

House Bill 1 - ICF/MR Update
As Signed by Governor Strickland

In June, the Office of Budget and Management announced that a \$3.2 billion budget hole needed to be filled. In response to the revenue shortage, the Governor proposed a new budget “framework” that included many controversial items. Included in that framework was a cut in funding to the ICF/MR program of around \$50 million over the biennium (all funds). The framework also restored language that put in place a cap of 8% in FY 10 and 7% in FY 11 on the amount an ICF rate could increase from year-to-year.

OPRA members reacted with a huge grassroots effort to express concern about the cut to legislators and the Governor’s office. Because of this, we were able to work with the administration and the legislature to address the proposed cut. The result is a very slight increase in the ICF/MR rate. This will largely be achieved through an agreement to delay the last payment of the biennium for two weeks, which pushes it into the next fiscal year (FY 12). This action allowed the state to save a month’s payment in the FY 10-11 biennium and those funds were used to support the ICF/MR rate. In addition, we were able to remove the proposed 108/107 cap language.

Below is a table that shows the statewide average rate and franchise permit fee as it currently stands, as originally proposed in the budget, as proposed in the Governor’s framework, and as passed by the conference committee:

	Current FY 09 levels	As introduced	Governor’s framework	Conference committee report
Statewide average rate	\$274.98	\$277.25	\$265.29	\$278.15
Franchise Permit Fee	\$11.98	\$14.25	\$14.20	\$14.75 (FY 10) \$13.55 (FY 11) Average of \$14.15

While we are aware that a delayed payment will cause cash flow difficulties for some providers, we thought that a rate cut would be a greater burden. OPRA was able to work with the administration to move the delay to the last payment of the biennium. More details will be forthcoming.

Also of note, House Bill 1 eliminates the requirement that day programming must be provided 200 feet away from an ICF/MR.

House Bill 1 has been signed by the Governor. Several items of interest to ICF/MR providers were subjected to vetoes:

- Language requiring a formal ICF/MR Reimbursement Study Council
- Language prescribing the provision and reimbursement of oxygen services to children living in ICFs/MR
- Language changes to the collection of Medicaid debts for nursing facilities and ICFs/MR.

Language Excerpts

ICF/MR reimbursement

Section 309.30.60. FISCAL YEAR 2010 MEDICAID REIMBURSEMENT	132116
SYSTEM FOR ICFs/MR	132117
 (A) As used in this section:	132118
 "Change of operator," "entering operator," and "exiting operator" have the same meanings as in section 5111.65 of the Revised Code.	132119 132120 132121
 "Franchise permit fee" and "provider" have the same meanings as in section 5111.20 of the Revised Code.	132122 132123
 "ICF/MR" means an intermediate care facility for the mentally retarded as defined in section 5111.20 of the Revised Code.	132124 132125
 "ICF/MR services" means services covered by the Medicaid program that an ICF/MR provides to a Medicaid recipient eligible for the services.	132126 132127 132128
 "Medicaid days" means all days during which a resident who is a Medicaid recipient occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made under section 5111.33 of the Revised Code are considered Medicaid days proportionate to the percentage of the ICF/MR's per resident per day rate paid for those days.	132129 132130 132131 132132 132133 132134 132135
 "Per diem rate" means the per diem rate calculated pursuant to sections 5111.20 to 5111.33 of the Revised Code.	132136 132137
 (B) This section applies to providers of ICFs/MR to which either of the following applies:	132138 132139
 (1) The provider has a valid Medicaid provider agreement for the ICF/MR on June 30, 2009, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2010.	132140 132141 132142
 (2) The ICF/MR undergoes a change of operator effective July 1, 2009, the exiting operator has a valid Medicaid provider	132143 132144

agreement for the ICF/MR on June 30, 2009, and the entering	132145
operator has a valid Medicaid provider agreement for the ICF/MR	132146
during fiscal year 2010.	132147
(C) Except as otherwise provided by this section, the	132148
provider of an ICF/MR to which this section applies shall be paid,	132149
for ICF/MR services the ICF/MR provides during fiscal year 2010,	132150
the rate calculated for the ICF/MR under sections 5111.20 to	132151
5111.33 of the Revised Code.	132152
(D) The provider of an ICF/MR to which this section applies	132153
shall be paid, for ICF/MR services the ICF/MR provides during the	132154
period beginning on the effective date of this section and ending	132155
July 31, 2009, the rate the provider was paid for ICF/MR services	132156
the ICF/MR provided on June 29, 2009.	132157
(E) If the mean total per diem rate for all ICFs/MR in this	132158
state for the period beginning August 1, 2009, and ending June 30,	132159
2010, weighted by May 2009 Medicaid days and calculated as of	132160
August 1, 2009, exceeds \$278.15, the Department shall reduce,	132161
for the period beginning August 1, 2009, and ending June 30, 2010,	132162
the total per diem rate for each ICF/MR to which this section	132163
applies by a percentage that is equal to the percentage by which	132164
the mean total per diem rate exceeds \$278.15.	132165
(F) The rate of an ICF/MR set pursuant to this section shall	132166
not be subject to any adjustments authorized by sections 5111.20	132167
to 5111.33 of the Revised Code, or any rule authorized by those	132168
sections, during the remainder of fiscal year 2010.	132169
(G) If the United States Centers for Medicare and Medicaid	132170
Services requires that the franchise permit fee be reduced or	132171
eliminated, the Department of Job and Family Services shall reduce	132172
the amount it pays providers of ICF/MR services under this section	132173
as necessary to reflect the loss to the state of the revenue and	132174
federal financial participation generated from the franchise	132175
permit fee.	132176
(H) The Department of Job and Family Services shall follow	132177
this section in determining the rate to be paid providers of	132178
ICF/MR services subject to this section notwithstanding anything	132179
to the contrary in sections 5111.20 to 5111.33 of the Revised	132180

Code.	132181
Section 309.30.70. FISCAL YEAR 2011 MEDICAID REIMBURSEMENT	132182
SYSTEM FOR ICFs/MR	132183
(A) As used in this section:	132184
"Change of operator," "entering operator," and "exiting operator" have the same meanings as in section 5111.65 of the Revised Code.	132185
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"Franchise permit fee" and "provider" have the same meanings as in section 5111.20 of the Revised Code.	132188
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"ICF/MR" means an intermediate care facility for the mentally retarded as defined in section 5111.20 of the Revised Code.	132190
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"ICF/MR services" means services covered by the Medicaid program that an ICF/MR provides to a Medicaid recipient eligible for the services.	132192
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"Medicaid days" means all days during which a resident who is a Medicaid recipient occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made under section 5111.33 of the Revised Code are considered Medicaid days proportionate to the percentage of the ICF/MR's per resident per day rate paid for those days.	132195
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"Per diem rate" means the per diem rate calculated pursuant to sections 5111.20 to 5111.33 of the Revised Code.	132202
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(B) This section applies to providers of ICFs/MR to which either of the following applies:	132204
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(1) The provider has a valid Medicaid provider agreement for the ICF/MR on June 30, 2010, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2011.	132206
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(2) The ICF/MR undergoes a change of operator effective July 1, 2010, the exiting operator has a valid Medicaid provider agreement for the ICF/MR on June 30, 2010, and the entering	132209
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operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2011.	132212 132213
(C) Except as otherwise provided by this section, the provider of an ICF/MR to which this section applies shall be paid, for ICF/MR services the ICF/MR provides during fiscal year 2011, the rate calculated for the ICF/MR under sections 5111.20 to 5111.33 of the Revised Code.	132214 132215 132216 132217 132218
(D) If the mean total per diem rate for all ICFs/MR in this state for fiscal year 2011, weighted by May 2010 Medicaid days and calculated as of July 1, 2010, exceeds \$278.15, the Department shall reduce the total per diem rate for each ICF/MR to which this section applies by a percentage that is equal to the percentage by which the mean total per diem rate exceeds \$278.15.	132219 132220 132221 132222 132223 132224
(E) The rate of an ICF/MR set pursuant to this section shall not be subject to any adjustments authorized by sections 5111.20 to 5111.33 of the Revised Code, or any rule authorized by those sections, during the remainder of fiscal year 2011.	132225 132226 132227 132228
(F) If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department of Job and Family Services shall reduce the amount it pays providers of ICF/MR services under this section as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.	132229 132230 132231 132232 132233 132234 132235
(G) The Department of Job and Family Services shall follow this section in determining the rate to be paid providers of ICF/MR services subject to this section notwithstanding anything to the contrary in sections 5111.20 to 5111.33 of the Revised Code.	132236 132237 132238 132239 132240

ICF/MR Franchise Permit Fee

Sec. 5112.30. As used in sections 5112.30 to 5112.39 of the Revised Code:	109119 109120
(A) <u>"Franchise permit fee rate" means the following:</u>	109121
(1) <u>Until August 1, 2009, eleven dollars and ninety-eight cents;</u>	109122 109123
(2) <u>For the period beginning August 1, 2009, and ending June 30, 2010, fourteen dollars and seventy-five cents;</u>	109124 109125
(3) <u>For fiscal year 2011, thirteen dollars and fifty-five cents;</u>	109126 109127
(4) <u>For fiscal year 2012 and each fiscal year thereafter, the rate used for the immediately preceding fiscal year as adjusted in accordance with the composite inflation factor established in rules adopted under section 5112.39 of the Revised Code.</u>	109128 109129 109130 109131
(B) <u>"Intermediate care facility for the mentally retarded"</u> has the same meaning as in section 5111.20 of the Revised Code, except that, <u>until August 1, 2009,</u> it does not include any such facility operated by the department of mental retardation and developmental disabilities.	109132 109133 109134 109135 109136
(B) (C) <u>"Medicaid"</u> has the same meaning as in section 5111.01 of the Revised Code.	109137 109138
Sec. 5112.31. The department of job and family services shall do all of the following:	109139 109140
(A) For <u>Subject to division (B) of this section and for the purposes specified in sections 5112.37 and 5112.371 of the Revised Code, annually assess for each fiscal year each intermediate care facility for the mentally retarded a franchise permit fee equal to eleven dollars and ninety-eight centsthe franchise permit fee rate multiplied by the product of the following:</u>	109141 109142 109143 109144 109145 109146 109147
(1) The number of beds certified under Title XIX of the	109148

"Social Security Act" on the first day of May of the calendar year in which the assessment is determined pursuant to division (A) of section 5112.33 of the Revised Code;	109149 109150 109151
(2) The <u>following number of days:</u>	109152
(a) <u>For fiscal year 2010, the following:</u>	109153
(i) <u>For the part of fiscal year 2010 during which the franchise permit fee rate is eleven dollars and ninety-eight cents, the number of days during fiscal year 2010 during which the franchise permit fee rate is that amount;</u>	109154 109155 109156 109157
(ii) <u>For the part of fiscal year 2010 during which the franchise permit fee rate is fourteen dollars and seventy-five cents, the number of days during fiscal year 2010 during which the franchise permit fee is that amount;</u>	109158 109159 109160 109161
(iii) <u>For fiscal year 2011 and each fiscal year thereafter, the number of days in the fiscal year beginning on the first day of July of the same calendar year.</u>	109162 109163 109164
(B) <u>Beginning July 1, 2009, and the first day of each July thereafter, adjust fees determined under division (A) of this section in accordance with the composite inflation factor established in rules adopted under section 5112.39 of the Revised Code. If the total amount of the franchise permit fee assessed under division (A) of this section for a fiscal year exceeds five and one-half per cent of the actual net patient revenue for all intermediate care facilities for the mentally retarded for that fiscal year, do both of the following:</u>	109165 109166 109167 109168 109169 109170 109171 109172 109173
(1) <u>Recalculate the assessments under division (A) of this section using a per bed per day rate equal to five and one-half per cent of actual net patient revenue for all intermediate care facilities for the mentally retarded for that fiscal year;</u>	109174 109175 109176 109177
(2) <u>Refund the difference between the amount of the franchise permit fee assessed for that fiscal year under division (A) of this section and the amount recalculated under division (B)(1) of this section as a credit against the assessments imposed under division (A) of this section for the subsequent fiscal year.</u>	109178 109179 109180 109181 109182

(C) If the United States secretary of health and human services determines that the franchise permit fee established by sections 5112.30 to 5112.39 of the Revised Code would be an impermissible health care-related tax under section 1903(w) of the "Social Security Act," 42 U.S.C.A. 1396b(w), as amended, take all necessary actions to cease implementation of those sections in accordance with rules adopted under section 5112.39 of the Revised Code.

Sec. 5112.37. There is hereby created in the state treasury the home and community-based services for the mentally retarded and developmentally disabled fund. ~~Ninety-four~~Eighty-four and twenty-eight hundredths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code for state fiscal year 2010 shall be deposited into the fund. Seventy-nine and twelve hundredths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code for state fiscal year 2011 and thereafter shall be deposited into the fund. The department of job and family services shall distribute the money in the fund in accordance with rules adopted under section 5112.39 of the Revised Code. The departments of job and family services and mental retardation and developmental disabilities shall use the money for the medicaid program established under Chapter 5111. of the Revised Code and home and community-based services to mentally retarded and developmentally disabled persons.

Sec. 5112.371. There is hereby created in the state treasury the department of developmental disabilities operating and services fund. Fifteen and eight tenths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code for state fiscal year 2010 shall be deposited into the fund. Twenty and eighty-eight hundredths per cent of all installment payments and penalties paid by an intermediate care facility for the mentally retarded under sections 5112.33 and 5112.34 of the Revised Code for state fiscal year 2011 and thereafter shall be deposited into the fund. The

<u>money in the fund shall be used for the expenses of the programs</u>	109221
<u>that the department of mental retardation and developmental</u>	109222
<u>disabilities administers and the department's administrative</u>	109223
<u>expenses.</u>	109224

ICF/MR Off-Site Day Programming

<u>Sec. 5111.233.</u> <u>The costs of day programming shall be part</u>	107054
<u>of the direct care costs of an intermediate care facility for the</u>	107055
<u>mentally retarded as off-site day programming if the area in which</u>	107056
<u>the day programming is provided is not certified by the director</u>	107057
<u>of health as an intermediate care facility for the mentally</u>	107058
<u>retarded under Title XIX and regardless of either of the</u>	107059
<u>following:</u>	107060

<u>(A) Whether or not the area in which the day programming is</u>	107061
<u>provided is less than two hundred feet away from the intermediate</u>	107062
<u>care facility for the mentally retarded;</u>	107063

<u>(B) Whether or not the day programming is provided by an</u>	107064
<u>individual who, or organization that, is a related party to the</u>	107065
<u>provider of the intermediate care facility for the mentally</u>	107066
<u>retarded.</u>	107067