Long Term & Behavioral Health Committee
Agency Report
Petition to
Allow Transfer of ICF/IID Beds
Proposed 2014 State Medical Facilities Plan

Petitioner:
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Request:
The petitioner requests the transfer of vacant Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) beds from state institutions to existing community facilities who lost slots in the Community Alternatives Program for Individuals with Intellectual and Developmental Disabilities program (CAP I/DD) due to recent Center for Medicare and Medicaid Services (CMS) policy changes.

Background Information:
Chapter 2 of the State Medical Facilities Plan (SMFP) describes the purpose and process for submitting petitions to amend the SMFP during its development. Petitions may be sent to the Medical Facilities Planning Branch twice during the course of plan development. Early in the planning year petitions related to basic SMFP policies and methodologies that have a statewide impact may be submitted. The SMFP defines changes with the potential for a statewide impact as *"the addition, deletion, and revision of policies and revision of the projection methodologies."* The change requested by these petitioners affects ICF/IID policies and should be considered before publication of the Proposed 2014 SMFP.

Later in the planning cycle when need projections are identified in the Proposed SMFP, petitions may be submitted seeking adjustments to the projected need determination in any service area if the petitioner believes the needs of a service area are not fully addressed by the standard methodology.

CAP I/DD is a Medicaid Home and Community Based Services waiver for individuals with intellectual and/or developmental disabilities. The CAP I/DD program started in 1983 to serve individuals who would otherwise require care in an ICF/IID. CAP I/DD waivers are approved by

CMS under Section 1915(c) of the Social Security Act and allow the state to offer targeted services that are not otherwise available under the North Carolina State Plan (Medicaid). The waivers allow individuals with intellectual and/or developmental disorders the opportunity to be served in the community instead of residing in an institutional or group home setting. Both federal and state dollars fund CAP I/DD waivers. Under the latest CMS CAP I/DD waiver, approved November 1, 2012, the definition of *home and community-based settings* specifically excludes nursing facilities, institutions for mental disease, ICF/IIDs and hospitals providing long-term care services. In North Carolina, this change has resulted in some CAP I/DD waiver recipients being faced with the choice of losing their waiver because their independent living housing is located on the same campus as an ICF/IID or losing their current living arrangements in order to retain the CAP I/DD waiver funding needed for community-based services.

The Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) and the Division of Medical Assistance (DMA) cooperate in the operation of the CAP I/DD waivers under a memorandum of understanding that delineates each division's responsibilities. DMH/DD/SAS is the operating agency for the CAP I/DD waivers and is responsible for the management of the waivers at the state level as the agency responsible for implementation of the public mental health and developmental disability service systems in North Carolina. DMH/DD/SAS carries out these responsibilities via a system of local networks, called local management entities/managed care organizations (LME/MCOs), which are either single or multi-county political subdivisions of the state that are established and operate in accordance with N.C. General Statute 122C (G.S. 122C-116). DMA, the single state Medicaid agency, is the administrative authority overseeing the overall operation, including fiscal responsibility, of the CAP I/DD waiver according to federal and state guidelines. DMA's Behavioral Health Section directly oversees the CAP I/DD waiver, approves all policies and procedures governing waiver operations and ensures that CAP I/DD waiver assurances are met. DMA contracts with LME/MCOs to arrange for and manage the delivery of services and perform other waiver operational functions under the CAP I/DD waivers at the local level.

The Division of State Operated Healthcare Facilities oversees and manages fourteen state operated healthcare facilities that treat adults and children with mental illness, developmental disabilities and substance use disorders, including three developmental centers that treat individuals with intellectual and/or developmental disorders.

Analysis/Implications:
Appropriations Bill Session Law 2007-323 Section 10.50 calls for the Department to "ensure that the downsizing of the State's Developmental Centers is based upon individual needs and the availability of community-based services with a targeted goal of four percent (4%) each year." The Department must "ensure that placements for ICF-MR level of care shall be made to appropriate community-based settings" and "admissions to a State-operated ICF-MR facility is permitted only as a last resort." The proposed policy is in keeping with the mandate set forth in this legislation and with the Developmental Disabilities Assistance and Bill of Rights Act of 2000 as determined by Olmstead vs. L.C. in that it respects the choice of consumers impacted by the CMS policy change to continue living in the community rather than in an institutional setting.

For the consumers impacted by this CMS policy change, particularly those who are elderly, the most likely outcome in these circumstances is institutionalization unless their unique situation is addressed. As the petitioner states, there are few practical alternatives for these individuals other than re-institutionalization, given the specialized needs of the aging IID population and the current wait-list status for ICF/IID beds in the only community-based facility in the state that focuses services on individuals 55 years and older. Providing these consumers with a mechanism for remaining in their current living situation serves the impacted consumers in multiple ways: (1) it maintains continuity of care, enabling them to age in place; (2) it preserves existing social supports as means of improving positive long-term health outcomes; and (3) it is in accordance with national trends and best practices recommendations emphasizing community-based care in the least restrictive environment. Each of these outcomes is consistent with the State Health Coordinating Council's (SHCC) guiding principle of quality of care.

Access and value, the other basic principles of the SHCC, would also be preserved by implementing this policy. As the structure of mental health service provision has changed within the state, resources have become more accessible in consumers' local communities. As mental health resources become more community-based and the population housed in the state's developmental centers shrinks, it becomes more costly to treat consumers in an institutional setting. As stated in the Human Services Research Institute's report to the North Carolina Council on Developmental Disabilities (January 2012), the average cost of serving an individual in a developmental center in North Carolina is almost 50% higher than providing service through a community-based ICF/IID facility.

The agency has engaged representatives from the various divisions that would be impacted by this policy, including State Operated Healthcare Facilities, DMH/DD/SAS, and DMA. Each division expressed their support for the implementation of this policy as a means of complying with both federal and state mandates while enabling the impacted ICF/IID facilities to continue operating.

Lastly, the proposed bed transfer policy is not in conflict with the state's moratorium on the creation of new ICF/IID beds in place since 1995; rather, it is a relocation of currently existing Medicaid-certified ICF/IID beds to the community.

Agency Recommendation:

The petitioner requests the adoption of a new ICF/IID policy to transfer vacant ICF/IID beds from state institutions to existing community facilities who lost slots in the CAP I/DD program due to a change in CMS policy prohibiting CAP I/DD and ICF/IDD beds from being located on the same service facility campus. Given the available information and comments submitted by the March 22, 2013 deadline and in consideration of factors discussed above, the agency recommends adopting the requested policy based on the proposed policy's consistency with existing state mandates and priorities.

Furthermore, the agency recommends that the policy include the following language:

POLICY ICF/IID-3: TRANSFER OF ICF/IID BEDS FROM STATE OPERATED DEVELOPMENTAL CENTERS TO COMMUNITY FACILITIES FOR ADULTS WITH SEVERE TO PROFOUND DEVELOPMENTAL DISABILITIES

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) beds in state operated developmental centers may be relocated to existing community facilities through the certificate of need process for the replacement of Community Alternatives Program for Individuals with Intellectual and Developmental Disabilities (CAP I/DD) waiver slots lost as a result of the Centers for Medicaid and Medicare Services (CMS) policy designed to prohibit CAP I/DD waiver and ICF/IID beds from being located on the same campus. This policy allows for the relocation or transfer of beds only and does not provide for transfer of residents with the beds. State operated developmental center ICF/IID beds that are relocated to community facilities shall be closed upon licensure of the transferred beds.

Facilities proposing to operate transferred beds shall submit an application to the Certificate of Need Section demonstrating a commitment to serve adults who have severe to profound developmental disabilities. This policy applies only to facilities that have lost waiver slots as a result of the CMS ruling and does not apply for expansion beyond the lost beds. To help ensure the relocated beds will serve these residents such proposal shall include a written agreement with the following representatives: director of the local management entity/managed care organization serving the county where the community-based facility is located; the director of the applicable state operated developmental center; the director of the North Carolina Division of State Operated Healthcare Facilities; the secretary of the North Carolina Department of Health and Human Services and the operator of the community-based facility.