service intensity add-on payment in accordance with federal regulations (as published in 80 FR 47142 and affecting 42 CFR 418). These changes are being implemented by the Centers for Medicare and Medicaid Services ("CMS") for Medicare hospice payments rates to be budget neutral as required by Section 1814(i)(6)(D)(ii) of the Social Security Act. As Indiana uses the Medicare hospice payment rates adjusted by a wage index for Indiana to determine the Medicaid hospice payment rates, the implementation of this change is also budget neutral.

Impact of the proposed rule on the family well-being or family formation

FSSA – OMPP assessed the proposed rule's impact on family formation and well-being, in light of the six (6) considerations enumerated in the Order. Overall, FSSA – OMPP expects that the proposed rule will have a **neutral** impact on family formation and well-being. FSSA – OMPP is submitting this certification to the OMB that it has considered the requisite criteria in Executive Order 13-05 in developing the proposed rule. FSSA – OMPP's response to the enumerated measures is as follows:

- 1) Whether or not this action by government strengthens or erodes the stability of the family and the marital commitment.**

Response: FSSA – OMPP does not expect the proposed rule to destabilize the family or marital commitment. The rate reimbursement provisions are administrative in nature and do not impact family well-being or family formation. In fact, the proposed rule primarily



concerns the relationship between the Medicaid program and payment to Medicaid providers providing hospice services.

2) Whether or not this action encourages or discourages non-marital childbearing.

Response: The proposed rule primarily concerns the relationship between the Medicaid program and payment to Medicaid providers providing hospice services. The rate reimbursement provisions are administrative in nature; therefore, the proposed rule neither encourages nor discourages non-marital childbearing.

3) Whether or not this action respects or inhibits the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.

Response: The proposed rule primarily concerns the relationship between the Medicaid program and payment to Medicaid providers providing hospice services. The rate reimbursement provisions are administrative in nature; therefore, the proposed rule does not impact the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.

4) Whether or not this action increases or decreases private family earnings or the incentive for parents to provide materially and emotionally for their children.

Response: The proposed rule primarily concerns the relationship between the Medicaid program and payment to Medicaid providers providing hospice services. The rate reimbursement provisions are administrative in nature; therefore, FSSA – OMPP does not expect the proposed rule to provide a disincentive for parents to provide for their children or reduce family earnings.

5) What message, intended or otherwise, does this program send to the public concerning the status of the family?

Response: The proposed rule primarily concerns the relationship between the Medicaid program and payment to Medicaid providers providing hospice services. The rate reimbursement provisions are administrative in nature; therefore, the proposed rule does not send a positive or negative message concerning the status of the family.

6) What message does the action send to children about the relationship between their present choices and their future well-being?

Response: The proposed rule primarily concerns the relationship between the Medicaid program and payment to Medicaid providers providing hospice services. The rate reimbursement provisions are administrative in nature; therefore, the proposed rule does

not send a positive or negative message to children concerning the relationship between their present choices and their future well-being.

Office of the Secretary of Family and
Social Services



John J. Wernert, M.D., Secretary



Family Impact Assessment

Documentation of new Policies and Rules

Pursuant to Section 2(a)-(f) of Executive Order 13-05:

In formulating and implementing policies and rules that may have a significant impact on family formation and general well-being, the agencies listed in Section 1 of Executive Order 13-05 shall assess such measures in light of the following considerations:

- 1) **Whether or not this action by government strengthens or erodes the stability of the family and the marital commitment.**
- 2) **Whether or not this action encourages or discourages non-marital childbearing.**
- 3) **Whether or not this action respects or inhibits the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.**
- 4) **Whether or not this action increases or decreases private family earnings or the incentive for parents to provide materially and emotionally for their children.**
- 5) **What message, intended or otherwise, does this program send to the public concerning the status of the family?**
- 6) **What message does the action send to children about the relationship between their present choices and their future well-being?**

These assessments should be answered on a separate document attached to this submission form and clearly marked as answers to considerations 1-6. If an agency does not think that a consideration applies to their proposal, the agency must include an explanation of why the consideration does not apply. Additionally, if the proposal contains a potentially negative impact on family well-being or family formation, the agency must include an explanation of why the proposal is necessary.

This submission form and the agency assessments should be submitted simultaneously with the proposed policy or rule to the Office of Management and Budget.

By signing below, the agency head certifies that they are aware of the Family Impact Assessment, and all information submitted is accurate to the best of their knowledge.



John J. Wernert, M.D., Secretary

10/22/15
Date

FSSA
Agency