

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education.**

**R414-510-1. Introduction and Authority.**

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF) Transition Program, and the education process required for individuals currently residing in ICFs and those considering ICF admission. ICF Transition Program participation is voluntary and allows an individual to transition from a privately-owned ICF to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(2) This rule is authorized by Section 26-18-3. Waiver services are optional and provided in accordance with 42 CFR 440.225.

**R414-510-2. Definitions.**

(1) "Departments" means the Utah Department of Health and the Utah Department of Human Services.

(2) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(3) "Guardian" means an individual, who is legally authorized to make decisions on an individual's behalf.

(4) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(5) "Intermediate Care Facilities" means privately-owned intermediate care facilities for individuals with intellectual disabilities.

(6) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state. The Departments consider a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days. Breaks in stay due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence, if due to health concerns related to Coronavirus (COVID-19), will not be considered a break in stay when evaluating Subsection R414-510-3(5).

(7) "Representative" means an individual, who is not a guardian, and does not have decision-making authority, but is identified as an individual who assists a potential Transition Program participant.

(8) "State staff" means employees of the Division of Medicaid and Health Financing or the Division of Services for People with Disabilities.

(9) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(10) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

**R414-510-3. Eligibility Requirements for the Transition Program.**

Waiver services are potentially available to an individual who:

(1) receives ICF benefits under the Medicaid State Plan;

(2) has been diagnosed with an intellectual disability or a related condition;

(3) meets ICF level of care criteria defined in Section R414-502-8;

(4) meets state funding eligibility criteria for the Division of Services for People with Disabilities (DSPD) found in Subsection 62A-5-102(4); and

(5) has at least a 12-month length of stay in any Medicaid-certified, privately-owned ICF located in Utah.

**R414-510-4. Transition Program Access.**

(1) Each state fiscal year, the Departments shall identify the number of people projected to participate in the Transition Program.

(2) Based on the funds available for the Transition Program in a given state fiscal year, the Departments shall enroll individuals into the Waiver through the Transition Program until available funds are exhausted.

(3) In a given state fiscal year, if the funds available for the Transition Program are sufficient to enroll all individuals who have expressed interest in participating in the Transition Program, and meet the requirements in Section R414-510-3, the Departments shall enroll all identified individuals. The Departments shall prioritize community transition to all individuals under 22 years of age.

(4) In a given state fiscal year, if the funds available for the Transition Program are not sufficient to allow transition of all individuals who express interest and who meet the requirements in Section R414-510-3, the Departments shall:

(a) Prioritize community transition to all individuals under 22 years of age;

(b) For individuals over 22 years of age, each interested individual will receive a weighted-score, and be ranked based on that score, from highest to lowest score. Scores shall be based on:

(i) The number of years the person has expressed interest in participating in the Transition Program since State Fiscal Year 2013;

(ii) Whether the applicant has applied for home and community based services and is currently on the DSPD waiting list;

(iii) Length of consecutive stay in an ICF in the state of Utah; and

(iv) If there are multiple individuals with the same weighted-score, the Departments shall rank individuals based on greatest length of stay.

(c) If an individual is selected for the Transition Program and has a spouse who also resides in a Utah ICF and who meets the eligibility criteria in Section R414-510-3, the Departments shall include the spouse in the Transition Program that same year.

(5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian and the individual retains the right to amend his or her choice at any time.

(6) In cases where an individual does not initially express a choice to transition to the community or to remain in the ICF, the Departments will identify the individual as "undecided." For individuals identified as "undecided," the Departments will engage in additional in-reach and education to build relationships with the individual, the guardian or representative;

(a) After engaging in additional education, the Departments will re-determine whether individuals are interested in moving to the community or continuing to reside in ICFs; and

(b) For remaining individuals who are incapable of expressing choice, the Departments will identify the individuals as "undetermined";

(7) In cases where an individual has been identified as "undetermined," the Departments will utilize a formal assisted decision-making process to support the individual and their guardian to make an informed choice.

#### **R414-510-5. ICF Transition Program Education for Current ICF Residents.**

(1) Education about the ICF Transition Program and home and community based services shall be provided by state staff to all individuals residing in ICFs. Education efforts shall be provided on an ongoing basis by state staff and will include, but are not limited to:

(a) Displaying Transition Program and state staff contact information in conspicuous locations within each ICF;

(b) Meeting with individuals living in ICFs, and with their guardians or representatives on a recurring basis;

(c) Providing opportunities for individuals living in ICFs, their guardians or representatives to visit home and community based services settings; and

(d) Providing opportunities for individuals living in ICFs, their guardians or representatives to receive support from peers who have experienced moving from an ICF to home and community based services.

(2) Education about the ICF Transition Program and home and community based services shall be provided in multiple ways and in a manner that is responsive to each person's method of communication. Examples include in-person, one-on-one or group discussions, interactions in community based settings, and communication over the telephone or through email. Educational materials will be provided in print or other mediums.

(3) As ongoing education about community based services is provided to individuals without guardians, state staff will work with the individual and anyone the individual invites to participate. At recurring intervals, state staff will work with the individual and anyone the individual invites to participate to express whether he or she wants to participate in the Transition Program. At each interval, state staff shall document and act upon the individual's decision;

(4) As ongoing education about community based services is provided to individuals with guardians, state staff will work with the guardian and anyone the guardian invites to participate. State staff will rely on the decision rendered by the guardian regarding whether the guardian wants the individual to participate in the Transition Program.

(5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian, and the individual retains the right to amend his or her choice at any time.

#### **R414-510-6. Education and Referral for Individuals Seeking ICF Services.**

(1) Prior to admission to an ICF, an individual or guardian must contact state staff to receive education of and referral to local resources.

(a) For individuals under 22 years of age, the state agencies shall perform an additional evaluation of services to determine whether community based services are available to assure informed choice before admission to an ICF. The Director of the Division of Medicaid and Health Financing (or designee) and the Director of the Division of Services for People with Disabilities (or designee) shall authorize in writing all ICF admissions of individuals under 22 years of age.

(b) ICFs shall not admit an individual under 22 years of age, unless the admission has been authorized as stated in Subsection R414-510-6(1)(a) above. After admission, the ICF shall keep a copy of the written authorization in the individual's medical record. An individual who admits to an ICF, who meets the requirements described in Section R414-510-3, is eligible to participate in the Transition Program.

(c) Upon completing education and referral with state staff, individuals who are over 22 years of age and decide to move into an ICF, shall be given a written confirmation to demonstrate that the education process occurred prior to admission.

(d) ICFs shall not admit an individual who has not received the required state staff education and referral. After admission, the ICF shall keep a copy of the written confirmation form in the individual's medical record.

(2) Due to an urgent or emergency need, an individual may be admitted to an ICF immediately, and education and assistance with resources shall be provided after the placement.

(a) The ICF must:

(i) notify the Departments of the admission;

(ii) explain the reason the admission was considered urgent or emergency; and

(iii) provide contact information for the individual, guardian, or representative.

(3) Education shall be provided within 30 days of ICF admission unless an individual's health or other external factors make it necessary to provide the education at a later date.

(4) Once education has been provided, the Departments will provide the ICF with a written confirmation of education form, and the ICF will keep a copy of the form in the individual's medical record.

**R414-510-7. Service Coverage.**

Services and limitations of the Transition Program may be found in the Waiver State Implementation Plan.

**R414-510-8. Reimbursement Methodology.**

The Department of Human Services (DHS) contracts with the Department to set rates for waiver-covered services. The DHS rate-setting process is designed to comply with the requirements of Subsection 1915(c) of the Social Security Act and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: September 22, 2020**

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**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3**