IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EDWARD BOUDREAU, by and through his parents, Edwin and Ann Boudreau, et. al.,	)	
Plaintiffs,	)	No. 00 C 5392
vs.	)	JUDGE GRADY
	)	MAGISTRATE DENLOW
GEORGE H. RYAN, in his official capacity as Governor of the State of Illinois, et al.,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW
IN RESPONSE TO THE COURT'S INQUIRY ON DECEMBER 6, 2001

Now comes the Plaintiffs, by and through their attorney, Robert H. Farley, Jr., Ltd., and Thomas G. Morrissey, Ltd., and submits this Memorandum of Law in Response to the Court's inquiry on December 6, 2001 and in support thereof states as follows:

I. Pre-Admission Screening Agencies Are Agents Of The State Of Illinois

59 Illinois Administrative Code Section 120.10 defines Pre-Admission Screening (PAS) agents as follows:

> Community agencies or units of local government selected by the Department to act as agents of the Department in carrying out certain federal and State requirements related to the assessment, determination or eligibility, and arrangements for Medicaid-funded services and supports for individuals with a developmental disability. [1]

The Procedures Manual for Developmental Disabilities Pre-Admission Screening Agencies issued by the Illinois Department of Human Services, states as follows:

[1] See Exhibit "A"

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> The role of the DD PAS agency is to ensure compliance with applicable Federal and State laws, arrange for and conduct assessments, make necessary determinations regarding eligibility for services, educate individuals and families, and make referrals and provide linkage to appropriate and needed services.[2]

II. The Family Is Part Of The Active Treatment Program

Habilitation or active treatment generally refers to programs for the mentally retarded which focus primarily on training and the development of needed skills. *Youngberg v. Romeo,* 457 U.S. 307, 309 n.1, 102 S.Ct. 2452 (1982). ICF/MR regulations require, as a condition of participation, that "each [resident] 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 toward the acquisition of the behaviors necessary for the [resident] to function with as much self-determination and independence as possible and the prevention or deceleration of regression or loss of current optimal functional status." 42 C.F.R. Sec. 483.440(a) (See Exhibit "C")

Each resident must have an individual program plan (IPP) developed by an interdisciplinary team (IDT) based on an assessment of the individual needs of the resident. 42 C.F.R. Sec. 483.440(c) and the family is part of the interdisciplinary team. **"Participation by the [resident], his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.** 42 C.F.R. Sec. 483.440(c)(2). (See Exhibit "C")

The Health Care Financing Administration (HCFA) has issued survey procedures and

[2] See Exhibit "B" - Section 020.00

interpretive guidelines for ICF/MRs. (See Exhibit "D") In order to determine whether a person is receiving an active treatment program, the surveyors are required to interview the individual and family/advocate and the purpose is as follows:

> Individuals living in the facility, their families/guardians and advocates, and direct care staff are important sources of information about the receipt of active treatment on a daily basis. Interviews are conducted for two purposes: to determine how the individual perceives the services delivered by the facility, and to clarify information gathered during observations. (See Exhibit D-14 at VIII.A)

The interview procedure begins with the individual, then followed by the families, legal guardian or advocates and then followed by others such as the direct care staff, professional staff and the administrators. (See Exhibit D-15 at B) The "Content of In-Depth Interviews" is as follows:

> Determine what the facility does to provide individualized services and supports; **and how individuals and families participate in service planning and in making choices about matters important to them.** (See Exhibit D-16 at C)

Accordingly, the family of a person with developmental disabilities is an integral part of the active treatment program.

III. The Seventh Circuit Court Of Appeals Recognizes The Importance Of Persons Obtaining Services Near Their Families and Homes (Market Area)

In *Nelson v. Monroe Regional Medical Center,* 925 F.2d 1555 (7th Cir. 1991), the Circuit Court (Flaum, J.), reinstated the antitrust claim which a family had filed against a medical clinic. The Plaintiffs were a mildly retarded 18 year old woman and her mother, who lived in Monroe, a city of approximately 10,000 inhabitants located in south central Wisconsin. Because of her

handicap, the daughter was in need of frequent medical attention and received services from a doctor of the Monroe Clinic. After a malpractice suit was brought against the doctor, she ceased going to the Monroe Clinic and instead went to a different clinic, the Monroe Medical Center. However, the two clinics merged and although the malpractice claim had been withdrawn, the family was notified by the merged clinic that it would no longer treat either of them on a non-emergency basis and offered to assist them to find alternate care and to transfer records to the providers they selected.

The Court stated:

> Plaintiffs now obtain medical care in Madison Wisconsin, some 40 miles north of Monroe. Another consequence of the Clinic's decision to deny them care is to prevent Bowman from obtaining medical care by herself; because she must travel outside Monroe, she must be driven by [her mother]. According to [her mother] and her employer, the City of Monroe, the need to accompany her daughter on her periodic visits to doctors in Madison has disrupted Nelson's work schedule and caused her to lose wages. *Id.* at 1557.

The Court found that the Plaintiffs had "alleged and introduced facts to support the view that 'an injury to the market' has occurred that has claimed them as its first victims." *Id.* at 1565. Judge Cudahy, concurring stated:

> In fact, the plaintiff has suffered what is the very essence of antitrust injury. The merger of the Monroe Clinic and the Monroe Medical Center has ostensibly eliminated all competition in the provision of medical services in the Green County market. It was this elimination of competition and the resulting effective monopoly position of the Monroe Clinic that made the Clinic's refusal to deal with Darci Bowman injurious to her. Because she had no other supplier with which to deal, Bowman was forced to seek service in another market allegedly to her detriment. *Id.* at 1568.

In *United States of America v. Rockford Memorial Corporation,* 898 F.2d 1278, (7th Cir. 1990), the Circuit Court (Posner, J.) affirmed an injunction which prevented the merger of the two largest hospitals in Rockford, Illinois which held around two-thirds of the market for inpatient services in their geographical area. The Court characterized the Defendants proposal that the hospitals market area should encompass a ten-county area service as being "ridiculous." *Id. at* 1285. The Court stated, "But for the most part hospital services are local. People want to be hospitalized near their families." *Id. at* 1285.

In the instant case, developmentally disabled persons should be permitted to receive services in their communities so they can maintain their ties to their family as the family is an integral part of the active treatment program.

Respectfully submitted,

One of the Plaintiffs Attorney

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Exhibit A

Illinois Administrative Code

***59 Ill. Adm. Code 120.10* Definitions**

For the purposes of this Part, the following terms are defined:

"Code." The Mental Health and Development Disabilities Code 405 ILCS 5.

"Community integrated living arrangement (CILA)." A living arrangement provided by a licensed community developmental disabilities services agency where eight or fewer individuals with a developmental disability reside under the supervision of the agency. Individuals receive a customized array of flexible habilitation or personal care supports and services in the home, in day programs and in other community locations under the supervision of a community support team within the local agency. 210 ILCS 135/3(d)

"Community living facility (CLF)." A facility geared to assist the individual in preparing for independent living. Emphasis is placed on teaching the individual adequate social and daily living skills. Individuals are involved in practical experiences in community living and are guided in planning for and using leisure time and developing the ability to function independently in the community. Community living facilities are limited to no more than 20 individuals, age 18 or older (Community Living Facilities Licensing Act 210 ILCS 35).

"Community residential alternatives (CRA)." A group home, as defined in the Community Residential Alternatives Licensing Act 210 ILCS 140, for eight or fewer adults with developmental disabilities who are unable to live independently but are capable of community living if provided with an appropriate level of supervision, assistance and support services. A community residential alternative may provide training and guidance to individuals in the skills of daily living and shall provide opportunities for participation in community activities. A community residential alternative shall not be a medical or nursing facility. 210 ILCS 140/3(4)

"Confidentiality Act." The Mental Health and Developmental Disabilities Confidentiality Act 740 ILCS 110.

"Days." Unless otherwise indicated, means calendar days.

"Department." The Department of Mental Health and Developmental Disabilities.

"Developmental training." A day program that focuses on the development and enhancement of daily living skills such as motor development, dressing, grooming, toileting, eating, language, reading and writing, quantitative skills, capacity for independent living, economic self-sufficiency and reduction of maladaptive behaviors.

"Director." The Director of the Department of Mental Health and

Developmental Disabilities.

"Grant agreement." When fully executed the obligating instrument providing the basis for Departmental financial participation in grant-in-aid programs and which formalizes the contractual relationship between the Department and the provider indicating the amount of Department funds which will be paid to the provider for the provision of services as described in the grant agreement and the agency plan. Requirements for grant-in-aid funded providers are contained in the Department's rules at 59 Ill. Adm. Code 103.

"Guardian." A person appointed by the court as the plenary or limited guardian or conservator of the individual for an individual over age 18 so long as the limited guardian's duties encompass concerns related to service requirements or the natural or adoptive parent of a minor or a person acting as a parent of a minor.

"Habilitation." An effort directed toward the alleviation of a developmental disability or toward increasing the level of physical, mental, social or economic functioning of an individual with a developmental disability. Habilitation may include, but is not limited to diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, supported employment, protective services, counseling and other services provided to individuals with developmental disabilities by developmental disabilities facilities. (Section 1-111 of the Code)

"Home individual program (HIP)." A program which provides support and training to one or two individuals with developmental disabilities in a home environment.

"Individual." A person with developmental disabilities who is requesting, is receiving or has received services under this Part.

"Individual service/support plan." A written plan of care, consistent with the individual's diagnosis and needs, which describes the habilitation goals and a projected timetable for their attainment and the services/support to be provided as defined in Section 4-309 of the Code.

"Intermediate care facility for the mentally retarded (ICF/MR)." Medicaid-certified long-term care facility as defined by 42 CFR 440.150 (1994) serving individuals with developmental disabilities. ICF/MR includes community facilities licensed by the Department of Public Health for skilled/pediatric nursing (77 Ill. Adm. Code 390) (if certified as ICF/MR), intermediate care for the developmentally disabled (77 Ill. Adm. Code 350), intermediate care for the developmentally disabled with 16 beds and under (77 Ill. Adm. Code 350) and State-operated developmental centers.

"Mental retardation." Significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years. (Section 1-116 of the Code)

"Nursing facility." A Medicaid-certified long-term care facility. Nursing facilities include facilities licensed by the Department of Public Health for skilled/pediatric nursing (77 Ill. Adm. Code 390) (unless certified as ICF/MR), intermediate care and skilled nursing (77 Ill. Adm. Code 300).

"Pre-admission screening and resident review (PASARR) agents." Community agencies or units of local government selected by the Department to act as agents of the Department in carrying out certain federal and State requirements related to the assessment,

EXHIBIT B

PROCEDURES MANUAL
FOR
DEVELOPMENTAL DISABILITIES
PRE-ADMISSION SCREENING AGENCIES

July, 2000

Office of Developmental Disabilities
Illinois Department of Human Services

INTRODUCTION

010.00 AUTHORITY AND RESPONSIBILITY

This manual provides the policies and procedures to be followed by Developmental Disabilities Pre-Admission Screening (DD PAS) agencies as set forth in the following documents:

(1) the Omnibus Reconciliation Act of 1987;

(2) the Illinois Nursing Home Care Act (210 ILCS 45/2-201.5);

(3) Illinois Department of Public Aid Rule 89, Illinois Administrative Code 140.642 (Screening Assessment for Nursing Facility and Alternative Residential Settings and Services);

(4) the State of Illinois Department of Human Services Community Service Agreement; and

(5) 89 Illinois Administrative Code, Part 144 (Intermediate Care Facility/Mental Retardation.

020.00 ROLE OF PAS AGENCIES

The role of the DD PAS agency is to ensure compliance with applicable Federal and State laws, arrange for and conduct assessments, make necessary determinations regarding eligibility for services, educate individuals and families, and make referrals and provide linkage to appropriate and needed services. The PAS process will prevent inappropriate admissions to long term care facilities (nursing facilities and Intermediate Care Facilities serving persons with Developmental Disabilities [ICFDDs]) and inappropriate enrollments in waiver programs.

030.00 PERSONS SERVED BY DD PAS AGENCIES

Persons who are eligible to receive DD PAS Services are the following:

A. Persons to be Screened Using the OBRA-1 Initial Screen. (See Chapter 100.)

1. All persons requesting admission to a nursing facility, regardless of funding source, will be screened using the OBRA-1 Initial Screen.

2. All persons requesting developmental disabilities services that will be funded through Medicaid will be screened, first, using the OBRA-1 Initial Screen.

B. Persons to be Screened through the Level II DD PAS Screen.

1. Individuals for whom there is a reasonable basis to suspect a developmental disability (DD) as determined by the OBRA-1 Initial Screen process who are seeking admission to nursing facility services (i.e., Intermediate Care Facility or Skilled Nursing Facility), regardless of the individual's funding source. (For individuals for whom payment will be provided by private funds, the DD PAS agency will use the number 999999999 for the Medicaid Recipient I.D. number on all DDPAS forms.)

2. Individuals for whom there is a reasonable basis to suspect a DD as determined by the OBRA-1 Initial Screen process who are Medicaid eligible or expected to become Medicaid eligible within 60 days, and who are seeking admission to an Intermediate Care Facility for individuals with a Developmental Disability (ICF/DD, ICF/DD-16), including those provided by a Specialized Living Center (SLC), Skilled Nursing Facility for Pediatric Residents (SNF/PED), or State-Operated Developmental Center (SODC); or any Medicaid Waiver service funded under the Home and Community-Based Services Waiver program. (For individuals who are pending Medicaid eligibility within the next 60 days, the DD PAS agency will use the number 888888888 for the Medicaid I.D. number on all DDPAS forms.)

040.00 OVERVIEW OF THE RESPONSIBILITIES OF PAS AGENCIES

The DD PAS agencies' responsibilities include the following activities:

1. Provide PAS services to a designated geographic service area to ensure compliance with Federal and State Pre-Admission Screening laws and regulations;

2. Assess individuals for whom there is a reasonable basis to suspect a developmental disability who are seeking admission to nursing facilities, regardless of funding source.

3. Assess individuals who are seeking Medicaid-funded services in a DD setting and who are Medicaid eligible or are expected to become Medicaid eligible within 60 days;

4. Conduct and arrange for assessments required to complete the PAS process for an individual;

5. Determine the specific service needs for individuals based on an interpretation of these assessments and evaluations, including eligibility as a person with developmental disabilities, determinations of the need for 24-hour nursing care, and the need for active treatment for the developmental disability;

6. Screen for guardianship needs and, if necessary, refer the individual who may have guardianship needs to the local Office of State Guardian (OSG);

7. Educate individuals and families, presenting all options and facilitating the service selection process;

8. Link individuals to needed support services in accordance with the requirements of Federal and State criteria;

9. Coordinate PAS activities with other screening entities within the State, including those representing the Office of Mental Health, the Office of Rehabilitation Services, the Department on Aging, and other entities designated as screeners according to rules and regulations of the Illinois Department of Public Aid;

10. Complete all documentation required to support the DD PAS agency's determinations;

11. Supply necessary information to the existing or potential service provider;

12. Adapt the screening and assessment processes, as necessary, to meet the cultural background, language, ethnic origin, and means of communication of all individuals presenting for services;

13. Provide 24-hour accessibility for individuals, families, and providers; and

14. Develop and implement an internal quality enhancement protocol that will ensure and document the quality and appropriateness of the assessments and determinations made under the DD PAS process.

050.00 GEOGRAPHIC RESPONSIBILITY FOR DD PAS FUNCTIONS

For individuals located in other States who are seeking services in Illinois facilities and whose current services are not funded through Illinois public funding resources (e.g., Illinois Medicaid, Illinois Department of Human Services, Illinois Department of Child and Family Services, etc.), PAS activity must be provided by a PAS entity in the State in which the individual is currently located.

For individuals located in other States whose current services are funded through Illinois public funding resources and for individuals now located in Illinois, the following guidelines are provided in order to enable DD PAS agencies to make consistent decisions regarding geographic responsibility, in order to provide more prompt and less costly response to individuals' service needs.

A. Geographic Issues related to DD PAS Services.

The DD PAS agency is responsible for screening and assessing individuals who are located in the geographic area assigned to the DD PAS agency by the Department of Human Services (DHS). The screening entity completing the OBRA-1, if other than a DD PAS agency, will refer the individual to the DD PAS agency responsible for the geographic area in which the individual is currently located. The DD PAS agency that receives the OBRA-1 is responsible for providing DD PAS services or for referring the individual to the appropriate DD PAS agency, according to the following considerations.

1. If an individual is located in a non-hospital, non-institutional, non-State-funded setting, DD PAS services will be provided by the DD PAS agency serving the geographic area in which the individual is currently located.

2. If an individual has been served in a hospital, institutional, or State-funded setting for fewer than 180 calendar days, DD PAS services will be provided by the DD PAS agency serving the previous geographic area to which the individual has the greatest significant ties, according to one or more of the following factors:

   (a) a previous location history of 180 or more days; and/or
   (b) family members, friends, advocates, and/or community organizations who express an interest in providing future supports to the individual; and/or
   (c) the individual's or guardian's own expression of a preference for a geographic area, arising out of the individual's history.

3. If an individual has stayed in a hospital, institutional, or State-funded setting for more than 180 calendar days and does not have significant ties to a previous geographic area, services will be provided by the DD PAS agency serving the geographic area that is the location of that hospital, institutional, or State-funded setting.

4. If an individual has stayed in a hospital, institutional, or State-funded setting for more than 180 calendar days and does have significant ties to a previous geographic area, services will be provided by the DD PAS agency serving the geographic area in which those ties are located.

5. It is possible that significant ties may not be discovered until the assessment process is under way or finished. The DD PAS agency where the individual is physically located has ultimate responsibility for completing the required assessments.

6. In cases where a DD PAS agency is responsible for assessing an individual outside the DD PAS agency's own geographic area, the DD PAS agency serving the area where the individual is located must assist with scheduling and completion of assessments.

B. Transfer of DD PAS Responsibilities when an individual plans to move to another DD PAS Agency's Service Area.

If an individual/guardian chooses services outside of a PAS agency's designated geographic area, DD PAS agencies are to use the following guidelines:

1. Conduct the PAS screening.

2. Provide the individual and/or guardian with results of the Pre-Admission Screening, including the services for which the individual is eligible.

3. Facilitate the decision process for the individual and/or guardian (by answering questions and providing information) so that the individual/guardian can make choices regarding appropriate services and geographic areas.

4. When the individual/guardian has determined which service(s) and geographic area(s) are desired, make referrals to providers within your area and/or contact the PAS agencies in other geographic areas in accordance with the wishes of the individual/guardian. If the individual wishes to explore service options outside the local PAS area, the DD PAS agency must proceed with the following steps:

   (a) Provide the receiving PAS agency with all information and results pertaining to the PAS process, including copies of all Level II assessments; copies of all completed OBRA forms; information regarding assets and income; information regarding the services for which the individual is eligible, chooses, and currently receives;

   (b) Assist the individual and/or guardian in establishing linkage with the receiving DD PAS agency by calling the agency and detailing the transfer in writing;

   (c) Assist the receiving DD PAS agency, which is responsible for making and following referrals within its assigned geographic area; and

   (d) Serve as the contact for the individual until such time as a final provider selection has been made and an official transfer can be accomplished.

5. The DD PAS agency in whose area the individual/guardian ultimately chooses to receive services shall work with the prospective provider of services to develop service and rates packages as necessary and conduct the required four weekly visits following service implementation.

060.00 TIME FRAMES

On average, DD PAS screens must be completed within 10 days, per Federal regulations.

EXHIBIT C

42 CFR 483.440

TITLE 42 -- PUBLIC HEALTH
CHAPTER IV -- CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBCHAPTER G -- STANDARDS AND CERTIFICATION
PART 483 -- REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES
SUBPART I -- CONDITIONS OF PARTICIPATION FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

42 CFR **483.440**

§ **483.440** Condition of participation: Active treatment services.

(a) Standard: Active treatment. (1) 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 described in this subpart, that is directed toward--

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) Standard: Admissions, transfers, and discharge. (1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must--

(i) Have documentation in the client's record that the client was transferred or discharged for

good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must--

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) Standard: Individual program plan. (1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to--

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must--

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must--

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(iv) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) Standard: Program implementation. (1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) Standard: Program documentation. (1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measureable terms.

(2) The facility must document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(f) Standard: Program monitoring and change. (1) The individual program plan must be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to situations in which the client--

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to--

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

HISTORY:
[53 FR 20496, June 3, 1988. Redesignated at 56 FR 48918, Sept. 26, 1991]

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

NOTES:
NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter IV appear at 45 FR 53806, Aug. 13, 1980; 50 FR 12741, Mar. 29, 1985; 50 FR 33034, Aug. 16, 1985; 51 FR 41338, Nov. 14, 1986; 53 FR 6634, Mar. 2, 1988; 53 FR 47201, Nov. 22, 1988; 56 FR 8852, Mar. 1, 1991; 66 FR 39450, 39452, July 31, 2001.]

1704 words

APPENDIX J

SURVEY PROCEDURES AND INTERPRETIVE GUIDELINES

FOR INTERMEDIATE CARE FACILITIES FOR

PERSONS WITH MENTAL RETARDATION

APPENDIX J

SURVEY PROCEDURES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICFs/MR)

PART 1

XIII. Additional Survey Report Documentation (for the file)

XIV. Instructions for Completing the Revised HCFA-3070-G-I (10/95) - The ICF/MR Survey Report Form (See Exhibit 80)

INTERPRETIVE GUIDELINES FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

PART 2

Column I.	Tag Number
Column II.	Regulation
Column III.	Guidance to Surveyors (Compliance Principles, Interpretive Guidelines, Facility Practice Statements, and Survey Probes)

SURVEY PROCEDURES
INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

I. INTRODUCTION

This revised ICF/MR survey protocol is to assist surveyors to focus attention on the outcomes of individualized active treatment services. The Health Care Financing Administration (HCFA) intends the revised survey process to be less resource intensive for providers who consistently demonstrate compliance with the regulations. The survey process is based on the October 3, 1988 regulation and is applicable to all ICFs/MR, regardless of size.

In 1988, when the current ICF/MR regulation was implemented, it was viewed as a great step forward in promoting a focus on the actual outcomes experienced by consumers, rather than on the policies, procedures and paperwork of the facility. Since that time there has been an evolution on thinking in both the field of developmental disabilities (DD) and in the field of quality assurance (QA).

The field of DD is increasingly emphasizing supporting individuals in their own homes and communities, rather than placing people in facilities. In addition services in virtually all States are placing increased emphasis on person-centered planning and person-centered services that focus on the preferences, goals and aspirations of each individual and on supporting them in reaching their personal goals. The field of QA is placing increased emphasis on outcomes related to choice, control, relationships, community inclusion, and satisfaction with life, as well as satisfaction with services and supports. Many QA systems also include organizational self-assessment and continuous quality improvement components. These trends have contributed to the perception by providers and advocates that the ICF/MR regulation and oversight process is too prescriptive

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and cumbersome, and should be altered to reflect newer values of quality enhancement and continuous quality improvement.

This revised survey protocol gives facilities broader latitude to develop the processes by which it implements active treatment services. While the facility practice must comply with the requirements of 42 CFR 483, Subpart I, the survey is to center on the fundamental requirements that produce outcomes for individuals. When those outcomes occur, review of additional supporting requirements of process and structure is not indicated.

A survey which focuses on observations of staff/consumer interaction and on interviews with consumers regarding their participation and choice of services is sufficiently informative to determine the outcomes of active treatment. In the presence of problems, a more in-depth review of how the process unfolded for a particular individual(s) occurs.

A facility may receive reimbursement only for the cost of care of individuals classified*as eligible* for the ICF/MR level of care who are receiving active treatment. Determine facility compliance with Conditions of Participation and with standards in the context of individual experiences within the facility. When performing certification surveys to assess facility compliance, assess whether individuals are receiving needed active treatment services.

II. PRINCIPAL FOCUS OF SURVEYS

The principal focus of the survey is on the "outcome" of the facility's implementation of ICF/MR active treatment services. Direct your principal attention to what actually happens to individuals: whether the facility provides needed services and interventions; whether the facility insures

individuals are free from abuse, mistreatment, or neglect; whether individuals, families and guardians participate in identifying and selecting services; whether the facility promotes greater independence, choice, integration and productivity; how competently and effectively the staff interact with individuals; and whether all health needs are being met.

Use observation and interview as the primary methods of information gathering. Conduct record reviews after completion of observations and interviews to confirm specific issues. Verify that the facility develops interventions and supports that address the individuals' needs, and provides required individual protections and health services. Do not conduct in-depth reviews of assessments, progress notes or historical data unless outcomes fail to occur for individuals.

III. SURVEY PROCESS

The survey process is divided into three stages. They are the fundamental, extended and full survey. **(Note: These stages do not apply to the Life Safety Code survey. Every certification and annual re-certification requires a complete Life Safety Code survey) (see instructions in**

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A. Fundamental Survey.--A fundamental survey is conducted to determine the quality of services and supports received by individuals, as measured by outcomes for individuals and essential components of a system which must be present for the outcomes of active treatment to occur. Certain requirements are designated as fundamental and are reviewed first. The remaining requirements (that are not designated as fundamental) are supporting structures or processes that the facility must implement. A decision that a provider is in compliance with the fundamental requirements indicates an outcome-reviewed compliance with the non-fundamental requirements and associated conditions of participation. Focus initial attention on the fundamental requirements of the conditions of participation for:

42 CFR 483.420 Client Protections

Fundamental requirements:

483.420(a)(2) - (7)	W124 - W130
483.420(a)(9)	W133
483.420(a)(11) - (12)	W136 - W137
483.420(c)(1) - (6)	W143 - W148
483.420(d)(2) - (4)	W153 - W157

42 CFR 483.440 Active Treatment Services

Fundamental requirements:

483.440(a)(1) - (2)	W196 - W197
483.440(c)(2)	W209
483.440(c)(4)	W227
483.440(c)(6)(i)	W240
483.440(c)(6)(111)	W242
483.440(c)(6)(vi)	W247
483.440(d)(1)	W249
483.440(f)(1)	W255 - W257
483.440(f)(3)(i) - (ii)	W262 - W263

In addition include:

483.410(d)(3)	*W120*
483.430(d)(2)	W186
483.470(g)(2)	W436
483.470(i)(4)	*W448 - W449*

42 CFR 483.450 Client Behavior and Facility Practices

Fundamental requirements:

483.450(b)(2)	W285
483.450(b)(3)	W286 - W288

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483.450(c)(1)	W291
483.450(c)(3)	W293
483.450(d)(4)	W301 - W302
483.450(e)(3)	W313
483.450(e)(4)(i)	W314

42 CFR 483.460 Health Care Services

Fundamental requirements:

483.460(a)(3)	W322
483.460(c)	W331
483.460(c)(3)(v)	W338
483.460(g)(2)	W356
483.460(k)(2)	W369
483.460(k)(4)	W371

All fundamental requirements must be reviewed in every annual recertification survey. When observations and interviews are complete, review the individuals' records, as needed, to verify observation and interview findings. If indicated, verify that individual health needs are met and protections are in place. When the fundamental requirements are "met", the facility meets the Conditions of Participation.

When fundamental requirements are "not met", review the condition-level compliance principles found in the interpretive guidelines for W122, W195, W266, and W318. Determine whether deficiencies at the fundamental requirements, when viewed as a whole, lead you to believe that one or more of the "not met" compliance principles is present. If this is the case, conduct an extended survey, as instructed below. When the "met" compliance principles are present, the facility is assumed to be in compliance with all conditions of participation. This is the end of the fundamental survey. The survey agency would prepare a Form HCFA-2567, Statement of Deficiencies, and report any standard-level deficiencies based on the findings from the fundamental survey.

B. Extended Survey.--An extended survey is conducted when standard-level deficiencies are found during the fundamental survey and the survey team has determined or suspects that one or more Conditions of Participation examined during the fundamental survey (42 CFR 483.420, 42 CFR 483.440, 42 CFR 483.450, and 42 CFR 483.460) are "not met." The team would need to gather additional information in order to identify the structural and process requirements that are "not met" and to support their condition-level compliance decision. The team reviews all of the requirements within the Condition(s) for which compliance is in doubt. Using the condition-level compliance principles in the interpretive guidelines as a guide, determine if the facility complies with the relevant Condition(s) of Participation.

When the survey team determines that the facility is in compliance with the relevant Conditions of Participation, conclude the survey and prepare a HCFA-2567 for facility practices not in compliance with standards. When the facility is not in compliance with one or more Conditions of Participation, prepare a HCFA-2567 describing the deficient facility practices which are not in compliance with the Conditions of Participation of either 42 CFR 483.420, 42 CFR 483.440, 42

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findings. Review of additional requirements under other

Conditions of Participation is at the option of the survey agency based on the criteria under paragraph "C" of this section.

NOTE: Neither the fundamental or the extended survey process preclude the survey agency from review of any standard, if evidence of non-compliant facility practice is suspected during any survey.

C. Full Survey.--A full survey is conducted at an initial survey and at the discretion of the survey agency, based on the survey agency's identification of concerns related to the provider's capacity to furnish adequate services. This decision may be based on criteria, including but not limited to, the following:

- o A condition-level deficiency on the previous year's recertification survey,
- o The existence of a time-limited agreement of less than twelve months due to programmatic deficiencies, or
- o Evidence related to diminished capacity to provide services based on other sources, such as complaints, inspection of care findings or State licensure deficiencies that are relevant to Federal requirements.

The team reviews all the requirements in all Conditions of Participation to determine if the facility maintains the process and structure necessary to achieve the required outcomes. Based on the information collected, determine whether facility practice is in compliance with all Conditions of Participation.

IV. COMPONENTS OF ACTIVE TREATMENT

The definition of "active treatment in intermediate care facilities for persons with mental retardation" in 42 CFR 435.1009 refers to treatment that meets the requirements specified in the standard for active treatment 42 CFR 483.440(a). The components of the active treatment process*are*:

A. Comprehensive Functional Assessment (42 CFR 483.440(c)(3)).--The individual's interdisciplinary team must produce accurate, comprehensive functional assessment data, within 30 days after admission, that identify all of the individual's:

- o Specific developmental strengths, including individual preferences;
- o Specific functional and adaptive social skills the individual needs to acquire;
- o Presenting disabilities, and when possible their causes; and
- o Need for services without regard to their availability.

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B. Individual Program Plan (IPP) (42 CFR 483.440(c))--The interdisciplinary team must prepare an IPP*which includes opportunities for individual choice and self-management and* identifies: the discrete, measurable, criteria-based objectives the individual is to achieveand the specific individualized program of specialized and generic strategies, *supports,* and techniques to be employed. The IPP must be directed toward the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status.

C. Program Implementation (42 CFR 483.440(d)).--Each individual must receive a continuous active treatment program consisting of needed interventions and services in sufficient*intensity* and frequency to support the achievement of IPP objectives.

D. Program Documentation (42 CFR 483.440(e)).--Accurate, systematic, behaviorally stated data about the individual's performance toward meeting the criteria stated in IPP objectives serves as the basis for necessary change and revision to the program.

E. Program Monitoring and Change (42 CFR 483.440(f)).--At least annually, the comprehensive functional assessment of each individual is reviewed by the interdisciplinary team for its relevancy and updated, as needed. The IPP is revised, as appropriate.

V. TASK 1 -*SAMPLE SELECTION*

A. Purpose of the Sample.--The purpose of drawing a sample of individuals from the facility is to reflect a proportionate representation of individuals by the four functional levels (mild, moderate, severe, and profound mental retardation) as defined by the American Association on Mental Deficiency, Classification in Mental Retardation*(eighth edition, 1983).*

The sampling process is not designed to produce a "statistically valid" sample. Apply the method with flexibility based upon the prevailing developmental strengths and needs presented by the individuals served by the facility. A "statistically valid" sample would not accommodate this need.

While the individuals in the sample are targeted for observation and interview, conduct each program audit of the individual within the context of each of the environments in which the individual lives, works, and spends major leisure time. Although you focus on the individual, the behavior and interactions of all other individuals and staff within those environments also contribute to the total context and conditions for active treatment. Therefore,*other individuals will be included* in the overall sample.

As the sample is built, additional information about the facility's services and special individual needs may emerge. If you find that a disproportionate number of disabilities or needs are present within the facility's*population add to or replace originally selected individuals of the same functional level in* the

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program audit sample to ensure that the appropriate care and services arereviewed. *Staff interview for individual characteristics (see the back of Form HCFA-3070G) may help identify areas of individual need that should be reflected in the sample.*

For example, if you discover a significant percentage of individuals are nonambulatory, and this characteristic has not been represented in the sample, add additional individuals. Likewise, if while observing Individual A (a member of the sample), you note that Individual B (who was not targeted for the sample) engages in a particular problematic behavior for which staff*do not appear to provide* appropriate intervention, add Individual B to the sample in order to probe further if needs are addressed. You are free by this methodology to add to the sample on an as needed basis.

SURVEY PROCEDURES
INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

B. Sample Size.--Calculate the size of the sample by the following guidance:

Number of Individuals residing in the Facility	Number of Individuals in the Sample	Number of Interviews with Individual/Family
4 - 8	50 percent	50 percent of sample
9 - 16	4	4
17 - 50	8	5
51 - 100	*10*	*5*
101 - 500	*10 percent*	*50 percent of sample (max.: 15)*
Over 500	50	15

C. Sample Selection.--Do not allow the facility staff to select the sample.

1. Facilities Serving 100 or Fewer Individuals.--Draw a sample that evenly distributes the individuals among buildings and functioning levels. Usually, this can be done by asking the staff to provide a full list of the individuals with their building locatons and functional levels and you choosing the names.

2. Facilities with over 100 individuals.--

o Request a listing of all individuals by overall functional (cognitive and adaptive) level (i.e., mild, moderate, severe, profound) and building location.

o Determine the number of individuals to draw based upon the total individuals from Section III B.

o Determine the percentage occurrence of each functional level in the overall population (e.g., 12 percent mild; 24 percent moderate; 63 percent severe).

o Determine the number of individuals to draw in each functional

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category (for example, if the sample size is 50, and 12 percent of the individuals have mild mental retardation, then multiply 50 by .12 = 6, and draw 6 individuals who have mild mental retardation into the sample).

o Draw the sample for each functional category. (Assume there are 60 with mild mental retardation, and 6 are to be sampled. Divide 60 by 6 = 10, and draw every tenth individual.) The interval of selection varies with each functional category because there will be a different percentage occurrence at each. Thus, assuming there are 16 individuals with severe mental retardation and 4 are to be sampled, draw every fourth name from the list of individuals with severe mental retardation.

o Locate each selected individual's living unit on a map of the facility building(s) to see if too many are concentrated in too few buildings. To provide a comprehensive look at the facility, drop some individuals and add others in other buildings for a better distribution. Each individual replacing an originally selected individual must be of the same functional level.

3. Alternate Sampling Procedure.--In the rare situation in which the facility is unable to produce the necessary data on which to draw the sample, draw a random sample, to the maximum extent possible. Supplement it as described in Section VA.

SURVEY PROCEDURES
INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

Mental retardation, as defined by the American Association on Mental Retardation (AAMR) in Mental Retardation: Definition, Classification and Systems of Supports (ninth edition, 1992), is no longer classified in four functional levels (mild, moderate, severe, and profound.) Most facilities have not yet adopted the 1992 classification system; however, when the facility does use the 1992 classification system and information regarding the four functional levels is not available, revise the sampling procedure. Follow the instructions in A and B above but, instead of using the four functional levels referenced in AAMR's Classification System of 1983, use the four levels of intensity of supports (intermittent, limited, extensive, and pervasive) on Dimension I for Self-Care from the new classification system. Although not equivalent to the 1993 classifications, this method should provide a sample of individuals within the facility who represent a variety of functional abilities.

D. Program Audit Approach.--To maximize the advantage of an interdisciplinary survey team, the team leader assigns each member an equitable number of individuals on whom to focus. For each individual, assess all applicable fundamental requirements of the ICF/MR Conditions of Participation based on the individual's need for that particular service. Each member of the team shares salient data about findings relative to his or her assigned individuals. Consult with one another, on a regular basis during the survey, to maximize sharing of knowledge and competencies.

E. Sampling on Follow-up Survey.--The purpose of the follow-up survey is to verify correction of deficiencies previously cited on the HCFA-2567. It is NOT necessary to do a full review of all services being received, only those areas in which deficiencies were previously cited. Sample selection on the follow-up survey is, therefore, dependent on the nature of the deficiencies for which

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follow-up must be done.

If the last survey found multiple standard-level deficiencies that are not limited to a specific area or issue, follow the procedure described in paragraphs A through D above to select a new sample and use the same sample size specified in paragraph B. This procedure may result in inclusion of some individuals from the previous sample, however, approximately 50% of the sample on the follow-up survey should be individuals who were not previously reviewed in order to assure systemic correction of the identified deficiencies. This can be accomplished by beginning the interval of selection at a different point on the list of individuals residing at the facility. The maximum sample size on a follow-up survey is 30.

When Conditions of Participation have been found not met in the annual survey and the types of deficiencies are limited to a specific need or service area, then the follow-up sample may be drawn from the specific universe of individuals who have that specific need. To select the sample, start with the total number of individuals affected by the specific need, then choose the sample size. The sample universe will be the total number of individuals who have that specific need. For example, if the facility has 20 individuals receiving medications to manage behavior, the sample size would be 8, in accordance with paragraph B.

VI. TASK 2 - REVIEW OF FACILITY SYSTEMS TO PREVENT ABUSE, NEGLECT AND MISTREATMENT AND TO RESOLVE COMPLAINTS

During the entrance conference, determine how the facility resolves individual complaints and allegations of abuse, mistreatment and neglect. While no specific system is required, 42 CFR 483.420(d)(4) does require that the results of all investigations are reported to the administrator and are reported in

accordance with State law. The facility, therefore, should have a reproducible mechanism to assure its responsiveness to concerns of individuals and their families. That system must assure prompt detection, reporting, investigation and resolution of complaints and of allegations and occurrences of abuse, mistreatment and neglect and injuries from unknown sources.

Review the facility's system (e.g., accident and injury logs and reports) for any evidence that suggests that individuals are being abused or are vulnerable to abuse and injury. Data that is derived from these reports are important in the event that you find an immediate and serious threat to an individual's health and safety. If you discern any patterns that suggest abuse, follow up on the status and condition of those individuals. Also review investigations completed and those in process to determine that the facility protects individuals from abuse, mistreatment and neglect while the allegation is under investigation. If the State law or regulation requires the facility to report such allegation to other agencies, determine that this occurs.

Conducting this review early in the survey process facilitates any necessary follow-up during later observations, interviews or record reviews of individuals. Use the Interpretive Guidelines and Additional Data Probes at 42 CFR 483.420 (a)(5) or W127 for further guidance. If you believe serious and immediate

threat to individual's health and safety exists, consult Appendix Q.

VII. TASK 3 - INDIVIDUAL OBSERVATIONS

Upon completion of Task 2, surveyors are to conduct observations of the individuals selected for the sample. DO NOT:

- *Conduct a detailed review of individual's records;*
- *Conduct an inspection tour of the facility's environment; or*
- *Request facility staff to keep people home from scheduled activities, such as work or day programs.*

A. Purpose.--Determine if the necessary relationship between the individual's needs and preferences, and what staff know and do with individuals, in both formal and informal settings throughout the day and evening, is made.

As a result of any observation, the surveyor should be able to determine whether:

- *Competent interaction occurs between staff and the individual (s);*
- *Individuals are given the opportunity to exercise choice and function with as much self-determination and independence as possible; and*
- *Staff provide the needed supports and interventions to increase skills or prevent loss of functioning.*

The primary purpose of the visit to the out-of-home program is to determine whether the individual is receiving services that promote growth and independence and how the residence assures consistent delivery of services. Generally the out-of-home program and residence should be using the same interventions, communication methods, and behavior shaping strategies. If not, determine the justification for the difference in services. For example, if the day program is using physical restraints as an intervention and the home is not, determine the justification for the restraints.

B. Survey Conduct.--Be present when individuals are present. If individuals are in a program other than in the residence, go to that location. Observe each person in the sample in the home environment and in the day

program. Observations across the entire survey (e.g., early morning, afternoon and evening observations) are absolutely essential. One method to conduct observations over this time span is to alter the work day of the survey team members. For example, some members might work from 6:30 a.m. to 3:00 p.m., while others work from 1:00 p.m. to 9:30 p.m.

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Schedule your time to observe special training programs that are critical to the individuals' development. Use your observations to determine if individual training is carried out consistently at all appropriate times throughout the day. Observations of meal times, individuals' communication with staff and others, behavior shaping interventions, and routine activities should reflect a consistent pattern of interaction with the individual and demonstrate the staff's knowledge of the individual. Take steps to validate any discrepancies noted. Additional observations within similar situations, locations or activities may be necessary to identify a systemic deficient practice as opposed to a one time occurrence.

Show respect for the individuals' home and their privacy. As a courtesy, alway request permission before entering a bedroom. Do not observe activities in which individuals are undressed unless that observation is essential to your assessment of facility compliance and the information cannot be obtained from other reliable sources. Most information about routine hygiene activities during which individuals are undressed can be obtained through interview of individuals or staff. As a general policy, it is preferable to ask permission to make these types of observations from the individual, or from the staff person who is present if the individual cannot communicate. An individual's request not to be observed while undressed should be honored, when possible. The surveyor does have authority, however, to access information that is essential to determining compliance without asking permission.This authority may need to be exercised in regard to an individual who is undressed, for example, in order to observe for bruises or other signs of injury when it is suspected that the individual is being abused. These observations should be conducted in private, with as little of the body exposed as possible, and with a staff person present. Consent from staff or guardians is not required in order to access information or make observations.

For individuals who are working in competitive employment sites, ask the individual's permission to visit that site. If the individual is unable to communicate, discuss with the staff the advisability of visiting the competitive site. The intent is that the individual is not identified as different from other workers at the site. If the individual works in a restaurant, for example, you may be able to visit as a "customer" to observe the work environment. If an interview with a job supervisor or support person is indicated, attempt to conduct this interview in a private or inconspicuous area. Upon arrival, introduce yourself to the individual and to the staff and explain the purpose of your visit.

C. Observation Procedure.--Initially the surveyor should note the general impressions of the area. Note things such as:

1. General Impressions.--

o How are individuals dressed?

o What activities are taking place?

o What materials and supplies are present?

o Is the environment pleasant and conducive to learning? (e.g., odors, noise, furniture, and adequate bathroom facilities)

o How many staff are present? How many individuals?

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o What types of adaptive equipment or assistive devices are used?

2. Specific Activities and Interactions.--After noting the general setting, the surveyor should begin to focus on the specific activities and interactions. For example:

o Are individuals involved and participating in the activity? Are the activities active or passive? Does the activity appear to have a purpose? Are staff able to explain how the activity is promoting greater independence for each of the individuals present?

o Are there supplies and materials used to assist the individuals? Do individuals use the materials? Do they seem appropriate for the task or activity? Are they appropriate for the individuals?

o What interaction is occurring between staff and individuals? Do the interactions give evidence of respect, dignity? Do staff recognize efforts made by the individuals and provide positive reinforcement?

o Is the number of staff present sufficient for the number of individuals based on the individual needs or the type of activity?

o Are individuals encouraged to make their own choices and decisions? Are they encouraged to complete tasks with as much independence as possible? Are staff doing the activity for the person, or is the person encouraged to do things for him or herself?

o Are any maladaptive behaviors exhibited? How do staff respond?

o Are any individuals ignored or isolated from the activity? If so, what is the reason or justification for this?

3. Individuals in Sample.--The third step of the observation process focuses on the individual(s) in the sample. The surveyor should specifically note:

o What is the appearance of the individual? Is the individual dressed neatly? Does the person appear clean and is his/her hair combed?

o Does the individual exhibit any apparent physical or medical needs? Is the individual over or under weight, edentulous, continent? Does the individual have contractures, vision or hearing impairments?

o What adaptive devices/assistive devices are used? Does the individual use a hearing aid, glasses, plate guard , etc.? Does the device(s) appear to be used correctly?

o How does the individual move about in the environment? Does

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the individual use a walker, ambulate, move his own wheelchair, etc.?

o How does the person communicate? Does the person talk, use sign or a communication board, make facial expressions or behavioral responses? Do others appear to understand the person's communications?

o What is the person's level of social skill or behavior toward others? What types of interactions occur and with whom? Does the individual exhibit any maladaptive behaviors?

o What are the individual's observed skills relative to the activity or task observed? For example, if observed during dining, does the individual eat without assistance? What utensils

are used? Are applicable skills developed or encouraged during the activity, such as passing food, pace of eating, social conversations? Is the individual receiving any special diet?

o What level of assistance is provided by staff? What types of assistance are used - verbal prompts, gestures, hand over hand?

o Are there any individual needs that are not being addressed? Are staff aware of the observed needs? Is there a reason it is not being addressed?

4. Areas for Further Observation.--The surveyor will then identify areas to which to pay attention during other observations. Those areas may include any supports, interventions or skills that would be expected to occur consistently across settings or any apparent needs, concerns or discrepancies noted during the observation. For example, if the surveyor notes that the individual uses sign language for communication, do all staff working with the individual understand and use sign with him/her? Or if an individual is observed to have good gross motor skills, do staff feed the person or perform other tasks for him/her that your observation indicates the person could possibly do independently? Focus interviews and record review based on concerns, issues, inconsistencies and needs noted from these observation(s).

D. Documentation.--Record your observations. The optional individual observation worksheet (HCFA-3070I (10/95)) may be used. If your behavior or presence disrupts the activity being observed, wait five minutes before recording the observation.

VIII.TASK 4 - REQUIRED INTERVIEWS WITH INDIVIDUALS AND/OR FAMILY/ADVOCATE, AND DIRECT CARE STAFF

A. Purpose.--Individuals living in the facility, their families/guardians and advocates, and direct care staff are important sources of information about the receipt of active treatment on a daily basis. Interviews are conducted for two purposes: to determine how the individual perceives the services delivered by the facility, and to clarify information gathered during observations. *Only*

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direct care staff count toward the total number of required interviews (as reflected in the sample chart shown in Section 5B - Sample Size).

B. Interview Procedure.--Start with the individual in the sample and the people most closely associated with the individual's daily program implementation. Use the following hierarchy of sources, to the maximum extent possible, in the order shown:

- o Individual;
- o Families, legal guardian, or advocate;
- o Direct care staff;
- o Qualified mental retardation professional (QMRP) and/or professional staff; and
- o Managers, administrators, or department heads

Determine from your observations and from the staff how the individual communicates with others. Also determine from the staff the extent of involvement of family members, guardians or advocates with the individuals in the sample. Based on this information, select the individuals from the sample with whom you will conduct more in-depth interviews. Select those individuals who will be able to communicate at least some basic information or those who have actively involved family members, guardians or advocates. Do not exclude from interviews individuals who use alternate means of communication, such as communication boards, sign language, and gestures. Most individuals are able to communicate in some manner. At a minimum conduct the number of in-depth interviews specified in Section V, Task 1B.

Attempt to obtain the required number of interviews first from individuals and then from family members, guardians or advocates. In the absence of individuals who are able to communicate and active significant others, interview the direct care staff person who works most closely with the individual in order to obtain the required number of in-depth interviews.

The questions and communication method will vary from person to person. For individuals who use a specialized communication method, attempt to begin the interview on a one to one basis. If you find you are unable to communicate with the individual, ask someone familiar with the person to assist you (e.g., a family member or a staff person.) For this individual, pay close attention to how the staff communicates with him or her. If the person uses sign language or a communication board, do staff understand and interact with the individual using the same method? If the person uses gestures, do staff take time to determine his or her needs?

Family members, guardians or advocates may be interviewed at the facility, at a location convenient to both the surveyor and the interviewee, or by telephone. All interviews should be conducted in private locations and scheduled at

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mutually agreed upon times in order to minimize disruptions to individual, family, or staff activities.

C. Content of In-depth Interviews.--Determine what the facility does to provide individualized services and supports; and how individuals and families participate in service planning and in making choices about matters important to them. Are individuals treated with respect and dignity? Does the facility attempt to help the person set and attain individual goals? Are there consistent opportunities for making choices? When a choice is not an option, how is the individual assisted to understand? For example, if a planned activity is to go to a restaurant for dinner, who chooses the restaurant? Staff or the individuals living in the facility? If one group of people does not want to go, how is this choice accommodated? Is the accommodation based on individual choice, staff convenience, or a reasonable justification if a choice is not an option?

See section D for suggested interview questions. Unless designated to be directed to a certain person, questions are relevant to whomever is being interviewed (individual, family member, advocate or staff person.) Modify the wording of the questions based on the person being interviewed (individual, family member, or staff) and on the communication skills of that individual. For example, you may discover that the person responds better to questions that can be answered "yes" or "no" than to open-ended questions. Be sensitive to signs that the individual is tiring or becoming uncomfortable and either end the interview or continue it at a later time if this occurs. It is not necessary to ask every question in the guide, but do try to ask at least one question from each topic area.

D. Suggested Interview Questions.--If you have not met the person before, begin the interview by explaining who you are and what your role is. To put the person at ease you may want to begin with some general conversation, e.g., about the weather or a special event coming up. At the end of the interview, if you think you may need to discuss or confirm personal information with staff or family, ask the person if it is OK to share that information.

1. Questions Related to Choice and Community Participation (W136, W147, W247):

- *What sorts of things do you like to do for fun?*
- *Do you go out to activities or events in the community (like shopping, movies or church)?*
- *How often do you do this?*
- *How do you get there?*

- *Who chooses where you go?*
- *Do you go to visit family members or take vacations?*

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- *Is there something you would like to do more often?*

2. Questions Related to Personal Finances and Possessions(W126, W137):

- *Do you earn money on your job (at your day program)?*
- *What do you like to buy with your money?*
- *Do you have enough money to buy the things you want or need?*
- *Does someone help you with spending or saving your money?*
- *When you go to the store, do you pay for items or does a staff person pay for them?*
- *Do you have enough clothes and shoes?*
- *Do you always have enough deodorant and toothpaste, etc.?*
- *What do you do if you need to buy something?*

3. Questions Related to Personal Relationships and Privacy (W129-W130, W133, W143 -W148):

- *Do you have family or friends who visit you?*
- *Does your family write to you or telephone you?*
- *Does someone help you read their letters/ call them on the phone?*
- *If you feel like being alone or spending private time with a friend or family where do you go?*
- *Do staff knock on your door before they come into the room?*

For family member/advocate:

- *How do you learn about things like the services your family member receives, an illness or a change in medication?*
- *Are there any restrictions on when you visit your family member or where you can go within the home?*

4. Questions Related to Individual's and Family's Participation in the IPP Process (W209, W247):

- *Do you go to (team) meetings with the staff where they talk about the services you get?*
- *Does your family/advocate come to these meetings?*

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o *Were you asked if the date and time of the meeting were OK with you?*

o *What would you like to learn to do for yourself?*

o *Do the staff ask you what you want?*

o *Who chooses what you do?*

o *Does the staff listen to you and make changes based on what you want?*

For staff:

o *How do you communicate with this individual?*

o *What does (s)he like and dislike? How do you know that?*

5. *Questions Related to Service Delivery (W242, W249, W436):*

o *What help do you need from staff to dress, eat, bathe, etc?*

o Do you get any special therapy (e.g., speech or physical therapy)?

o What new things are you learning to do?

o What chores do you help with around the house?

o Who helps you when you do not know how to do something?

o What special equipment do you use?

6. Questions Related to Individual's Rights and Protections: W124-W125, W127, W153-W157, W127-W128, W263

o Who do you tell if you do not like something, or something is wrong?

o Are there rules that everyone who lives here must follow?

o What sorts of things are you allowed to do or not do?

o How does the staff treat you?

o Are staff loud?

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- o Does staff yell, swear or hit?

- o Do you ever do things you are not supposed to do? What happens then?

- o Were you ever asked to give consent for any treatments or services?

- o Were you told the benefits, risks and alternatives?

7. Questions Related to Health Status (W322, W356):

- o How often do you see a doctor? A dentist?

- o Do you have any health problems?

- o Do you take any medicines? Do you know what they are for?

8. Wrap-up Questions:

- o Is there anything you especially like about living here? Anything you especially dislike?

- o Is there anything else you think I should know about what it is like to live here?

E. Interviews to Clarify Observations.--In the absence of finding appropriate interaction between staff and individuals during observations, it may be necessary to judge whether or not staff are knowledgeable about individual objectives and techniques for implementation of programs. *If possible, interview staff following the interval in which the individual was observed with the particular staff member.* (For example, if you have just observed Individual A engaging in stereotypical behaviors, ask: "Can you tell me what, if anything, you do when he rocks back and forth?") Ask questions that elicit information about how staff learn what to do with individuals across the spectrum of support and programming activities they are expected to perform. Ask professional staff questions to see if they know how to implement programs for an individual other than their professional discipline (e.g., how to carry through with a behavior program in the midst of communications training).

Ascertain whether the staff are competent to carry out the individual's choices and skill development activity. Is there evidence that programs are in fact being carried out throughout the individual's waking hours? Are interventions revised based on changes in the individual's progress toward goals? If staff cannot demonstrate the skills necessary to implement the individual's programs and choices, if interventions are not being carried out consistently, or if revisions to interventions do not occur, you have findings that active treatment is not being delivered.

E. Documentation.--Record each interview you conduct with individuals, staff, consultants, off-site day program staff, legal guardians, etc., in your personal notes or on the optional observation worksheet (HCFA-3070I). Include the following information in your notes for each interview:

- o Date and time of interview;
- o Job title and assignment at the ICF/MR;
- o Relationship to the individual or reason for the interview; and
- o Summary of the information obtained.

IX. TASK 5 - DRUG PASS OBSERVATION

Observe the preparation and administration of medications to individuals. With this approach, there is no doubt that the errors detected, if any, are errors in drug administration, not documentation. Follow the procedure in the interpretive guidelines at W369 for conducting the drug pass observation. Notes on observations of the drug pass may be recorded on Form HCFA-677 (LTC Medication Pass Worksheet) or in the surveyor's personal notes. The purpose of the review is to direct the facility's attention to assuring an error free drug distribution system and away from the paper processes that often do not represent actual errors in medication administration. For the purposes of this task, a "small" facility is one which houses 16 or fewer residents.

X. TASK 6 - VISIT TO EACH AREA OF FACILITY SERVING CERTIFIED INDIVIDUALS

A. Purpose.--By the end of the survey, visit each area of the facility serving certified individuals in order to:

- o Ensure that all areas of the facility (including those which are not represented by individuals in the sample) are providing services in the manner required by the regulations.
- o Assess generally the physical safety of the environment.
- o Assess that individual rights are proactively asserted and protected.

B. Protocol.--After individuals in the sample have been assigned to team members, review the facility's map or building layout. Assign members to visit each remaining residential and on-campus day program site prior to completing the survey. Insure that each area of the facility that is utilized by individuals has been visited. This visit may be done with or without facility staff accompanying you, as you prefer, and subject to their availability. Record your observations in your notes.

Converse with individuals, family members/significant others (if present), and staff. Ask open-ended questions in order to confirm observations, obtain additional information, or corroborate information, e.g., accidents, odors, apparent inappropriate dress, adequacy and appropriateness of training activities. Observe staff interactions with other staff members as well as with individuals for insight into matters such as individual rights and staff

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responsibilities.

XI. TASK 7 - RECORD REVIEW OF INDIVIDUALS IN THE SAMPLE

A. Introduction.--Do not spend an excessive amount of time looking at fine details in the record review of the selected sample. The purposes are to:

- o Verify the applicable information obtained from your observations and interviews;
- o Review revisions that have been made to the objectives; and
- o Verify that needed health and safety supports are in place.

Do not review in detail the written training programs that are developed for each individual unless you discover serious differences between the record and your observations and interviews. Review those parts of the record most relevant to your purposes as described below.

B. The Individual Program Plan (IPP).--Identify the developmental, behavioral, and health objectives the facility has committed itself to accomplish during the current IPP period. Identify what, if any, behavioral strategies (e.g., behavior modification programs, use of psychotropics) are being used with individuals in your sample. *Determine what, if any, health or other problems might interfere with participation in program services.*

C. Program Monitoring and Change.--Skim the most recent interdisciplinary team review notes to identify what revisions were made to the IPP. Determine whether revisions were based on objective measures of the individual's progress, regression, or lack of progress toward his/her objectives.

D. Health and Safety Supports.--Verify, either through the interdisciplinary team review notes or through the most recent nursing notes, that the individual has received follow-up services for any health or dental needs identified in the IPP and check the person's current drug regimen. For individuals with whom restrictive or intrusive techniques are used, verify that the necessary consents and approvals have been obtained.

If this information is consistent with your observations and interviews, conclude the record review. If discrepancies are found, conduct further observations or interviews as needed to verify your findings.

XII. TASK 8 - TEAM ASSESSMENT OF COMPLIANCE AND FORMATION OF THE REPORT OF ICF/MR DEFICIENCIES

A. General.--The*Survey Report Form (HCFA-3070H) is composed during the pre-exit conference and* contains*the* negative findings*that contribute to a determination that an ICF/MR requirement is "not met."* Meet as a team, in a pre-exit conference, to discuss the findings and make conclusions about the deficiencies, subject to additional information provided by facility officials.

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Review the summaries/conclusions from each task and decide whether further information and/or documentation is necessary. Ask the facility for additional information or clarification about particular findings, if necessary. Consider information provided by the facility. *If the facility maintains that a practice in question is acceptable, request reference material or sources that support the facility's position.*

B. Team Assessment of Compliance.--During the pre-exit conference, the survey team reviews each survey tag number*reviewed during either the fundamental, extended or full survey*, and comes to a consensus as to whether or not the facility complies with each requirement. The team reviews all data collected. For each standard determined to be not met, record salient findings on the*HCFA-3070H*. With the exception of the Life Safety Code Survey, compliance decisions are not made by individual surveyors*when more than one surveyor has conducted the survey*.

C. Analysis.--Analyze your findings relative to each requirement*reviewed during either the fundamental, extended or full survey* for the degree of severity, frequency of occurrence and impact on delivery of active treatment or quality of life. The threshold at which the frequency of occurrences amounts to a deficiency varies. One occurrence directly related to a life-threatening or fatal outcome can be cited as a deficiency. On the other hand,

a few sporadic occurrences may have so slight an impact on delivery of active treatment or quality of life that they do not warrant a deficiency citation.

The interpretive guidelines contain two types of guidance designed to assist the survey team in analyzing their findings and making consistent compliance decisions:

1. Facility Practice Statements.--The purpose of facility practice statements is to clarify the information that is relevant to specific requirements, and to increase the survey focus on outcomes for individuals. Facility practice statements are provided for those requirements which experience has shown, are difficult to interpret. The practice statements are not necessarily all inclusive, but rather represent the practices most commonly associated with compliance for specific requirements. Each facility practice statement relates directly to the language of the requirement to which it applies. Positive outcomes identified by the practice statements should be observed in operation in the facility during the survey. When the team's negative findings indicate that a practice is not present, a citation of the requirement may be appropriate, depending upon the frequency and the severity of those findings. Use the practice statements during the pre-exit conference to assist the team in analyzing negative findings and determining the appropriate requirement at which to cite negative findings. When stated in the negative, facility practice statements may form the basis for a citation on the HCFA-2567.

2. Condition Level Compliance Principles.--The purpose of the compliance principles is to assist in consistent decision-making about facility compliance at the Condition of Participation level. The primary focus of those decisions is placed on the outcomes to the individuals and their actual

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experiences of daily life. At each Condition of Participation, the guidelines contain compliance principles which identify those outcomes that must be present in order for the Condition to be found "met," and those outcomes that indicate the Condition is "not met." The compliance principles are based on the requirements which fall under the Condition. This guidance is NOT to replace professional surveyor judgement. It is possible that the surveyor may encounter a situation which is not covered by the compliance principles, however, such instances are expected to be rare. In the event the survey team makes a determination that the Condition is "not met," and the situation causing that determination is not identified in one of the "not met" compliance principles, notify HCFA's Central Office in writing within 10 days after the completion of the survey for purposes of review, possible dissemination to other surveyors, and to ensure consistency within the survey process.

Some of the compliance principles for the Conditions of governing body, facility staffing and physical environment reference other Conditions. Governing body, facility staffing and physical environment tend to address organizational processes which support the provision of active treatment, protection of rights and adequate health and dietary services. Therefore, the governing body, facility staffing and physical environment Conditions are usually "met" unless it is first determined that there are serious deficiencies in services or protections which fall under one or more of the other areas.

After the survey team reviews its positive and negative findings for the requirements within a particular Condition of Participation and determines which of those requirements are deficient, examine the findings for that Condition as a whole. When analysis of these findings leads the team to conclude that each of the "met" compliance principles for that Condition is present, then the facility is in compliance with that Condition. When analysis

of the standard level deficiencies viewed as a whole, leads the team to conclude that one or more of the "not met" compliance principles for that Condition is present for one or more individuals or situations, consider the frequency and the severity of the negative finding(s) in relation to the applicable "not met" compliance principle(s) in order to determine whether Condition level noncompliance is warranted.

D. Composing the Report of ICF/MR Deficiencies (HCFA-3070H/(10/95)).--

During the pre-exit conference, the survey team records on the HCFA-3070H those requirements that are determined to be deficient and the findings which support that determination. Write the deficiency statement in terms specific enough to allow a reasonably knowledgeable person to understand the aspect (s) of the requirement(s) that is (are) not met. Do not delve into the facility's policies and procedures to determine or speculate on its root cause, or sift through various alternatives to prescribe an acceptable remedy. Indicate*on the HCFA-3070H* the data prefix tag, followed by a summary of the *deficient facility practice(s). Briefly identify the supporting findings for each deficiency (i.e., transfer to the HCFA-3070H the identifier numbers of all individuals to whom the deficient practice applies.) It is not necessary to write a full description of the findings on the HCFA-3070H since they will be described in more detail on*

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the completed Statement of Deficiencies (HCFA-2567). It is necessary to complete the HCFA-3070H for each survey because the HCFA-3070H is the only document in which the survey team's recommendations for deficiencies are recorded (which may be changed later on the final HCFA-2567 as a result of supervisory review) and because not all individual examples may be used on the HCFA-2567. Instructions for the HCFA-3070H are found on page J-18.6.

Alternatively, when the survey team enters its findings directly into a computerized system such as Automated Survey Processing Environment during the pre-exit conference, the statement of deficiencies (HCFA-2567) that is generated onsite at the facility may be substituted for the HCFA-3070H. The HCFA-2567 generated onsite then must contain the information required for the HCFA-3070H and must be clearly marked "DRAFT - SUBJECT TO STATE AGENCY REVIEW" on each page.

XIII - ADDITIONAL SURVEY REPORT DOCUMENTATION (FOR THE FILE)

Upon the completion of each survey, the team leader completes the following additional documentation. This information remains at the survey agency with the HCFA-3070G-H (*10/95*) in the official file:

A. Summary Listing of all ICF/MR Individuals Comprising the Survey Sample (include any additional individuals added to the sample).--At a minimum, identify:

o The name or Medicaid number of each individual chosen to be part of the sample;

o Any individual identifier codes used as a reference to protect the individual's confidentiality; and

o The reason for including the individual in the sample (e.g., "*Random* Program Audit," "Discharge," "New Admission," "Death," "Abuse Investigation", "Drugs to Control Behavior"). This listing serves as a future reference to any individual identifiers recorded in surveyors' notes, the HCFA-3070G-I, and the HCFA-2567.

B. Description of the Representative Sample Selection.--At a minimum, identify, at the time of the survey:

o How the sample was selected;

o What was the percentage occurrence of each functional level of mental retardation in the facility's overall population;

o The distribution of the individuals in the sample across the facility's living units;

o The number of people in the sample;

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o The number, if any, of individuals substituted in the sample, and the reason; and

o Any other characteristic of individuals served that was specifically introduced into the sampling process and the reason.

C. Summary of Individual Observations.--Include all individual observation worksheets (HCFA-3070I) and any surveyor notes containing information regarding observations. These notes should include the dates, locations, and starting and ending times for each observation.

D. Summary of Interviews.--Include all surveyor notes containing information obtained during interviews with individuals, families, guardians, direct care staff, QMRPs, professional staff or consultants, administrators and managers, and others. These notes should identify the person interviewed by name or position, and date and time of interview.

E. Drug Pass Worksheets (HCFA-677) or Surveyor Notes of the Drug Pass Observation

F. Other Relevant Facility Data.--Include other salient data used in support of the survey findings with the HCFA-3070G-H (10/95) (e.g., photographs, affidavits). The survey agency's documentation of the justification for the decision to conduct a full survey must be maintained in the survey agency's file.

XIV. COMPLETING THE REVISED HCFA-3070-G-I (10/95) ICF/MR SURVEY REPORT FORM (SRF)

Part 1 (3070G):	This is the cover sheet for the ICF/MR SRF which summarizesdata relative to: facility characteristics; description of the individual population served; special needs represented by that population; and essential characteristics of the survey conducted. Portions of this information are entered into the*Onsite Survey and Certification Automated Reporting (OSCAR)* System and used to review trends about the ICF/MR program nationwide.
General Instructions:	*1. Complete all portions of Part 1 onsite, preferably during the first day of the survey. Work with the facility to complete the form according to these instructions and to ensure accurate information is obtained prior to leaving the facility.* 2. If a number is requested (e.g., No. of beds, No. of individuals), and the answer is NONE or ZERO, enter a "O" in the space provided.

3. If a box is provided to "check one" of the answers provided, enter a check mark.4. Abbreviations used: "CEO" means Chief Executive Officer; "QMRP" means Qualified Mental Retardation Professional; "MR" means mental retardation; "No." means number.
5. Regulatory references on the form refer to regulations found in the Code of Federal Regulations, and refer to regulations applicable to ICFs/MR.

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6. Review all portions for accuracy*prior to leaving the facility.*

Specific instructions:	
Blocks 1-10, 13-14:	Enter identifying data, as requested.
Block 11:	Enter the dates of the first and last days of the survey(even if there is a break in survey days).
Block 12:	Enter the number describing the ownership/control type in the box marked "W6." If "other" best describes the facility, specify the other type on the space provided.
Blocks 15 (A-M):	(Col. 1): Enter the No. of disciplines that best describe your team's composition. If a surveyor has multiple areas of expertise (e.g., a nurse surveyor who is also a dietitian), include each discipline of expertise.(Col. 2) Enter the No. of disciplines represented on the team which also qualified as a QMRP (as per 42 CFR 483.430(a)(1)(2)(i)-(iii) and 42 CFR 483.430(b)(5) of the ICF/MR Conditions of Participation.
Blocks 15 (N-O):	Enter the number, as requested.
Blocks 16 (A-B):	A "Yes" indicates that the CEO directs not only the activities of the ICF/MR, but also those of another residential services program (e.g., another ICF/MR; another*Medicare/Medicaid Provider that serves persons with MR* regardless of funding source). A "No" indicates that the CEO of the ICF/MR does not direct the activity of another residential services program for persons with MR. If "Yes" was indicated for 16A, identify the name, address and CEO of the larger organization or agency in 16B (could be the same information for this ICF/MR in Block 7.) Enter the total bed*capacity of all residential services for which the CEO is directly responsible (including the ICF/MR bed capacity) in "W14". Do not include beds for which the CEO is indirectly responsible. (For example, in some States the CEO of a State-operated institution is also indirectly responsible for all beds in a region, including those operated by private providers within that region. Do not include beds directly operated by another agency or organization for the purposes of W14.)* Enter the total No. of individuals residing in the beds (including ICF/MR individuals) in "W15."
Block 16C:	Enter the No. as requested.
Block 16 D:	*A "Yes" indicates that this ICF/MR (i.e., the beds under this provider number) is the only house or apartment at the address stated in Block 2 and is located in close proximity to other houses or apartments occupied by people who are not disabled. A "No" indicates that there is other bed capacity to provide residential services to persons with disabilities at the address stated in Block 2 or that this ICF/MR is surrounded by other buildings or residential units serving people with*

	disabilities.
Block 16 E:	*Enter the No., as requested.*
Block 16 F:	Enter the total No. of discrete units. If the ICF/MR encompasses several bldgs, count the total No. of discrete living units*within all buildings.*
Block 16 G:	List the ages of the youngest individual in W20 and oldest in W21.
Block 16 H:	Each day's program site included in this number should be located off the grounds or campus of the ICF/MR. Any individual going to this program should be scheduled to attend regularly (at least 3 hrs.a day, 2-5 days a wk.). If the day program provides 2 or more programs at the same address, for purposes of this item, consider it one site.
Blocks 17 (A-D):	Enter the full time equivalents (FTEs) for each category listed. For 17A, include only staff who provide direct care services to individuals at their living units. Include direct care supervisors only if they are also responsible to provide direct care as part of their duties. (See 42 CFR 483.430(d).) For 17D, include all personnel, including the No. of direct care and licensed nursing personnel, *as well as professional and support staff employed by the facility.* To determine FTEs: add the total No. of hrs. worked the week prior to the survey, by all employees identified in each category of 17 (A-D); divide this No. by the No. of hrs. in the standard work week. Express FTEs to the nearest quarter decimal (i.e., ".00", ".25", ".50", and ".75").
Block 18 A:	Enter the No. of individuals in the total sample (i.e., the representative sample and any other individuals added to the sample for other reasons.)
Block 18 B:	Enter the No. of sites visited in which observations of individuals in the sample were completed.
Blocks 20 (A-L):	*INDIVIDUAL CHARACTERISTICS*: The last date of the survey is the date by which age is determined. The term "Total" No. refers to the No. of ICF/MR individuals fitting the

	characteristic listed who are currently living in the facility.
20 A (1):	Enter the total No. of individuals within each age group regardless of sex.
Blocks 20 A (2):	*Enter the No. of individuals by sex and the total. The total should equal the No. entered in 20 (A)(1), Total (W33).*
Blocks 20 (B-C):	Enter the total No. of individuals by each characteristic requested; and the total. Count individuals with more than one disability in every applicable column. Use the following definitions:Autism is a diagnosis whereby the individual exhibits extreme forms of self-injurious, repetitive, aggressive, or withdrawal behaviors; extremely inadequate social relationships; or extreme language disturbances. Cerebral Palsy is a diagnosed condition whereby gross and fine movements and speech clarity of the individual may be impaired but performance of activities of daily living is

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functional; or, the individual is unable to perform adequately activities of daily living such as walking, using hands, or using speech for communication.

Mental retardation levels (mild, moderate, severe, and profound) are described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983 edition).

Nonambulatory means unable to walk independently.

Mobile nonambulatory means unable to walk independently, but able to move from place to place with the use of such devices as walkers, crutches, wheelchairs, and wheeled platforms.

Nonmobile means unable to move from place to place.

Epilepsy means a neurological disorder characterized by seizures of motor and sensory movements.

Hard of Hearing means able to hear speech,*including with amplification.*

Deaf means unable to hear speech, even with amplification.

Impaired vision means*able to see objects*, with correction.

Blind means*unable to see objects.*

Blocks 20 (D-K):	Enter the total No. of ICF/MR individuals who have the following care needs or characteristics: Medical Care Plan (i.e., requires 24 hour licensed nursing care as defined at 42 CFR 483.450(a)(2)); Drugs to Control Behavior (42 CFR 483.450(b)(1)(iv)(C); Restraints(42 CFR 483.450(b)(1)(iv)(B);Time-out rooms (42 CFR

	483.450(b)(1)(iv)(A); Application of Painful or Noxious Stimuli (42 CFR 483.450(b)(1)(iv)(D); Attend Off-Campus Day Programs; Court Ordered Admissions; and the No. Over Age 18 with a Legally Appointed Guardian.
Block 20 L:	If the facility or you believe that a particular individual or program characteristic that describes the population has not been requested on this form, identify it, programs provided, etc., in the space provided. Enter the total Nos. of*individuals having this characteristic.*
Part 2 (3070-H):	REPORT OF DEFICIENCIESUse this part in conjunction with the regulation text and interpretive guidelines. Include basic information on non-compliance. Complete the report*during the pre-exit conference* for all surveys. Record all deficiencies found during the survey. Sign it, certifying that all other facility requirements not documented as deficiencies, are in compliance. Evaluate each discrete requirement identified*by a tag number*

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	in the ICF/MR Interpretive Guidelines. For each identified deficiency: o In the first column, identify the data tag number; o In the second column, write the standard number. If it is a Condition of Participation, enter "CoP" below the standard number. o *Identify the deficient facility practice,* findings and evidence in the "Comments" column. o Draw horizontal lines to separate identified tag numbers. o Use as many sheets as needed. o Each surveyor must sign the appropriate certifying statement on the last page of Part 2.
Part 3 (3070-I):	*INDIVIDUAL* OBSERVATION WORKSHEETPart 3 of the SRF is an optional worksheet that may be used to record and structure observations so that individual data relative to compliance with the statutory active treatment requirement are available for analysis and retrieval. This is completed for each observation as follows: Heading: Enter requested names, locations, codes, times and dates. Enter "individual codes" only if individuals in the sample are present. Column 1 - Time: Enter the time of discrete observations or consecutive time intervals. Column 2 - Observation: Include the information specified in Section V-B of this Appendix for each observation (e.g., number of individuals; number of staff; activity in progress).

SURVEY PROCEDURES
INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION

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CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., Attorney for the Plaintiffs, deposes and states that he served a copy of the foregoing Plaintiffs Memorandum of Law by hand delivering a copy to Hinshaw & Culbertson (Attn. Steven M. Puiszis / Michael Leech) 222 N. LaSalle Street, Suite 300, Chicago, IL on December 10, 2001.

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