

STATE OF MAINE

***REGULATIONS GOVERNING THE
LICENSING AND FUNCTIONING OF
INTERMEDIATE CARE FACILITIES
FOR PERSONS WITH MENTAL
RETARDATION***

**10-144 CMR Chapter 118
(Effective Date: September 1, 2007)**



**DEPARTMENT OF HEALTH & HUMAN SERVICES
Division of Licensing & Regulatory Services**

10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES
 DIVISION OF LICENSING AND REGULATORY SERVICES
 Chapter 118: REGULATIONS GOVERNING THE LICENSING AND
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 PERSONS WITH MENTAL RETARDATION

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CHAPTER 1: DECLARATION OF INTENT AND FUNCTIONS OF ICF/MR

Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) are homes. They provide persons with mental retardation an opportunity for personal development and growth. If created in concert with the intent of these regulations, these homes afford individuals privacy, dignity, comfort, sanitation, a home-like environment and above all, provide a dynamic, healthy and purposeful life for them.

09/01/07

It is the intent of the Maine Department of Health and Human Services (DHHS) to establish and to promote the development and utilization of resources to ensure effective health and habilitation services for persons with mental retardation and related conditions who require an environment which adheres to the concepts of "Active Treatment," "Normalization" and/or "Social Role Valorization".

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Intermediate Care Facilities for Persons with Mental Retardation are subject to licensure by these rules, which establish standards for the physical facility, maintenance and conduct of client care and habilitation, so as to meet the needs of those living in the homes.

The goal of ICF/MR services is to provide a habilitation program, which will enhance each person's ability to cope with his/her environment and create a reasonable expectation of progress toward the goal of community living in the least restrictive and most normal living conditions possible.

09/01/07

In accordance with Chapter 52, Resolve, *To Require the Department of Health and Human Services to Amend Rules Regarding Licensing of Intermediate Care Facilities for Mental Retardation*, DHHS has revised these regulations to eliminate State licensing requirements that are duplicative of the Federal Title XIX requirements, or no longer essential. DHHS has adopted the Medicaid or Title XIX requirements for purposes of State licensure, and by reference has incorporated the Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded (42 Code of Federal Regulations, Subpart I, Sections §483.10-483.40). DHHS has consulted with consumers, providers, advocates and regulators prior to revising these rules.

CHAPTER 2: DEFINITIONS

The following terms shall have the meanings specified:

- 09/01/07 1. Abuse - The willful, reckless or negligent infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; sexual abuse or exploitation; or the willful deprivation of essential needs. A person may commit abuse by willfully, recklessly or negligently inflicting injury by responding to the actions of a client, if the person's response was excessive or unwarranted under the circumstances. Intimidation, for purposes of this definition, shall include verbal interaction between a person and a client receiving care that is either intended to inflict mental anguish or could reasonably be expected to inflict mental anguish upon the person subjected to such verbal interaction.
- a. Willful conduct, for purposes of this definition, means intentional or knowing conduct.
 - b. Reckless conduct, for purposes of this definition, means a conscious disregard of a substantial and unjustifiable risk.
 - c. Negligent conduct, for purposes of this definition, means a failure to exercise that degree of care which a reasonable person would exercise in the same situation.
2. Active Treatment - A continuous aggressive and consistent program of specialized and generic training, treatment, health services and related services that is directed toward 1) the clients' acquisition of behaviors necessary to function with as much self-determination and independence as possible; and 2) the prevention or deceleration of regression or loss of current optimal functional status.
- 09/01/07 3. Activities Coordinator – A person who has training and experience with clients with developmental disabilities, and who is responsible for the integration of recreation and leisure activities as part of the clients' active treatment program.
- 09/01/07 4. Adult – Means any person who has attained eighteen (18) years of age and who is a legally emancipated minor.
- 09/01/07 5. Advocate - A member of the Office of Advocacy, who is responsible to advise, assist, and protect the personal, legal and financial rights of persons with mental retardation.
- 09/01/07 6. Ambulatory - Able to walk without assistance from a mechanical device or another human.
- 09/01/07 7. Annual Plan - See Individual Program Plan.

- 09/01/07 8. Behavioral Program - A structured program established for a client by the Interdisciplinary Team and written by a qualified professional to develop or enhance desired behaviors or to modify or eliminate inappropriate behaviors.
- 09/01/07 9. Certified Nursing Assistant (CNA) - A person whose duties are assigned by a registered professional nurse and who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing, holds a certificate of training from that program or course and is listed on the Maine Registry of Certified Nursing Assistants
- 09/01/07 10. Certified Nursing Assistant/Medications (CNA/M) - An experienced certified nursing assistant who has satisfactorily completed the Board of Nursing's standardized medication course for certified nursing assistants. The CNA/M may perform this complex nursing task only under the director onsite supervision of a licensed nurse and only in long term care nursing facilities and state mental health institutions.
- 09/01/07 11. Client – A person who 1) has been diagnosed with mental retardation or other related developmental disabilities; and 2) is in need of, and is receiving active treatment in an Intermediate Care Facility for Persons with 876 Mental Retardation.
- 09/01/07 12. Competent Client - A client eighteen (18) years old or older, not under legal guardianship.
- 09/01/07 13. Department - The Department of Health and Human Services (DHHS).
- 09/01/07 14. Developmental Disability – A severe chronic disability of a person which:
- A. Is attributable to a mental or physical impairment or a combination of the two;
 - B. Is manifested before the person reaches age 22;
 - C. Is likely to continue indefinitely;
 - D. Results in substantial functional limitations in three (3) or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;

- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency; and

E. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services, which are individually planned and coordinated.

- 09/01/07 15. Developmental Trainer - A person in the ICF/MR facility who, during active treatment hours, is responsible for directing and coordinating of direct services employees on their assigned shift. This person must have the required education and/or experience as outlined in Chapter 6.
- 09/01/07 16. Developmental Training Assistant – A person providing direct services in an ICF/MR facility who has had at least three (3) months experience in working with persons with developmental disabilities.
- 09/01/07 17. Developmental Training Coordinator – The person who develops and monitors habilitation plans for clients in an ICF/MR facility. He/she may act as assistant to the Qualified Mental Retardation Professional.
- 09/01/07 18. Director of Food Services - A person who:
- A. Is a licensed dietitian; or
 - B. Is a licensed dietetic technician or dietary manager or who is certified by the Dietary Managers Association; or
 - C. Is a graduate of a State-approved course that provided at least 90 hours of classroom instruction in food service supervision and has experience as a supervisor in a health care facility with consultation from a licensed dietitian; or
 - D. Has training and experience in food service supervision or management in a military service. The training shall be equivalent in content to the program in paragraph B or C, above, as determined by the Department.
- 09/01/07 19. Director of Nursing (DON) – A registered professional nurse who has the responsibility for nursing services in a facility.
- 09/01/07 20. Direct Services Staff - Staff whose primary daily responsibility is to manage, supervise and provide hands-on care to clients in their residential living units.
- 09/01/07 21. Discharge - The permanent transfer of a client to another residence.

- 09/01/07 22. Distinct Part – A physically separate unit that is clearly identifiable in the facility, such as an entire ward or contiguous wards, wing, floor or buildings.
- 09/01/07 23. Division of Licensing and Regulatory Services - The State Agency responsible for licensure and Medicaid certification of ICFs/MR.
- 09/01/07 24. External or Day Programs - An external program means employment for pay, vocational or pre-vocational activity away from the person's residence, or other habilitative support services that are provided outside of the person's residence.
- 09/01/07 25. Habilitation - The process by which a person is assisted to acquire and maintain those life skills which:
- Enable the person to cope more effectively with the demands of his/her own person and of the environment;
 - Raise the level of his/her physical, mental and social ability; and
 - Improve his/her sense of well-being.
- 09/01/07 26. Incident or Accident - Any occurrence which threatens the safety, health or well-being of any person residing in the facility.
- 09/01/07 27. Individual Program Plan (IPP) - A detailed annual written plan developed by the person and an Interdisciplinary Team, outlining the person's specific needs for training, treatment, education and habilitation services along with the methods to be utilized in providing them. This includes the Person Centered Plan (PCP).
- 09/01/07 28. Informed Consent - A specific written approval by or on behalf of a resident which is given by the person or the person's legal guardian who is able to evaluate the risks and alternatives of the treatment, program or proposal.
- 09/01/07 29. Interdisciplinary Team (IDT) - A team of professionals, paraprofessionals and nonprofessionals who represent the disciplines or service areas that are relevant to the identification of the client's needs as described in the comprehensive functional assessment, and who have the expertise to design effective programs to meet those needs.
- 09/01/07 30. Intermediate Care Facility for Persons with Mental Retardation - Group (ICF/MR Group) - A facility that provides for clients with a diagnosis of mental retardation, or related conditions, who require less than eight (8)

hours of licensed nurse supervision per day.

- 09/01/07 31. Intermediate Care Facility for Persons with Mental Retardation - Nursing (ICF/MR Nursing) - A facility that provides for clients with a diagnosis of mental retardation whose medical/nursing needs require the presence of a licensed nurse at least eight (8) hours per day seven (7) days per week. The facility must, therefore, have nursing coverage twenty-four (24) hours per day to provide adequate services to clients.
- 09/01/07 32. Institution - Means a facility, a health care facility or an ICF/MR.
- 09/01/07 33. Laboratory Services - For the purposes of this regulation, "laboratory" means an entity whose work is the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, treatment or assessment of any disease or medical condition.
- 09/01/07 34. Licensee – Any person, partnership, association or corporation to whom a license to operate an ICF/MR is issued.
- 09/01/07 35. Medication Error - The incorrect administration of any medication as related to selection of drug, dosage, form, route and time of administration, omission of prescribed medication and unauthorized drug without a physician order. Errors in documentation or charting are considered medication errors.
- 09/01/07 36. Mistreatment – Behavior or facility practices that result in any type of individual exploitation such as financial, sexual or criminal.
- 09/01/07 37. Mobile - Ability to move independently from place to place.
- 09/01/07 38. Mobile Nonambulatory - Unable to walk without assistance, but able to move from place to place with the use of a mechanical device such as a walker, crutches, a wheelchair or a wheeled platform.
- 09/01/07 39. Neglect – A threat to an individual's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these.
- 09/01/07 40. Nonambulatory - Unable to walk without assistance and unable to move from place to place without the assistance of another person.
- 09/01/07 41. Normalization - Means the principle of assisting the person with mental retardation or autism to obtain an existence as close to normal as possible and making available to that person patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society. [See Wolfensberger 1980 in Normalization, Integration and Community Services; R.J. Flynn and K.E. Nitsch (eds.). Baltimore, University Park Press] "The use of culturally valued

means in order to enable people to lead culturally valued lives.”

- 09/01/07 42. Person - Any individual, corporation, partnership, association, governmental subdivision or any other entity.
- 09/01/07 43. Person Centered Plan (PCP) - A process where the needs and desires of the person are articulated and identified with as much involvement of the person him/herself as possible. (See IPP).
- 09/01/07 44. Prescription Drugs - Means those drugs that may be dispensed only on the written prescription of a physician, psychiatrist, dentist, physician assistant and nurse practitioner.
- 09/01/07 45. Program - Refers to any and all activities that are specified in the individual program plan (IPP)/Annual Plan, and is designed to increase physical, social, emotional or intellectual growth and development.
- 09/01/07 46. Psychotropic Drug - Those drugs which exert an effect upon the mind and which include anti-depressants, anti-anxiety agents, anti-psychotics and hypnotics.
- 09/01/07 47. Qualified Mental Retardation Professional (QMRP) - A person who has at least one (1) year of experience working directly with persons with mental retardation or other developmental disabilities; and:
- A. Has a bachelor's degree in human services; or
 - B. Is a physician; or
 - C. Is a registered nurse.
- 09/01/07 48. Recreation Therapist - A person who has at least a bachelor's degree in therapeutic recreation.
- 09/01/07 49. Rehabilitation - The restoration of a client to an optimal functional state through the establishment and implementation of an individually designed program.
- 09/01/07 50. Resident Assistant – A person in an entry level position who provides, under supervision, direct services to clients in an ICF/MR facility.
- 09/01/07 51. Residential Living Unit - (Same as Client Living Unit) Those rooms and/or areas clients can be expected to use on a daily basis. The rooms include the living room, dining room, recreation or family room, bathroom and the individual's bedroom.
- 09/01/07 52. Restraint - Any procedure, equipment or medication used for the purpose of restricting the activity of a client. Examples of restraint include, but are not limited to, the following:

- A. Time-out room - The use of a room to isolate a client for a limited time and only under limited circumstances;
- B. Physical Restraint - Any manual method or physical or mechanical device that the client cannot remove easily, and which restricts the free movement of, normal functioning of, or normal access to a portion or portions of a client's body;
- C. Drugs to Manage Inappropriate Behavior - Medications prescribed and administered for modifying the maladaptive behavior of a client; and
- 09/01/07 D. Chemical Restraint - Chemical restraint is the emergency use of a prescribed medicine, administered involuntarily, when all of the following conditions exist (emergency means a situation in which the use of the restraint is absolutely necessary to prevent imminent harm or danger to the person or others, and is a situation that could not be reasonably anticipated):
1. The medication is used primarily in response to a behavioral incident rather than a medical incident;
 2. The prescribed medicine represents a dosage which would not otherwise be administered to the client as part of a regular medication regime; and
 - 09/01/07 3. The prescribed medicine impairs the client's ability to do or accomplish his or her usual activities of daily living.
- 09/01/07 53. Social Role Valorization – “The enablement, establishment, enhancement, maintenance and/or defense of valued social roles for people - particularly for those at value risk - by using, as much as possible, culturally valued means”. (A Brief Introduction to Social Role Valorization (2nd ed.) 1992 by Wolf Wolfensberger; Training Institute for Human Service Planning, Leadership and Change Agency (Syracuse University) (See Normalization)
- 09/01/07 54. Transfer - The movement of a client between facilities.

CHAPTER 3: LICENSURE

3.A. Requirements of Licensure

3.A.1. Requirements

- a. No person shall operate an ICF/MR without a license from the Department in force, authorizing such operation.
- b. Reimbursement shall not be accepted, by any person, for rendering intermediate care for the mentally retarded for even one person not a relative within the third degree of kinship, without such person having first secured a license in force, authorizing such operation in accordance with these regulations.

3.A.2. Appointment of Administrator

Each licensee shall appoint an administrator for each ICF/MR. The licensee and the administrator may be the same person.

3.B. Application Procedure

3.B.1. Filing of Application

Any person desiring a license to operate an ICF/MR shall, prior to the commencement of such operation, file an application containing the information required in this section with the Department. Application on behalf of a corporation, association, or government unit shall be made by any two officers thereof or by its managing agency and by any general partner of a partnership. All applicants shall submit satisfactory evidence of their ability to comply with the minimum standards of Chapter 405 of Title 22 M.R.S.A., and all rules and regulations adopted thereunder. Such application shall be on a form approved by the Department.

3.B.2. Contents of Application

- a. The name or address by which the ICF/MR is to be legally known and the name under which it will be doing business;
- b. The address and telephone number of the premises which are to constitute the location of the ICF/MR, together with a description of all structures and buildings forming a part thereof, and the name of the owner or owners of the premises; and

c. The full name and address of each person having a direct or indirect ownership interest of ten percent (10%) or more in such ICF/MR. Additionally, in case the ICF/MR is organized as a corporation, the full name and address of each officer and director of the corporation; and if the ICF/MR is organized as a partnership, the full name and address of each partner;

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d. The name, home address, home telephone number, e-mail address and office telephone number of the individual designated by the applicant as the administrator of the facility.

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3.B.3. Statement by Commissioner of the Department of Public Safety

Each applicant shall provide to the Department a written statement signed by an authorized representative of the Department of Public Safety or the proper municipal official designated in Title 25 M.R.S.A., Chapters 311 to 321, to make fire safety inspections, so that the ICF/MR and premises comply with said Chapters.

3.B.4. Fees

09/01/07

Each application for a license must be accompanied by a non-refundable fee of \$10.00 for each bed contained within the facility. Licenses issued must be renewed annually upon payment of a like fee and determination of compliance with state and federal statutes and regulations. Any license re-issued as a result of a change of administrator, change in bed complement, change of ownership or modification to a temporary or a conditional status will be issued upon payment of a \$25.00 fee.

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3.B.5. Additional Information

Each applicant shall provide to the Department any information the Department may require to determine the suitability for licensure and conformity with state and federal statutes and regulations.

3.C. Initial Licensing

The following must be submitted by the applicant with the initial application:

3.C.1. Floor Plans

Plans of the ICF/MR, drawn to scale, showing the use of each room and the source of utilities and methods of waste disposal.

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3.C.2. Statement by Division of Environmental Health

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A written statement, signed by an authorized representative of the Division of Environmental Health of the Department, indicating compliance of the facility with all applicable State statutes and regulations relating to plumbing, water supply, and sewage disposal.

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3.C.3. Statement by the Office of Adults with Physical and Cognitive Disabilities Services

09/01/07

A written statement, signed by the appropriate local Regional Management Team of the Office of Adults with Cognitive and Physical Disabilities Services of the Department, indicating the ICF/MR's stated philosophy, operating policies and procedures, staffing pattern, physical plant design and day programming, and upholding the rights of persons with mental retardation, as set forth in Title 34-B M.R.S.A., subsection 5601 *et seq.*

3.C.4. Policies

09/01/07

A copy of the policies governing the services of the facility must be submitted to the Department. The Department shall notify the facility in writing of any policies which are not approved due to noncompliance with any statutes or regulations.

3.C.5. Transfer Agreement

Each applicant shall have an agreement with a licensed hospital concerning the transfer of clients.

3.C.6. Copy of the Lease (if applicable)

When a building is leased, a copy of the lease must be filed with the application for a license. The lease shall clearly indicate responsibility for the maintenance and upkeep of the property. The Department shall be notified within seventy-two (72) hours if there is any change in the lease agreement that may, in any way, affect the responsibility for maintenance and upkeep of the property.

3.C.7. Compliance with Local Laws

A letter from the appropriate municipal official having jurisdiction over the premises where the facility is to be located, indicating compliance with all local laws relative to the type of facility for which the license is requested must be on file in the facility.

3.C.8. Staffing

- 09/01/07
- a. A staffing pattern must be submitted to the Department for approval. Copies of job descriptions may be requested by the Department.
 - b. Prior to the opening of a new ICF/MR, all staff shall be appropriately trained and oriented.

3.C.9. Admission Plan

- 09/01/07
- a. All direct care staff shall have completed orientation as required in Chapter 6.E.3, prior to admission of clients.
- 09/01/07
- b. A planned program for admissions shall be submitted to the Department and approved by the Department prior to any clients being admitted to the facility. For any changes, a written request must be submitted to the Department.
- 09/01/07
- c. A survey will be conducted by the Department on the day of proposed opening. All State requirements must be met or an acceptable plan of correction must be presented before a license can be issued or clients admitted.
- 09/01/07

3.D. Issuance of License

Each license issued by the Department shall specify:

- 3.D.1. The name and/or the address of the facility;
- 3.D.2. The name of the administrator;
- 3.D.3. Whether the facility is ICF/MR Nursing or Group;
- 3.D.4. The maximum allowable number of clients;
- 3.D.5. Any waivers that have been granted; and
- 3.D.6. An expiration date.

09/01/07

- 09/01/07 3.E. Number of Clients
- The ICF/MR shall not admit clients beyond:
- a. Its licensed capacity; or
 - b. Its capability to provide adequate programming.
- 09/01/07 3.F. Facility Sites/Community Integration
- 09/01/07 3.F.1. The ICF/MR must be operated in accordance with the principles of normalization and social role valorization.
- 09/01/07 3.F.2. The following guidelines govern the location and structure of ICF/MR facilities.
- a. Based on behavioral and physical needs of clients, the facility must be located within reasonable driving time of:
 1. Day or external program locations;
 2. Hospital and other professional services; and
 3. Shopping and recreational resources.
 - b. The area must be reasonably free of environmental hazards.
 - c. The facility must be served by a road which is kept passable at all times of the year.
- 09/01/07 3.F.3. The facility must not have any unrelated business conducted in the building, or any rented living space for other persons.
- 09/01/07 3.F.4. Separate licenses are required for separate facilities operated by the same management.
- 09/01/07 3.G. New Construction
- No new construction may be commenced before application is made for a Certificate of Need from the Department.
- 09/01/07 3.G.1. An application for approval of new construction must be submitted on forms required by the Department.

- 09/01/07 3.G.2. Commencement of construction shall not occur until the Department issues a Certificate of Need or formally notifies the facility that such a Certificate is not required.
- 09/01/07 3.H. Changes Requiring Prior Written Approval
- 09/01/07 The following changes require prior written approval by the Department:
- 09/01/07 3.H.1. Alterations which affect:
- a. The structural integrity of the building;
 - b. Fire safety;
 - c. The primary functioning and/or operation of the facility or the number of beds for which the facility is licensed or relocation of beds.
- No significant change shall be made in a licensed facility, its physical plant operation, or services of a degree or character which affects continuing licensability, without prior approval of the Department.
- 09/01/07 3.H.2. Change in Ownership of Facility
- a. No license is assigned or transferable.
 - b. At least thirty (30) days advance written notice must be given to the Department prior to the transfer of ownership.
 - c. Each application for a license from a new owner must be accompanied by a statement from the previous owner or his/her duly authorized representative concerning the change of ownership, a copy of the purchase and sale agreement, or other validating document.
 - d. Upon receipt of a completed application and fee, the Department shall issue a temporary license to the new owner of an occupied facility for a period not to exceed ninety (90) days, pending compliance by the new owner with the requirements for initial licensure.
- 09/01/07 3.I. Change of Administrator
- 09/01/07 A change of administrator must be reported to the Department in writing at least thirty (30) days prior to the change taking effect. In

09/01/07 emergency situations, the Department must be notified immediately.
 09/01/07 The name of the new administrator, his/her qualifications, facility
 address, home and office telephone number and e-mail address must
 be included. A new license shall be issued within thirty (30) days upon
 payment of a \$25.00 fee, pending approval of the new administrator.

09/01/07 3.J. Waiver Provisions

09/01/07 3.J.1. Fire Protection Waiver

- a. The Department may waive specific provisions of the Life Safety Code (the Code) for as long as it considers appropriate, if:
1. The waiver would not adversely affect the health and safety of the client's residing in the facility; and
 2. Rigid application of specific provisions would result in unreasonable hardship for the ICF/MR.
- b. If the Department waives provisions of the Code for an existing building of two or more stories that is not built of at least two (2) hour fire-resistive construction, the ICF/MR may not house individuals who are blind, non-ambulatory or with physical, handicaps above the street-level floor unless:
1. It is built of one-hour protected, noncombustible construction as defined in National Fire Protection Association Standard No. 220;
 2. It has full sprinkler, one (1) hour protected, ordinary construction; or
 3. It has full sprinkler, one (1) hour protected, wood frame construction.

09/01/07

09/01/07 3.J.2. Building Accessibility and Use

09/01/07

The State survey agency may waive, for as long as it considers appropriate, specific provisions of American National Safety Institute (ANSI) Standard No. A 117.1 (1998) if:

- a. The construction plans for the ICF/MR or a part of it were approved and stamped by the responsible State agency before March 18, 1974;

- b. The provision would result in unreasonable hardship on the ICF/MR if strictly enforced; and
- c. The waiver does not adversely affect the health and safety of the individuals residing in the facility.

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3.K. Waiver Procedures

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3.K.1. The facility must apply in writing to the Department for a waiver. The application shall contain a justification for the request and state the specific provisions of the regulations for which a waiver is being requested.

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3.K.2. No waiver may extend beyond the term of the license and a new waiver shall be required when the license of the facility is renewed.

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3.K.3. The Department may request additional information before making a decision on an application for a waiver.

09/01/07

3.K.4. No waiver or waivers shall be granted if there would be an adverse effect to the health or safety of the individuals residing in the facility.

09/01/07

3.K.5. The facility shall be notified in writing when a waiver is granted or denied. In the event of an approval, the waiver shall be noted on the license.

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3.L. Availability of License in the Facility

The license, with noted waivers if applicable, must be made available to anyone upon request.

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3.M. Renewal of a License

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At least thirty (30) days prior to the expiration of a license to operate a facility, an application and the required fee for a renewal thereof must be submitted to the Department on a form approved by the Department and accompanied by such additional information as may be required. Prior to reissuance or renewal of a license, the Department, through the Division of Licensing and Regulatory Services, will inspect the facility for compliance with licensing regulations. Findings may result in a Statement of Deficiencies, which will require a detailed, systematic and preventative plan of correction. Upon receipt and review of the application and determination of compliance with the law, the Department shall renew such license for a period of one (1) year, unless it finds that there are specific and sufficient grounds either for denying the

application for renewal or renewing the license on a temporary or conditional basis.

09/01/07 | 3.N. Refusal to Issue a License

09/01/07 | The Department may refuse to issue a license to the applicant covering the premises identified in the application, if it finds the representation made in the application to be materially incorrect or insufficient, or if it finds that the applicant, the premises, or the designated administrator of the facility do not meet all requirements of the law and regulations. Any person who is aggrieved by the decision of the Department in denying a license or its renewal may file an appeal pursuant to Title 5 M.R.S.A., Section 10001, *et seq.*

09/01/07 | 3.N.1. Loss of License

a. Temporary or Conditional License

The Department may issue a temporary or conditional license to afford the facility the opportunity to correct the condition forming the basis for revocation of, or refusal to renew a license. The decision to issue a temporary or conditional license will be based upon the interests of the clients residing in the facility and the interest of the general public.

09/01/07 | b. Suspension, Emergency Suspension or Revocation of License

09/01/07 | The Department may amend, modify or refuse to renew a license hereunder in conformity with the Maine Administrative Procedure Act, Title 5, M.R.S.A., chapter 375, or file a complaint with the District Court requesting suspension or revocation of any license on any of the following grounds: Violation of this chapter or the rules and regulations issued pursuant thereto; permitting, aiding or abetting the commission of any illegal act in that institution; conduct of practices detrimental to the welfare of the patient; provided that whenever, on inspection by the Department, conditions are found to exist that violate Title 22 M.R.S.A., Chapter 405, or departmental regulations issued thereunder that, in the opinion of the Commissioner, or designee, immediately endanger the health or safety of patients, or both the health and safety, in any of the institutions or to such an extent as to create an emergency, the Department, by its duly authorized agents may, under the emergency provisions of Title 4, M.R.S.A., section 184, subsection 6, request that the District Court suspend or revoke the license. Upon suspension or revocation of a license, the license shall be immediately surrendered to the Department.

09/01/07 | 3.O. Closing of a Facility

3.O.1. Involuntary Closing

If an annual license is revoked or suspended, if a conditional license is voided, or if the Department refuses to issue or renew a license, the facility shall, in consultation with the Department, make appropriate arrangement for the orderly transfer of all clients residing in the facility.

09/01/07 3.O.2 Voluntary Closing

Whenever a facility voluntarily discontinues operation, it shall inform the clients residing in the facility, the next of kin, legal representative or agency acting on the client's behalf, and the Department of the fact and the proposed time of such discontinuance, giving at least thirty (30) days notice so that suitable arrangements may be made for the orderly transfer of the clients. In the case of any individual who has no person acting on his/her behalf, the facility, aided by the Department, shall be responsible for assisting the client to make other suitable living arrangements. Immediately upon discontinuance of operation of a licensed facility, the owner shall surrender the license to the Department.

09/01/07 3.P. Public Notice

If an annual license is revoked or suspended, or a conditional license is voided, the Department shall advise the public of such action. The notice to the public must be in the form of a paid legal notice in the local newspapers, published no more than fifteen (15) days after the termination, suspension or, revocation of the license.

09/01/07 3.Q. Right of Entry and Inspection

The Department and any duly designated representative thereof shall have the right to enter upon and into the premises of any facility licensed pursuant to these rules and regulations at any time in order to determine the facility's compliance with relevant statutes and regulations. Such right of entry and inspection shall extend to any premises which the Department has reason to believe are being operated or maintained as a health care facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant authorizing the same is first obtained from the court of jurisdiction. Any application for a license made pursuant to these rules and regulations shall constitute permission

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for any entry or inspection of the premises for which the license is sought in order to facilitate verification of information submitted on or in connection with such application.

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3.R. Receivership

Pursuant to Title 22 M.R.S.A. Section 7931 *et seq.*, the Department may petition the Superior Court to appoint a receiver to operate an ICF/MR facility in the following circumstances:

1. When the facility intends to close, but has not arranged, at least thirty (30) days prior to closure, for the orderly transfer of its clients;
2. When an emergency exists in the facility, which threatens the health, security or welfare of clients; or
3. When the facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal regulations to the detriment of the welfare of the clients.

3.S. Appeals

Any ICF/MR facility aggrieved by the Department's decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedure Act, Title 5 M.R.S.A., Section 10001 *et seq.* or the Department's Administrative Hearing Regulation. Administrative hearings will be held in conformity with the Department's Administrative Hearing Manual. A request for a hearing must be made in writing to the Director of the Division of Licensing and Regulatory Services, and must specify the reason for the appeal. Any request must be mailed within ten (10) days from receipt of the Department's decision to:

- a. Issue a conditional license;
- b. Amend or modify a license
- c. Void a conditional license;
- d. Refuse to issue or renew a full license;
- e. Refuse to issue a provisional license;
- f. Stop or limit admissions;
- g. Issue a directed plan of correction

 CHAPTER 4: GOVERNING BODY AND MANAGEMENT

09/01/07 4.A. Shared Administrator

1. Separately licensed ICFs/MR may share an administrator.

09/01/07 2. Any sharing of the same administrator shall be defined and the duties and schedules of working hours for each ICF/MR shall be outlined in the policy material of the facilities involved. Each ICF/MR shall make such changes in the written policies as the Department may require.

09/01/07 4.B. Qualifications of Administrator

09/01/07 4.B.1. An administrator of an ICF/MR Nursing Facility must be licensed in the State of Maine as a nursing home administrator.

09/01/07 4.B.2. An administrator of an ICF/MR Group Facility must be a Qualified Mental Retardation Professional (QMRP) who has had at least one (1) year's experience in management, personnel responsibilities and financial administration. With the concurrence of the Department, suitable candidates may be considered for the position of administrator if they lack required experience in working with persons with mental retardation, management, personnel responsibilities and financial administration. The administrator shall be designated on the license.

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09/01/07 4.C. Person to Act in Absence of Administrator

09/01/07 A person, qualified and authorized to act in the absence of the administrator during the normal working day, shall be designated. Any planned absence of the administrator for a period longer than thirty (30) days shall be reported in writing to the Department for prior approval.

4.D. Acting Administrator for Emergency Conditions

09/01/07 If a licensed ICF/MR is required to secure a new administrator under emergency conditions, he/she may, within seventy-two (72) hours notice to the Department and in accordance with these Regulations, place the ICF/MR in charge of in acting administrator. This shall be for such limited time mutually agreed upon between the Department and licensee as may be necessary to permit the securing of a: qualified administrator, but in no event to exceed sixty (60) days. When a qualified administrator has been secured, the name, qualifications, home address, office telephone number and e-mail address shall be sent to the Department. The current license shall be returned to the Department and a new license will be issued within thirty (30) days with payment of a \$25 fee. If it is unable to secure a

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09/01/07 qualified administrator within sixty (60) days, the ICF/MR must immediately submit written evidence of actions being taken to secure a qualified administrator.

09/01/07 4.E. Client Records

09/01/07 4.E.1. The facility must develop and maintain a record-keeping system that includes a separate record for each client. All reports and records must be available for inspection by the Department upon request.

09/01/07 4.E.2. Documentation in the record must include:

a. Health Care Services (if appropriate):

1. Medical care plan and progress notes; or nursing/health care plan and progress notes; and
2. Medication administration and response to drugs

b. Active Treatment:

- 09/01/07
1. Annual Plan
 2. Written training plans;
 3. Reviews, as appropriate, by a member of the IDT;
 4. Professional evaluations and recommendations for treatment; and
 5. Reports from external and day programs;
 6. Ensure that the updated comprehensive functional assessment and the reviewed and revised IPP is placed in the client's record, together with:
 - (a) New and revised habilitation plans and programs; and
 - (b) All reports and evaluations which contributed to the development of the new plan including, but not limited to:
 - (1) Social Services progress notes;
 - (2) Activities assessments and summaries;
 - (3) Annual evaluations with progress notes and recommendations by all professions whose expertise encompasses areas in which the client does not function appropriately;

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- (4) Physician's statement of current status and evaluation of progress;
 - (5) Psychological evaluation with summary of developmental and behavioral progress/problems and recommendations;
 - (6) Pharmacist's drug regimen reports;
 - (7) Nursing summary of progress/problems and recommendations; and
- c. Social Information:
1. Plan of care and progress notes;
 2. Discharge plan;
 3. Record of family involvement; and
 4. Activities assessment.
- d. Protection of Clients Rights:
1. Acknowledgment of client or his/her legal representative having read or heard the statement of rights;
 2. If anyone other than the facility or appropriate governmental agency staff is to have access, written permission from the client or his/her legal representative for that person;
 3. Personal property inventory; and
 4. Appropriate authorizations and consents by clients, parents, or legal guardians.
- e. In addition to the above, the record for each client admitted will contain:
1. Initial assessments, progress reports, the most recent individual program plan and current information for the past twelve (12) months;
 2. Name, date of admission, birth date and place of birth, citizenship status and social security number;
 3. Parent(s) names, birthplaces and marital status, if known;

4. Name, address and telephone number of parent(s), legal guardian, correspondent and, if needed, next of kin;
5. Sex, race, height, weight, color of hair, color of eyes, identifying marks and recent photograph;
6. Language spoken and understood, and religious affiliation;
7. Preadmission evaluation and medical history;
8. Physician(s) orders for medication and other prescribed treatment;
9. Physician certification for appropriate level of care;
10. Reason for referral for admission as documented by the Preplacement Interdisciplinary Team;
11. Type and legal status of admission;
12. Legal competency status;
13. All sources of financial support;
14. Records of significant behavior incidents;
15. Records of any allegation or instance of abuse, neglect or exploitation of the client if appropriate, with documentation of resolution;
16. Reports of accidents, seizures, illness and treatments for these conditions;
17. Records of all periods that restraints were used, with justification and authorization for each;
18. Correspondence pertaining to the client;
19. Records of immunizations; and
20. Contracts between the client and the facility.

4.E.3. The facility shall keep confidential all information in client records regardless of form or method of storage, including information contained in an automated data bank. The client or his/her legally designated guardian shall have access to the records (unless medically contraindicated as documented by the physician in the medical record) in the presence of a member of the facility staff.

4.F. Administrative Records

09/01/07 Administrative records must be available to the Department.

09/01/07 4.G. Retention of Records

09/01/07 4.G.1. Client records must:

- a. Be retained for a period that meets both federal and state regulations;
- b. Be retained for at least seven (7) years after the date of death or last discharge of the client. Records of a minor child shall be retained until the child reaches the age of majority or seven (7) years after the date of death or last discharge, whichever is longer;

09/01/07 4.G.2. Administrative records must include:

- a. Minutes of committee meetings, with the most recent twelve (12) months kept on active file, and the most recent five (5) years retained;
- b. Consultant reports, with the most recent twelve (12) months kept on active file, and the most recent seven (7) years retained;

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- c. Inservice Records, with three (3) years retained.
- d. Staffing schedules, with five (5) years retained (for auditing purposes);
- e. Menu plans, with thirty (30) days of plans retained;

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- f. Financial records, with five (5) years retained (for auditing purposes);
- g. Reports of fire drills with twelve (12) months retained;
- h. Accident and incident reports with five (5) years retained;
- i. Utilization review reports kept together for twelve (12) months, with five (5) years retained;
- j. Terminated employee files, with three (3) years retained.

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4.H.4. Rebating Prohibited

No owner, administrator, employee or representative of a licensed facility may either directly or indirectly pay to, or receive from, any physician, organization, agency or other person any commission, bonus or gratuity for clients referred or services rendered.

09/01/07

PROPOSED

CHAPTER 5: CLIENT PROTECTIONS

5.A. Protection of Clients' Rights

Each facility must have, and shall implement written policies and procedures which ensure the rights of clients as set forth in Title 34-B M.R.S.A., Section 5601, *et seq.* (Rights of Mentally Retarded Persons) and 42 C.F.R., Section 483.420.

Policies and procedures shall require that:

5.A.1. The facility must:

- a. Inform, in writing, each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility, including:
 1. All services available; and
 2. Changes in services or charges as they occur during the client's stay.
- b. Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment and ensure the opportunity for the client to participate in planning the total care and medical treatment, unless the physician decides that informing the client is medically contraindicated. This decision must be documented in the client's record.
- c. Transfer or discharge clients only for:
 1. Medical reasons;
 2. The welfare of the client or that of other clients; or
 3. Nonpayment, except as prohibited by the Medicaid Program;
- d. Advise clients and guardians of their right to appeal, and notify advocacy agencies as appropriate.
- e. Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the State of Maine and the United States, including their rights to file complaints, to due process and to vote.

- 09/01/07
1. The client and parents shall be informed of the advocacy services available, and
 2. Opportunity for client participation in the Resident Council or comparable mechanism for client input regarding the rules of conduct for the facility shall be provided.
- 09/01/07
- f. Ensure that clients are not compelled to perform services for the facility;
- 09/01/07
1. Training tasks may not involve the care or treatment of other clients.
 2. Clients shall be encouraged and/or assisted to perform work in the least restrictive setting and at the highest remunerative value of which they are capable.
- 09/01/07
- g. Housekeeping:
- 09/01/07
- A client may be encouraged to perform tasks of a personal housekeeping nature when:
- 09/01/07
1. They are included in the client's Annual Plan to develop new skills;
 2. They require the client to be reasonably responsible for keeping his/her personal areas clean and neat.
- 09/01/07
- h. Ensure that each client is being treated with consideration, respect, and full recognition of his/her dignity and individuality. To that end, the client shall have a right to private communications, and have access to telephones with privacy for incoming and outgoing local and long distance calls, except as contraindicated by factors identified within their IPP.
- 09/01/07
- i. Ensure that each client has the right to retain and use personal possessions and his/her own clothing. If necessary, to protect the client or others from imminent injury, the staff may take temporary custody of clothing or personal effects, provided such emergency conditions of custody are documented in the client's record and the possessions are returned to the client as soon as the emergency is over and the return of the possessions would not precipitate another emergency;

- 09/01/07 j. Ensure that each client shall be dressed in his/her own clothing each day.
- 09/01/07 1. The client shall be assisted in obtaining and, if necessary, provided with adequate, fashionable and reasonable clothing including shoes and coats; and
- 09/01/07 2. Special or adaptive clothing shall be provided where necessary.
- 09/01/07 k. Provide for assistance to each client so that the client may
- 09/01/07 1. Exercise the right to vote.
- 09/01/07 2. Have the right to religious freedom and practice.
- 09/01/07 l. Provide privacy for a married client during visits with his/her spouse;
- 09/01/07 m. As appropriate, provide training in sexuality and socialization to include information on contraception;
- 09/01/07 n. Ensure that no person shall be admitted to an ICF/MR unless a prior determination is made that residence at the home is the least restrictive habilitation setting appropriate for that person.
1. Clients shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the outside community, including access to educational, vocational and recreational therapy services outside of the facility. Clients shall be taught skills that help them learn how to manipulate their environment and how to make choices necessary for daily living.
2. Clients have a right to habilitation, including medical treatment, education, training and care, suited to their needs, regardless of age, level of retardation or handicapping condition. Each client has a right to a habilitation program which will maximize his/her abilities, enhance his/her ability to cope with his/her environment and create a reasonable expectation of progress toward the goal of independent living.

- 09/01/07
- o. Ensure that clients shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move clients from:
1. More to less structured living;
 2. Larger to smaller facilities;
 3. Larger to smaller living units;
 4. Group to individual residences;
 5. Segregated to integrated community living;
 6. Dependent to independent living;
- and in concert with the clients' and/or guardians' preference.
- 09/01/07
- p. Ensure that, unless contraindicated by the client's IPP/Annual Plan, ICFs/MR shall house both male and female clients. Unrelated clients of grossly different ages, developmental levels and social needs shall not be housed in close physical proximity, and clients who are non-ambulatory, deaf, blind, epileptic, or otherwise with a physical disability shall not be grouped with lower functioning clients solely because of such handicaps.
- 09/01/07
- q. Ensure that the facility's rhythm of life shall conform with practices prevalent in the community. For example, older clients ordinarily shall not be expected to live according to the timetable of younger clients.
- 09/01/07
- r. Ensure that clients who are non-ambulatory and have multiple handicaps shall, except where otherwise indicated by a physician's order, spend a major portion of their waking day out of bed, and out of their bedroom, have planned daily activity, and be rendered mobile by suitable methods and devices. Clients shall not stay in beds, cribs, wheelchairs or orthopedic carts all day long, except on the order of a physician, which must be in writing if the order is to remain in effect for more than four (4) hours.

5.B. Client Finances

09/01/07 The ICF/MR must establish and maintain a system that assures a full and complete accounting of each client's personal funds entrusted to the facility on their behalf. A "full and complete accounting for personal funds" does not need to document accounting for incidental expenses or "pocket money," funds a capable individual handles without assistance, funds dispensed to an individual under a program to train the individual in money management, and funds that are not entrusted to the facility (e.g., funds paid directly to the individual's representative payee).

09/01/07 5.B.1. Each client, unless he/she has a court appointed guardian or conservator, shall have the right to manage and spend personal funds, including the right to maintain an individual bank account.

09/01/07 5.B.2. The ICF/MR must maintain a current financial record for each client that includes written receipts for:

09/01/07 a. All personal possessions and funds received by or deposited with the ICF/MR or by the ICF/MR in a financial institution on behalf of the client.

09/01/07 b. No funds may be deposited with the administrator of a facility, unless all of the following conditions are met:

1. The deposit is promptly recorded in the client's records;
2. A receipt is given to the client or, when appropriate, the guardian or parent;
3. A record is kept of every deposit or withdrawal of funds, including the date and the amount received or disbursed;
4. An accounting is provided on demand to the client, guardian or parent;
5. Deposited funds must be used in accordance with the client's desires, but may never be applied to goods or services which the home is obliged or funded to provide.

- 09/01/07 c. Where the client has deposited funds in excess of \$200.00 with the administrator, an individual interest bearing bank account must be maintained. Interest earned thereon shall be the property of the client only.
- 09/01/07
- 09/01/07 5.B.3. Withdrawal of funds requires the authorization of the client, or where appropriate, the client's guardian or parent.
- 09/01/07 5.B.4. The client's financial record must be made available on request to the client, or, where appropriate, guardian or parent. The individual, in turn, is free to choose to make his or her financial record available to anyone else.
- 09/01/07 5.B.5. The administrator of the facility shall not act as representative payee for the client.
- 09/01/07 5.B.6. No home, and no owner, administrator, employee, relative, or representative thereof, may act as guardian, trustee or conservator for any client of such home or for any of his/her property.
- 09/01/07 5.B.7. Exceptions to these requirements may be considered by the Department for clients who are relatives of the owner, administrator, employee or representative of the licensed home or their spouse within the third degree of kinship.
- 5.C. Staff Treatment of Clients
- 09/01/07 5.C.1. The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client. Policies must ensure that:
- a. Mistreatment, neglect, or abuse of clients in any form is prohibited;
 - b. Use of all forms of restraint is prohibited, except when absolutely necessary to prevent a client from seriously injuring himself or others;
 - c. Restraint is never employed as a punishment, for the convenience of staff, or as a substitute for programs, and restraint may be applied only after other less restrictive means of controlling behavior have been tried and have failed; and
 - d. Documentation of the failure of alternative techniques must be included in the client's records and be available for inspection.

- 09/01/07 5.C.2. The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, conviction for animal abuse, neglect or mistreatment;
- a. A written policy must be developed to outline the facility's hiring procedures;
 - b. Results of reference checks must be placed in a personnel folder at the time of employment.
- 09/01/07 5.C.3. All allegations must be reported immediately to:
- a. The administrator and/or his/her designee, and followed up in writing within twenty-four (24) hours after the initial report of the incident;
 - b. The advocate;
 - c. The Department, Medical Facilities Branch of the Division of Licensing and Regulatory Services.
- 09/01/07 Allegations concerning adults with mental retardation must be reported to the Regional Management Team of the Office of Adults with Cognitive Physical Disabilities Services through their reportable events process.
- 09/01/07 5.C.4. The facility shall ensure that a thorough investigation of each alleged violation is completed and must be documented and the facility must prohibit the person alleged to have perpetrated the abuse, mistreatment or neglect from providing direct services to any client during the period of preliminary investigation.
- 09/01/07 5.C.5. The results of all investigations must be reported to the administrator within five (5) working days of the incident. A copy of this report will be sent to appropriate State agencies and made available to State agencies upon request.
- 09/01/07 5.C.6. The administrator shall be responsible to inform the legal guardian of the client of the results of the investigation.
- 09/01/07 5.C.7. [RESERVE]

Mandatory Reporting of Sentinel Events

a. Definitions

~~As used in this section, unless the context otherwise indicates, the following terms have the following~~

meanings:

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1. ~~Division. "Division" means the Division of Licensing and Regulatory Services within the Department.~~
2. ~~Healthcare Facility. "Healthcare facility" or "facility" means a state institution as defined under Title 34-B, M.R.S.A., Chapter 1 or a health care facility licensed by the Division, except that it does not include a facility licensed as a nursing facility or licensed under Chapter 1665.~~
3. ~~Major Permanent Loss of Function. "Major Permanent Loss of Function" means sensory, motor, physiological or intellectual impairment that requires continued treatment or imposes persistent major restrictions in activities of daily living.~~
4. ~~Sentinel Event. "Sentinel Event" means:~~
 - (a) ~~One of the following that is determined to be unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition or that results from the elopement of a patient who lacks the capacity, as defined in Title 18-A, M.R.S.A., section 5-801, paragraph C, to make decisions:~~
 - (1) ~~An unanticipated death; or~~
 - (2) ~~A major permanent loss of function that is not present when the patient is admitted to the healthcare facility.~~
 - (b) ~~Suicide of a patient in a health care facility where the patient receives inpatient care;~~
 - (c) ~~Infant abduction or discharge to the wrong family, and~~
 - (d) ~~Rape of a patient.~~

b. ~~Reporting~~

~~A healthcare facility shall report to the Division a sentinel event that occurs to an individual while the individual is a resident of the Intermediate Care Facility for Persons with Mental Retardation~~

~~(ICF/MR):~~

~~1. The ICF/MR shall notify the Division of the occurrence of a sentinel event by the next business day after the sentinel event has occurred or the next business day after the ICF/MR determines that the event occurred. The notification shall include:~~

~~(a) Name of the ICF/MR;~~

~~(b) Type of sentinel event as defined in Chapter 5.C.7.A.4;~~

~~(c) Date and time of sentinel event;~~

~~(d) Date and time of notification.~~

~~2. A written report shall be submitted to the Division no later than forty five (45) days following the notification of the occurrence of a sentinel event. The written report shall contain the following information:~~

~~(a) The ICF/MR's name and address;~~

~~(b) The name, title and telephone number of the contact person for the hospital;~~

~~(c) The date and time of the sentinel event;~~

~~(d) The type of sentinel event and a brief description of the sentinel event;~~

~~(e) Identification of clinical and organizational systems or processes that may have contributed to the sentinel event;~~

~~(f) Identification of changes that could be made that would reduce the risk of such a sentinel event occurring in the future;~~

~~(g) A brief description of any corrective action taken or planned; and~~

~~(h) Signature of the Chief Executive Officer/ Administrator of the ICF/MR.~~

~~c. Confidentially of Mandated Reporting~~

~~Notifications and reports of sentinel events filled pursuant to this Chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.~~

~~1. Privileged and confidential information under this subsection is not:~~

- ~~(a) Subject to public access under Title 1, M.R.S.A., Chapter 13, except for data developed from the reports that do not identify or permit identification of the healthcare facility;~~
- ~~(b) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or~~
- ~~(c) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.~~

~~2. The transfer of any information to which this Chapter applies by a healthcare facility to the Division or to a national organization that accredits healthcare facilities may not be treated as a waiver of any privilege or protection established under this Chapter or other laws of this State.~~

~~3. The Division shall take appropriate measures to protect the security of any information to which this Chapter applies.~~

~~4. This section may not be construed to limit other privileges that are available under Federal law or other laws of this State that provide for greater peer review or confidentiality protections that the peer review and confidentiality protections provide for in this subsection.~~

~~5. For the purpose of this subsection, "privileged and confidential information" does not include:~~

- ~~(a) Any final administrative action;~~
- ~~(b) Information independently received pursuant to a third party complaint investigation conducted pursuant to Department rules; or~~

~~(c) Information designated as confidential under rules and laws of this State.~~

~~This subsection does not affect the obligations of the Department relating to Federal law.~~

09/01/07

~~(d) The Division of Licensing and Regulatory Services shall have access to all licensed facility records necessary to carry out the provision of this Chapter. The records obtained by the Division are not available to the public except under Section 5.C.7.c. of this Chapter.~~

09/01/07

~~(e) A healthcare facility that knowingly violates any provision of this sentinel event mandated reporting requirement is subject to a civil penalty, up to \$5000 per unreported episode, paid to the State to be recovered in a civil action.~~

PROPOSED

CHAPTER 6: FACILITY STAFFING

6.A. Qualified Mental Retardation Professional

09/01/07 The facility shall have a Qualified Mental Retardation Professional (QMRP) who is responsible for integrating, coordinating and monitoring each client's active treatment program. The QMRP is responsible for such tasks as coordinating, supervising, integrating and reviewing the various aspects of programs and services. The facility shall ensure that:

- 09/01/07
1. There is an assigned qualified mental retardation professional (QMRP).
 2. There are sufficient numbers of QMRPs to accomplish the job.
 3. The QMRP observes individuals, reviews data and progress, and revises programs based on individual need and performance.
 4. The QMRP ensures consistency among external and internal programs and disciplines.
 5. The QMRP ensures service design and delivery which provides each individual with an appropriate active treatment program.
 6. The QMRP ensures that any discrepancies or conflicts between programmatic, medical, dietary, and vocational aspects of the individual's assessment and program are resolved.
 7. The QMRP ensures a follow-up to recommendations for services, equipment or programs.
 8. The QMRP ensures that adequate environmental supports and assistive devices are present to promote independence.
 9. The QMRP initiates a periodic review of each individual program plan for necessary changes.

6.B. Professional Program Services

09/01/07 Each client shall receive those professional program services that are needed to implement the active treatment program defined by the client's annual plan, so that the following aspects of the client are considered and incorporated in the annual plan:

- 09/01/07
1. Physical development and health;
- 09/01/07
2. Nutritional status;
- 09/01/07
3. Sensorimotor development;

- 09/01/07 4. Affective (emotional development;
- 09/01/07 5. Speech and language communication development;
- 09/01/07 6. Auditory functioning;
- 09/01/07 7. Cognitive development;
- 09/01/07 8. Vocational development;
- 09/01/07 9. Social development; and
- 09/01/07 10. Adaptive behaviors/independent living skills.
- 09/01/07 6.C. Direct Services (Residential Living Unit) Staff
- 09/01/07 6.C.1. Direct services staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.
- 09/01/07 6.C.2. The minimum overall staff-to-client ratio is 1:2 for each residential living unit serving clients:
- a. With severe and/or profound mental retardation; or
 - b. With aggressive, assaultive, severely hyperactive or psychotic-like behavior; or
 - c. Who are under the age of twelve (12); or
 - d. With severe physical disabilities; or
 - e. Who otherwise present a security risk.
- 09/01/07 6.C.3. For each residential living unit serving clients with moderate retardation, the minimum staff-to-client ratio is 1:4.
- For each residential living unit, serving clients who function within the range of mild retardation, the minimum staff-to-client ratio is 1:6.4.
- 09/01/07 6.C.4. The staffing pattern and schedule used in the facility are functions of three (3) variables:
- a. The intensity of the programming required by the clients;
 - b. The number of clients living there; and
 - c. The accessibility of available community resources.

- 09/01/07 Because of the expected variation in client needs, the actual staffing pattern may exceed the established minimum rations. Requests for additional staff, based upon the IDT recommendations shall be submitted for approval to the Department.
- 09/01/07 6.D. Staff Training
- 6.D.1. The facility must provide each employee with initial and continuing training that enables him to perform his/her duties effectively, efficiently and competently.
- 6.D.2. Employees who work with clients must be provided training focused on skills and competencies directed toward the clients' developmental, behavioral, and health needs.
- 09/01/07 6.D.3. The facility must provide each employee with basic orientation to his/her position. The orientation should be provided within two (2) weeks of employment and should include, but not be limited to:
- a. Emergency procedures such as fire protection/drills/evacuations;
 - b. Job description and personnel policies;
 - c. Facility policies and procedures;
 - 09/01/07 d. Daily operational procedures;
 - e. Orientation to community;
 - 09/01/07 f. Confidentiality; and
 - g. Reportable Events.
- 09/01/07 6.D.4. Staff training and introduction to developmental disabilities should be provided to each direct service staff within ten (10) weeks from date of employment. The developmental disabilities training should include, but not be limited to:
- 09/01/07 a. Social role and community inclusion;
 - b. Developmental disabilities;
 - c. Human and legal rights;
 - d. Teaching people;
 - e. Human behavior;

- 09/01/07
- f. Health care and safety;
 - g. Emergency care to include Heimlich maneuver and CPR;
 - h. Annual Planning process;
 - i. Documentation;
 - j. Skill-based activities;
 - k. Oral hygiene, and feeding techniques as appropriate;
 - l. Behavioral intervention, as appropriate.
- 09/01/07
- 6.D.5. No direct services staff may provide services to a client without having had appropriate training.
- 09/01/07
- 6.D.6 Continuing inservice training shall be provided, according to Federal Certification requirements and applicable individual certification and licensing requirements for all employees.
- 09/01/07
- 6.D.7 Personnel Records
- a. A record must be completed for each employee, and must be available to the Department for review. This record must contain date of employment, birth date, home address, education and background, social security number, occupational license number if applicable, and whatever other information the facility deems appropriate for the position.
 - b. A record on work performance must be kept for each employee, containing a periodic performance appraisal, attendance at inservices, trainings, workshops and educational conferences. The record must be included in his/her personnel file.
 - c. Terminated employee files shall contain a reason for leaving, with a final evaluation of work performance.

09/01/07 6.E. Employee Requirements

Employee schedules must be available to the Department.

6.E.1. Resident Assistant (RA) Requirements

ICF/MR Group

- High School Diploma or G.E.D., and
- Pre-employment Screening

09/01/07

ICF/MR Nursing

- CNA, and
- Pre-employment screening

6.E.2 Developmental Training Assistant (DTA) Requirements

ICF/MR Group

- H.S. Diploma or G.E.D.,
- 150 Hours inservice training (not to include more than 24 hours of job shadowing), and
- 3 months full-time experience working with individuals with developmental disabilities.

09/01/07

ICF/MR Nursing

- CNA, and
- 60 hours inservice training (not to include more than 24 hours of job shadowing) and
- 3 Months full-time experience working with individuals with developmental disabilities.

6.E.3. Developmental Trainer (DT) Requirements

ICF/MR Group

- 30 credit hours toward an Associates or Bachelor's Degree in a related field and 40 hours inservice training; or
- 1 year certificate and 40 hours inservice training; or
- Associates Degree in a related field; or
- 4 years full-time related experience with 160 hours inservice training at least 40 of which were in the last year; or Medication Certification

ICF/MR Nursing

- CNA and 30 credit hours toward an Associates or Bachelor's Degree in a related field; and
- 40 hours inservice training; or
- CNA and 1 year certificate and 40 hours inservice training; or
- CNA and Associates Degree in a related field; or

09/01/07

- CNA and 4 years full-time related experience with 160 hours inservice training at least 40 of which were in the last year and High School Diploma or G.E.D.

6.E.4 Developmental Training Coordinator (DTC) Requirements

- BA/BS in a related field; or
- Associates Degree in a related field and 1 year experience in a related field with 40 hours of documented inservice training; or
- 60 hours toward a BA/BS in a related field and 1 year experience in a related field with 40 hours documented inservice training.

PROPOSED

09/01/07

CHAPTER 7: ADMISSION, DISCHARGE and TRANSFER

7.A. Admissions, Transfers, Discharges

7.A.1. Admission decisions must be based on a current functional assessment of the client that is conducted and updated by the facility or by outside sources on admission.

09/01/07

7.A.2. On admission the facility shall place in the client's record:

- a. Medical history;
- b. Current medical status and physical disabilities;
- c. Transfer form and Medicaid certification;
- d. Physician's plan of care;
- e. Preadmission IPP;
- f. Reason for referral if emergency;
- g. Personal property list, signed and dated;
- h. Legal competency status and guardianship, if applicable;
- i. Physical examination report from physical completed seven (7) days prior to or forty-eight (48) hours following admission.

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7.A.3. If admission is not the best plan, but the person must be admitted, the IDT must:

- a. Clearly acknowledge that the admission is not the best plan; and
- b. Initiate plans to actively explore alternatives.

09/01/07

7.A.4. A preliminary evaluation must contain:

- a. Current background information;
- b. Currently valid assessments of:
 1. Functional development;
 2. Behavior;
 3. Social;

4. Health and nutritional status;

To determine if:

- (a) The facility can provide for the client's needs; and
- (b) The client is likely to benefit from placement in the facility.

09/01/07 7.A.5. Availability of Rules and Procedures

The facility shall make available for distribution to clients and/or their guardians) a summary of the laws, regulations, and procedures concerning admission to, readmission to, and discharge from the facility.

09/01/07 7.B. Program Implementation

09/01/07 7.B.1. Upon admission, the active treatment program shall:

- a. Establish uniform approaches to be used consistently across disciplines and environments;
- b. Be carried out with suitable communication across disciplines and environments;
- c. Be implemented to ensure that each discipline working with the client integrates, as appropriate, other disciplines' objectives and techniques;
- d. Be coordinated with other habilitative and training activities in which the client may participate outside of the facility, and vice versa.

09/01/07 7.B.2. Transfer or Discharge to Another Home

09/01/07 a. The facility shall establish procedures for counseling a client and/or guardian concerning the advantages and disadvantages of a requested move.

09/01/07 b. Planning for the move of a client shall include arranging for appropriate services in the client's new environment, and shall be done in accordance with the client's IDT.

09/01/07 c. When a client moves, the facility making the transfer shall document in the client's record:

- 1. The reason for the transfer; and

- 09/01/07 2. A summary of status, progress and plans.
- 09/01/07 d. Except in an emergency, the facility making the transfer shall inform the client and/or the guardian at least thirty (30) days in advance and obtain written consent to the transfer or discharge.
- 09/01/07 e. On the death of a client residing in the facility:
- 09/01/07 1. The facility shall promptly notify the client's next of kin and/or guardian;
- 09/01/07 2. The facility shall advise the next of kin and/or guardian of his/her right to request the autopsy findings if one is performed;
- 09/01/07 3. The physician will write an order for the release of the body, and
- 09/01/07 4. The mortician will sign for receipt of the body.
- 09/01/07 5. All personal funds will be refunded to responsible estate within 30 days.
- 09/01/07 7.B.3. Transfer to a Hospital
- a. The facility shall have in effect a transfer agreement with one or more hospitals sufficiently close:
1. To make feasible the prompt transfer of the client; and
2. To support a working arrangement between the facility and the hospital for providing hospital services to clients when needed.
- b. The transfer agreement must provide:
1. For the transfer of written information pertaining to the care which the client has been receiving; and
2. For the transfer of written information relative to personal effects of significant value.

09/01/07

7.B.4. At the time of discharge the facility personnel shall:

- a. Place in the client's record:
 1. Physician's discharge order and final summary;
 2. Disposition of personal possessions;
 3. Physician's order and disposition of medications; and
 4. Evidence of transfer of personal funds.

PROPOSED

CHAPTER 8: FACILITY PRACTICES AND CLIENT BEHAVIOR

8.A. Facility Practices - Conduct Toward Clients

8.A.1. The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients.

These policies and procedures must:

- a. Promote the growth, development and independence of the client;
- d. Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;
- c. Specify client conduct to be allowed or not allowed;
- d. Be available to all staff;
- e. Be available to clients and parents of minor children or legal guardians of clients; and
- f. Be available in the facility.

8.B. Management of Inappropriate Client Behavior

The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior.

These policies and procedures must:

- 8.B.1. Be consistent with the provisions of conduct toward clients in this section;
- 8.B.2. Specify all facility approved interventions to manage inappropriate client behavior;
- 8.B.3. Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive; and
- 8.B.4. Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective.

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Definition

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8.B.5. Staff Members Who May Authorize the Use of Specified Interventions

Any staff member who is involved in interventions used in the management of inappropriate client behaviors must have training and experience in:

- a. Client rights;
- b. Behavioral procedures in the field of mental retardation; and
- c. The use of the specific behavioral intervention.

09/01/07

8.C. Drug Usage

09/01/07

8.C.1. Drugs Used for Control of Inappropriate Behavior

- a. For these drugs to be an effective therapeutic tool, they must be prescribed only to the extent that they are necessary for management of the client.
- b. Each use of a chemical restraint shall be ordered by a physician. Such order shall be signed by the physician as soon as possible after use of the drug. The physician's findings must be noted in the client's record.
- c. In an emergency, a physician may authorize the use of a drug to modify an inappropriate behavior. However, orders for continued emergency drug usage cannot continue beyond twelve (12) hours unless:
 1. The drug usage has been reviewed by the Interdisciplinary Team; and
 2. The drug's use is included as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drug is employed.
- d. Psychotropic drug therapy may not be used outside an active treatment program targeted to eliminate the specific behaviors, which are thought to be drug responsive.
- e. When drugs are used for control of inappropriate behavior, documentation that alternative interventions have been considered and tried must be contained in the client's record.

- 09/01/07 8.C.2. Drugs used for control of inappropriate behavior must not be used until they have been justified in writing by a member of the IDT, that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.
- 09/01/07 8.C.3. Drugs used for control of inappropriate behavior must be:
- a. Assessed at time of medication change;
 - b. Monitored by the:
 1. Physician, at least as often as the drug and client's condition requires;
 2. R.N. or Pharmacist, at least monthly;
 3. Pharmacist, at least quarterly; and
 4. Facility staff, as often as is necessary to determine whether the desired response is being attained or there are any adverse consequences, e.g., motor restlessness, Parkinson's symptoms, Tardive Dyskinesia.

CHAPTER 9: PROFESSIONAL AND DEVELOPMENTAL SERVICES

9.A. Provision of Professional Programs and Services

The facility shall provide professional and special programs and services to the clients based on their needs.

9.A.1. A need is deemed to be unmet when the client is not functioning optimally in a given environment.

9.A.2. Programs and services provided by the ICF/MR or to the ICF/MR by outside agencies or individuals must meet the standards for quality of services required.

09/01/07 9.B. Implementing Training Skills of Daily Living

Training services in the skills of daily living must be provided to the client in the following areas, as appropriate, to enhance the client's independence, to facilitate his/her intellectual, social, sensorimotor and affective development, and to prevent deceleration of abilities:

- a. Personal hygiene, grooming and personal care, including appropriate eating, dressing, care and selection of clothing and toileting;
- b. Health maintenance, self-preservation and safety, including mobility skills, hazard recognition and avoidance and responses appropriate to emergency situations;
- c. Self-direction, including problem-solving and decision-making, orientation and mobility and time management;
- d. Communication skills, including verbal and written expression, signing for the deaf, utilization of available and appropriate forms of communication media;
- e. Social skills, including interpersonal relations, appropriateness of social behavior, expression of feelings through appropriate behavior, participation in social activities, development of the client's interest in his/her environment and training in the selection of and participation in recreational and leisure time activities; and
- f. Training in community orientation and involvement including use of transportation and travel, restaurant and restroom use, shopping, enjoying cultural events and entertainment, and citizenship training including voting, consumer rights and orientation to advocacy resources.

09/01/07 9.C. Day or External Programs

09/01/07 a. Unless a competent client objects, all clients are required to attend day or external programs outside the facility each week day, unless medically contraindicated. This should be reviewed and documented quarterly.

09/01/07 b. All day programs must be of at least four (4) hours duration, exclusive of meal and rest periods. A client may attend for a shorter period of time if recommended by the IPP and if the client receives alternate programming in the living unit and/or the community.

09/01/07 9.D. Activity Services

09/01/07 There must be activity services to increase the client's independence in pursuit and use of leisure time activities as well as the promotion of maximum community integration of the client and his/her activities.

9.D.1. Required Services

The facility shall:

- 09/01/07 a. Coordinate activity services with other services and programs provided to each client in order to:
1. Make the fullest possible use of the facility's resources; and
 2. Maximize benefits to the clients;
- b. Design and construct or modify recreation areas and facilities so that all clients, regardless of their disabilities, have access to them;
- c. Provide recreational activities that are appropriate to the client, are individualized and reflect the client's choice and preferences; and
- d. Provide recreational program activity to each client as established in his/her IPP.

09/01/07 9.E. Program Activity

09/01/07 The intent must be to provide opportunities that meet the activity needs of each client as set forth in his/her IPP. There must be enough activities equipment to provide adequate services to all clients. There must be a special effort to find equipment as necessary, that is appropriate for people who have multiple handicaps and profound mental retardation. The activity program must conform as closely as possible to normal community activities.

09/01/07

- 09/01/07 9.E.1. Recreation may be considered a part of programming if it consists of organized and structured activity related to the achievement of IPP goals.
- 09/01/07 9.E.2. Whenever possible, activities shall take place in the community. The facility shall ensure transportation for clients, regardless of handicap.
- 09/01/07 9.E.3. In addition to recreational program activity, developmentally appropriate opportunities shall be provided to all clients for use of their leisure time.
- 09/01/07 9.E.4. Weather permitting, and unless inappropriate for the activity, it shall take place outdoors.
- 09/01/07 9.E.5. A calendar with activity plans for individual clients and large and small group activities must be made available for all staff and clients.
- 09/01/07 9.F. Client Records
- The client's records must include:
- 09/01/07 9.F.1. Periodic surveys of the client's interests, at least annually;
- 09/01/07 9.F.2. The extent and level of the client's participation in the activities program; and
- 09/01/07 9.F.3. Quarterly progress notes to show implementation of the activity plan according to the IPP.
- 09/01/07 9.G. Social Work Services
- 09/01/07 9.G.1. When social work needs are identified in the Annual Plan, the facility may either continue to employ a licensed social worker per the hours authorized prior to 12/1/89 or arrange for social work with qualified outside resources.
- 09/01/07 9.G.2. If the facility employs a licensed social worker, the licensed social will be responsible for at least the following:
- 09/01/07 a. Enhancing the coping capabilities of each client's family.
- 09/01/07 b. Preparing and maintaining records as follows:
1. Psychosocial history completed within one (1) month of admission, with an update as needed or at least every three (3) years;
 2. Psychosocial assessment completed within one (1)

month of admission and updated as needed or at least annually;

3. Social work services care plan completed within one (1) month of admission which shall identify the social and emotional needs of the client and his/her family, be integrated and coordinated with the overall IPP and be updated as needed or at least annually;
4. A discharge plan completed within one (1) month of admission and updated as needed or at least annually;
5. Progress notes entered at least quarterly containing a summary of the worker's contacts with the client and family, progress made on goals identified in the social work services care plan, and significant emotional attitudes and events.

09/01/07 9.G.3. If the facility employs a social service designee, the designee may be responsible only for functions delegated by the licensed Social Worker. A non-licensed social service designee must receive consultation from a qualified Social Worker eight (8) hours per quarter.

09/01/07 9.H. Social Service Designee

09/01/07 If a social service designee is employed, consultation from a qualified social worker must be provided to the facility eight (8) hours quarterly.

09/01/07 9.I. Physical Therapy Services

The facility must provide:

- 09/01/07 9.I.1. Physical therapy services as identified in the Annual Plan through:
- a. Direct contact between therapist and clients; and
 - b. Contact between therapists and individuals involved with clients.

- 09/01/07 9.1.2. Programs developed by a physical therapist and delivered by appropriate staff, that are designed to:
- a.. Preserve and improve abilities, such as range of motion, strength, physical coordination, and sensorimotor functioning; and
 - b. Prevent deceleration of current functional status through techniques utilizing orthotic and prosthetic appliances, assistive and adaptive devices, and positioning and sensory stimulation.
- 09/01/07 9.1.3. Adequate space, equipment, and supplies, for efficient and effective physical therapy services;
- 09/01/07 9.1.4. A Physical Therapist (as appropriate) to:
- a. Work with client's primary physician and other medical specialists;
 - b. Participate as members of IDT in relevant aspects of the active treatment process;
 - c. Provide an evaluation for any client who does not function normally and is in need of physical therapy services;
 - d. Provide direct treatment to the client as appropriate;
 - e. Provide recommendations for treatment and recall;
 - f. Provide progress notes quarterly for each client receiving physical therapy services;
 - g. Modify programs as necessary; and
 - h. Offer training and supervision, as needed, to ensure that direct service staff are capable of carrying out prescribed programs for clients.
- 09/01/07 9.J. Occupational Therapy Services
- The facility must provide the following services:
- 09/01/07 9.J.1. Occupational Therapy Services, as identified in the Annual Plan through:
- a. Direct contact between therapists and clients; and
 - b. Contact between therapists and individuals involved with clients.

- 09/01/07 9.J.2. Programs, developed by professionals and implemented by appropriate staff, that are designed to:
- a. Preserve and increase client abilities, such as fine and gross motor coordination, activities of daily living, and adaptive habilitation methods; and
 - b. Prevent deceleration of current functional status and decrease of independence through designed procedures such as behavior adaptation, sensorimotor coordination, self-help dining techniques, etc.
- 09/01/07 9.J.3. Adequate equipment, supplies and space for proficient and productive occupational therapy;
- 09/01/07 9.J.4. Sufficient qualified professional and direct service staff:
- a. The professional occupational therapist shall:
 1. Work with the client's medical and developmental professionals;
 2. Participate as a member of the IDT in relevant aspects of the active treatment process;
 3. Provide an evaluation for each client who needs occupational therapy services;
 4. Provide direct treatment to the client, as necessary;
 5. Write progress notes quarterly for each client receiving occupational therapy services; and
 6. Modify programs as necessary.
 - b. To offer training and supervision, as needed, to ensure that direct service staff is capable of carrying out prescribed programs for clients.
- 09/01/07 9.K. Psychological Services
- 09/01/07 9.K.1. The facility must provide psychological services as identified by the Annual Plan.

- 09/01/07 9.K.2. Sufficient qualified psychologists and support staff to provide services needed by clients including, but not limited to the following:
- 09/01/07 a. Professional psychological services must be available to the QMRP and other staff for consultation and program development.
- 09/01/07 b. Professional instruction in behavior management techniques must be given to direct services personnel.
- 09/01/07 9.K.3. The psychologist must:
- 09/01/07 a. Assist in the monitoring and follow-up of the client's behavior management and/or behavior modification program as appropriate;
- b. Promptly provide information necessary to staff working with the client;
- c. Participate in the development of written behavioral plans which shall be:
- 09/01/07 1. Specific and individualized for the client and
2. Reviewed periodically for recommendation for follow-up or for modification.
- 09/01/07 9.L. Speech Pathology and Audiology
- 9.L.1. The facility shall provide speech pathology and audiology services, as required by the Annual Plan:
- a. Through direct contact between speech therapists and audiologists and the clients; and
- b. Contact between speech therapists and audiologists and other personnel, such as direct service staff and teachers.
- c. Which include, but are not limited to:
1. Speech evaluation, as appropriate, for each client who is unable to communicate;
2. Hearing screening as appropriate if the client has a hearing impairment;
3. Provision for procurement, maintenance, and replacement of hearing aids as specified by a qualified audiologist;

4. Sufficient space, equipment and supplies to promote efficient and effective speech pathology and audiology services.

09/01/07

9.L.2. The speech therapist or audiologist shall:

- a. Participate in the client's IDT as appropriate;
- b. Document in the client's record, the information needed for staff to implement continuing programs;
- c. Record each client's response to program and progress, at least quarterly;
- d. Participate in inservice training for direct service staff to whom implementation of treatment is delegated.

PROPOSED

CHAPTER 10: HEALTH CARE SERVICES

10.A. Physician Services

The facility must:

- 09/01/07 10.A.1. Have a formal arrangement for providing each client with Medical care that includes:
- a. The availability of physician services twenty-four (24) hours a day; and
 - b. The provision of care for medical emergencies twenty-four (24) hours a day.
- 09/01/07 10.A.2. Designate a physician, licensed to practice in the State of Maine, to be responsible for maintaining the general health conditions and practices in the facility;
- 09/01/07 10.A.3. Have enough space, facilities, and equipment to service the medical needs of the clients;
- 10.B. The physician shall:
- 10.B.1. Prior to a client's admission, furnish for the preplacement IDT:
- a. Client's medical history;
 - b. Current medical findings;
- 10.B.2. Certify that the admission is necessary;
- 10.B.3. On admission provide a plan of care which includes:
- a. Health services and treatment as appropriate;
 - b. Diet;
 - c. Orders for medications if appropriate.
- 09/01/07 10.B.4. Carry out a complete physical examination seven (7) days prior to or two (2) days following admission.
- 09/01/07 10.B.5. The medical plan of care must be reviewed and reordered by the physician at least every ninety (90) days.

- 09/01/07 10.C. The facility must provide or obtain:
- 09/01/07 10.C.1. Means for the prompt detection and referral of health problems through adequate medical surveillance, periodic inspection and regular examinations;
- 09/01/07 10.C.2. Preventive and general care including:
- a. Medical services-to maintain an optimum level of health and to prevent disability for each client;
 - b. Procedures for referral for specialized services by other physicians;
 - c. Agreements with providers of such services as laboratory and radiology.
- 09/01/07 10.D. Physician Participation in the IPP
- A physician shall participate in:
- 09/01/07 10.D.1. The IDT process if appropriate;
- 09/01/07 10.D.2. The review and update of an IPP as part of the interdisciplinary team process, if appropriate:
- a. At least annually;
 - b. By review and reordering of the medical plan of care quarterly; and
 - c. By the quarterly writing of notes to record achievement of progress toward goals.
- 09/01/07 10.E. The registered nurse shall participate in:
- 09/01/07 10.E.1. The preadmission evaluation study and plan for each client;
- 09/01/07 10.E.2. The evaluation study, program design, and placement of the client at the time of admission;
- 09/01/07 10.E.3. The periodic re-evaluation of the type, extent and quality of services and programming;
- 09/01/07 10.E.4. The development and modifications of the discharge plan;
- 09/01/07 10.E.5. The development of a written nursing services plan:
- a. For each client with a medical care plan;

- 09/01/07 b. For each client who has nursing needs;
- 09/01/07 10.E.6. Review and modification of the nursing care plan in terms of the client's daily needs, at least quarterly for adults and more frequently for children, in accordance with developmental changes.
- 09/01/07 10.F. Nursing Staff
- 09/01/07 10.F.1. The facility shall utilize registered nurses as appropriate and as required by State law to perform the health services specified in this section.
- 09/01/07 a. There must be a registered nurse serving as director of nursing in each ICF/MR Nursing facility. Departmental approval must be obtained for less than forty (40) hours/week for Director of Nursing services.
- 09/01/07 b. The facility shall have a contractual agreement with a registered nurse consultant to provide nursing services in an ICF/MR Group facility.
- 09/01/07 c. If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or on-site consultation to the licensed practical or vocational nurse. A record must be kept of each consultation.
- 09/01/07 10.F.2. Non-licensed direct care staff in an ICF/MR Nursing facility must be certified nursing assistants, or be enrolled in an approved nurse aide training program. A CNA may perform duties only under the supervision of a licensed nurse.
- 09/01/07 10.G. Dental Services
- The facility shall provide education and training in the maintenance of oral health by:
- 09/01/07 a. Direct contact between dental professional and clients, or
- 09/01/07 b. Contact between dental professionals and staff who work directly With clients.
- 09/01/07 10.H. Comprehensive Dental Diagnostic Services
- 09/01/07 10.H.1. The dentist shall enter into the client's record
- a. The findings of the examination;

- b. A summary of services performed;
- c. Recommendations for treatment, if any;
- d. Return date; and
- e. Dentist's signature and date of entry.

09/01/07 10.H.2. The dental records and recommendations must be released to
Accompany the client when discharged.

09/01/07 10.I. Pharmacy Services

The facility shall:

09/01/07 10.I.1. Provide current [no more than three (3) years old] reference
material for staff to use as a resource for information regarding the
administration and use of medication;

09/01/07 10.I.2. Develop policies and procedures with input from the pharmacist,
physician and nurse to govern the administration and handling of
drugs, to include but not be limited to:

- a. Identification and administration of medications;
- b. Drug storage and security measures;
- c. Staff qualifications for medication administration;
- d. Recording of medication administration;
- e. Reporting of drug errors and reactions;
- f. Self administration of drugs; and
- g. The use of drugs by clients while not under the direct
care of the facility.

09/01/07 10.J. Drug Regimen Review

09/01/07 10.J.1. A pharmacist or registered nurse must review the medication
record of each client monthly:

- a. For rationale, potential adverse reactions, allergies,
interactions, contraindications, and response to medications;
- b. For modifications indicated by any laboratory test;

- c. To advise the physician of any recommended changes and give the reasons therefor; and
- d. To propose an alternate drug regimen if indicated.

09/01/07

10.J.2. The pharmacist must:

09/01/07

- a. Maintain a profile of all prescription and non prescription medications, including quantities and frequency of refills; and
- b. Participate, as appropriate, in the continuing interdisciplinary evaluation of individual charts for the purposes of beginning, monitoring and following up on individualized programs.

09/01/07

10.J.3. The facility shall have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that:

- a. All staff administering medications employ a uniform means for identifying clients; and
- b. Procedures are established to check administration of medication against the physician's orders.

09/01/07

10.J.4. All drugs must be administered in compliance with the physician's orders.

09/01/07

a. Orders for medications must:

1. Be written by the client's physician;
2. Contain the name and strength of the medication, the dose, the dosage form, the route of administration, and the frequency to administer the medications;
3. Be signed and dated by the physician; and
4. Be in effect for the time specified by the physician but in no case to exceed a period of three (3) months unless there is a written reorder.

b. Oral orders may be accepted only by a:

1. Licensed nurse;
2. Pharmacist; or
3. Physician.

- c. The person taking an oral order shall:
 - 1. Write it in the client's record, immediately;
 - 2. Sign the order; and
 - 3. Ensure that the physician countersigns according to accepted practice.
- d. The client's physician shall be notified prior to the discontinuation of a medication.

09/01/07

10.J.5. Medication Records

- a. An individual medication administration record must be kept for each resident of all treatments, drugs and medications ordered by the physician, including the name of the drug, dosage and time to be given.
- b. An entry must be made on the medication administration record to indicate whenever a medication, including a medication ordered to be administered as needed, or a treatment is started, given, refused, or discontinued.
- c. Medication errors and reactions must be recorded in the resident's record. Medication errors include omissions, as well as errors of commission. Errors in documentation or charting are errors of omission.

09/01/07

10.J.5. All drugs, including those that are self-administered, are administered without error.

- a. A record of drug administration errors must:
 - 1. Be reported to the administrator, with a written incident report; and
 - 2. Describe the incident and indicate the extent of the injury or reaction and necessary treatment;

09/01/07

- a. The resident shall be examined and treated by a physician, if necessary; and

09/01/07

- b. The administrator shall sign and date the incident report.

09/01/07

10.J.7. Personnel Administering Medication

- a. In ICFs/MR Nursing, all medications must be administered by licensed medical, nursing personnel, or a CNA who has a certificate indicating completion of a course in medication

administration given in accordance with Chapter 5 of the Rules and Regulations of the Maine State Board of Nursing.

- b. In ICFs/MR Group, oral and topical medications may be given by a staff member who has a certificate in the administration of medications, awarded upon successful completion of a state approved medication administration course. The R.N. Consultant is responsible for:
1. Monitoring the policies and procedures related to the administration of medications;
 2. Regularly observing and evaluating the administration of medications to the clients in the facility;
 3. Providing inservice relative to the medications prescribed for the clients in the facility;
 4. Conducting an overview of the policies and procedures relating to the administration of medications with new personnel prior to their performance of this task; and
 5. Ensuring that the staff maintain current certification.
- c. Medications must be administered as soon as possible after doses are prepared and by the same person who prepared the medication for administration.
- d. An individual medication administration record must be maintained for each client.
1. The record must include:
 - (a) Name of drug;
 - (b) Dosage;
 - (c) Time given; and
 - (d) Initials of the administering individual with the full name of the individual written somewhere on the record.
 2. Entries must be made on the medication record whenever medications are started, given, discontinued, or refused or when a medication error is made.

09/01/07

- 09/01/07 10.J.8. Drugs used by clients, while not under the direct care of the facility, must be packaged and labeled in accordance with State law. Procedures for sending medications with the client to the external or day program, on vacation, or home, etc., include:
- a. The pharmacist may provide a separate container or medication pack with an appropriate label.
 - b. Packaging of medication may be done only by the pharmacist.
- 09/01/07 10.J.9. Drug administration errors and adverse drug reactions must be:
- a. Recorded in the client's record;
 - b. Reported immediately to a physician; and
 - c. Reviewed monthly, with appropriate recommendations for action.
- 09/01/07 10.K. Drug Storage and Recordkeeping
- 09/01/07 10.K.1. The facility may stock in bulk supply those items regularly available without prescription at a pharmacy.
- 09/01/07 10.K.2. The facility shall:
- a. Provide a medicine cabinet for individual prescriptions, which:
 1. Is large enough to hold all medications in use and lit well enough to permit one to read the labels;
 2. Is located where easily accessible;
 3. Is equipped with secure storage units, plainly labeled, in which individual client's medications can be clearly separated from another's; and
 4. Provides physical separation for internal and external medications.
 - b. Store poisons, drugs used externally, and drugs taken internally on separate shelves or in separate cabinets, at all locations;
 - c. Store in a separate compartment with proper security, any medication that is kept in a refrigerator that also contains non-medication items;

- 09/01/07 d. Have a separate secure place apart from medicine, drugs and food for the storage of bleaches, detergents, disinfectants, insecticides and poisons. Each of these must be clearly labeled; and
- 09/01/07 e. Keep all drugs and biologicals locked except when they are being prepared for administration.
- 09/01/07 f. Only authorized persons may have access to the keys to the drug storage area.
- 09/01/07 10.K.3. All prescribed medicines are the property of the client. Upon discharge of a living client from a licensed home, his/her prescribed medications, including controlled drugs or substances, may be released with him, but only upon written authorization by the client's physician.
- 09/01/07 10.K.4. All prescribed medications other than Schedule II controlled substances and individual unit doses for a deceased client must be destroyed by the Administrator or the Director of Nursing Services:
- 09/01/07 a. The destruction shall be conducted in such a manner so as to prevent any person from being able to use, administer, sell or give away the medication;
- 09/01/07 b. The destruction shall be documented by the person destroying the medications; and
- 09/01/07 c. Witnessed in fact and by signature by at least one (1) additional witness.
- 09/01/07 10.K.5. Schedule II controlled substances that are the property of the patient and are no longer in use may be disposed of by any of the following persons:
- 09/01/07 a. A pharmacist;
- b. A pharmacist member of the Maine Board of Pharmacy;
- c. A Drug Enforcement Agency (DEA) agent; or
- e. An authorized representative of the Department of Health and Human Services in association with a pharmacist or nurse.
- Records will be maintained of the disposition/destruction of all Schedule II controlled substances.

- 09/01/07 10.K.6. Individual unit doses may be returned to the pharmacist for credit.
- 09/01/07 10.K.7. Amounts of medication destroyed or returned must be recorded on the client's record and witnessed by one (1) additional witness.
- 09/01/07 10.K.8. An emergency kit appropriate to the needs of the clients must be available to the authorized personnel of the living unit.
- 09/01/07 10.L. Drug Labeling
- Labeling of drugs and biologicals must be based on currently accepted professional principles and practices:
- 09/01/07 10.L.1. Each drug container must be clearly labeled and the label must include:
- a. Prescription number;
 - b. Client's full name;
 - c. The name, strength and dosage form of the drug;
 - d. Directions for use;
 - e. Name of physician prescribing;
 - f. Name and address of pharmacy issuing the drug;
 - g. Date of issuance or latest refill;
 - h. Expiration date; and
 - j. The appropriate accessory and cautionary instructions.
- 09/01/07 10.L.2. A medication must be used only by the client for whom it was issued.
- 09/01/07 10.M. Laboratory
- 09/01/07 10.M.1. If a facility chooses to provide laboratory services, the laboratory shall:
- a. Meet the management requirements specified in 42 CFR 493.110.1105;
 - b. Provide personnel to direct and conduct the laboratory service as specified in 42 CFR 493.1351.1495;
 - c. Meet the proficiency testing requirements specified in 42 CFR 493.801.865;

- 09/01/07
- d. Meet the quality control requirements specified in 42 CFR 493.1200.1299;
- 09/01/07
- f. If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be certified in accordance with the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

PROPOSED

CHAPTER 11: CLIENT LIVING ENVIRONMENT

11.A. Client Living Environment

- 09/01/07 11.A.1. The size of the living unit must be based upon the needs of the clients, but may not serve more than twenty (20) clients.
- 09/01/07 11.A.2. The client living unit:
- a. Must house both male and female clients to the extent that this conforms to the prevailing cultural norms and is not contraindicated by the IPP. This unit must make provision for privacy and for appropriate separation of male and female clients;
 - 09/01/07 b. Must stimulate the environment of a family home in order to encourage a personalized atmosphere for clients;
 - 09/01/07 c. Must contain at least the following: a bedroom, living room, bathroom, recreation room, connecting areas, dining room, and kitchen. A waiver for a recreation room may be requested by a pre-existing facility. This waiver is time-limited to the duration of the license.
- 09/01/07 11.A.3. Client Use of Facility Space
- 09/01/07 a. Clients shall be allowed free use of all space within the living unit, with due regard for privacy and personal possessions. Any restrictions must be documented in the Annual Plan.
 - b. Each client shall have access to a quiet, private area where he/she can withdraw from the group.
 - 09/01/07 c. Outdoor leisure time or recreation areas shall be readily accessible to all living units.
 - d. No interior or exterior doors may be locked except to protect a client and the ICF/MR from clear and present danger, or in conjunction with a behavior management program. In no case may locked doors be a substitute for program or staff interaction with clients or interfere with the rights of other clients.

11.B. Physical Environment

- 09/01/07 11.B.1. Each client's bedroom must have direct access to a corridor, without requiring one to pass through a bathroom or another client's room.

- 11.B.2. Single bedrooms for the accommodation of clients must contain a minimum of one hundred (100) square feet of usable floor space. Multiple bedrooms must contain a minimum of eighty (80) square feet of available floor space per bed. Available floor space shall be calculated only for those areas having a ceiling height of at least six (6) feet. Available floor space does not include corridors, passageways and vestibules.
- 11.B.3. No room may have more than two (2) beds except in placements developed prior to January 1, 1978, which may have no more than three (3).
- 09/01/07 11.B.4. Bedroom windows must have a minimum window glass area equal to 1/10 of the available floor space. The windows must be openable and be equipped with functioning window shades or their equivalent, except in air conditioned buildings, or if a bedroom is below grade level, one (1) window in each room must be operable and usable as a second means of escape by the client(s) occupying the room.
- 09/01/07 11.B.5. Bedroom windows must be grade level on a vertical plane, located on an exterior wall, and have an unobstructed view.
- 09/01/07 11.C. Client Bedrooms
- Each facility must provide each client with:
- 11.C.1. A separate bed of proper size and height for the convenience of the client, at least thirty-six (36) inches wide, of substantial construction and in good repair. Rollaway beds, metal cots or folding beds are not acceptable. Each bed must have:
- a. Satisfactory type springs in good repair, and a clean comfortable mattress at least five (5) inches thick, four (4) inches if of foam rubber construction, and four and one-half (4 1/2) inches thick if of inner spring type and standard in size for the bed. Specialty beds, such as waterbeds, will be acceptable, and will be reviewed for approval by the Department on an individual basis;
 - b. Clean, comfortable pillows of average bed size;
 - c. Moisture-proof covers and sheets sufficient to keep the mattress and pillows dry and clean, and
 - d. A bedspread.
- 09/01/07
- 09/01/07
- 11.C.2. Beds must be so placed in each room as to be easily serviceable and not subjected to extremes of heat or cold. A bed must not be placed any closer than (3) feet to other beds.

The head of a bed may be placed against properly insulated exterior wall. No bed may be placed within three (3) feet of a heating unit, unless the heating unit is properly protected.

11.C.3. Each client's bedroom must have functional furniture appropriate to the client's needs, including:

- a. A bedside cabinet with a drawer and washable top or table;
- b. A minimum of two (2) dresser drawers;
- c. A comfortable non-folding chair, or a chair specifically designed for client needs;
- d. A reading lamp; and
- e. A mirror.

09/01/07 11.D. Client Bathrooms

The facility shall:

09/01/07 11.D.1. Have a minimum of one (1) lavatory and one (1) toilet for each six (6) clients. All ICFs/MR, or additions of more than four (4) beds to existing ICFs/MR, for which construction is started after July 1, 1980 must provide a minimum of one (1) lavatory and one (1) toilet for each four (4) clients. A minimum door width of two feet eight inches (2'8") must be provided to all client toilet areas; and

09/01/07 11.D.2. For persons with physical handicaps, ICFs/MR must equip bathrooms and provide appliances appropriate for use by such persons.

09/01/07 11.D.3. Bathroom Location and Equipment

- a. All bathing and toileting rooms must be easily accessible and conveniently located to all clients.
- b. No bathing or toileting rooms may be so located that a client must pass through another client's room to enter it.
- c. No toileting room may open directly into a kitchen, pantry, or food preparation or storage room.
- d. Each toileting and bathing room must be adequately lighted, have a light switch just inside or outside the door, and be provided with a well lighted mirror for each lavatory.

- e. Locks on the rooms must be able to be opened from the outside.
- f. One (1) toilet enclosure large enough to permit toilet training of wheelchair clients must be provided on each floor having people who use wheelchairs.
- g. New ICFs/MR for which construction is started after July 1, 1980 must provide a toilet training room directly off the corridor with at least three (3) feet clearance on both sides and in front of the toilet. A sink and a mirror located and hung so that it can be used by persons who use wheelchairs must be provided for each toilet.
- h. Clients' bathing, lavatory and toilet rooms must not be used as utility rooms, linen storage or medication areas.

09/01/07 11.E. Laundry Facilities

09/01/07 11.E.1. The facility shall provide a laundry room which:

- a. Contains adequate washing, drying and ironing equipment;
- b. Is well lit and ventilated and adequate in size for the needs of the facility;
- c. Is maintained in a sanitary manner and kept in good repair; and
- d. Is not used for food storage, preparation or serving.

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09/01/07 11.E.2. The facility shall develop procedures for laundry services which ensure that all:

- a. Personal clothing of the clients is laundered;
- b. Personal laundry is not washed with house linens;
- c. Services and procedures are conducted in a safe and sanitary manner; and
- d. Soiled linen is not carried through food preparation areas, except when enclosed in clean nonpermeable laundry bags.

09/01/07 11.E.3. Linen Supply

There must be a sufficient supply of linen including sheets, pillow cases, blankets and bedspreads for each bed.

09/01/07 11.F. Administrative Services

The facility must provide adequate administrative support to meet the needs of the clients through its purchasing of supplies, storage and property control functions.

09/01/07 11.F.1. Engineering and Maintenance

The facility must develop an appropriate written policy for a preventive maintenance program which ensures that:

- a. The building is kept in good repair and free of hazards such as cracks in floors, walls or ceilings; warped or loose boards; warped, broken, loose or cracked floor coverings such as tile or linoleum; loose handrails or railings, loose or broken windowpanes and any similar hazards;
- b. All electrical, mechanical and fire protection systems are kept in a safe and functional condition. Frayed wires, cracked or damaged switches, plugs, fixtures and appliances must be repaired or replaced;
- c. All plumbing fixtures are maintained in good repair and properly functioning;
- d. The heating system is inspected regularly and all necessary repairs are made to maintain it in a safe and functioning condition;
- e. The interior and exterior of the building are painted as needed. Loose, cracked or peeling wall paper or paint must be promptly replaced or repaired with lead-free paint;
- f. All furniture and furnishings are attractive and kept in good repair; and
- g. The grounds and other buildings on the grounds are kept in a safe, sanitary, and presentable condition. Grounds must be kept free of refuse and litter, as well as insect and rodent breeding areas.

09/01/07 11.F.2. Housekeeping Services

The facility must develop policies and procedures which provide that:

- a. Sufficient staff time is allocated to ensure, that the facility is in compliance with standards of health, safety and sanitation;

- b. The building, including rooms, corridors and stairways are maintained in a clean, safe and orderly condition;
- c. The facility, including attics, basements and storage areas, is kept free of any necessary accumulations of refuse, clutter, newspapers, boxes, discarded furniture and equipment; and
- d. Bathrooms and lavatories are not used for laundering, janitorial or storage purposes.

09/01/07

11.F.3. Storage

The facility shall provide:

- a. That all storage areas are kept neat, safe and free of unnecessary accumulations;
- b. Sufficient areas for storage of clients' possessions, out of season clothing, seasonal outdoor furniture and equipment and maintenance equipment; and
- c. A suitable number, type and location of utility and storage areas, which depends on the size of the facility, its physical layout and the needs of the clients living there.
- d. Kitchen Areas
 - 1. Garbage must be:
 - (a) Located away from food preparation and client areas;
 - (b) In fly and rodent-tight enclosures; and
 - 2. Garbage cans must be installed so as to be easily and thoroughly cleaned inside and out at each emptying.
 - 3. Dry storage areas must be suitable in size and type, and placed in a well ventilated area accessible to the kitchen.
- e. Provide a locked storage area for bleaches, detergents, disinfectants, insecticides and poisons.

09/01/07

11.F.4. Table and Kitchen Ware

An enclosed space and a method that ensures prevention of contamination must be provided for storage of trays, glasses and dishes.

09/01/07 11.G. Building Location and Construction Requirements

The facility shall:

- 09/01/07 11.G.1. Be located so as to be reasonably free from undue noises, smoke and dust;
- 09/01/07 11.G.2. Be served by a road which is kept passable at all times of the year;
- 09/01/07 11.G.3. Be served by a reliable electrical service;
- 09/01/07 11.G.4. Have an entrance into the building which provides a transition area from the out-of-doors to interior areas. Main entrance areas must open into general or group function areas;
- 09/01/07 11.G.5. Ensure that traffic patterns resemble those expected in other residences in the community;
- 09/01/07 11.G.6. Provide adequate closet space located near outside entrances for coats, boots, jackets, etc.
- 09/01/07 11.G.7. Be constructed and maintained so as to reasonable prevent the entrance and harboring of rats, mice, flies and other insects, rodents and pests;
- 09/01/07 11.G.8. Have all windows opening to the outside effectively protected by screening. All windows must be in good repair, fit snugly, and open and close easily;
- 09/01/07 11.G.9. Provide safety devices across windows lower than two (2) feet from the floor and across open landings at changes in floor level or other danger areas used by clients;
- 09/01/07 11.G.10. Have all open porches and verandas protected by sturdy rails of a height not less than forty (40) inches;
- 09/01/07 11.G.11. Be equipped, as appropriate, with sturdy handrails on each side of all inside and outside stairs that are accessible to clients, unless the Department has given prior written approval for any exceptions. All stairways must be provided with non-skid treads;
- 09/01/07 11.G.12. Have a telephone in the building and additional telephones or extensions as required by the Department to summon help promptly in case of fire or other emergencies. Pay stations or locked telephones do not meet this requirement;
- 09/01/07 11.G.13. Have a telephone located so as to be accessible and afford privacy to each client; and

- 09/01/07 11.G.14. Be equipped with a central heating plant connected to a radiator, convector or register in each room or area used by clients and staff. The heating system must be capable of maintaining a temperature of seventy-five (75) degrees Fahrenheit throughout the clients' section of the building. Alternate heating systems may be approved by the Department if a uniform temperature of seventy-five (75) degrees Fahrenheit cannot be safely maintained in the facility.
- 09/01/07 11.H. Family Rooms and Dining Rooms
- 09/01/07 11.H.1. Usage and Size
- a. Family rooms and dining areas must be accessible to all clients.
 - b. Each facility shall provide a family room and a dining room for the use of the clients, which:
 1. May not, under any circumstances, be used as bedrooms by clients or personnel;
 2. Must contain sufficient space to accommodate all activities without one activity interfering with any other.
 - c. No corridor area may be used as a family room, recreation room or dining room.
 - d. No multipurpose room may be used as a dining room, family room or recreation room without prior approval of the Department.
 - e. Each facility shall provide at least twenty (20) square feet of family and dining room area per bed.
 - f. All newly constructed facilities, or additions of more than four (4) beds to existing facilities, for which construction is started after July 1, 1980 shall provide family room and dining room areas to the extent of thirty (30) square feet per bed or additional bed.
- 09/01/07 11.H.2. Furnishings
- a. Family Room

Each family room or recreation room for clients' use must be provided with an adequate number of reading lamps capable of producing thirty (30) foot candles of light at reading level and furnished with:

1. Tables and chairs or settees of satisfactory design for needs of the clients;
2. Sufficient equipment for leisure and social activities; and
3. A functional television set.

b. Dining Area

1. The dining area must be furnished to stimulate maximum self-development, social interaction, comfort and pleasure.
2. The dining area must have a pleasant and home-like environment, be attractively furnished and decorated, and have good acoustic quality.

09/01/07 11.I. Utilities

09/01/07 11.I.1. Water Supply

- a. Each facility shall use an approved public or municipal water supply if one is available.
- b. In areas where an approved public or municipal water supply is not available, a private water supply under pressure must be provided for each facility and it shall meet the standards approved by the Division of Health Engineering in the Department. If water is used from a private supply, water samples must be submitted to the Division of Health Engineering at least once every six (6) months.
- c. There must be sufficient water pressure to meet the sanitary needs of each facility at all times.
- d. There must be an adequate supply of hot water for clients' use at all times.
- e. All plumbing must comply with the standards set by the State of Maine Plumbing Code, including any amendments thereof or additions thereto, as well as with any higher standards set by local ordinances.

11.I.2. Sewage Disposal

- a. Each facility shall dispose of all sewage and liquid wastes in a public sewerage system, if one is available.
- b. If a public sewerage system is not available, sewerage and liquid wastes must be collected and disposed of in

private disposal facilities, the construction, maintenance, and operation of which must be approved by the Division of Health Engineering of the Department.

- c. Plans for any proposed disposal system and/or additions thereto must be reviewed and approved by the Division of Health Engineering in the Department before construction is started.

11.1.3. Lighting

- a. Each facility shall provide all entrances, hallways, stairways, cellars, attics, storerooms, kitchens, laundries, and service units with sufficient lighting, natural or artificial, for these areas to be functional at any hour of the day.
- b. Natural or artificial lighting must be provided for various areas as follows:

Minimum Foot Candles

Entrances, exits, hallways, stairways, ramps	10
Storerooms.....	10
Bedrooms - general.....	10
Reading or sewing.....	30
Bathrooms, lavatories.....	10
Dining Room.....	20
Living Room - general	20
Living Room - reading or sewing.....	30
Kitchen, Laundry, Utility Room	20
General office	20
Desks and Charts.....	30
Medication Cabinet.....	30

- c. The use of candles, courtesy oil lanterns and other open flame methods of illumination is prohibited.
- d. An emergency source of electrical power must be provided to maintain operation of lights in all means of egress; for equipment to maintain fire detection, alarm and extinguishing systems; and life support systems. Such emergency electrical service may be battery operated if the battery is sufficiently charged to provide adequate power for four (4) or more hours.

09/01/07 11.J. Building Accessibility and Use

09/01/07 11.J.1. The facility must:

- a. Be accessible to and usable by all clients, personnel, and the public, including clients with disabilities;
- b. Have only clients who are ambulatory in bedrooms on any floor that is served by a corridor that cannot accommodate a wheelchair; and
- c. Not have housed above the first floor any clients who are blind or non-ambulatory who would be unable to evacuate the premises in an emergency without physical assistance from others.

09/01/07 11.J.2. In newly constructed facilities for persons who are ambulatory, visitors who use wheelchairs shall be accommodated in the following manner:

- a. The entrances must be accessible;
- b. Doorways must be thirty-six (36) inches in width;
- c. Hallways must be of sufficient width to meet accessibility requirements; and
- d. There must be at least one barrier-free bathroom that is accessible to staff and visitors who have handicaps.

09/01/07 11.J.3. Ramps

To provide accessibility in all facilities to clients who are nonambulatory and for visitors who use wheelchairs, facilities which do not have grounds graded to the same level as the primary entrance shall install a ramp to the first floor. The ramp must have:

- a. No greater slope than one and three sixteenth ($1 \frac{3}{16}$) inches in twelve (12) inches;
- b. Handrails;
- c. A width not less than four (4) feet clear of all obstructions; and
- d. A surface of nonskid material.

09/01/07 11.J.4. Each facility shall meet the requirements of Americans with Disabilities Act Guidelines, 1991.

- a. Stairs that allow use by persons with physical handicaps are of a height and design that allow such individuals to negotiate them without assistance.
- b. These stairs must be equipped with handrails, at least one of which extends past the top and bottom steps.
- c. Floors are non-slip and on a common level or connected by a negotiable ramp on each story.

- 09/01/07 11.J.5. Each facility must have accessible to and usable by persons with handicaps:
- a. An appropriate number of toilet rooms;
 - 09/01/07 b. An appropriate number of public telephones;
 - 09/01/07 c. Elevators in multi-story buildings (at entrance level and all levels normally used by the public);
 - 09/01/07 d. Switches and controls of frequent or essential use;
 - 09/01/07 e. Appropriate means for persons who are blind to identify rooms, facilities and hazard areas;
 - 09/01/07 f. Simultaneous audible and visual warning signals, if appropriate to persons living in that facility;
 - 09/01/07 g. Safeguards to eliminate hazards;
 - 09/01/07 h. Client closets; and
 - 09/01/07 i. Beds of a height that permit a person to get in and out of bed unassisted.
- 09/01/07 11.J.6. The facility shall:
- a. Be accessible to and usable by all clients, staff and the public;
 - b. Have grounds that are graded to the same level as the primary entrance so that the building is accessible to persons with physical handicaps;
 - c. Have walks, the width and grade of which are designed so that they can be utilized by persons with handicaps;

- d. Have a properly designated parking space near the building, allowing room for persons with handicaps to get in and out of an automobile onto a surface suitable for wheeling and walking;
- e. Have ramps designed so that they can be negotiated by persons who use wheelchairs;
- f. Have a primary entrance usable by persons in wheelchairs;
- g. Have doors used by clients and the public that are of sufficient width and weight and are so equipped to permit a person in a wheelchair to open them with a single effort.

09/01/07 11.K. Emergency Plan and Procedures

09/01/07 11.K.1. The facility shall make the emergency plan available, and provide training to the staff. The plan is to be reviewed annually.

09/01/07 11.L. Fire Protection

09/01/07 11.L.1. Except as specified in paragraph 11.M.1. of this Chapter, the facility shall meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 2003 edition, which is incorporated by reference. The State Survey Agency may apply a single chapter of the Life Safety Code to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the Life Safety Code. A facility that meets the Life Safety Code definition of a residential board and care occupancy and has sixteen (16) or fewer beds, must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Life Safety Code.

09/01/07 a. Facilities which are designated ICF/MR Nursing shall meet the requirements of Chapter 18 of the Life Safety Code of the National Fire Protection Agency (2003).

09/01/07 b. Facilities designated ICF/MR Group non-ambulatory shall meet the requirements of Chapter 18 of the Life Safety Code of the National Fire Protection Agency (2003).

09/01/07 c. Facilities designated ICF/MR Group and housing less than sixteen (16) clients shall meet the requirements of Chapter 32 of the Life Safety Code of the National Fire Protection Association (2003).

- 09/01/07 11.M. Fire Protection Exceptions
- 09/01/07 11.M.1. Exceptions for facilities that meet the Life Safety Code definition of a health care occupancy:
- 09/01/07 a. The Centers for Medicare and Medicaid Services may waive, for a period it considers appropriate, specific provisions of the Life Safety Code [See 42 CFR, 483.486] if:
- 09/01/07
1. The waiver would not adversely affect the health and safety of the clients; and
 2. Rigid application of specific provisions would result in an unreasonable hardship for the facility.
- b. The State Survey Agency may apply the State's fire and safety code instead of the Life Safety Code, if the Secretary of the Department of Health and Human Services finds that the State has a code imposed by State law that adequately protects a facility's clients.
- c. Compliance on November 26, 1982 with the 1967 edition of the Life Safety Code (LSC) or compliance on April 18, 1986 with the 1981 edition of the LSC, with or without waivers, is considered to be in compliance with Chapter 11.0. of these regulations as long as the facility continues to remain in compliance with that edition of the Code.
- d. For facilities that meet the Life Safety Code definition of a residential board and care occupancy and that have more than sixteen (16) beds, the State Survey Agency may apply the State's fire and safety code as specified in paragraph 11.L.1. of this Chapter.
- 09/01/07
- 09/01/07 11.M.2. If the State Survey Agency waives provisions of the Code for an existing building of two (2) or more stories that is not built of at least two (2) hour fire-resistive construction, the ICF/MR may not house persons who are blind, non-ambulatory, or with physical handicaps above the street-level floor, unless it is:
- a. Built of one (1) hour protected, noncombustible construction as defined in National Fire Protection Association Standard No. 220 or achieves a passing score on the Fire Safety Evaluation System (42 CFR 405.1134, 442.323);
 - b. Fully sprinklered, one (1) hour protected, ordinary construction; or

- c. Fully sprinklered, one (1) hour protected, wood frame construction.

09/01/07 11.N. Safety and Sanitation

09/01/07 11.N.1. Department of Public Safety Certification

Each facility shall be certified by the Department of Public Safety of the State of Maine as having complied with the fire protection and prevention requirements of the Department.

09/01/07 11.N.2. Reporting of Fire Incidents

A written report must be submitted to the State Fire Marshal Office, Department of Public Safety, and the Department, within seventy-two (72) hours of any smoke or any fire incident involving the facility or any client. The report must include the date, time, and place of the incident, and a description of what occurred, and the action taken.

09/01/07 11.N.3. Testing of Equipment

- a. The manual fire alarm system must be tested each month.
- b. The emergency lights must be checked at least monthly.
- c. The automatic fire detection system must be tested at least monthly.
- d. The sprinkler system must be checked by a qualified sprinkler serviceman at least annually.
- e. Fire extinguishers must be checked and tagged at least yearly, or more often if so indicated by the condition of the extinguishers.
- f. The emergency generator (when a generator is required) must be made operational for a period of at least half an hour each month.
- g. A record book must be maintained showing the day each of the above tests or checks was done, and by whom.
- h. Any equipment found defective must be immediately fully repaired.

- 09/01/07 11.O. Infection Control
- 09/01/07 11.O.1. There must be an active program for the prevention, control and investigation of infection and communicable diseases including,
- a. Continuing staff training in methods and procedures in antisepsis and prophylaxis;
 - b. Teaching of personal hygiene and cleanliness to clients;
 - c. Documentation of all instances of infection, detailing in each instance the investigation undertaken and recommendations made.
- 09/01/07 11.O.2. The facility must implement successful corrective action in affected problem areas and must make reports available to appropriate authorities including the Department.

PROPOSED

CHAPTER 12: FOOD AND NUTRITION SERVICES

- 09/01/07 12.A. Staff
- 09/01/07 12.A.1. There must be sufficient adequately trained staff to carry out the functions of dietetic services and to meet the food and nutrition needs of clients.
- 09/01/07 12.A.2. Staff must maintain a high degree of personal cleanliness and conform to good hygienic practices.
- 09/01/07 12.A.3. A licensed dietitian must be employed either full-time, part-time or on a consultant basis at the facility's discretion.
- a. When a dietitian is employed on a consultant basis, the dietitian must prepare a written report for the administration including dates, times, services rendered, problems identified and recommendations made. Consultation time must be at least eight (8) hours minimum per quarter. Consultation time beyond eight (8) hours per quarter must have prior approval from the Department.
- 09/01/07 12.A.4. In an ICF/MR with less than twenty (20) beds, where a licensed dietitian is not employed full-time, the facility must designate a person responsible for food services.
- In an ICF/MR-with twenty (20) beds or more, the facility must have a Director of Food Services.
- 09/01/07 12.A.5. The functions of the person responsible for food and nutrition services include performance or supervision of the following:
- a. Training and establishing work schedules and assignments for staff;
- b. Menu planning and purchasing of food and supplies;
- c. Preparing and serving of all food,
- d. Assuring proper food storage;
- e. Assuring proper sanitation in the kitchen and all other areas where food is prepared and/or stored;
- f. Dishwashing;

- g. Monitoring clients' food preferences, intake and tolerance to diet;
- h. Gathering nutritional data for the dietitian to assess;
- i. Participating in the development and review of food and nutrition policies and procedures that may be needed.

09/01/07

12.A.6. Responsibilities of the dietitian include the following:

- a. Assisting in the evaluation of food and nutrition services;
- b. Developing a nutrition assessment format to be completed for each client on admission;
- c. Identifying nutrition problems for consideration by the client's interdisciplinary team;
- d. Documenting potential information regarding clients' nutritional status and care;

09/01/07

- e. Approving all menus including prescribed, modified and special diets;

- f. Approving the diet manual;

09/01/07

- g. Planning and conducting inservice education programs, and
- h. Participating in the development and review of food and nutrition policies and procedures.

09/01/07

12.B. Diet Requirements

09/01/07

- 12.B.1. Food must be served in an attractive, appetizing manner. Clients should be encouraged to eat in a leisurely fashion and to select items in quantities according to food preference and diet requirements, Liquids must be offered throughout the meal.

09/01/07

- 12.B.2. The client's interdisciplinary team, including a licensed dietitian and physician, must prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

09/01/07

12.C. Food Service

09/01/07

- 12.C.1. Food must be served:

- a. In appropriate quantity;
- b. At appropriate temperatures;

- c. In a form consistent with the developmental level of the client; and
 - d. With appropriate utensils.
- 09/01/07 12.C.2. Substitutes of similar nutritive value must be offered if a client refuses food served.
- 09/01/07 12.D. Menus
- 09/01/07 12.D.1. Menus must:
 - a. Be prepared in advance;
 - b. Provide a variety of foods at each meal;
 - c. Be different for the same days of each week and adjusted to include fresh food in season; and
 - d. Include the average portion sizes for menu items.
- 09/01/07 12.D.2. A current diet manual, not more than five (5) years old, must be available in the facility.
- 09/01/07 12.E. Food Supplies
- 09/01/07 12.E.1. An adequate supply of good quality food to meet client needs must be kept on the premises at all times This must include supplies of staple foods sufficient for at least one week and of perishable foods sufficient for at least forty-eight (48) hours to meet the requirements of the planned menus.
- 09/01/07 12.E.2. The use of second grade or outdated products, unlabeled canned goods, railroad salvage, and similar foods is prohibited.
- 09/01/07 12.E.3. Hermetically sealed food must be obtained from a regulated food processing establishment.
- 09/01/07 12.E.4. Fluid milk and fluid milk products used or served must be obtained pasteurized.
- 09/01/07 12.E.5. Milk served to clients for drinking must be served in the original container or the glass filled at mealtime from a sanitary bulk milk dispenser.
- 09/01/07 12.E.6. No reconstituted powdered milk or evaporated milk may be served for drinking.

- 09/01/07 12.E.7. Dry powdered or evaporated milk may be used in cooking or may be added to milk from the dairy to be used as a high protein supplement.
- 09/01/07 12.E.8. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products may be used. Hard-boiled, peeled eggs, commercially prepared and packaged, may be used. Eggs must be refrigerated at all times and no raw eggs may be used in uncooked products.
- 09/01/07 12.E.9. Food containers must be in good condition and maintain the safety and integrity of the contents.
- 09/01/07 12.F. Food Storage
- 09/01/07 12.F.1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, must be stored in a clean and sanitized container and be labeled and dated.
- 09/01/07 12.F.2. Containers of food must be stored at least eight (8) inches above the floor, in such a manner as to be protected from splashing and other contamination.
- 09/01/07 12.F.3. Food not subject to further washing or cooking before serving must be protected against contamination from food requiring washing or cooking.
- 09/01/07 12.F.4. Hermetically sealed cans, once opened, must not be used for storage of food.
- 09/01/07 12.F.5. The maximum temperature for the refrigerated storage of all perishable and potentially hazardous foods and fluids is forty-five (45) degrees Fahrenheit.
- 09/01/07 12.F.6. Freezers and frozen food compartments of refrigerators must be maintained at or below zero (0) degrees Fahrenheit.
- 09/01/07 12.F.7. A thermometer, accurate to plus or minus three (3) degrees Fahrenheit, must be attached to the inside of each refrigerator, freezer, or other storage space used for potentially hazardous food.
- 09/01/07 12.G. Food Preparation
- 09/01/07 12.G.1. Food must be prepared by methods that conserve nutritive value, flavor, and appearance.
- 09/01/07 12.G.2. A file of recipes that list clear descriptive procedures, portion

yield, and measures, must be maintained and utilized and must correspond to items on the menus.

- 09/01/07 12.G.3. Food must be cut, chopped, or ground to meet individual needs.
- 09/01/07 12.G.4. Convenient and suitable utensils, such as forks, knives, tongs, spoons, scoops and disposable gloves must be provided and used to minimize direct manual contact with food at all points where food is prepared.
- 09/01/07 12.G.5. Food must be prepared on surfaces that have been cleaned and sanitized to prevent cross contamination.
- 09/01/07 12.G.6. All raw fruits and vegetables must be thoroughly washed to remove soil and other contaminants before being cut, combined with other ingredients, cooked or served.
- 09/01/07 12.G.7. Frozen foods must be thawed as follows:
- a. Under refrigeration at a temperature not to exceed forty-five (45) degrees Fahrenheit;
 - b. Under potable running water at a temperature of seventy (70) degrees Fahrenheit, or below, with sufficient water velocity to agitate and float off loose particles into the overflow and for a period not to exceed that needed to thaw the products; or
 - c. As part of a continuous cooking process using a microwave oven, a conventional cooking unit or a combination of cooking equipment.

ADDENDUM

References:

1. Statutory authority for these regulations is found under the following Titles in the Maine Revised Statutes Annotated:

Title 22, Health and Welfare

Title 22.A, Health and Human Services

Title 34, Public Institutions and Corrections

Title 34-B, Mental Health, Mental Retardation and Substance Abuse Services

2. Additional references of use are:

Chapter 5, Rules and Regulations of the Maine State Board of Nursing, (as amended) 2003

Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Persons with Mental Retardation, State Operations Manual, Department of Health and Human Services, Center for Medicare and Medicaid Services

Section 2, Chapter 5, Regulations Governing Emergency Interventions and Behavioral Treatment for People with Mental Retardation and/or Autism.

Maine Care Benefits Manual, Chapter II, Section 50, ICF-MR Services

Subpart I, Section 483.400 - 483.480, Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, 42 Code of Federal Regulations

Rule 14-197 Department of Behavioral and Developmental Retardation Services, Chapter 9 (*Reporting, Investigation and Review of Reportable Events*)

Websites:

- Secretary of State: <http://www.maine.gov/SOS/>

Contains State agency rules for the State's Department of Health and Human Services, to include ICFs/MR licensing regulations, Maine Care Benefits Manual.

- State Operations Manual, Appendix J, Centers for Medicare and Medicaid Services: <http://www.cms.hhs.gov/Manuals/10M/list.asp#TopOfPage>

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

July 13, 2004 – filing 2004-259, added 5.D.11

NON-SUBSTANTIVE CORRECTION:

April 4, 2005 – Section 5.D.11.b.2.(b)

AMENDED:

September 1, 2007 – filing 2007-302 (major substantive final adoption by the authority of Resolve 2007, Chapter 33)

AMENDED:

Chapter 5.C.7 Mandatory Reporting of Sentinel Events is repealed and replaced by 10-144 C.M.R. Chapter 114, Rules Governing the Reporting of Sentinel Events.

PROPOSED