

Developmental Disabilities Section

TITLE XIX
PROCEDURES FOR
DD LICENSED
PROVIDERS

GLOSSARY OF TERMS

Centers for Medicare and Medicaid Services (CMS)- The federal agency that runs the Medicare program. In addition, CMS works with the States to run the Medicaid program. CMS works to make sure that the beneficiaries in these programs are able to get high quality health care.

Department of Health and Human Services (DHHS)-The North Dakota state agency providing:
-Oversight and services to adults and aging individuals; child support; children and family Services, public assistance programs including heating assistance, supplemental nutrition and food stamps, Medicaid and medical services, mental health and substance abuse services, and services to individuals with disabilities.
-Public health services such as disease control; community health programs; safeguarding air, land, water quality; waste management; emergency preparedness and response; and licensing hospitals, nursing homes, basic care facilities, home health agencies, hospice programs, restaurants and lodging establishments.

Developmental Disabilities (DD) Section- A section within the Department of Health and Human Services charged with administering the system of services and supports to individuals with intellectual and developmental disabilities in the State of North Dakota.

Developmental Disabilities Program Administrator (DDPA)-Employee of the Department of Health and Human Services responsible to monitor and supervise the functions of the regional DD Program Managers, facilitate regional planning and service development, and coordinate the flow of information between the state and regional levels of the system. There is one DDPA for each of the eight regional human service centers.

Developmental Disabilities Program Manager (DDPM)- Employee of the Department of Health and Human Services responsible to provide coordination and monitoring of Medicaid and general fund services provided to individuals with intellectual and/or developmental disabilities. DDPM's are located in the eight regional human service centers. Every individual who is receiving DD Program Management services has an assigned DDPM.

Health Facilities Unit- a unit within the Department of Health and Human Services that works to ensure people receive appropriate, acceptable services in a safe environment. This is done by evaluating the programs, services, staff, buildings and equipment of the inpatient care facilities and outpatient programs to ensure they meet state licensure and federal certification standards and provide services consistent with generally accepted practice. The ICF/IID facilities are surveyed by the Health Facilities Unit.

Life Safety and Construction Unit- a unit within the Department of Health and Human Services that ensuring a safe environment for the elderly and disabled living in institutional settings.

Medical Services- a division within the Department of Health and Human Services which administers Medicaid programs.

Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)- A residential facility operated pursuant to federal regulations and serving people with intellectual disabilities and related conditions. The programming provided in this type of residence is for individuals with extensive needs. Each client must receive a continuous active treatment program, which includes an aggressive and consistent program of training, health services, and related services so that the client acquires the ability to function with as much self-determination and independence as possible.

Life Safety Code- Specific construction and fire safety requirements in order to be licensed and participate in the Medicare/Medicaid programs. Life Safety Code surveys are done in the following types of facilities: nursing facilities, hospitals, critical access hospitals, basic care facilities, ASCs, ESRDs, and ICF/IID's.

Medicaid- The United States health benefit program that helps provide assistance for individuals and families who have low incomes and limited financial resources. Medicaid is essentially an entitlement program where the costs are shared by the states and the federal government, and the local Medicaid programs are managed by the states. People that may qualify for and benefit from Medicaid are eligible low-income parents, children, elderly seniors, and people with chronic disabilities.

Protection and Advocacy (P&A)- independent state agency to advocate for the human and legal rights of people with disabilities. P&A strives to create an inclusive society that values each individual.

Title XIX-Regulations under the Social Security Act for the Medicaid program which are carried out by the Centers for Medicaid and Medicaid Services.

Introduction

This document was developed in collaboration with the DD Section and Health Facilities Unit. The purpose of the information is to provide additional guidance including defining the expectations, roles, and processes among DD Licensed Providers, the DD Section, and Health Facilities with the Title XIX requirements. This does not replace the importance of the regulations or Interpretive Guidelines, but complements it.

Please refer to the following for more information: *State Operations Manual Appendix J - Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities*

http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_j_intermcare.pdf

Certification Information

ICF/IID facilities are institutions that participate in Medicaid and must comply with specific Medicaid standards; meeting applicable requirements and evaluation of quality of care. The survey for the determination of standards, collectively known as the certification process, is done on behalf of CMS by individual State Survey Agencies. In North Dakota, it is completed by the Health Facilities Unit.

Certification is completed initially and annually for each ICF/IID facility (home) based on the agency's ability to comply with Condition of Participation for ICF/IID's. The Condition of Participation focus is on the provision of active treatment services. Day Supports is not certified by Health Facilities, but they do receive Life Safety Code certification through the Life Safety and Construction Unit. The Title XIX survey process reviews the Day Support facility for individuals selected in the ICF/IID facility sample to evaluate consistency of services and how the entities work together. The survey sample is based on the number of individuals who reside in the facility, not what the facility is licensed for.

If a facility does not receive re-certification, termination of Title XIX occurs, which means the facility is not eligible to participate as an ICF/IID and receive Medicaid funding.

ICF/IID Licensure and Certification

The following steps need to be taken to become licensed as an ICF/IID facility:

1. A set of floor plans must be submitted to the DD Section for review and approval. Once the floor plans are approved, DD will contact Health Facilities to inform them of the provider's intent to become certified.
2. New providers must submit policies and procedures to the DD Section for review and approval through the provider licensure process. This is not required for existing providers who choose to use previously established policies and procedures.

3. An application for ICF/IID licensure must be submitted to the DD Section and the provider must inform Health Facilities at least 90 days prior to the anticipated open date. It is the **provider's responsibility** to keep DD and Health Facilities informed of the progress.
4. A Life Safety Code inspection must be made by the Life Safety and Construction Unit. The provider must make a formal request to the Life Safety and Construction Unit at least 120 days prior to the anticipated open date and cc the request to Health Facilities. If there are changes in the anticipated open date, it is the provider's responsibility to notify DD, Life Safety and Construction Unit, and Health Facilities.
5. Life Safety and Construction notifies Health Facilities once the provider is in compliance with the Life Safety Code regulations. Health Facilities will notify the DD Section at which time a provisional license will be issued. The facility may then admit residents. A provisional license will remain in effect until certification is achieved.
6. Health Facilities completes an inspection of the facility to ensure compliance with all Conditions of Participation specified in the ICF/IID regulations. Once a facility is determined to be in compliance with Title XIX requirements, CMS will be notified by Health Facilities and a certification number will be issued. Until the certification is achieved Medicaid funds cannot be accessed and only state funds can be used.

Bed Capacity

According to regulation, in order for a facility to be established as an ICF/IID there must be at least 4 Individuals residing in the facility. However, there is no minimum number of individuals who must be in the facility at the time of an initial certification. The facility must have enough individuals residing in the facility to demonstrate that it is able to, and does in fact, provide services to the total number of individuals it proposes to serve. The maximum number of beds for an ICF/IID facility is established with licensure. Bed capacity within a facility can increase or decrease in conjunction with changes to individual living situations.

Procedures:

1. Circumstances warranting a change in licensure will be either of a planned or an emergency nature. Providers need to submit a new license application form requesting the change according to the DD Provider Licensure Handbook.
2. Any request for an increase or decrease with bed capacity is discussed with the Regional DDPA.
3. DD will notify Health Facilities of the increase or decrease bed capacity approval by means of a letter.
4. Upon receiving each notification from DD of the increase or decrease in bed capacity, Health Facilities completes a Certification and Transmittal form changing the number of beds and sends it to Medical Services who approves/signs the Certification and Transmittal.
5. If the facility has a Condition Level deficiency and the provider would like to increase the bed capacity or pursue new admissions, the provider must communicate their request with DD for approval. DD will contact Health Facilities to mutually discuss the request. The DD Quality Assurance Administrator will contact the DD Licensing Administrator.

Non-Compliance

Initial certification requires a full survey, which is a review of all regulations for Title XIX. Annual recertification focuses on the fundamental requirements, but may expand if issues are identified. A deficiency is defined as the facility's failure to meet the requirements within the Title XIX regulations. The survey's emphasis is on whether active treatment is provided to the individuals residing in the ICF/IID.

Findings are analyzed relative to each requirement based on the degree of severity, frequency of occurrence and impact on delivery of active treatment or quality of life. If non-compliance is identified, a standard level deficiency is cited.

Conditions of Participation

Providers must meet all Conditions of Participation (COP) initially and annually to continue Medicaid participation and to be certified. There are a total of eight COPs that address health and safety standards.

Procedures:

1. If a COP is out of compliance, certification is not removed immediately as a provider has a timeframe to correct with a Plan of Correction (POC). The POC timeline is 35 days, which begins from the date of the exit meeting.
2. For any facility cited with a Condition Level deficiency, Health Facilities notifies the CMS Regional Office.
3. Health Facilities will notify the DD Quality Assurances Administrator for any significant Condition of Participation that may require immediate follow up.
4. DD will review the survey results to determine appropriate remediation within DD. Depending on the situation and circumstances, consultation with Health Facilities may occur.
5. Health Facilities must complete an on-site revisit to verify the implementation of the POC for any Condition Level deficiencies.
6. If a COP remains out of compliance, it could result in termination of Title XIX certification. This means the facility is not eligible to participate as an ICF/IID and receive Medicaid funding.
7. If the facility has a Condition Level deficiency and the provider would like to increase the bed capacity or pursue new admissions, the provider must communicate their request with DHHS for approval. DHHS will contact Health Facilities to mutually discuss the request.

Immediate Jeopardy

Immediate Jeopardy is defined as "A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident." Typically, if an immediate jeopardy situation occurs, a COP may also be present.

Some examples of immediate jeopardy include:

Example 1- During the survey, an individual elopes from the facility. Upon further review from the surveyor, it is discovered that within the past 3 months this individual has eloped 10 times and there have been no mitigation or corrective action implemented to prevent further attempts or establish staff responses.

Example 2- During the GER file review, the surveyor reviews incidents where an individual has fallen out of their chair on several occasions. Corrective actions and risk management was recommended. During the survey, the surveyor witnesses the individual falling out their chair and the corrective actions and risk management steps identified were not in place.

Please refer to the following for more information: *State Operations Manual Appendix Q - Guidelines for Determining Immediate Jeopardy*

http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_q_immedjeopardy.pdf

Procedures:

1. If the surveyor on-site suspects immediate jeopardy, the surveyor communicates with Health Facilities supervisor to establish the immediate jeopardy determination.
2. Upon a citation of immediate jeopardy, Health Facilities must notify the CMS Regional Office.
3. The surveyor must remain on-site until the immediate jeopardy is removed and the facility must have an acceptable POC.
4. If a facility is cited with immediate jeopardy, Health Facilities will notify the DD Quality Assurances Administrator.
5. DD will determine if additional remediation is necessary. Depending on the situation and circumstances, consultation with Health Facilities may occur.

Survey Reports and Plans of Correction (POC)

An exit meeting is held prior to Health Facilities leaving the facility. The provider will receive verbal communication by the Health Facilities surveyor of any issues identified and potential deficiencies. The provider will then receive a written report and must submit a POC to Health Facilities for any deficiencies. Health Facilities will follow up with the provider to verify completion of the POC. This can be accomplished through several methods, such as document review, verbal communications, and depending on the situation, with an on-site visit.

Procedures:

1. Upon completion of the survey, Health Facilities has 10 working days to complete and send the written report, which list the deficiencies, to the provider.
2. Health Facilities will notify, upon completion of the survey, the DD Quality Assurance Administrator if there are any Condition Level deficiencies, Immediate Jeopardy, or other items which may require follow up activities.
3. The provider has 10 calendar days to sign the written report and submit a POC to Health Facilities.

4. Providers have 35 calendar days to implement the POC, which begins from the date of the exit. The POC can be implemented sooner than the 35 days, but not later. It is strongly encouraged that providers begin to develop and implement their plans of correction as soon as possible, if not immediately, once Health Facilities has exited.
5. Upon Health Facilities acceptance of the POC, a copy of the certification survey is provided to Medical Services, DD, and Protection and Advocacy. The following forms are included: Certification and Transmittal, Statement of Deficiencies and Plan of Correction, provider letter, and roster.
6. The DD Section enters the survey information into a database and routes the forms for DD staff to review. The surveys will be routed first to the Quality Assurance Administrator within the DD Section. The DD Section provides a copy of the survey report to the Regional Human Service Center DDPA who reviews the results. Follow up on individual concerns may be conducted by the DDPM and documented in the Quality Enhancement Review. Life Safety Code surveys are monitored and tracked by the DD Section.
7. Medical Services approves/signs the Certification and Transmittal form. A Disclosure of Information is completed by Medical Services and the Statement of Deficiencies and Plan of Correction is disclosed to the local Zone where the facility is located. The survey reports are to be made available to the public for a period of two years. The reports are public records and this is one method to provide the information to the public.
8. The DD Quality Assurance Administrator will notify DD staff, the Regional DDPA, and Medical Services if there any are provider concerns, such as a Condition Level deficiency, Immediate Jeopardy, or other occurring remediation activities which could have the potential to impact certification.

Termination

Certification can be terminated if the facility is not in substantial compliance with program requirements, including maintaining certification or submitting an acceptable POC.

Procedures:

1. Health Facilities initiates the action, prepares the necessary documents, and forwards them to the State Medicaid Agency. The State Medicaid Agency has the responsibility for the termination, nonrenewal, or cancellation of the agreement.
2. The State Medicaid Agency notifies CMS and the public of the action and affords the facility notice and opportunity for a hearing.
3. Following termination, an ICF/IID wanting readmission to the Medicaid program must contact the State Medicaid Agency.
4. Federal Financial Participation (FFP) may continue for up to 30 calendar days after the effective date of termination if the Medicaid beneficiaries were admitted to the entity before the effective date of termination and the State is making reasonable effort to transfer those beneficiaries to other facilities or to alternate care or to ensure that they are

appropriately discharged. Relocation activities of individuals due to termination or other events should follow procedures.

Please refer to the following for more information: *State Operations Manual, Chapter 3-Additional Program Activities*

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107c03.pdf>

Quality Assurance

State quality assurance activities are essential, not only to clearly establish monitoring protocols but to also provide assurances to CMS especially when concerns are identified. Although each certification review may be completed based on an individual facility, the DD Section maintains the responsibility to conduct quality assurance activities that contribute to the evaluation and enhancement of services not only for providers but also for the system throughout the state.

The DD Section receives and reviews each facility's certification survey. The DD Quality Assurance Administrator will conduct tracking and trending activities of the Title XIX deficiencies to determine potential statewide opportunities for improvements and to conduct any essential technical assistance.