



## Ohio Revised Code

### Section 5124.17 ICF/IID's per medicaid day capital component rate.

Effective: September 15, 2014

Legislation: House Bill 483 - 130th General Assembly

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(A) For each fiscal year, the department of developmental disabilities shall determine each ICF/IID's per medicaid day payment rate for reasonable capital costs. Except as otherwise provided in this chapter, an ICF/IID's rate shall be determined prospectively and based on the ICF/IID's capital costs for the calendar year preceding the fiscal year in which the rate will be paid. Subject to section 5124.28 of the Revised Code, an ICF/IID's rate shall equal the sum of the following:

(1) The ICF/IID's desk-reviewed, actual, allowable, per diem costs of ownership for the immediately preceding cost reporting period, limited as provided in divisions (B), (C), and (D) of this section;

(2) The ICF/IID's per medicaid day payment for the ICF/IID's per diem capitalized costs of nonextensive renovations determined under division (E)(1) of this section if the ICF/IID qualifies for a payment for such costs as specified in division (E)(2) of this section;

(3) The ICF/IID's per medicaid day efficiency incentive determined under division (F) of this section.

(B) The costs of ownership per diem payment rates for ICFs/IID in peer group 1 shall not exceed the following limits as adjusted for inflation in accordance with division (G) of this section:

(1) For ICFs/IID with dates of licensure prior to January 1, 1958, not exceeding two dollars and fifty cents;

(2) For ICFs/IID with dates of licensure after December 31, 1957, but prior to January 1, 1968, not exceeding:

(a) Three dollars and fifty cents if the cost of construction was three thousand five hundred dollars



or more per bed;

(b) Two dollars and fifty cents if the cost of construction was less than three thousand five hundred dollars per bed.

(3) For ICFs/IID with dates of licensure after December 31, 1967, but prior to January 1, 1976, not exceeding:

(a) Four dollars and fifty cents if the cost of construction was five thousand one hundred fifty dollars or more per bed;

(b) Three dollars and fifty cents if the cost of construction was less than five thousand one hundred fifty dollars per bed, but exceeds three thousand five hundred dollars per bed;

(c) Two dollars and fifty cents if the cost of construction was three thousand five hundred dollars or less per bed.

(4) For ICFs/IID with dates of licensure after December 31, 1975, but prior to January 1, 1979, not exceeding:

(a) Five dollars and fifty cents if the cost of construction was six thousand eight hundred dollars or more per bed;

(b) Four dollars and fifty cents if the cost of construction was less than six thousand eight hundred dollars per bed but exceeds five thousand one hundred fifty dollars per bed;

(c) Three dollars and fifty cents if the cost of construction was five thousand one hundred fifty dollars or less per bed, but exceeds three thousand five hundred dollars per bed;

(d) Two dollars and fifty cents if the cost of construction was three thousand five hundred dollars or less per bed.

(5) For ICFs/IID with dates of licensure after December 31, 1978, but prior to January 1, 1980, not



exceeding:

- (a) Six dollars if the cost of construction was seven thousand six hundred twenty-five dollars or more per bed;
  - (b) Five dollars and fifty cents if the cost of construction was less than seven thousand six hundred twenty-five dollars per bed but exceeds six thousand eight hundred dollars per bed;
  - (c) Four dollars and fifty cents if the cost of construction was six thousand eight hundred dollars or less per bed but exceeds five thousand one hundred fifty dollars per bed;
  - (d) Three dollars and fifty cents if the cost of construction was five thousand one hundred fifty dollars or less but exceeds three thousand five hundred dollars per bed;
  - (e) Two dollars and fifty cents if the cost of construction was three thousand five hundred dollars or less per bed.
- (6) For ICFs/IID with dates of licensure after December 31, 1979, but prior to January 1, 1981, not exceeding:
- (a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;
  - (b) Six dollars if the beds were originally licensed as nursing home beds by the department of health.
- (7) For ICFs/IID with dates of licensure after December 31, 1980, but prior to January 1, 1982, not exceeding:
- (a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;
  - (b) Six dollars and forty-five cents if the beds were originally licensed as nursing home beds by the



department of health.

(8) For ICFs/IID with dates of licensure after December 31, 1981, but prior to January 1, 1983, not exceeding:

(a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Six dollars and seventy-nine cents if the beds were originally licensed as nursing home beds by the department of health.

(9) For ICFs/IID with dates of licensure after December 31, 1982, but prior to January 1, 1984, not exceeding:

(a) Twelve dollars if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and nine cents if the beds were originally licensed as nursing home beds by the department of health.

(10) For ICFs/IID with dates of licensure after December 31, 1983, but prior to January 1, 1985, not exceeding:

(a) Twelve dollars and twenty-four cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and twenty-three cents if the beds were originally licensed as nursing home beds by the department of health.

(11) For ICFs/IID with dates of licensure after December 31, 1984, but prior to January 1, 1986, not exceeding:

(a) Twelve dollars and fifty-three cents if the beds were originally licensed as residential facility



beds by the department of developmental disabilities;

(b) Seven dollars and forty cents if the beds were originally licensed as nursing home beds by the department of health.

(12) For ICFs/IID with dates of licensure after December 31, 1985, but prior to January 1, 1987, not exceeding:

(a) Twelve dollars and seventy cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and fifty cents if the beds were originally licensed as nursing home beds by the department of health.

(13) For ICFs/IID with dates of licensure after December 31, 1986, but prior to January 1, 1988, not exceeding:

(a) Twelve dollars and ninety-nine cents if the beds were originally licensed as residential facility beds by the department of developmental disabilities;

(b) Seven dollars and sixty-seven cents if the beds were originally licensed as nursing home beds by the department of health.

(14) For ICFs/IID with dates of licensure after December 31, 1987, but prior to January 1, 1989, not exceeding thirteen dollars and twenty-six cents;

(15) For ICFs/IID with dates of licensure after December 31, 1988, but prior to January 1, 1990, not exceeding thirteen dollars and forty-six cents;

(16) For ICFs/IID with dates of licensure after December 31, 1989, but prior to January 1, 1991, not exceeding thirteen dollars and sixty cents;

(17) For ICFs/IID with dates of licensure after December 31, 1990, but prior to January 1, 1992,



not exceeding thirteen dollars and forty-nine cents;

(18) For ICFs/IID with dates of licensure after December 31, 1991, but prior to January 1, 1993, not exceeding thirteen dollars and sixty-seven cents;

(19) For ICFs/IID with dates of licensure after December 31, 1992, not exceeding fourteen dollars and twenty-eight cents.

(C)(1) The costs of ownership per diem payment rate for an ICF/IID in peer group 2 shall not exceed the following limits:

(a) Eighteen dollars and thirty cents as adjusted for inflation pursuant to division (C)(2) of this section if any of the following apply to the ICF/IID:

(i) The ICF/IID has a date of licensure, or was granted project authorization by the department of developmental disabilities, before July 1, 1993.

(ii) The ICF/IID has a date of licensure, or was granted project authorization by the department, on or after July 1, 1993, and the provider demonstrates that the provider made substantial commitments of funds for the ICF/IID before that date.

(iii) The ICF/IID has a date of licensure, or was granted project authorization by the department, on or after July 1, 1993, the provider made no substantial commitment of funds for the ICF/IID before that date, and the department of job and family services or department of developmental disabilities gave prior approval for the ICF/IID's construction.

(b) If division (C)(1)(a) of this section does not apply to the ICF/IID, the amount that would apply to the ICF/IID under division (B) of this section if it were in peer group 1.

(2) The eighteen-dollar and thirty-cent payment rate specified in division (C)(1)(a) of this section shall be increased as follows:

(a) For the period beginning June 30, 1990, and ending July 1, 1993, by the change in the "Dodge



building cost indexes, northeastern and north central states," published by Marshall and Swift;

(b) For each fiscal year thereafter, in accordance with division (G) of this section.

(D) The costs of ownership per diem payment rate for an ICF/IID in peer group 3 shall not exceed the amount that is used for the purpose of division (C)(1)(a) of this section and is in effect on July 1, 2014. That rate shall be increased each fiscal year that begins after the effective date of this section in accordance with division (G) of this section.

(E)(1) Beginning January 1, 1981, regardless of the original date of licensure, the payment rate for the per diem capitalized costs of nonextensive renovations made after January 1, 1981, to a qualifying ICF/IID, shall not exceed six dollars per medicaid day using 1980 as the base year and adjusting the amount annually until June 30, 1993, for fluctuations in construction costs calculated by the department using the "Dodge building cost indexes, northeastern and north central states," published by Marshall and Swift. The payment rate shall be further adjusted in accordance with division (G) of this section. The payment provided for in this division is the only payment that shall be made for an ICF/IID's capitalized costs of nonextensive renovations. Costs of nonextensive renovations shall not be included in costs of ownership and shall not affect the date of licensure for purposes of division (B) or (C) of this section. This division applies to nonextensive renovations regardless of whether they are made by an owner or a lessee. If the tenancy of a lessee that has made nonextensive renovations ends before the depreciation expense for the costs of nonextensive renovations has been fully reported, the former lessee shall not report the undepreciated balance as an expense.

(2) An ICF/IID qualifies for a payment for costs of nonextensive renovations if all of the following apply:

(a) Either of the following applies:

(i) The ICF/IID is in peer group 1 and either the department approved the nonextensive renovation before July 1, 2013, or the nonextensive renovation is part of a project that results in the ICF/IID becoming a downsized ICF/IID or partially converted ICF/IID.



(ii) The ICF/IID is in peer group 2 or peer group 3.

(b) At least five years have elapsed since the ICF/IID's date of licensure or date of an extensive renovation of the portion of the ICF/IID that is proposed to be nonextensively renovated, unless the nonextensive renovation is necessary to meet the requirements of federal, state, or local statutes, ordinances, rules, or policies.

(c) The provider of the ICF/IID does both of the following:

(i) Submits to the department a plan that describes in detail the changes in capital assets to be accomplished by means of the nonextensive renovation and the timetable for completing the project, which shall be not more than eighteen months after the nonextensive renovation begins;

(ii) Obtains prior approval from the department for the nonextensive renovation.

(3) The director of developmental disabilities shall adopt rules under section 5124.03 of the Revised Code that specify criteria and procedures for prior approval of nonextensive renovation and extensive renovation projects. No provider shall separate a project with the intent to evade the characterization of the project as a nonextensive renovation or as an extensive renovation. No provider shall increase the scope of a project after it is approved by the department unless the increase in scope is approved by the department.

(F)(1) Subject to division (F)(2) of this section, an ICF/IID's per medicaid day efficiency incentive payment rate shall equal the following percentage of the difference between the ICF/IID's desk-reviewed, actual, allowable per diem costs of ownership and the applicable limit on costs of ownership payment rates established by division (B) of this section:

(a) In the case of an ICF/IID in peer group 1, the following percentage:

(i) Fifty per cent if the provider of the ICF/IID obtains the department's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018;





(ii) Twenty-five per cent if division (F)(1)(a)(i) of this section does not apply;

(b) In the case of an ICF/IID in peer group 2 or peer group 3, fifty per cent.

(2) The efficiency incentive payment rate for an ICF/IID in peer group 2 or peer group 3 shall not exceed three dollars per medicaid day, adjusted annually in accordance with division (G) of this section. For the purpose of determining an ICF/IID's efficiency incentive payment rate, both of the following apply:

(a) Depreciation for costs paid or reimbursed by any government agency shall be considered as a cost of ownership;

(b) The applicable limit under division (B) of this section shall apply to all ICFs/IID regardless of which peer group they are in.

(G) The amounts specified in divisions (B), (C), (D), (E), and (F) of this section shall be adjusted beginning on the first day of each fiscal year for the estimated inflation rate for the twelve-month period beginning on the first day of July of the calendar year immediately preceding the calendar year that immediately precedes the fiscal year for which rate will be paid and ending on the thirtieth day of the following June, using the consumer price index for shelter costs for all urban consumers for the midwest region, as published by the United States bureau of labor statistics.

(H) Notwithstanding divisions (C) and (E) of this section, the total payment rate for costs of ownership, capitalized costs of nonextensive renovations, and the efficiency incentive for an ICF/IID in peer group 2 shall not exceed the sum of the limitations specified in divisions (C) and (E) of this section. Notwithstanding divisions (D) and (E) of this section, the total payment rate for costs of ownership, capitalized costs of nonextensive renovations, and the efficiency incentive for an ICF/IID in peer group 3 shall not exceed the sum of the limitations specified in divisions (D) and (E) of this section.

(I)(1) For the purpose of determining ICFs/IID's medicaid payment rates for capital costs:

(a) Buildings shall be depreciated using the straight line method over forty years or over a different



period approved by the department.

(b) Components and equipment shall be depreciated using the straight line method over a period designated by the director of developmental disabilities in rules adopted under section 5124.03 of the Revised Code, consistent with the guidelines of the American hospital association, or over a different period approved by the department.

(2) Any rules authorized by division (I)(1) of this section that specify useful lives of buildings, components, or equipment apply only to assets acquired on or after July 1, 1993. Depreciation for costs paid or reimbursed by any government agency shall not be included in costs of ownership or costs of nonextensive renovations unless that part of the payment under this chapter is used to reimburse the government agency.

(J)(1) Except as provided in division (J)(2) of this section, if a provider leases or transfers an interest in an ICF/IID to another provider who is a related party, the related party's allowable costs of ownership shall include the lesser of the following:

(a) The annual lease expense or actual cost of ownership, whichever is applicable;

(b) The reasonable cost to the lessor or provider making the transfer.

(2) If a provider leases or transfers an interest in an ICF/IID to another provider who is a related party, regardless of the date of the lease or transfer, the related party's allowable cost of ownership shall include the annual lease expense or actual cost of ownership, whichever is applicable, subject to the limitations specified in divisions (B) to (I) of this section, if all of the following conditions are met:

(a) The related party is a relative of owner;

(b) In the case of a lease, if the lessor retains any ownership interest, it is, except as provided in division (J)(2)(d)(ii) of this section, in only the real property and any improvements on the real property;



(c) In the case of a transfer, the provider making the transfer retains, except as provided in division (J)(2)(d)(iv) of this section, no ownership interest in the ICF/IID;

(d) The department determines that the lease or transfer is an arm's length transaction pursuant to rules adopted under section 5124.03 of the Revised Code. The rules shall provide that a lease or transfer is an arm's length transaction if all of the following, as applicable, apply:

(i) In the case of a lease, once the lease goes into effect, the lessor has no direct or indirect interest in the lessee or, except as provided in division (J)(2)(b) of this section, the ICF/IID itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a lessor.

(ii) In the case of a lease, the lessor does not reacquire an interest in the ICF/IID except through the exercise of a lessor's rights in the event of a default. If the lessor reacquires an interest in the ICF/IID in this manner, the department shall treat the ICF/IID as if the lease never occurred when the department determines its payment rate for capital costs.

(iii) In the case of a transfer, once the transfer goes into effect, the provider that made the transfer has no direct or indirect interest in the provider that acquires the ICF/IID or the ICF/IID itself, including interest as an owner, officer, director, employee, independent contractor, or consultant, but excluding interest as a creditor.

(iv) In the case of a transfer, the provider that made the transfer does not reacquire an interest in the ICF/IID except through the exercise of a creditor's rights in the event of a default. If the provider reacquires an interest in the ICF/IID in this manner, the department shall treat the ICF/IID as if the transfer never occurred when the department determines its payment rate for capital costs.

(v) The lease or transfer satisfies any other criteria specified in the rules.

(e) Except in the case of hardship caused by a catastrophic event, as determined by the department, or in the case of a lessor or provider making the transfer who is at least sixty-five years of age, not less than twenty years have elapsed since, for the same ICF/IID, allowable cost of ownership was determined most recently under this division.