

ICF Conversion Frequently Asked Questions

Program Development

Q: Do voluntary agencies have to ensure that any new development is four beds or less?

A: Not at this time. OPWDD is considering setting a maximum size limit for new development beginning sometime in 2016. The maximum size for new residential development would be between four-six unrelated individuals unless an exception is made by the Commissioner or designee based on evidence/justification that a larger size is needed to address individualized medical/clinical needs and this evidence/justification is deemed acceptable by the Commissioner and/or designee.

Fees/Rates

Q: What is the rate paid to the agency-operated day programs ICF individuals attend?

A: Once an ICF converts, day services will be separately authorized through the Waiver for the residents of the former ICF, so no funding will be made available to the residential provider for day services, since the day service provider will bill Medicaid directly.

Q: For ICFs converting to IRAs, will the 5.5% Facility Assessment be available to the provider for planning purposes?

A: The assessment is levied against ICFs; once an ICF becomes an IRA, there is no provider of services assessment (tax) on this class of service. Therefore, no facility assessment will be provided. The value of the 5.5% will be eliminated, and the provider cannot assume it will be available for planning purposes.

Q: Will the converted funding (IRA rate + assistive supports rate) be the same as the ICF rate amount?

A: The provider will be reimbursed the equivalent of their 7/1/14 ICF rate minus the facility assessment and day services (which was removed from the rate on 4/1/15). The net ICF rate will be funded from the agency's IRA price currently in effect and any benefits to which an individual is entitled (SSI, SNAP, etc.). If the IRA rate is lower than the ICF rate the provider previously received minus the facility assessment and day services, the difference will be covered by a state supplemental payment. To the extent that the IRA rate, plus benefits, is equal to or greater than the net ICF rate, no additional state funding will be provided.

Q: If an ICF converts to an IRA and later the agency's IRA rate goes down, or its ICF rate goes up, will OPWDD recalculate the revenue neutrality supplemental payment based on the new rates?

A: No. The fiscal policy for ICF Conversions describes a one-time calculation of a supplemental payment based on ICF and IRA rates that were in effect for the provider on 7/1/14, net of day services and facility assessment and including workforce adjustments that went into effect on 1/1/15 and 4/1/15.

Q: Which IRA rate is used in calculating revenue neutrality for ICF to IRA conversions?

A: The 7/1/14 IRA rate is used in this calculation, with adjustments for the 1/1/15 and 4/1/15 workforce increases, which means the 4/1/15 rate is actually the rate being used.

HCBS Waiver and HCBS Settings Rule

Q: Who signs the waiver enrollment documentation when someone has no guardian or involved family member?

A: It is expected that the individual will sign his or her enrollment documentation. If the individual is not able to understand what signing the documentation means (e.g., where they will live and what services they will receive), then someone with decision-making authority for the individual may sign. This could include a court appointed guardian, someone with power of attorney for the individual, or an actively involved family member. If no such person exists, the agency CEO or his or her designee, may sign the enrollment documents *after* the following steps are taken.

The individual’s MSC, or if the individual does not yet have an MSC, the planning team, should work with the individual to expand their circle of support and identify an advocate (see definition at 14 NYCRR 635-10 (99.1(c)), who can assist him or her with HCBS waiver service decisions including enrollment.

A team meeting is held to discuss whether it is in the best interests of the individual to remain in the converting home and to be enrolled in the waiver. Invitees to this meeting should include the individual, team members most familiar with the individual’s needs, the individual’s advocate if one has been identified, as well as a representative from the appropriate Mental Hygiene Legal Services office (MHLS). Once consensus is reached on whether enrollment in the waiver is in the individual’s best interests, the CEO should proceed accordingly.

Q: Can people residing in ICFs receive Community Habilitation in their home once their ICF converts to an IRA?

A: Community Habilitation cannot take place in a certified location except in the following circumstances: when a Community Habilitation staff person accompanies an individual to a clinic treatment facility (Article 16 clinic) or when a staff person accompanies the individual to an Individualized Service Plan (ISP) review meeting that occurs in a certified location. (See CH ADM 2015-01).

Q: As an ICF, the voluntary provider contracts out for clinical services such as Physical Therapy, Occupational Therapy, Speech, Nursing and Psychology to be delivered in the house. Will that continue in the converted IRA? What clinical services will be included in the IRA rate?

A: Included in the IRA rate are nursing, psychology and nutrition. Additional clinical services can be accessed in the community via State Plan providers, Article 16 clinics or through Preventive Services delivered in the IRA by independent practitioners.

Q: Can ICF providers that convert ICFs to IRAs continue to provide nursing to the individuals through the IRA staff after conversion?

A: Yes, Providers can continue to employ nurses to provide nursing to the IRA residents. If the provider cannot meet all of the nursing needs of the individuals within the IRA funding level, State Plan nursing can be accessed.

Q: When an ICF converts to an IRA, is there a way to bill for at home day services in the IRA?

A: Yes, if a person needs day services delivered in the home, the residential provider can provide residential habilitation to meet his/her needs or a day habilitation provider can provide day habilitation. The ISP and day habilitation plan should contain information which explains why any portion of the day service takes place in the home. Plans which justify day services occurring in the home should retain a community focus in accordance with the person's interests and abilities. In-home day services must be based on a carefully analysis of the person's needs and not based on staff or programming convenience. Day Habilitation may take place in an IRA but the general expectation is that the service take place largely outside of the certified site. Guidance was provided in 2010 regarding Day Habilitation service provision in the residence.

Q: How will billing for day services transition if they were provided by a provider other than the residential provider?

A: Since there can be a lag between when a program certification is reflected in TABS and the HCBS enrollment is entered for an individual, the day service provider (assuming the individual attends a program that provides day habilitation to HCBS enrolled individuals), ideally should hold off billing until the program certification is reflected and individuals' HCBS enrollment status is finalized. Then the day habilitation provider can bill with the appropriate rate codes and locator code. If the day provider submits a claim based on "day services" and then the program certification and the HCBS enrollment of individuals are retroactively entered in TABS, the day provider would need to adjust their claim for the appropriate rate codes and locator code. Providers can verify the IRA certification is in place via CHOICES or by contacting their regional office.

If, however, an individual was not getting day services at a program that provides day habilitation to HCBS enrolled individuals prior to the ICF converting, then the day provider would need to file a DDP-1.

Q: How will ICF providers who operate ICFs that are clustered or co-located on the same property or in the same building be able to convert to IRAs and meet the HCBS Settings rule?

A: All ICFs that convert to IRAs will automatically be subject to heightened scrutiny (HS), meaning the provider will need to prepare an evidence package that is subject to a public input process and submission to CMS for final approval that the setting is an HCBS eligible setting. The evidence package must document how the setting overcomes the CMS presumption that it is institutional and/or isolating and show that the setting has all the qualities required of an HCBS setting. In addition, the evidence must demonstrate that the setting does not isolate individuals and each person served is afforded access to the community to the

same degree as other members of the community who do not receive Medicaid HCBS. OPWDD plans to develop templates for providers to use to prepare the evidence package.

CMS has NOT indicated that homes of a certain size or in close proximity to other homes for individuals with developmental disabilities cannot overcome the presumption of being institutional in nature because of these characteristics. However, CMS has indicated that when a state submits documentation for a heightened scrutiny review, CMS will review the evidence to ensure that all participants in the setting are afforded the degree of community integration required by the regulation and desired by the individual. It will be imperative that converting ICF settings document this activity and the attempts to link people to desired community activities.

Q: In the ICF conversions proposal template on page 17, question F1 asks if there is a “lease or written occupancy agreement for residents that provides protections and appeals/due process from evictions.” Is there a specific template for this occupancy agreement that is required? If not will OPWDD consider creating a statewide assessment?

A: OPWDD is working in partnership with other state agencies to develop an occupancy agreement template for each setting type. These are expected to be available in mid-2016. The occupancy agreement should outline the circumstances under which a person would be required to relocate and the due process and appeals rights afforded under this circumstance. The occupancy agreement can be combined with a general notice of rights already in use by an agency as long as it has the above protections.

Q: Will each individual going through ICF conversion have to go through the Front Door?

A: Yes, but each individual will go through an expedited Front Door process that does not require determination of eligibility or the Front Door assessment. See the Guidance for ICF Conversions with No Change in Capacity.

MSC

Q: Who chooses the MSC agency when someone has no guardian or involved family member?

A: To avoid a potential conflict of interest in selecting an MSC when someone is not able to make his or her own decisions and does not have a legal guardian or involved family member to make such decisions on their behalf, the residential agency may select a MSC provider agency other than itself, i.e., the agency that operates the individual’s residence. OPWDD recently issued guidance indicating the limited circumstances under which a residential provider may select itself to serve as an MSC for an individual who has no representative and is unable to make a selection him/herself. The guidance requires the provider agency to submit an acceptable justification for this MSC selection and receive approval from the DDRO. The policy and justification form can be found at: http://www.opwdd.ny.gov/transformation-agreement/mfp/ICF_Transitions.

Q: After an ICF converts an IRA will additional units be added to the base for MSC services?

A: An MSC provider is responsible for tracking units. MSC providers should be able to calculate their current allocation by reviewing their roster. As they serve additional individuals, the individuals will bring “new” units to the agencies’ allocation based on where they live so there should be no need to request more units. Additional guidance about unit management can be found here: <http://www.opwdd.ny.gov/node/5359>.

Willowbrook Class

Q: Will providers be given an enhanced fee for MSC for Willowbrook class members?

A: Yes, providers will receive an enhanced service coordination fee when providing service coordination to a Willowbrook class member. The current monthly fee for a class member receiving Willowbrook Case Services in an ICF is \$240.49. The current monthly fee for a class member receiving MSC in an IRA or other setting is \$480.97, compared to the monthly fee of \$252.98 for a non-class member living in an IRA.

Q: Can Willowbrook class members choose a Medicaid Service Coordinator that is also employed by the agency providing them with Residential services if both the family and the individual wish to do so?

A: If the family represents the class member and they insist on the same agency providing both the residential and MSC service, this is allowable as long as there is functional independence. This means the Residential department and the Service Coordination department must be organizationally separate, and the MSC must report to someone in the agency other than the Residential department. If the individual is represented by CAB, the CAB may insist on a different provider for MSC and residential services to ensure functional independence.

Q: Are providers able to bill a transition rate for Willowbrook class members when their ICFs convert to IRAs?

A: Yes, the MSC provider can bill and be reimbursed for services provided to assist transition planning for any individuals (including Willowbrook class members) through a single transition MSC billing once the individual is discharged from the ICF, and as long as all other billing requirements are met.

Miscellaneous

Q: Does the opportunity to convert ICFs to IRAs apply to ICFs that are operating as part of a Children’s Residential Project, or must CRP-related ICFs remain ICFs?

A: OPWDD’s Transition Plan sets forth annual goals for reducing the agency’s reliance on the ICF model of care for individuals with developmental disabilities. The plan is structured with the intent that by October 2018, the service system will have in place 150 campus-based ICF opportunities for individuals who are in transition and preparation for community based supports and 456 opportunities for students in CRPs. Because CRPs are associated with a residential school that can provide intensive supports for educational services for students who require placement outside their home school district, and because Individualized Residential Alternatives (IRAs) lack the educational component to meet these needs, the ICF Transition Plan does not call for CRPs to convert to Individualized Residential Alternatives (IRAs). If a

student at a CRP no longer requires the residential school services, OPWDD expects the regular discharge planning required for that student will lead to discharge and transition of the student to a less restrictive setting prior to aging out. If a student continues to require the support of a residential school, the student would remain at the CRP and would not be eligible to enroll in the HCBS Waiver.

Q: Once a provider converts an ICF to an IRA with no change in capacity, can the provider then downsize the IRA to a smaller size?

A: Yes, agencies may decide to downsize IRAs after they have converted them from ICFs.

Q: When are new billing codes available for agencies converting ICFs to IRAs?

A: If a provider needs a new provider ID to bill for waiver services, OPWDD Central Operations will send a Medicaid application to the provider to complete, with a copy of the approved authorization to provide services. The provider must then complete the Medicaid application and submit it directly to the NYS Department of Health, which has 90 days to process the application. See page 10 of the Guidance for ICF Conversions with No Change in Capacity document. Once the provider ID is issued, the appropriate rate amount will be verified and loaded into eMedNY by OPWDD. The agency will receive correspondence from DOH that the rate was loaded and is available to begin submitting claims to Medicaid per the effective date identified.