

MENTAL RETARDATION BULLETIN

COMMONWEALTH OF PENNSYLVANIA · DEPARTMENT OF PUBLIC WELFARE



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SUBJECT:

Alternative Sanction Guidelines for ICF/MR Medical Assistance Certification

BY:

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Richard H. Lee
Deputy Secretary for Quality Assurance
Department of Health

BY:

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David Feinberg
Deputy Secretary for Medical Assistance Programs
Department of Public Welfare

SCOPE

State Center Facility Directors
Non-State Operated ICF/MR Directors
County MH/MR Program Administrators

PURPOSE:

The purpose of this Bulletin is to announce the issuance of guidelines and procedures to implement alternative sanctions for the Medicaid certification of Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) in Pennsylvania, including public ICFs/MR (MR State Centers) and Non-State (Private) ICFs/MR.

BACKGROUND:

The Intermediate Care Facility for the Mentally Retarded (ICF/MR) program is an optional service provided in Pennsylvania under the State Medical Assistance (MA) Plan approved by the Centers for Medicare and Medicaid Services (CMS). ICFs/MR are certified in accordance with federal ICF/MR program requirements found at 42 CFR 483.400 et al. The Pennsylvania Department of Health is the designated State Survey Agency (SSA) for ICFs/MR. Survey staff from the Department of Health, Bureau of Community Program Licensure and Certification, Division of Intermediate Care Facilities conduct surveys of Public and Private ICFs/MR to assess compliance with the federal conditions of participation for this program.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO :

Frank L. Pierce, Office of Mental Retardation, Department of Public Welfare
Orlando Hernandez, Division of ICF, Department of Health

The Department of Public Welfare (DPW) is the single State Agency for Medical Assistance in Pennsylvania, responsible for the administration of the program. The Office of Medical Assistance Programs (OMAP) is the designated unit within DPW that is responsible to certify ICFs/MR, based upon the survey results and recommendation from the Department of Health.

Historically, Pennsylvania's State MA Plan provided for termination of certification of ICFs/MR if serious and significant deficiencies and non-compliance with federal conditions of participation were identified.

DISCUSSION:

As part of efforts to assure compliance to the ICF/MR requirements and to avoid disruptions to consumers, families and facility staff that occur as a result of terminations from the Medicaid program, DOH and DPW worked together to revise the Pennsylvania's State MA Plan and to obtain approval by CMS to incorporate several alternative sanctions to be used in lieu of or in combination with termination actions *when deficiencies do not constitute immediate jeopardy to the health and safety of persons served*. These alternative sanctions include:

- *Temporary Management*
- *Civil Monetary Penalty*
- *State Monitoring*
- *Directed Plan of Correction*
- *Directed In-Service Training*

The above alternative sanctions are now available for use in addition to the following administrative sanctions already previously approved in Pennsylvania's State MA Plan:

- Termination of Provider Agreement
- Denial of Payment for New Admissions
- Transfer of Residents

Section 1902 (i)(1)(B) of the Social Security Act as revised by the Balanced Budget Act of 1997, allows States to establish alternative sanctions for certification to be used as enforcement remedies related to deficiencies that do not constitute immediate jeopardy. One or more of the alternative sanctions can be imposed against Public or Private ICFs/MR in lieu of or in addition to termination of a Medicaid provider agreement.

Federal Medicaid implementation regulations are found at 42 CFR 488.400-488.456. Further federal guidance related to the imposition of alternative sanctions is provided in CMS State Operations Manual, Provider Certification, Section 3006.1.

The attached Guidelines were developed jointly by DPW, as the State Medicaid Agency, including OMAP and the Office of Mental Retardation (OMR) (State Licensing Agency) and DOH, as the State Survey Agency, to guide the implementation of the alternative sanctions.