

## Regulation of Intermediate Care Facilities

### Legislative Disabilities Concerns Subcommittee

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## Profile of ICF Delivery System

- Dept. of Health website ([www.health.state.nm.us](http://www.health.state.nm.us)) lists 42 ICFs operated by 5 Non-Profit Organizations & 1 State Operated ICF
- Size ranges from 4 persons to 16 persons with statewide ICF capacity for 274 individuals
- One program specializes in care of children while another serves a geriatric population
- Locations include Santa Fe, Espanola, Alcalde, Los Lunas, ABQ, Carlsbad, & Carrizozo

## Profile of ICF Delivery System

- Person-centered, homelike environment
- The home or “facility” may resemble waiver homes for individuals with disabilities
- Care delivery includes active treatment services which includes aggressive, consistent implementation of a program of training, treatment, health services and related services

## Regulatory Overview

- State Licensing and Fee Regulations
- State Enforcement Regulations
- Criminal History Screening Act
- Incident Management Regulations
- Resident Abuse and Neglect Act
- Employee Abuse Registry
- Life Safety Code/International Fire Code
- Federal Conditions of Participation
- Federal Interpretive Guidelines
- State Medicaid Regulations
- General Business State & Federal Statutes & Regulation – OSHA, IRS, Wage and Hour/Labor Laws, ADA, etc.

## State Licensing & Fee Regulations

- Requirements for Licensure of Intermediate Care Facilities, Title 7, Chapter 26, Part 2 – Purpose of these regulations is to:
  - establish professional minimum standards,
  - monitor ICF/MR facilities through surveys,
  - encourage the maintenance of facilities that provide quality services which maintain or improve the health and quality of life to the clients,
  - expand ICF/MR programs to assure timely placement for persons who need residential services,
  - assure integrated active treatment programs, homelike living arrangements and consumer protections for clients,
  - promote access and availability statewide, and recognize specialized ICF/MR programs to service individuals with intense needs.
  - 96 Sections with numerous subparts governing all aspects of oversight
- Health Facility Licensure Fees & Procedures Title 7, Chapter 1, Part 7 – Specifies Licensing fees

## State Enforcement Sanctions

- NMAC Title 7, Chapter 1, Part 8 sets forth regulations with 30 sections to govern the imposition of intermediate sanctions and civil monetary penalties levied on health care facilities licensed by the Department of Health to encourage compliance with licensing requirements and accelerate compliance when found in violation.

## Caregivers Criminal History Screening

- Title 7 NMAC, Chapter 1, Part 9
- Includes 11 sections governing caregiver employment requirements including:
  - conditional employment,
  - fingerprinting fees, procedures, timelines, recordkeeping,
  - mandates for state and national record checks, disqualifying convictions and prohibitions on employment, and
  - procedures for administrative reconsideration.

## Resident Abuse & Neglect Act & Incident Management Regulations

- NMSA Chapter 30, Article 47 – Resident Abuse & Neglect Act provides deterrents and remedies for abuse, neglect or exploitation of care facility residents and a system for reporting these instances including criminal penalties, employee mandates to report, and prohibitions against retaliation or discrimination against anyone who reports or testifies about resident abuse, neglect or exploitation.
- NMAC Title 7, Chapter 1, Part 13 - Incident Management Regulations - details 14 sections to outline:
  - Specific incident reporting instructions for abuse, neglect and misappropriation of property and injuries of unknown source.
  - Employer mandates to develop policies, prohibit retaliation, establish an incident management system, provide volunteers and employees with a written training curriculum, provide consumers, families and guardians with an orientation packet to include incident management systems policies and procedural information concerning reporting abuse, neglect or misappropriation, and post incident management information.
  - Consequences of noncompliance.

## Employee Abuse Registry

- Title 7, Chapter 1, Part 12 includes 18 sections and requires a state employee abuse registry and specifies:
  - Provider inquiry prior to hiring and recordkeeping,
  - Providers not employ individuals on the registry,
  - Provider cooperation with investigation of complaints and allegations of abuse, neglect or exploitation

## Federal Conditions of Participation 42 CFR 483.400-483.480

- **Eight Conditions of Participation**
  - Governing Body and Management
  - Client Protections
  - Facility Staffing
  - Active Treatment Services
  - Client Behavior and Facility Practices
  - Health Care Services
  - Physical Environment
  - Dietetic Services
- **Conditions are measured on Standards with approximately 375 requirements**

## **Federal Interpretive Guidelines - State Operations Manual (SOM)**

- **229 page SOM Appendix J describes the survey process, components, tasks, documentation and survey report form that surveyors must follow.**
- **Compliance is determined through this extremely detailed survey process.**

## **Federal Intermediate Sanctions and Civil Monetary Penalties**

- **State Operations Manual Chapter 3 includes enforcement methods including intermediate sanctions such as denial of payment on new admissions, civil monetary penalties, directed plan of correction, directed inservice education, facility monitors, etc.**

## Life Safety Code

- LSC is a publication of the National Fire Protection Association adopted by CMS to reasonably assure safety from fire.
- LSC covers construction, protection and operational features designed to provide safety from fire, smoke and panic.
- CMS partners with state agencies to assess facility compliance with over 150 LSC requirements for small facilities (under 16 person capacity.)

## International Fire Code

- Model code that regulates minimum fire safety requirements for new and existing buildings, facilities, storage and processes.
- The IFC addresses fire prevention, fire protection, life safety and safe storage and use of hazardous materials in new and existing buildings, facilities, and processes.
- The IFC provides a total approach of controlling hazards in all buildings and sites, regardless of the hazard being indoors or outdoors.
- IFC is nearly 400 pages divided into 38 chapters, consists of 45 Chapters and 7 Appendices of requirements that may apply to ICF programs.

## State Medicaid Regulations

- **NMAC Title 8, Chapter 323, Part 2 and Part 3 – 40 Regulatory sections that define:**
  - Eligible providers,
  - Medical Assistance Division standards, penalties, appeal processes,
  - Provider responsibilities,
  - Required and covered services as well a non-covered services,
  - Provider mandates to maintain recipient personal fund accounts and applicable recordkeeping,
  - Level of care determination process,
  - Coverage of reserve bed days,
  - Payment Methodology to establish daily rates for ICF/MR client services, and
  - Cost reporting requirements

## Thanks For Your Interest!

### For More Information, Contact:

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