



# MENTAL RETARDATION BULLETIN

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DEPARTMENT OF PUBLIC WELFARE

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SUBJECT:

New Federal ICF/MR Regulations

BY:

Steven M. Eldelman  
Deputy Secretary for Mental Retardation

## SCOPE

Intermediate Care Facility for the Mentally Retarded (ICF/MR) Directors  
County Mental Health/Mental Retardation Administrators

## PURPOSE

The purpose of this Bulletin is to provide Federal Intermediate Care Facility for the Mentally Retarded (ICF/MR) program regulations for information and to highlight significant changes represented by these regulations. In addition, the Interpretive Guidelines that the Department of Health surveyors will use to focus on implementation of the regulations and their outcome are also provided.

## BACKGROUND

On June 3, 1988, the Health Care Financing Administration (HCFA) published final ICF/MR regulations in the Federal Register, Volume 53, No. 107 (see attached). These regulations represent changes to the requirements that Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) must meet in order to participate in the Medicaid program. The regulations became effective October 3, 1988. HCFA also issued Transmittal No. 212, dated October, 1988, which contained the Interpretive Guidelines noted above.

## DISCUSSION

The HCFA preamble to the regulations contains a detailed analysis of the changes along with information regarding HCFA's rationale on many points. The final regulations are organized as "conditions of participation." This format, which originated in the Medicare program, is designed to ensure that facilities that do not meet the minimum requirements of the program do not participate in it. The conditions are now located in 42 CFR, Subchapter E, "Standards and Certification." This subchapter currently contains the conditions of participation for hospitals and specialized providers. The ICF/MR conditions make up a new Part 483 of Subchapter E. Each of the eight conditions encompasses several standards,

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO: Frank L. Pierce, Chief, Division of Direct Contract Programs, Bureau of Community Programs, Office of Mental Retardation, Room 405, H&W Building, Harrisburg, PA 17120. Telephone: 717-783-5314.

which are deemed by HCFA officials to be essential components of a well-run facility. If a facility is found out of compliance with a condition, the facility's certification will be terminated within 90 days. If a facility meets all the conditions, but has deficiencies in one or more standards, it has up to 12 months to achieve compliance in conformity with a corrective plan of action, as long as the deficiencies do not immediately jeopardize the health and safety of the facility's residents. If the deficiencies do pose an immediate threat to the residents' health and safety, the facility's certification will be terminated immediately.

A. The eight conditions of participation relate to:

1. Governing Body and Management. The standards under this condition include a variety of requirements concerning the management and operation of a facility. Among the provisions of the rules are the following:

Governing Body. The facility must have a governing body which exercises general control over the facility, sets the qualifications for the administrator and appoints the administrator.

Compliance with Federal, State and Local Laws. The previous requirement that a facility comply with all federal, state and local laws is retained. However, a new section has been added to the rules to describe the relationships between the ICF/MR program and Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act and the Age Discrimination Act.

Client Records. The final regulations consolidate existing recordkeeping requirements and eliminate detailed specifications. Facilities are obligated to maintain a comprehensive recordkeeping system that assures confidentiality. HCFA has specified that a facility must meet certain requirements when it arranges to obtain services from an outside source. The regulations require that there be a written agreement specifying the conditions under which the services are provided and that the facility itself assure that the services meet client needs.

2. Client Protections. A new Section 483.420(a) has been added to the regulations to spell out the facility's obligations in protecting the rights of its clients. The particulars of the "bill of rights" provision of the original ICF/MR rules was retained but clarified. In addition, qualified mental retardation professionals (QMRPs) are no longer allowed to determine whether a client can understand his or her rights. HCFA officials maintain that this is a legal judgement that goes beyond the clinical process. The section of the proposed rules on client finances is also included under this condition.

Also under the client protections condition is a standard related to communication with clients, parents and guardians.

Staff treatment of clients is the final standard under this condition. Under the new Section 483.420, the facility is required to develop and implement written policies and procedures that prohibit mistreatment, abuse or neglect of clients.

3. Facility Staffing. According to the final rules, each client's active treatment program must be coordinated, integrated and monitored by a qualified mental retardation professional (QMRP).

A standard on professional program services requires that each client receive the professional services needed to implement his or her IPP and that professional staff work directly with other staff who work with clients. In addition, the facility must continue to "have available enough qualified professional staff to carry out and monitor" programs and professional staff must participate as treatment team members.

The standard governing residential living unit (or direct care) staff mandates that the facility provide "sufficient direct care staff to manage and supervise clients in accordance with" their Individual Program Plans.

4. Active Treatment Services. Section 483.440 of the new regulations details the active treatment condition of participation. According to the new regulations:

Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart that is directed toward:

(i) the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) the prevention or deceleration of regression or loss of current optimal functional status.

Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

5. Client Behavior and Facility Practices. Facilities are now obligated to develop and implement written policies governing interaction between staff and clients. These policies must promote client growth and independence, address issues related to client choice and specify client conduct that will be allowed and not allowed. When promulgated, these policies must be available to all staff members, clients, parents of minor children and legal guardians. Clients should participate in the development of such policies. Clients may not be involved in disciplining other clients.

6. Health Care Services. Fourteen standards comprise section 483.460 of the regulations; they make up the condition of participation entitled "health care services" and they are as follows: physician services; physician participation in the individual program plan; nursing services; nursing staff requirements; dental services; comprehensive dental diagnostic services; dental treatment services; documentation of dental services; pharmacy services; drug regimen review; drug administration system; drug storage and recordkeeping; drug labeling; and laboratory services.
  
7. Physical Environment. The condition on the physical environment of an ICF/MR includes standards governing the disparate requirements of the previous regulations (i.e., client living environments, client bedrooms, storage space in bedrooms, client bathrooms, heating and ventilation, floors, space and equipment, emergency plan and procedures, evacuation drills, paint, and infection control). Only minor changes were made in the new regulations dealing with these standards. For example, facilities are still obligated to house clients appropriately, according to their age, developmental and social needs; however, they are prohibited from segregating clients with physical handicaps. Also, although the new regulations require detailed written plans and procedures be prepared and made available to all staff to meet any potential emergency such as fire, severe weather and missing clients, such plans no longer need to be on display in the facility.
  
8. Dietetic Services. The final condition of participation for ICFs/MR consolidates the existing standards related to dietary services in a single set of regulatory requirements. Each facility is responsible for ensuring that every client receives a nourishing, well-balanced diet. A qualified dietician must be employed full time, part time or on a consultant basis at the facility's discretion; if a qualified dietician is not employed full time, the facility must designate a person to serve as director of food services. The client's Interdisciplinary Team, including a physician and dietician, must prescribe all modified and special diets, including those used as part of a program to manage inappropriate client behaviors.

The final standards require that no more than 14 hours may elapse between a substantial evening meal and breakfast the next morning; however, the new regulations allow 16 hours to elapse on weekends, so clients may sleep late if they wish to do so. Food served to individual clients and not consumed must be discarded, but food served "family style" that is not eaten may be stored and used again.

A change in the regulations requires that menus be prepared in advance, provide a variety of foods at each meal, be different for the same days of each week and adjusted seasonally; menus only need to be kept on file for 30 days, according to the new standards.

B. The Interpretive Guidelines:

Every ICF/MR is required to comply with the federal regulations governing such facilities. Section 1902(a)(33) of the Social Security Act mandates that every ICF/MR facility be reviewed annually by its designated state survey agency for compliance with federal regulatory standards; this is done according to a predetermined schedule.

In addition, ICFs/MR are subject to direct federal validation surveys, or look behind reviews, which are conducted by regional officials of the Health Care Financing Administration. Look behind surveys are authorized under Section 1902(a)(33) of the Social Security Act; HCFA is charged with validating state survey agency decisions and making independent and binding determinations concerning the Medicaid participation of any Title XIX-certified provider of long term care services (including ICFs/MR). HCFA also is authorized under Section 1910(c) of the Act to cancel the approval of an ICF/MR's participation in the Medicaid program based on the results of a look behind survey.

To assist states in operationalizing the ICF/MR conditions of participation and to clarify the work of surveyors, HCFA has developed a set of interpretive guidelines (attached). These guidelines are intended to explain the provisions of the standards, without adding new requirements.

The survey process outlined in Transmittal No. 212 is to be used in reviewing the compliance of all ICFs/MR, regardless of whether the facility is free-standing or a distinct part of a multi-purpose facility. It is explained that a complete ICF/MR survey consists of the assessment of four elements: (a) delivery of active treatment; (b) delivery of individual health care, nutrition and protections; (c) administrative and physical environment requirements; and (d) life safety code requirements.

A set of revised forms is included in the Guidelines packet. Among the forms are the survey report, the deficiencies report, and the client observation worksheet. The introduction to the survey process instructs surveyors to determine facility compliance with the conditions of participation "and with the standards in the context of individual experiences within the facility."

Appendix J of the transmittal contains the ICF/MR interpretative guidelines which are formatted in three columns. Column one contains the tag number; column two includes the regulatory requirement; and, column three offers "guidance to surveyors," including the interpretive guidelines and probes. The guidelines are 138 pages long.

SUMMARY

The new conditions of participation coupled with the interpretive guidelines indicate that survey agency staff will be concentrating on how ICF/MR staff will be coordinating their in-house programming with that of residents' day programs or schools to achieve maximum client benefits. The de-emphasis on "paper compliance" means that a greater emphasis is expected to be placed on ICF/MR staff to provide "active treatment" in all phases of residents' life activities while they receive ICF/MR services.

Attachment