



To: Debbie Jenkins, Division of Medicaid Development and Administration, DODD
From: Anita Allen, Jeff Davis, OPRA
Date: May 18, 2012

Comments on Proposed New Rule:
5123:2-7-XX Intermediate Care Facilities-rate reconsideration on the basis of extreme hardship upon admission of resident of state-operated developmental center.

The Department is to be applauded for its recognition of and desire to establish provider incentives to assist in the continued effort to downsize the state-operated developmental centers. We appreciate the historic significance of your efforts to voluntarily downsize your developmental center population and particularly appreciate its role within the larger re-alignment of the DD system.

OPRA very much wants to continue our close partnership with the Department and our member agencies to ensure that private providers are able to achieve the desired outcomes. In addition to a structured response to proposed administrative rules such as this, we also want to continue to provide you with more informal reciprocal feedback on what is working and what barriers we see as impeding progress.

In response to and with general respect to the proposed rule it would appear that the suggested approach marginally qualifies as an incentive. As structured, the rate reconsideration is not guaranteed, is after the fact, offers no specific guidelines, and its approval is entirely within the discretion of the Department. In practice this leaves the provider guessing as to the ultimate outcome and may not actually incent the proactive type of behavior you wish to promote.

As the intention is to incentivize downsizing, the Department should consider mirroring the parameters for the individual qualification established for the DC down-size waiver add-on on a per person basis in ICF/DD's. A stand alone, per-person approach will eliminate up front uncertainty among providers as to whether they will qualify for the add-on and will prove a more effective incentive. Allocating the incentive through a facility's per diem will serve the purpose of incentivizing *only* if the facility remains at maximum capacity throughout the 12 month period the add on is in effect. Therefore, if an individual meets the qualifications, the ICF add-on should be guaranteed and paid separately from the facility per diem. We also question the impact this one time, 12 month add on may have on ceilings as well as its overall impact on rate setting moving forward.

As a postscript this rule as drafted seems to reflect the Department's operational preference for as much unilateral decision making authority as is possible. We see this reflected in the current process for approving development within the context of the current private ICF downsizing initiative. Given the historic nature of the current system redesign and the ongoing diversity of service provision within our statewide system, it is understandable that the Department wants flexibility. It is also true that the state department's desire for flexibility is not new and has always been met with stakeholder preference/need for more structure. Moving forward do not be surprised if OPRA gently pushes to find the appropriate balance between the two. We think this will greatly benefit the system as a whole and compliment our comprehensive collaborative efforts to re-shape our system to better serve our individuals. Thank you again for this opportunity to provide feedback.