ICF-MR Restructuring Initiative

Mitchell Hagopian
Wisconsin Coalition for Advocacy

October 2004

I. Introduction

As part of the 2003-2005 state budget, changes were made to Chapters 46, 49 and 55 of the Wisconsin Statutes that are aimed at significantly reducing the level of institutional placement in private and county operated Intermediate Care Facilities for the Mentally Retarded (ICFs-MR).[1] The Wisconsin Department of Health and Family Services (WDHFS) is calling this group of changes its "ICF-MR Restructuring Initiative." In addition, WDHFS, by administrative fiat, is altering the way it will allow counties to spend Medicaid funds which had previously only been permitted to be spent on institutional placements. Most of the statutory changes take effect on January 1, 2005. Changes that affect petitions for protective placements and *Watts* reviews begin applying to petitions filed and reviews that occur on or after May 1, 2005.

II. Changes to Chapters 46, 49 and 55

A. Specific testimony on placement in a non-institutional setting

Any time a person with a developmental disability is being considered for protective placement in an intermediate care facility for the mentally retarded (ICF-MR) or a nursing home the court is required to receive a statement or testimony from the county regarding whether the person could be served in a non-institutional setting. §55.06(8) Wis. Stats.

B. Restrictions on placement in institutions

A court may not protectively place an individual with developmental disabilities to an ICF-MR or nursing home unless it finds that such placement is the "most integrated setting that is appropriate to the needs of the individual" §§55.06(9)(a) and 46.279(2) Wis. Stats.

C. What does "most integrated setting" mean?

"Most integrated setting" is defined as "a setting that enables an individual to interact with persons without disabilities to the fullest extent possible." 46.279(1)(bm). The definition is drawn from the Americans with Disabilities Act.

[1] None of the changes apply to residents of the state centers for the developmentally disabled.

D. Applications for admission to ICFs-MR and nursing homes beginning 1/1/05

Beginning 1/1/05 no person may place and no ICF-MR may admit an individual unless a court has determined, after review of a community service plan, that the ICF-MR is the most integrated setting. Within 5 days after receiving an application for admission an ICF-MR must notify the county long-term support agency of the application. The county then has 120 days to prepare a community services plan for that person. A similar requirement exists for nursing homes that a person with a need for active treatment seeks admission to, except the 120 days begin running from the date of the screening. §46.279(2), (3) and (4).

E. *Watts* reviews

Beginning May 1, 2005, at least 120 days prior to a developmentally disabled individual's annual *Watts* review the county protective services agency must notify, in writing, the county long term support agency (responsible for developing CIP-1B plans) of the impending review. The county long term support agency is then required, under §46.279(4) to prepare "a plan for providing home or community-based care in a non-institutional community setting" and submit the plan to the court and the guardian. §55.06(10)(a)2. Wis. Stats.

F. County obligated to pay for institutional placements

Beginning May 1, 2005 the county is responsible for paying the non-federal share of the Medicaid payment to an ICF-MR or nursing home §49.45(30m)(a) Wis. Stats.

G. Absence of medical assistance payment for some institutional placements

If a county allows a developmentally disabled individual to remain in an ICF-MR or nursing home either without a protective placement or in violation of §46.279 (meaning either a plan for community support was not developed or was not implemented) then no medical assistance payment is available to support the institutional placement, meaning, presumably, that the county will pay the entire cost of the placement—including what would have been the federal share of the medical assistance payment. §49.45(30m)(b) and (c) Wis. Stats.

H. How do these changes affect the county "shield law"?

A specific exception to the "county shield law" for people subject to 49.45(30m) has been added. This means that continued institutionalization of persons must be paid regardless of county resources. Depending on whether or not the institutional placement is "the most integrated setting" for the person, the county, pursuant to 49.45(30m) will either pay 40% or 100% of the cost of the institutional placement.

NOTE: It is not yet clear what the effect of this exception to the shield law will be on individuals for whom the institution is not the most integrated setting. It is unclear if the county will continue to be able to use the shield law to refuse to fund the necessary community services for those individuals. It appears that the legislature created an entirely new standard for protective placements for this category of wards; one that is disconnected from the part of 55.06(9)(a) that contains limitations on county funding obligations. What is certain is that the county incentive to continue serving those individuals in an institution will be significantly reduced because the county will be required to pay 100% of their institutional costs.

III. Nonstatutory changes to payment methodologies

A. Eliminate institutional funding bias

The state will permit each county to use funds currently spent by the state (as a Medicaid card service) on that county's ICF-MR population for either ICF-MR services or community services. This means that if an individual in an ICF-MR is found to not be in the "most integrated setting" the county will be able to use the Medicaid funds currently supporting the ICF-MR placement on an appropriate community placement. The county will not have to use an existing CIP-1B slot or create a locally matched CIP-1B slot to serve the person.

B. Cap the amount paid to counties based on ICF-MR census

The state will calculate a total "net nursing home cost" for each county and will make that available as the "county allocation." The net nursing home cost is made up of costs for county residents in 1) private or county ICFs, 2) St. Collettas and Bethesda Lutheran Home, and 3) Skilled Nursing facility if they have a DD level of care, minus patient contribution. Other downward adjustments are made to the rate. This "county allocation becomes the pool of funds from which a county can fund people either in the community or in an ICF-MR.

C. Increases to the "county allocation" are limited

The county allocation will increase by the same rate the nursing home provider rate increases. So, if the nursing home rate increases by 3% in the next budget so will the county allocation. The county allocation will not increase based on increased utilization of ICFs-MR. Therefore, if a county has two new admissions to ICFs-MR after 1/1/05 its county allocation will not increase. The county will have to fund those admissions from its fixed allocation. The state will not pay the state Medicaid share of those admissions. The county will be permitted to access federal matching funds, but only if the admission complies with the "most integrated setting" mandate discussed earlier.

D. 25 new CIP-1B slots

The state is creating 25 new CIP-1B slots that will be state funded at $75 per day. These are discretionary slots that will be provided to counties to deal with potential new ICF-MR admissions that will be diverted to the community through the "most integrated setting" mandate discussed above. If a county does not get one of these new slots and cannot absorb the cost of the new person in its county allocation the county could use CIP-1B money to fund the person.

E. How it will work

Counties will not actually be given their "county allocation." Instead, they will be told what their allocation is and will be able to tell the state how they want it spent, either on institutional or community services. The department says that this approach has been approved by CMS.