



RON CHAPMAN, MD, MPH
Director & State Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN, JR.
Governor

April 15, 2013

AFL 13-06

TO: Intermediate Care Facilities for the Intellectually Disabled

SUBJECT: No Longer Certified Under Time-Limited Agreements

AUTHORITY: Title 42 Code of Federal Regulations (CFR) Section 442.15, 442.109;
Section 3012 of the State Operations Manual

This All Facility Letter (AFL) outlines the Survey and Certification Letter 13-11, issued by the Centers for Medicare and Medicaid Services (CMS) on February 8, 2013, which announced that Title 42 CFR Section 442.15 was amended to eliminate time-limited agreements for providers of Intermediate Care Facilities for the Intellectually Disabled (ICF/IID), previously referred to as Intermediate Care Facilities for the Mentally Retarded.

Effective, May 16, 2012, ICF/IID's are no longer subject to time-limited agreements. Provider agreements will now remain effective for as long as the facility complies with the Conditions of Participation.

Recertification surveys are required an average of every 12 months and at least once every 15 months (Title 42 Code of Federal Regulations Sections 442.109(a) and (b)).

If during a survey, a facility is found not to meet the standards for participation the facility may maintain its certification if no Immediate Jeopardy exists and if the facility provides an acceptable plan of correction to the survey agency (the Licensing and Certification Program).

The ICF/IID may become decertified if an Immediate Jeopardy remains unabated after 23 days or it fails to regain compliance with Conditions of Participation within 90 days. Please consult Section 3012 of the State Operations Manual for the decertification procedures.

CMS's Survey and Certification Letter 13-11 is attached for your review.

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Facilities are responsible for following all applicable laws. The California Department of Public Health's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all California and federal laws and regulations.

If you have any questions, please contact your local District Office.

Sincerely,

Original signed by Pamela Dickoss for

Debby Rogers, RN, MS, FAEN
Deputy Director
Center for Health Care Quality

Attachment



Center for Clinical Standards and Quality /Survey & Certification Group

Ref: S&C: 13-11- ICF/IID

DATE: February 8, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Intermediate Care Facilities for the Intellectually Disabled (ICF/IID) No Longer Certified Under Time-Limited Agreements

Memorandum Summary

- **The Burden Reduction Rule I removed the time limited agreement for certification of ICF/IID's** – The regulation at §442.15 was changed to provide that provider agreements for ICF/IID's would remain in effect as long as the facility remains in compliance with the Conditions Of Participation (COP's). Regulations at §442.109 through §442.111 are also changed to reflect this change.
- **The rule was published May 16, 2012** – Beginning on that date, ICF/IID's are no longer subject to time-limited agreements. However, they are to be surveyed for re-certification an average of every 12 months and at least once every 15 months.
- **If during a survey the survey agency finds a facility does not meet the standards for participation the facility may remain certified if the survey agency makes two determinations** – The facility may maintain its certification if the survey agency finds Immediate Jeopardy doesn't exist, and if the facility provides an acceptable plan of correction.
- **An ICF/IID may be decertified under procedures outlined in Section 3012 of the State Operations Manual.** More specifically, a facility may be decertified if an immediate jeopardy finding remains unabated after 23 days or if it fails to regain compliance with conditions of participation after 90 days.

Background

Regulations included in 42 CFR 442 contain requirements for the certification of ICF/IID facilities. Until adoption of the Burden Reduction Regulation I changes, ICF/IID's were certified each year under a time-limited agreement. With the publication of the Rule, the time-limited agreement was deleted and replaced with an open-ended agreement consistent with other provider types. ICF/IID's will be subject to survey an average of every 12 months and at least every 15 months, the same period that is applied to Nursing Homes.

If a survey agency finds a facility deficient in meeting the standards for ICFs/IID, as specified under subpart I of part 483 of chapter 42, the agency may continue certification of the facility for Medicaid purposes as long as the agency finds the facility's deficiencies do not constitute immediate jeopardy or seriously limit the facility's capacity to provide adequate care. In addition, the agency must find the facility's plan of correction is acceptable.

The survey agency may conduct a revisit to assure the conditions for continued certification are maintained. A facility's certification may be terminated according to procedures set out in Section 3012 of the State Operations Manual.

Next Steps

Technical changes to §442.105 and §442.110 may be considered in Burden Reduction II to assure they are consistent with removal of time-limited agreements for ICF/IID's. For example, §442.110(b) indicates that certification ends 60 days after the latest date of the POC. That is inconsistent with the new language in §442.15 which provides the facility will remain certified as long as it meets the conditions of participation. This contradiction may need to be clarified in the regulation. In addition, Informal Guidance for the ICF/IID regulations will be prepared and distributed to reflect the implemented changes.

The State performance measure which captures the survey frequency for ICF/IID's (F3.1) has been modified to reflect the aforementioned change and will be implemented for FY 2013.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management