



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

OCT 16 2019

Robin P. Amicon  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216

Dear Ms. Amicon:

Thank you for your letter to the Environmental Protection Agency (EPA) dated August 20, 2019, asking for a regulatory interpretation about whether an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF, also known as an ICF/ID or an ICF/IID) would meet the definition of a long-term care facility in § 266.500 of 40 CFR part 266 subpart P. Based upon the information that you provided in your letter, (see enclosure) combined with additional research that we conducted, we have concluded that an ICF does not meet the definition of long-term care facility and therefore is not a healthcare facility subject to 40 CFR part 266 subpart P.

Healthcare facilities that generate more than very small quantity generator (VSQG) amounts of hazardous waste are subject to part 266 subpart P.<sup>1</sup> A long-term care facility, which is a type of healthcare facility under subpart P, is defined in § 266.500 as:

A licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, hospice facilities, nursing facilities, skilled nursing facilities, and the nursing and skilled nursing care portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, assisted living facilities, and the independent and assisted living portions of continuing care retirement communities.

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<sup>1</sup> A very small quantity generator, as defined in 40 CFR 260.10, is a generator who generates less than or equal to the following amounts in a calendar month:

- (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and
- (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; and
- (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter.

ICFs are regulated by the Centers for Medicare and Medicaid Services (CMS) of the Department of Health and Human Services. The services provided by ICFs are defined in 42 CFR 440.150(a). As you noted in your letter, ICFs have some characteristics in common with long-term care facilities, such as being licensed and certified at the state-level, and providing institutional long-term care.<sup>2</sup> On the other hand, according to the Centers for Medicare and Medicaid Services (CMS), an “ICF/ID provides AT [active treatment], a continuous, aggressive, and consistent implementation of a program of specialized and generic training, treatment, and health or related services, directed toward helping the enrollee function with as much self-determination and independence as possible.”<sup>3</sup> CMS notes that “[m]any ICF/ID residents work in the community, with supports, or participate in vocational or other activities outside of the residence, and engage in community interests of their choice.”<sup>4</sup> Based on this information, along with the information that you provided in your letter (see enclosure), we have concluded that ICFs have more in common with group homes or assisted living facilities, which are not considered long-term care facilities, than to nursing facilities or skilled nursing facilities, which are considered long-term care facilities.

Because an ICF is not considered a long-term care facility, or other type of healthcare facility, as defined by 40 CFR 266.500, an ICF is not subject to 40 CFR Part 266 Subpart P. The wastes generated by residents at ICFs continue to be considered household wastes that are eligible for the household waste exclusion in 40 CFR 261.4(b)(1). That said, EPA strongly encourages environmentally sound disposal of pharmaceuticals by households. To that end, we strongly discourage the sewerage (e.g., flushing) of pharmaceuticals. Instead, we recommend the use of pharmaceutical take-back programs to protect both human health and the environment. Where take-back options are not available, we recommend that households mix their unused pharmaceuticals with an undesirable substance, such as used coffee grounds or kitty litter, before placing in the trash.

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<sup>2</sup> <https://www.medicaid.gov/medicaid/tss/institutional/index.html>; accessed September 9, 2019.

<sup>3</sup> <https://www.medicaid.gov/medicaid/tss/institutional/icfid/index.html>; accessed September 9, 2019.

<sup>4</sup> *Ibid.*

Finally, we note that Ohio is authorized to implement the RCRA regulations in lieu of the federal government. Because Ohio is an authorized state that has not yet adopted Part 266 Subpart P, the final rule is not yet effective in Ohio.<sup>5</sup> However, when Ohio adopts Part 266 Subpart P, they may be more stringent than the federal regulations. As a result, we advise you to keep in touch with your state as they go through the state adoption process.

If you need further assistance, please contact Kristin Fitzgerald at [fitzgerald.kristin@epa.gov](mailto:fitzgerald.kristin@epa.gov), or (703) 308-8286.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen Salyer', with a stylized, flowing script.

Kathleen Salyer, Deputy Director  
Office of Resource Conservation and  
Recovery

Enclosure

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<sup>5</sup> The sewer prohibition in § 266.505 became effective in all states starting August 21, 2019, regardless of whether the state is authorized or has adopted Part 266 Subpart P.