

5101:3-3-02.3 Institutions eligible to participate in medicaid as nursing facilities (NFs) or intermediate care facilities for the mentally retarded (ICFs-MR).

(A) *Definitions.*

- (1) "Certification" means the process by which the state survey agency certifies its findings to the federal centers for medicare and medicaid services (CMS) or the Ohio department of job and family services (ODJFS) with respect to a facility's compliance with health and safety requirements of divisions (a), (b), (c), and (d) of section 1919 of the federal Social Security Act.

- (2) "Certified beds" mean beds that are counted in a provider facility that meets medicaid standards. A count of facility beds may differ depending on whether the count is used for certification, licensure, eligibility for medicare or medicaid payment formulas, eligibility for waivers, or other purposes.

- (3) "**Distinct part**" means a portion of an institution or institutional complex that is certified to provide skilled nursing facility (SNF) and/or nursing facility (NF) services, or intermediate care facility for the mentally retarded (ICF-MR) services. A distinct part shall be physically distinguishable from the larger institution and fiscally separate for cost reporting purposes. A distinct part may be a separate building, wing, floor, hallway, or one side of a corridor. A hospital-based SNF or NF is a distinct part by definition. A long term care facility with both SNF and NF distinct parts is one facility, even though the distinct parts are certified separately for medicare and medicaid. "Distinct part", when applied to NFs or SNF/NFs, has the same definition and requirements as in 42 CFR 483.5 as amended August 4, 2003, and effective October 1, 2003 and 42 CFR §440.155 as amended Aug. 4, 2003, effective Oct. 1, 2003. "Distinct part", when applied to ICFs/MR has the same definition and requirements as in 42 CFR §440.150, as amended Nov. 10, 1994, effective July 1, 1995.

- (4) "Dually participating" means simultaneous participation of an institution or institutional complex in both the medicare and medicaid programs.

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- (5) "Dually participating long term care facility" means an institution that participates as both a SNF under the medicare program, and as a NF under the medicaid program. Such a facility is referred to as a SNF/NF.
- (6) "Facility" means the entity subject to certification and approval in order for the provider to be approved for medicaid payment. A facility may be an entire institution such as a free-standing nursing home, or may be a distinct part of an institution such as a hospital or continuing care retirement community.
- (7) "**ICF-MR services**" means those services covered by the medicaid program that an ICF-MR provides to a resident of the facility who is a medicaid recipient eligible for medicaid-covered ICF-MR services. ICF-MR services are defined by 42 C.F.R. 440.150.48 as amended November 10, 1994, and effective July 1, 1995, and provided to those Medicaid eligible individuals with mental retardation or a related condition requiring active treatment as defined in rule 5101:3-3-07 of the Administrative Code. ICF-MR services are available in facilities certified as ICFs-MR by the Ohio department of health (ODH) or by the state survey agency of another state.
- (8) "Long term care facility" means a NF, SNF, dually participating SNF/NF, or ICF-MR/DD as defined in division-level 5101:3 of the Administrative Code.
- (9) "Long term care institutional services" means those medicaid funded, institutional medical, health, psycho-social, habilitative, rehabilitative, and/or personal care services that may be provided to eligible individuals in a NF, SNF/NF, or ICF-MR/DD.
- (10) "**NF services**" means those services covered by the medicaid program that a NF provides to a resident of the NF who is a medicaid recipient eligible for medicaid-covered NF services. NF services are defined by 42 C.F.R. 440.155 as amended August 4, 2003 and effective Oct. 1, 2003 and provided to those Medicaid eligible individuals as defined in rule 5101:3-3-05 and rule 5101:3-3-06 of the Administrative Code. NF services are available in institutions, or parts of institutions, that are certified as NFs by ODH or by the state survey agency of another state.

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- (11) "Religious non-medical health care institution" (RNHCI) means an institution as defined in the Social Security Act, section 1861 (ss) (1), 79 Stat. 286 (1965), 42 U.S.C. 1395x (ss) (1), as amended, such as the "Christian Science RNHCI's" accredited by the "Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc." RNHCI's are subject to conditions of participation in the medicaid program according to C.F.R. Title 42, Chapter IV, part 403, subpart G.
- (12) "State survey agency" means the agency designated as the state health standard setting authority, and state health survey agency responsible for certifying and determining compliance of long term care facilities with the requirements for participation in the medicaid program. The state survey agency in Ohio is ODH.

(B) Types of long term care institutional services.

(1) The types of long term care institutional services covered under medicaid are those services provided in compliance with the provisions of Chapter 5101:3 of the Administrative Code and are:

- (a) NF services provided to eligible residents requiring either a skilled level of care as set forth in rule 5101:3-3-05 of the Administrative Code or an intermediate level of care as set forth in rule 5101:3-3-06 of the Administrative Code; and
- (b) ICF-MR/DD services provided to eligible residents requiring an ICF-MR/DD level of care as set forth in rule 5101:3-3-07 of the Administrative Code.

(2) Institutions not eligible for participation are:

- (a) An institution licensed or approved as a tuberculosis hospital;
- (b) A prison, juvenile criminal facility, or an institution used to incarcerate individuals involuntarily who have committed a violation of a criminal or civil law; and
- (c) An institution for mental disease, as defined in rule 5101:3-3-06.1 of the Administrative Code, for persons under sixty-five years old.

(C) Requirements for participation.

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To participate in the Ohio medicaid program and receive payment from ODJFS for long term care institutional services to eligible residents, operators of long term care facilities shall meet all of the following requirements:

- (1) Operate an institution that meets the licensure, registration, and other applicable state standards as set forth in this rule;
- (2) Operate an institution certified by ODH or by the state survey agency of another state as being in compliance with applicable federal regulations for medicaid participation as a NF with a minimum of four NF certified beds, or as an ICF-MR/DD with a minimum of four ICF-MR/DD certified beds, as set forth in this rule; and
- (3) Operate an institution for which a current, completed, and signed JFS 03623 "Ohio Medicaid Provider Agreement (for Long Term Care Facilities: SNF/NFs and ICFs-MR/DD)" (rev. 7/2005) is on file with ODJFS.

(D) Qualified types of Ohio NFs.

- (1) To be eligible for certification as a NF, an institution shall qualify as one of the following:
 - (a) A nursing home licensed by ODH under section 3721.02 of the Revised Code, or a nursing home licensed by a political subdivision certified under section 3721.09 of the Revised Code, such as the Cincinnati department of health. Licensed nursing homes eligible for medicaid certification include:
 - (i) RNHCIs; and
 - (ii) Veterans' homes operated under Chapter 5907. of the Revised Code; or
 - (b) A county home, county nursing home, or district home owned by the county and operated by the county commissioners in accordance with Chapter 5155. of the Revised Code, or operated by the board of county hospital trustees in accordance with section 5155.011 of the Revised Code;
 - (c) A unit of any hospital registered under section 3701.07 of the Revised Code that contains beds categorized before August 5, 1989, as skilled nursing facility beds per section 3702.52.2 of the Revised Code; or

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(d) A unit of any hospital registered under section 3701.07 of the Revised Code that contains beds categorized as long term care beds as defined in rule 3701-59-01 of the Administrative Code.

(E) Mandatory dual participation.

(1) To participate as a NF, all Ohio facilities shall comply with the provisions in rule 5101:3-3-02.4 of the Administrative Code regarding dual participation in the medicare program as a SNF/NF.

(2) Institutions exempt from mandatory dual participation are:

- (a) Veterans' homes operated under Chapter 5907 of the Revised Code; and
- (b) RNHCIs.

(F) Qualified types of Ohio ICFs-MR/DD.

(1) To be eligible for certification as a ICF-MR/DD, an institution shall qualify as one of the following:

- (a) A residential facility licensed by the Ohio department of mental retardation and developmental disabilities (ODMR/DD) in accordance with section 5123.19 of the Revised Code and rules adopted pursuant to Chapter 5123. of the Revised Code, with an operator who has received development approval from ODMR/DD to operate the residential facility as an ICF-MR/DD under one of the following conditions:
 - (i.) An operator has requested a new residential facility license from ODMR/DD and obtained development approval from ODMR/DD, pursuant to rule 5123:2-16-01 of the Administrative Code, to operate the facility as an ICF-MR/DD; or
 - (ii.) An operator of an existing residential facility who has received development approval from ODMR/DD to operate a facility other than an ICF-MR/DD, and has submitted a new request to ODMR/DD for development approval that specifies the plan to modify the type or source of funding for the facility, and has received development approval from ODMR/DD, pursuant to rule 5123:2-16-01 of the Administrative Code, to operate the facility as an ICF-MR/DD; or

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- (b) As described in section 5123.19.2 of the Revised Code a nursing home or portion of a nursing home licensed by ODH that holds beds initially certified as ICF-MR/DD beds before June 30, 1987 that continue to be certified as ICF-MR/DD beds; or
 - (c) A county home, county nursing home, or district home operated in compliance with Chapter 5155. of the Revised Code that was certified as an ICF-MR/DD before January 20, 2005.
- (G) Certification of NFs and beds subject to certification survey.
- (1) Certification.

A facility's certification as a NF by ODH or by the state survey agency of another state governs the types of services the operator of the facility may provide.
 - (2) Provider agreements.
 - (a) A provider agreement with the operator of an Ohio NF or SNF/NF shall include any part of the facility that meets standards for certification of compliance with federal and state laws and rules for participation in the medicaid program.
 - (b) Exceptions to this provision are NFs or SNFs that between July 1, 1987 and July 1, 1993 added beds licensed as nursing home beds under Chapter 3721. of the Revised Code. Such facilities are not required to include those beds in a provider agreement, unless otherwise required by federal law.
 - (3) Beds subject to certification survey.
 - (a) All beds in a medicaid participating NF or SNF/NF, except those licensed nursing home beds added between July 1, 1987 and July 1, 1993, shall be surveyed to determine compliance with the applicable certification standards and, if certifiable, included in the provider agreement as NF or SNF/NF beds.
 - (b) Beds that could qualify as NF or SNF/NF beds and were added between July 1, 1987 and July 1, 1993 may be surveyed for compliance at the discretion of the operator. Such facilities are not required to include those beds in a provider agreement, unless otherwise required by federal law.

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- (c) All other beds that meet NF or SNF/NF standards shall be certified as NF or SNF/NF beds.
- (4) The only other basis for allowing nonparticipation of a portion of an Ohio NF or SNF/NF that is not hospital-based is certification of noncompliance by ODH.
- (H) Certification of ICFs-MR/DD and beds subject to certification survey.
 - (1) Certification.

A facility's certification as an ICF-MR/DD by ODH or by the state survey agency of another state governs the types of services the facility may provide.
 - (2) Provider agreements.

A provider agreement with an Ohio ICF-MR/DD shall include any part of the facility that meets standards for certification of compliance with federal and state laws for participation in the medicaid program.
 - (3) Emergency services.
 - (a) Waiver of licensed capacity.
 - (i.) To accommodate persons in emergency need of services, the ODMR/DD may issue to the operator of a licensed residential facility a waiver of licensed capacity.
 - (ii.) A waiver of licensed capacity is time-limited and temporarily permits the operator to exceed the maximum number of licensed beds.
 - (b) Institutional respite care.
 - (i.) A waiver of licensed capacity may be made specifically in order to provide institutional respite care as a prior authorized service to persons enrolled on a home and community based services (HCBS) waiver in accordance with division-level 5101:3 of the Administrative Code.
 - (ii.) Beds designated for institutional respite care for HCBS enrollees shall not be included in the provider agreement.

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- (4) Beds subject to certification survey.
 - (a) All beds in a medicaid-participating ICF-MR/DD that are not designated for institutional respite care for persons enrolled on an HCBS waiver shall be surveyed to determine compliance with the applicable certification standards.
 - (b) If the beds are certifiable, they shall be included in the provider agreement.
 - (c) Beds authorized through a waiver of residential facility licensed capacity in accordance with rule 5123:2-16-01 of the Administrative Code that are used to provide ICF-MR/DD services shall be included in the provider agreement.
 - (d) The only other basis for allowing nonparticipation of a portion of an Ohio ICF-MR/DD is certification of noncompliance by ODH.

(I) Requirements for out-of-state providers of long term care institutional services.

- (1) To participate in the Ohio medicaid program and receive payment from ODJFS for long term care institutional services to eligible Ohio residents, an operator of a long term care facility located outside Ohio shall meet all of the following requirements in their state of origin:
 - (a) The operator of the facility shall hold a valid state-required license, registration, or equivalent from the respective state that specifies the level(s) of care the facility is qualified to provide; and
 - (b) The operator of the facility shall hold a valid and current medicaid provider agreement from the respective state as a NF, SNF/NF, or ICF-MR/DD provider type.
- (2) Additionally, out-of-state providers shall meet the following Ohio requirements:
 - (a) The operator of the facility shall have a current, completed and signed JFS 03623 "Ohio Medicaid Provider Agreement (for Long Term Care Facilities: SNF/NFs and ICFs-MR/DD)" on file with ODJFS; and
 - (b) The operator of the facility shall obtain resident-specific and date-specific prior authorization from ODJFS in accordance with rule 5101:3-1-11 of the Administrative Code.

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