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

Proposed Rule
LSA Document #02-144

DIGEST

Amends 405 IAC 1-14.5-13, 405 IAC 1-14.5-14, and 405 IAC 1-14.5-15 to change the index used in the calculation of the fair rental allowance from the United States Treasury 30 year bond to the United States Treasury 10 year bond. Effective 30 days after filing with the secretary of state.

405 IAC 1-14.5-13

405 IAC 1-14.5-14

405 IAC 1-14.5-15

SECTION 1. 405 IAC 1-14.5-13 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.5-13 Allowable costs; capital return factor; computation of use fee component; interest; allocation of loan to facilities and parties

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 13. (a) The use fee limitation is based on the following:

- (1) The assumption that facilities and equipment are prudently acquired and financed.
- (2) Providers will obtain independent financing in accordance with a sound financial plan.
- (3) Owner capital will be used for the balance of capital requirements.

(b) The amortization period to be used in computing the use fee shall be the greater of twenty (20) years or the actual amortization period for the facility and for facilities and equipment where a single lending arrangement covers both. Where equipment is specifically financed by means of a separate lending arrangement, a minimum of seven (7) years shall be the amortization period. Provided, however, that a mortgage existing on April 1, 1983, has a fully amortizing life of less than twenty (20) years, the use fee will be calculated using the actual life of the lending arrangement, but not less than twelve (12) years.

(c) The use fee component of the capital return factor shall be limited by the lesser of:

- (1) the original loan balance at the time of acquisition;
- (2) eighty percent (80%) of historical cost of the facilities and equipment; or
- (3) eighty percent (80%) of the maximum allowable property basis at the time of the acquisition plus one-half (½) of the difference between that amount and the maximum property basis per bed on the rate effective date.

(d) The maximum interest rate allowed in computing the use fee shall not exceed one and one-half percent (1.5%) above the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (.5%) or the actual interest rate, whichever is lower. For property financing with a fixed interest rate, the date that the financing commitment was signed by the lender and borrower shall be the date upon which the allowable rate shall be determined. For property financing with a variable interest rate, the allowable interest rate shall be determined each year at the provider's report year end.

(e) The use fee determined under this section shall be subject to the limitations under section 15(b) of this rule.

(f) Refinancing of mortgages shall be amortized over the amortization period of the refinancing; however, the amortization period for the refinanced mortgage shall not be less than twenty (20) years. Refinancing arrangements shall only be recognized when the interest rate is less than the original financing, and the interest rate on the refinancing shall not be allowable in excess of the interest rate limit established on the date the refinancing commitment was signed and the interest rate fixed by the lender and borrower.

(g) Variable interest debt will be recognized for the purpose of calculation of the use fee if the variable rate is a function of an arrangement entered into and incorporated in the lending arrangement at the time of the acquisition of the facility or as part of an allowable refinancing arrangement under subsection (f).

(h) Interest costs on borrowed funds used to construct facilities or enlarge existing facilities which are incurred during the period of construction shall be capitalized as part of the cost of the facility or addition.

(i) Interest costs on operating loans each reporting period shall be limited to interest costs of principal amounts that do not exceed a value equal to two (2) months of actual revenues. Interest on such loans shall only be recognized if the provider can demonstrate that such loans were reasonable and necessary in providing patient related services. Working capital interest must be reduced by investment income. Working capital interest is an operating cost and will not be included in calculating the use fee.

(j) Loans covering more than one (1) facility or asset shall apply to the several facilities or assets acquired in proportion to the cost that each item bears to the total cost. Accordingly, if any building or asset covered by the loan is used for purposes other than patient care, the use fee applicable to such assets will be determined based upon its proportionate share of the total asset cost.

(k) Loans from a related party must be identified and reported separately on the annual or historical financial report. Such loans shall be allowable if they meet all other requirements, the interest does not exceed the rate available in the open market, and such loans are repaid in accordance with an established repayment schedule.

(l) Use fee for variable interest rate mortgages will be calculated as follows:

(1) Recalculate the use fee for the reporting year based upon the provider's average actual rate of interest paid.

(2) Compare the use fee allowed in the reporting year and the recalculated use fee and determine the variance (amount by which the amount allowed in the prior rate case exceeded or was less than the amount earned under the recalculation in subdivision (1)).

(3) Calculate the prospective use fee based upon the interest rate in effect at the end of the provider's reporting year.

(4) The use fee on the prospective rate is the amount determined in subdivision (3) plus or minus the variance in subdivision (2).

(Office of the Secretary of Family and Social Services; 405 IAC 1-14.5-13; filed Aug 12, 1998, 2:32 p.m.: 22 IR 55; filed Sep 1, 2000, 2:10 p.m.: 24 IR 19; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 2. 405 IAC 1-14.5-14 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.5-14 Allowable costs; capital return factor; computation of return on equity component

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 14. (a) For a provider with an initial interim rate resulting from:

(1) a change of provider status; or

(2) a new operation;

before the effective date of this rule, the return on equity shall be computed on the higher of twenty percent (20%) of the allowable historical cost of facilities and equipment, or actual equity in allowable facilities and equipment. Allowable historical cost of facilities and equipment is the lesser of the provider's actual historical cost of facilities and equipment or the maximum allowable property basis at the time of the acquisition plus one-half (½) of the difference between that amount and the maximum allowable property basis per bed on the rate effective date.

(b) For a provider with an initial interim rate resulting from:

- (1) a change of provider status; or
- (2) a new operation;

on or after the effective date of this rule, the return on equity shall be computed on the actual equity in allowable facilities and equipment up to a maximum of eighty percent (80%) of allowable historical cost of facilities and equipment.

(c) The return on equity factor shall be equal to the interest rate used in computing the use fee plus one percent (1%), or one percent (1%) below the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate on the last day of the reporting period, plus three percent (3%), whichever is higher.

(d) The return on equity determined under this section shall be subject to the limitations under section 15(b) of this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 1-14.5-14; filed Aug 12, 1998, 2:32 p.m.: 22 IR 56; filed Sep 1, 2000, 2:10 p.m.: 24 IR 20; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

SECTION 3. 405 IAC 1-14.5-15 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.5-15 Allowable costs; capital return factor; use fee; depreciable life; property basis

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 15. (a) The following is a schedule of allowable use fee lives by property category:

Property Basis	Use Fee Life
Land	20 years
Land improvements	20 years
Buildings and building components	20 years
Building improvements	20 years
Movable equipment	7 years
Vehicles	7 years

The maximum property basis per bed at the time of acquisition shall be in accordance with the following schedule:

Acquisition Date	Maximum Property Basis Per Bed
7/1/76	\$12,650
4/1/77	\$13,255
10/1/77	\$13,695
4/1/78	\$14,080
10/1/78	\$14,630
4/1/79	\$15,290
10/1/79	\$16,115
4/1/80	\$16,610
10/1/80	\$17,490
4/1/81	\$18,370
10/1/81	\$19,140
4/1/82	\$19,690
9/1/82	\$20,000
3/1/83	\$20,100
9/1/83	\$20,600
3/1/84	\$20,600
9/1/84	\$21,200
3/1/85	\$21,200
9/1/85	\$21,200

3/1/86	\$21,400
9/1/86	\$21,500
3/1/87	\$21,900
9/1/87	\$22,400
3/1/88	\$22,600
9/1/88	\$23,000
3/1/89	\$23,100
9/1/89	\$23,300
3/1/90	\$23,600
9/1/90	\$23,900
3/1/91	\$24,500
9/1/91	\$24,700
3/1/92	\$24,900
9/1/92	\$25,300
3/1/93	\$25,400
9/1/93	\$25,700
3/1/94	\$26,000
9/1/94	\$26,300
3/1/95	\$26,500
9/1/95	\$27,300
3/1/96	\$27,700
9/1/96	\$28,000
3/1/97	\$28,300
9/1/97	\$28,600

The schedule shall be updated semiannually, effective on March 1 and September 1 by the office, and rounded to the nearest one hundred dollars (\$100) based on the change in the R.S. Means Construction Index.

(b) The capital return factor portion of a rate that becomes effective after the acquisition date of an asset shall be limited to the maximum capital return factor which shall be calculated as follows:

(1) The use fee portion of the maximum capital return factor is calculated based on:

(A) the maximum property basis per bed at the time of acquisition of each bed, plus one-half (½) of the difference between that amount and the maximum property basis per bed at the rate effective date times eighty percent (80%); (B) the term is determined per bed at the time of acquisition of each bed and is twenty (20) years for beds acquired on or after April 1, 1983, and twelve (12) years for beds acquired before April 1, 1983; and

(C) the allowable interest rate is the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (.5%) plus one and one-half percent (1.5%) at the earlier of the acquisition date of the beds or the commitment date of the attendant permanent financing.

(2) The equity portion of the maximum capital return factor is calculated based on:

(A) the allowable equity as established under section 14 of this rule; and

(B) a rate of return on equity that is the greater of United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (.5%) on the last day of the reporting period minus one percent (1%), or the weighted average of the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (.5%) plus one percent (1%) at the earlier of the acquisition date of the beds or the commitment date of the attendant permanent financing.

(c) For facilities with a change of provider status, the allowable capital return factor of the buyer/lessee shall be no greater than the capital return factor that the seller/lessor would have received on the date of the transaction, increased by one-half (½) of the percentage increase (as measured from the date of acquisition/lease commitment date by the seller/lessor to the date of the change in provider status) in the Consumer Price Index for All Urban Consumers (CPI-U)

(United States city average). Any additional allowed capital expenditures incurred by the buyer/lessee shall be treated in the same manner as if the seller/lessor had incurred the additional capital expenditures.

(d) The following costs which are attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has been previously made under the Indiana Medicaid program shall not be recognized as an allowable cost:

- (1) Legal fees.
- (2) Accounting and administrative costs.
- (3) Travel costs.
- (4) The costs of feasibility studies.

(Office of the Secretary of Family and Social Services; 405 IAC 1-14.5-15; filed Aug 12, 1998, 2:32 p.m.: 22 IR 56; filed Sep 1, 2000, 2:10 p.m.: 24 IR 20; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 22, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 5, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to the Medicaid reimbursement rule for HIV nursing facilities to change the index used in the calculation of the fair rental allowance from the United States Treasury 30 year bond to the United States Treasury 10 year bond. This change is being made because it was recently announced that the United States Treasury has stopped issuing the 30 year bond currently referenced in the rule. The 10 year bond is the new benchmark bond. There is no fiscal impact associated with this change.

Written comments regarding this change may be sent to the Office of Medicaid Policy and Planning, Indiana Government Center-South, 402 West Washington Street, Room W382, P.O. Box 7083, Indianapolis, Indiana 46204-2739 to the attention of Karen Smith Filler. Correspondence should be identified in the following manner: COMMENTS RE: LSA DOCUMENT #02-144. Written comments received will be available for inspection at this address.

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. Also, copies of proposed amendments to the rule are now available along with copies of this public notice and may be inspected by contacting the director of the local County Division of Family and Children office, except in Marion County where public inspection may be made at the Indiana Government Center-South, 402 West Washington Street, Room W382, Indianapolis, Indiana.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services