

## **INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES**

### **I. INTRODUCTION**

During the West Virginia Legislature's 2018 Regular Session, the Department of Health and Human Resources (DHHR) testified before the House Health and Human Resources Committee why there existed a need for 24 additional beds for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) Group Homes. DHHR provided information from the Bureau for Children and Families indicating there were 10 youth in out-of-state care eligible for care in ICF/IID; eight youth being held in detention in the Department of Juvenile Services facilities, that were eligible for placement in ICF/IID; and there were six adults residing in William R. Sharpe, Jr. Hospital and Mildred Mitchell-Bateman Hospital, both Institutions for Mental Disease, or psychiatric hospitals. DHHR further testified that the sole intent of adding these additional ICF/IID beds was to relocate individuals who were placed in inappropriate levels of care to less restrictive levels of care. The Legislature determined these numbers supported the addition of 24 ICF/IID beds and passed legislation authorizing these beds.

As a result, Senate Bill 575, passed by the West Virginia Legislature on March 8, 2018 (effective 90 days from passage), amended W. Va. Code § 16-2D-8 allowing for the establishment of no more than six, four-bed transitional intermediate care facilities for individuals with intellectual disabilities, provided that none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility.

Based on the current need of the State, there will be four ICF/IID Group Homes approved for children and two ICF/IID Group Homes approved for adults. Once an applicant is approved for an ICF/IID Group Home serving either children or

adults, the applicant must be willing to transition to the other population at the direction of DHHR based on current need. In addition, the applicant shall not transition from one population to the other without the approval of DHHR.

Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and if they are eligible, they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.

Individuals already receiving services under the IDD waiver will not be considered for placement in the 24 new intermediate care beds.

Due to the restricted number of ICF/IID Group Homes that are available for approval, a separate Certificate of Need (CON) application must be submitted for each individual facility.

This subdivision/standard terminates upon the approval of the sixth four-bed intermediate care facility.

## **II. DEFINITIONS**

**Active Treatment** means that each individual 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 that is directed towards (1) the acquisition of the behaviors necessary for the client to function with as much self-determination and

independence as possible and (2) the prevention of deceleration of regression or loss of current optimal functional status.

**Community-based facilities or home and community-based services** mean those services and facilities which are available for the evaluation, treatment and habilitation of persons with developmental disabilities in a community setting.

**Developmental disability** means a severe, chronic disability of an individual that:

- (1) Is attributable to a mental or physical impairment, or combination of mental and physical impairments;
- (2) Is manifested before the individual attains age 22;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity;
  - a. Self-care
  - b. Receptive and expressive language;
  - c. Learning;
  - d. Mobility;
  - e. Self-direction;
  - f. Capacity for independent living;
  - g. Economic self-sufficiency.
- (5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the

criteria described in (4) above, if the individual, without services and supports, has a high probability of meeting those criteria later in life.<sup>1</sup>

**Intellectual Disability** means an individual that is determined to meet the following three criteria: intellectual functioning level is below 70-75; significant limitations exist in adaptive skill areas; and the condition is present from childhood (defined as age 18 or less).

**Intermediate Care Facility for Individuals with Intellectual Disabilities** means a group home that is primarily for the diagnosis, treatment, or rehabilitation of the intellectually disabled or persons with related conditions and provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his/her greatest ability.

**Service area** means the county where the ICF/IID Group Home will be located.

**Specialized Family Care** means foster/adoptive family care provided through private agencies for children and adults with mental disabilities and/or developmental disabilities that are in the state's custody as a member of the Medley class or is considered Medley-at-Risk. These homes are developed, approved and certified by the West Virginia University Center for Excellence in Disabilities through a contract with the West Virginia Department of Health and Human Resources, Bureau for Children and Families.

**Transitional Intermediate Care Facility** means a group home that is primarily for the diagnosis, treatment, or rehabilitation of the intellectually disabled or persons with related conditions and provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at

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<sup>1</sup> Public Law 106-402-October 30, 2000

his/her greatest ability that is intended to be temporary until the individual can be moved to a less restrictive environment.

### III. NEED METHODOLOGY

Prior to the 2018 legislative session, there were 68 licensed intermediate care facilities with a total of 517 licensed beds for individuals who are intellectually disabled<sup>2</sup>. During the 2018 session, the West Virginia Legislature determined there is a need for 24 additional beds. The 24 additional beds will result in the establishment of six, four-bed transitional intermediate care facilities. None of the six newly established four-bed facilities shall be within five miles of another or adjacent to another behavioral health facility.

The West Virginia Health Care Authority (HCA) will perform and provide the need calculations. These need calculations shall be used to determine unmet need and is the only demonstration of need that the HCA shall consider. As the HCA is responsible for the need calculation, one need only look to the calculations to determine if a need exists in a certain county. The HCA has provided the methodology within these standards for the public's information. A description of the methodology follows:

The need methodology is comprised of five (5) calculations. The five calculations must be completed for each county.

**Calculation 1:** The West Virginia IDD population by county is determined by multiplying the 2018 population<sup>3</sup> for each county by the IDD prevalence rate of 1.8%<sup>4</sup>.

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<sup>2</sup> As reported by the Office of Health Facility Licensure & Certification – April 3, 2018

<sup>3</sup> Obtained from the Bureau of Business and Economic Research, College of Business and Economics, WVU

<sup>4</sup> Obtained from the West Virginia Developmental Disabilities Council

**Calculation 2:** The West Virginia IDD population by county is multiplied by ninety (90) percent to determine the amount of the West Virginia IDD population that receives services through the public sector.<sup>5</sup>

**Calculation 3:** The percentage of the WV IDD population that can utilize ICF/IID beds is determined by dividing the total number of WV ICF/IID beds [541 beds (517 currently licensed ICF/IID beds + 24 additional beds needed per 2018 legislative session = 541)] by the WV IDD population receiving services through the public sector.

**Calculation 4:** The number of ICF/IID beds that could be utilized in each county based on the county's population is determined by multiplying the WV IDD population receiving services through the public sector by the percentage of the WV IDD population utilizing ICF/IID beds.

**Calculation 5:** The number of additional ICF/IID beds that could be utilized per county is determined by subtracting the currently licensed ICF/IID beds in each county from the number of ICF/IID beds that could be utilized based on population, as determined in Calculation 4.

If Calculation 5 results in a difference of 4 or more, an unmet need exists in that county.

If a new ICF/IID Group Home has been approved since the calculation of the HCA need methodology, the applicant will subtract 4 from the applicable county.

The maximum number of individuals to be serviced in a proposed new ICF/IID Group Home is four.

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<sup>5</sup> Per Behavioral Health/Developmental Disabilities Services Standards

None of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility.

The facility must be located in a residential area and the structure should blend with other homes in the neighborhood.

#### **IV. QUALITY**

All applicants shall document that they will be in compliance with all current applicable CMS and Medicaid requirements.

The applicant shall document that the ICF/IID Group Home will have access to all the ancillary support services as required for ICF/IID certification.

The applicant shall provide information on program design including:

- (1) Programming;
- (2) Administrative;
- (3) Oversight functions.

#### **V. CONTINUUM OF CARE**

A. 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 that is directed towards (1) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible and (2) the prevention of deceleration of regression or loss of current optimal functional status.

B. Intermediate Care Facilities will develop referral relationships and cooperative agreements with other health care providers, behavioral health community services, and volunteer and support groups.

## **VI. COST**

- A. No CON shall be granted for new, replacement, or renovated ICF/IID, unless the applicant demonstrates that the project is financially feasible within the first three years of operation. Further, no such services shall be deemed consistent with the State Health Plan unless the projected costs are consistent with allowable costs provided for in the applicable federal reimbursement statutes and regulations. Costs shall be deemed to be reasonable if they are permitted under governing federal statutes and regulations on reimbursement.
  
- B. Applicants must demonstrate compliance and are responsible for the submission of all required financial disclosure information to the HCA as set forth in W.Va. C.S.R. § 65-13-1 et seq. and W.Va. Code § 16-29B-24.

## **VII. ACCESSIBILITY**

Applicants seeking to develop a new ICF/IID Group Home shall demonstrate compliance with the following criteria:

Selection policies which provide that no person shall be denied appropriate services on account of age, sex, race, color, creed, national origin, physical or behavioral disability, type of payor, or ability to pay.

Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and if they are eligible, they will be placed on the IDD Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home and community-based waiver status and will



also be considered for all other community-based options, including, but not limited to, specialized facility care and personal care.

Individuals already receiving services under the IDD waiver will not be considered for placement in the 24 new intermediate care beds.

## **VIII. OTHER**

An applicant for an ICF/IID Group Home must provide additional information, as may be requested by the HCA.

One aspect of the analysis is a coordinated review by regulatory, planning and payor agencies for state government. The HCA, in reviewing CON applications, takes into consideration the programmatic and fiscal plans of the Bureau for Medical Services (BMS). A recommendation is requested from the agency on each application. The recommendations are based on the respective agency's programmatic and/or fiscal plan. All recommendations will be taken into consideration; however, the HCA has final approval on all applications.

## 2018 Need Methodology Example

<b>WV Health Care Authority</b>				
<b>Intermediate Care Facilities for Individuals with Intellectual Disabilities</b>				
<b>2018 Need Methodology - EXAMPLE</b>				
		<b>County X</b>		
a	WV Population (2018) <sup>1</sup>	45,000		
b	WV IDD Residents as a % of WV Population	1.8%		
c	WV IDD Population (a x b)	810		
d	% of WV IDD Population receiving services through public sector <sup>2</sup>	90%		
e	WV IDD Population receiving services through public sector (c x d)	729		
f	% of WV IDD Population that can utilize ICF/ID beds <sup>3</sup>	1.82%		
g	Number of ICF/ID beds that could be utilized based on population (e x f)	13		
h	Number of currently licensed ICF/ID beds	6		
i	Additional ICF/ID beds that could be utilized (g - h) [Must show 4 or more]	7		
<sup>1</sup> Released March 2017 by Bureau of Business and Economic Research, College of Business and Economics, WVU				
<sup>2</sup> Per Behavioral Health/Developmental Disabilities Services Standards				
<sup>3</sup> Number of total WV ICF/ID beds divided by WV IDD population receiving services through public sector				