

This rule was file as 7 NMAC 26.9.

TITLE 7 HEALTH
CHAPTER 26 DEVELOPMENTAL DISABILITIES
PART 9 ADMISSION, DISCHARGE AND TRANSFER OF ELIGIBLE RECIPIENTS FOR
SERVICES IN ICF/MR FACILITIES

7.26.9.1 ISSUING AGENCY: Department of Health, Long Term Services Division, 1190 Saint Francis Drive, Post Office Box 26110, Santa Fe, New Mexico 87502-6110, Telephone No. (505) 827-2574
[3/15/99; Recompiled 10/31/01]

7.26.9.2 SCOPE:

A. These regulations provide a systematic process for admission of persons requesting services from an intermediate care facility for the mentally retarded (ICF/MR); the transfer between ICF/MR facilities of persons previously determined eligible; and the discharge of persons residing in an ICF/MR.

B. These regulations apply to persons who request admission to an ICF/MR and who reside in the community; in a nursing facility; in a hospital; or, in an ICF/MR. In addition, these regulations apply to any ICF/MR in the state of New Mexico that is licensed under department of health regulations governing long term care facilities.

C. These regulations are limited to the admission, transfer and discharge of persons receiving support and services funded in whole or in part by state funds or for whom services can reasonably be expected to be funded in whole or in part with state funds within six (6) months of admission into an ICF/MR.
[3/15/99; Recompiled 10/31/01]

7.26.9.3 STATUTORY AUTHORITY: Section 28-16A-15 NMSA 1978.
[3/15/99; Recompiled 10/31/01]

7.26.9.4 DURATION: Permanent.
[3/15/99; Recompiled 10/31/01]

7.26.9.5 EFFECTIVE DATE: March 15, 1999, unless a later date is cited at the end of a section or paragraph.
[3/15/99; Recompiled 10/31/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

7.26.9.6 OBJECTIVE: The purpose of these regulations is to:

A. Establish the process for the admission of any and all persons requesting admission to an ICF/MR, to be transferred between ICF/MR facilities, or to be discharged from an ICF/MR.

B. Establish admission, transfer and discharge procedures for ICF/MR facilities licensed and located in the state of New Mexico consistent with the Developmental Disabilities Act, Section 28-16A-15 NMSA 1978.

C. Notice of public hearing on the proposed regulations was given in accordance with Section 9-7-6 NMSA 1978. On July 16, 1998, a public hearing was held in Santa Fe, New Mexico. Both written and oral testimony was accepted from all persons who desired to testify. The department's hearing officer submitted his recommendations on August 15, 1998.
[3/15/99; Recompiled 10/31/01]

7.26.9.7 DEFINITIONS:

A. "Department" means the department of health.

B. "Discharge" means the termination of services for a person previously admitted into an ICF/MR and the discharging facility ceases to be legally responsible for the care of the person.

C. "Eligible central registry person" means a person who has requested admission to an ICF/MR, or discharge from an ICF/MR and transfer to a community-based department funded program, and who is determined by the department to meet pre-admission screening criteria for ICF/MR and home/community-based developmental disabilities services.

D. "ICF/MR" means an intermediate care facility that provides food, shelter, health or rehabilitative and active treatment for persons with mental retardation or related conditions, and that has a current license issued by the department.

E. "New admission" means a person requesting an ICF/MR admission for the first time and does not otherwise qualify as a re-admission. New admissions are subject to pre-admission screening.

F. "NMSA" means the New Mexico Statutes Annotated 1978 compilation and all the revisions and compilations thereof.

G. "Pre-admission screening" means the evaluation process of the department of health to determine a person's choice between ICF/MR and community based services, and whether the person has a developmental disability as described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1996), or a related condition as defined by 42 CFR 435.1009.

H. "Readmission" means a person re-admitted to an ICF/MR from another type of institution to which he/she was transferred for the purpose of receiving acute, psychiatric care or rehabilitation following a temporary, acute care episode. A readmission is not subject to pre-admission screening.

I. "Transfer" means movement of an individual from one ICF/MR to another ICF/MR, with or without an intervening hospital stay. A transfer is not subject to pre-admission screening.

J. "State medicaid agency" means the department of human services.

K. "Central registry" means a registry of persons who are requesting or receiving services established by the department in accordance with Section 28-16A-15 NMSA 1978.
[3/15/99; Recompiled 10/31/01]

7.26.9.8 ADMISSION:

A. No person shall be admitted into an ICF/MR unless the person has been pre-screened and referred to an ICF/MR by the department of health central registry.

B. Consistent with the provisions of 42 CFR 431.51 any person who requests to be placed on the department's central registry will be provided the opportunity to indicate a choice between ICF/MR and home/community-based waiver services at the time of application to the central registry. The purpose of this information request is for system service planning to identify persons who may be potentially eligible for ICF/MR services.

C. All applicants to the central registry may choose to be placed on the central registry for both ICF/MR and home/community-based waiver services.

D. All persons referred for admission into an ICF/MR from the central registry may choose to remain on the central registry for home/community-based waiver services. All persons referred for admission into home/community-based waiver services may choose to remain on the central registry for ICF/MR services.

E. All persons applying to the central registry will be pre-screened by the department before placement on the central registry to determine each person's choice between ICF/MR and home/community-based waiver services, and whether the person has a developmental disability or related condition as described in Section 7.8 [now Subsection H of 7.26.9.7 NMAC] of these regulations. Pre-screening does not include determination of financial eligibility and level of care, which are functions performed by the state medicaid agency.

F. The department will implement application procedures for the central registry that identifies applicant's freedom to choose between ICF/MR and home and community based services.

G. Upon notification from a ICF/MR to the department that a vacancy exist in their facility, the department will identify three (3) persons from the central registry, in the order of date of application to the central registry, who have indicated a choice for ICF/MR services, and who:

- (1) have never been admitted into an ICF/MR; or
- (2) were discharged from an ICF/MR for at least 30 days; or
- (3) did not qualify as a readmission.
- (4) The group of three individuals will be classified as "new admission" for the purposes of these regulations.

H. The department will notify the three persons about the availability of a vacancy and request each person to reaffirm in writing their choice between ICF/MR, developmental disabilities home and community waiver services, or other services.

I. The department will furnish to an ICF/MR the names and contact information of any persons on the central registry who indicate a choice for ICF/MR services in the long term services division region in which the ICF/MR is located.

J. The ICF/MR will contact and review each person's request for admission in accordance with federal licensing and certification requirements.

K. The ICF/MR will refer any person referred by the central registry, and whom the ICF/MR determined appropriate for admission based on its admission decision, to the state medicaid agency for level of care and financial eligibility determination.

L. The ICF/MR will notify the department and the eligible central registry person of the results of its admission decision for all three persons referred by the department with an explanation for its decision on each person referred. The ICF/MR will notify any person not admitted of their right to a review of the admission decision.

M. The ICF/MR may admit any person who meets the definition of "readmission" without referral through the department's central registry. A readmission will not be subject to pre-screening by the department.

N. The department of health central registry may refer an individual to an ICF/MR vacancy based on the department's determination that the referral is an emergency. The department may exempt an emergency referral from the central registry to be made based on the person's date of application to the central registry.

[3/15/99; Recompiled 10/31/01]

7.26.9.9 TRANSFER:

A. A person may be transferred to another ICF/MR operated by the same entity, or an ICF/MR that operates independent of the ICF/MR where the person currently resides without referral through the central registry, provided:

- (1) the person's interdisciplinary team recommends the transfer;
- (2) the person's transfer is based on the person's freedom of choice of providers; and
- (3) the receiving ICF/MR has identified a vacancy.

B. An ICF/MR may transfer a person temporarily to a psychiatric, acute care hospital, or temporarily to a nursing facility for care following a hospital stay. Persons returning to the ICF/MR under these conditions will be classified a "readmission" and will not be subject to pre-screening by the department.

C. Persons receiving services from an ICF/MR may be transferred to a home and community-based waiver program provided the person has been allocated to the program by the department in accordance with central registry policies and procedures.

D. The ICF/MR shall provide a complete copy of the person's medical and service records, including assessments required for individual program planning to the ICF/MR or community to which the person is transferred.

[3/15/99; Recompiled 10/31/01]

7.26.9.10 DISCHARGE:

A. A person may be discharged from an ICF/MR when the individual/guardian requests to be discharged; when the person's interdisciplinary team recommends the facility cannot meet the individual's needs; the individual no longer requires an active treatment program in an ICF/MR setting; the discharge would be more beneficial to the person; or for any other good cause. Any decision to discharge a person from an ICF/MR based on good cause must be adequately justified in writing by the ICF/MR and reviewed by the department prior to discharge.

B. The ICF/MR will ensure the person's family/guardian and the person's advocate is involved in the interdisciplinary team process, involving a discussion and proposed decision regarding discharge.

C. The ICF/MR will ensure a transition plan is developed thirty (30) working days prior to discharge in accordance with department policies on discharge and transition of persons in services.

D. The ICF/MR will ensure the person and his/her guardian is fully informed of their right to a fair hearing in accordance with 42 CFR 431.200-431.250.

E. The ICF/MR will ensure any discharge decision is carried out in accordance with provisions of 42 CFR 456.380.

[3/15/99; Recompiled 10/31/01]

7.26.9.11 NOTIFICATION OF THE DEPARTMENT:

A. The ICF/MR will notify the department of any vacancy or anticipated vacancy in their facility.

B. The ICF/MR will notify the department of any person requesting ICF/MR services and for whom state funding may be necessary.

C. The department will notify an ICF/MR of any person on the central registry indicating a choice of ICF/MR services in the long term services division region in which the ICF/MR is located.

D. Notice by either party shall be based on timelines adopted by the department.
[3/15/99; Recompiled 10/31/01]

HISTORY OF 7.26.9 NMAC: [RESERVED]