

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 47.
TAXATION, LICENSING, PERMITS,
ASSESSMENTS, AND FEES.

CHAPTER 12D.
STEVIE SELLOWS QUALITY IMPROVEMENT FUND;
ICF-IDD ASSESSMENT.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 12D. STEVIE SELLOWS QUALITY
IMPROVEMENT FUND; ICF-IDD ASSESSMENT.

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CHAPTER 12D. STEVIE SELLOWS QUALITY IMPROVEMENT FUND; ICF-IDD ASSESSMENT.

§ 47-1270. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Fund" means the Stevie Sellows Quality Improvement Fund established by this chapter.
- (2) "Gross revenue" means the sum of revenue for provisions of services to consumers with developmental disabilities. For purposes of this chapter, gross revenues does not include charitable contributions or interest income.
- (3) "Intermediate care facility for persons with intellectual or developmental disabilities" and "ICF-IDD" have the same meaning as under section 1905(d) of the Social Security Act, approved July 30, 1965 (79 Stat. 344; 42 U.S.C. 1396d(d)), but do not include a facility operated by the federal government.
- (4) "Medicaid" means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*), and by [§ 1-307.02], and administered by the Department of Health.
- (5) "Quality of care improvements" means improving the quality of care for consumers with developmental disabilities by efforts to reduce turnover and increase the qualifications of the employees, excluding managers, administrators, and contract employees, such as an increase in salaries or benefits, or an increase in training and educational opportunities.
- (6) "Resident" means a person receiving services in an ICF-IDD.
- (7) "Reimbursement methodology" means the prospective Medicaid payment rate system for intermediate care facilities for persons with intellectual disabilities.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(3), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 rewrote par. (3); in par. (6), substituted "ICF-IDD" for "ICF-MR"; and, in par. (7), substituted "for persons with intellectual disabilities" for "for the mentally retarded". Prior to amendment, par. (3) read as follows:

"(3) 'Intermediate care facility for the mentally retarded' and 'ICF-MR' have the same meaning as under section 1905(d) of the Social Security Act (42 U.S.C.S. § 1396d(d)), but does not include a facility operated by the federal government."

Legislative History of Laws

Law 16-68, the "Stevie Sellows Intermediate Care Facility for the Mentally Retarded Quality Improvement Act of 2005", was introduced in Council and assigned Bill No. 16-170 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 1, 2005, and December 6, 2005, respectively. Signed by the Mayor on December 22, 2005, it was assigned Act No. 16-230 and transmitted to both Houses of Congress for its review. D.C. Law 16-68 became effective on March 8, 2006.

Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-189, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 6, 2012, and April 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to both Houses of Congress for its review. D.C. Law 19-169 became effective on September 26, 2012.

Miscellaneous Notes

Section 7067 of D.C. Law 17-219 repealed section 3 of D.C. Law 16-68.

Section 35 of D.C. Law 19-169 provides:

"Sec. 35. No provision of this act shall impair any right or obligation existing under law."

§ 47-1271. ICF-IDD QUALITY IMPROVEMENT FUND.

(a) There is established a fund designated as the Stevie Sellows Quality Improvement Fund ("Fund"), which shall be separate from the General Fund of the District of Columbia and shall be used for the purposes set forth in subsection (b) of this section. All assessments collected under this chapter, any and all interest earned on those assessments, and any and all interest and penalties collected under § 47-1274, shall be deposited into the Fund, and shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress.

(b) The Fund shall be used to:

- (1) Fund quality of care improvements for those facilities who meet the requirements of § 47-1272 of up to \$2.50 per hour, or a higher amount as determined through rulemaking; and
- (2) Cover administrative costs of the Department of Health Care Finance ("DHCF") in administering the Fund, which these costs shall not be more than 5% of the Fund's total revenues for a fiscal year.

(c) Notwithstanding subsection (b) of this section, of the revenues deposited in the Fund in fiscal year 2011, at least \$1 million shall be used to support quality of care improvements for those facilities that meet the requirements of § 47-1272, and up to \$3.7 million may be used to support Medicaid services in the District of Columbia, including reimbursements for ICF-IDDs for the services that they provide.

(d) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Fund for a fiscal year.

(e) The Mayor shall audit all income and expenses of the Fund annually and provide the annual report to the Council.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 24, 2010, D.C. Law 18-223, § 5032(a), 57 DCR 6242; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(4), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-223, in subsec. (b)(1), substituted "per hour, or a higher amount as determined through rulemaking" for "per hour"; in subsec. (b)(2), substituted "Department of Health Care Finance ('DHCF')" for "Medical Assistance Administration ('MAA')"; and rewrote subsec. (c), which had read as follows:

"(c) Amounts remaining in the Fund after the disbursements required by subsection (b) of this section shall be used for an increase in the Medicaid per diem reimbursement rate for each ICF-MR above the fiscal year 2006 rate."

D.C. Law 19-169, in the section heading and subsec. (c), substituted "ICF-IDD" for "ICF-MR".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 5032(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For Law 18-223, see notes following § 47-355.05.

For history of Law 19-169, see notes under § 47-1270.

Miscellaneous Notes

Short title: Section 5031 of D.C. Law 18-223 provided that subtitle D of title V of the act may be cited as the "Intermediate Care Facilities Amendment Act of 2010".

§ 47-1272. QUALIFIED FACILITY; ELIGIBILITY; INSPECTION BY THE MAA; FUND RECOVERY; ADVERSE ACTION PROHIBITION.

(a) To be eligible to receive payments from the Fund for a fiscal year, an ICF-IDD shall submit the following to the DHCF by June 30 of the prior fiscal year:

(1) Proof of a legally binding written commitment to fund quality of care improvements as defined in § 47-1270;

(2) Proof of an enforcement mechanism of the written commitment to fund quality of care improvements, such as arbitration, that is:

(A) Expeditious;

(B) Uses a neutral decision maker;

(C) Economical for the employees; and

(D) Available to the employees or their representatives; and

(3) Proof that the facility has provided written notice of the terms of the commitment and the availability of the enforcement mechanism to the relevant employees or their recognized representatives.

(b) The DHCF shall terminate the quality improvement funding for a facility if it finds the binding written commitment has expired and does not otherwise remain enforceable.

(c) The DHCF may inspect relevant payroll and personnel records of facilities receiving funds pursuant to this section to ensure that the quality of care improvements provided for in this section have been implemented.

(d) In addition to the remedies provided in § 47-1274, the DHCF may retroactively recover funds provided to a facility for quality of care improvements incurred after expiration of the commitment or if a facility has failed to maintain the commitment.

(e) Enforcement or attempted enforcement of the written commitment pursuant to § 47-1272 shall not constitute a basis for adverse action by a facility against an employee.

(f) Documents submitted by the ICF-IDD to show its compliance with § 47-1272 shall be available for public review.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 24, 2010, D.C. Law 18-223, § 5032(b), 57 DCR 6242; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(5), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-223, in subsecs. (a), (b), and (c), substituted "DHCF" for "MAA"; and, in subsec. (d), substituted "DHCF" for "Department of Health".

D.C. Law 19-169 substituted "ICF-IDD" for "ICF-MR" both places it appeared.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 5032(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For Law 18-223, see notes following § 47-355.05.

For history of Law 19-169, see notes under § 47-1270.

§ 47-1273. ASSESSMENTS ON ICF-IDDs.

(a) Except as provided in § 47-1278(d), each ICF-IDD in the District of Columbia shall pay an assessment of 5.5% per annum of gross revenue.

(b) The Mayor shall provide notice to each ICF-IDD of the amount of the assessment for the ensuing fiscal year no later than September 1.

(c) Each ICF-IDD shall pay the assessment required by subsection (a) of this section in quarterly installments.

(d) Each ICF-IDD shall report gross resident revenue for the period upon which the assessment for a fiscal year is to be determined by submitting an audited financial statement and other information for that period as the Mayor may prescribe by rules issued pursuant to § 47-1277.

(e) If the total amount of the assessments to be collected for a fiscal year is inadequate to cover disbursements required under § 47-1271(b), the Mayor may raise the assessment up to the maximum allowed under federal law.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 24, 2010, D.C. Law 18-223, § 5032(c), 57 DCR 6242; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(6), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-223, in subsec. (a), substituted "5.5%" for "1.5%".

D.C. Law 19-169, in the section heading, substituted "ICF-IDDs" for "ICF-MRs"; and substituted "ICF-IDD" for "ICF-MR".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 5032(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For Law 18-223, see notes following § 47-355.05.

For history of Law 19-169, see notes under § 47-1270.

§ 47-1274. INTEREST AND PENALTIES.

(a)(1) If an ICF-IDD fails to pay the full amount of an assessment by the date required by this chapter, or by rules issued pursuant to § 47-1277, the unpaid balance shall accrue interest at the rate of 1.5% per month or any fraction thereof which shall be added to the unpaid balance.

(2) The Chief Financial Officer of the District of Columbia may arrange a payment plan for the amount of the assessment and interest in arrears.

(b) If an ICF-IDD fails to file a report required under this chapter, or by rules issued pursuant to § 47-1277, it shall be subject to an administrative penalty equal to 5% of the monthly assessment for each month, or any fraction thereof, that the failure to file continues; except, that the total administrative penalty shall not exceed 25% of the ICF-IDD's annual assessment.

(c)(1) If an ICF-IDD that knowingly provides false information in a report required by this chapter, or by rules issued pursuant to § 47-1277, it shall be subject to a penalty of up to \$10,000.

(2) Any action brought to enforce this subsection shall be brought in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia in the name of the District of Columbia.

(d) The District of Columbia shall have:

(1) A lien upon the real and personal property located in the District of Columbia of the ICF-IDD for any assessments, interest, or administrative penalties that are due under this chapter, or rules issued pursuant to § 47-1277; and

(2) The priority of a secured creditor.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(7), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "ICF-IDD" for "ICF-MR" and "ICF-IDD's" for "ICF-MR's".

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For history of Law 19-169, see notes under § 47-1270.

§ 47-1275. CONFIDENTIALITY; AUDIT; DETERMINATION OF ASSESSMENT.

(a) Unless otherwise provided by law or necessary to carry out the provisions of this chapter, proprietary information submitted by an ICF-IDD under this chapter is confidential and shall not be disclosed.

(b) The Mayor may audit the information required to be reported by an ICF-IDD under this chapter, or any rules issued pursuant to § 47-1277, and may use the audited information to determine, or redetermine, the amount of an assessment due under this chapter.

(c)(1) The Mayor may summon any person to appear to give testimony or answer interrogatories, or to produce books, records, or other information relating to matters subject to an audit.

(2) The summons shall be served by a member of the Metropolitan Police Department or by registered mail or certified mail addressed to the person at the last known dwelling place or principal place of

business.

(3) A verified return by the person serving the summons, or, in the case of service by registered or certified mail, the return post office receipt signed by the person served shall be proof of service.

(d) The Mayor may report a person who, having been served pursuant to subsection (c) of this section, neglects or refuses to obey the summons, to the Superior Court of the District of Columbia. The Superior Court may compel obedience to the summons to the same extent as witnesses may be compelled to obey subpoenas of the Superior Court.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(8), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "ICF-IDD" for "ICF-MR".

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For history of Law 19-169, see notes under § 47-1270.

§ 47-1276. APPEALS.

(a) An ICF-IDD may contest the amount of an assessment, including any interest or administrative penalties, imposed under this chapter, or by rules issued pursuant to § 47-1277, by filing a notice of appeal with the Office of Administrative Hearings within 60 days after the date of the notice of:

(1) An annual assessment under § 47-1273;

(2) A determination or redetermination of an assessment based on an audit of information under § 47-1275; or

(3) An imposition of interest or administrative penalties under § 47-1274.

(b) The Office of Administrative Hearings shall conduct a hearing on the appeal filed under subsection (a) of this section subject to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and pursuant to the rules of the Office of Administrative Hearings.

(c) Before filing an appeal pursuant to subsection (a) of this section, the ICF-IDD shall pay the assessment, together with any administrative penalties and interest due on the assessment. In no case shall the filing of a notice of appeal act as a stay on the payment of the assessment, interest, or administrative penalties.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(9), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "ICF-IDD" for "ICF-MR".

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For history of Law 19-169, see notes under § 47-1270.

§ 47-1277. RULES.

The Mayor, in consultation with the Department of Health and ICF-IDD and employee representatives, shall issue rules to implement the provisions of this chapter.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(10), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "ICF-IDD" for "ICF-MR".

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For history of Law 19-169, see notes under § 47-1270.

§ 47-1278. FEDERAL DETERMINATIONS; SUSPENSION AND TERMINATION OF ASSESSMENT.

(a) If the federal government determines that an assessment imposed on an ICF-IDD pursuant to this chapter does not satisfy the requirements for federal financial participation set forth in section 1903(w) of the Social Security Act, approved July 30, 1965 (70 Stat. 349; 42 U.S.C. § 1396b(w)), monies collected pursuant to the assessment shall be refunded and the assessment shall be null and void.

(b)(1) An determination adverse to the District under subsection (a) of this section with respect to an assessment imposed on one or more, but not all ICF-IDDs pursuant to this chapter shall not affect the validity, amount, applicable rate, or any other terms of an assessment on other facilities imposed by this chapter.

(2) An adverse determination with respect to all assessments imposed by this chapter shall be governed by subsection (a) of this section.

(c) Notwithstanding any other provision of this chapter, if the federal government determines that any exclusions from ICF-IDDs specified under this chapter would prevent an assessment imposed by this chapter from qualifying as a broad-based health care related tax, as that term is defined in section 1903(w)(3)(B) of the Social Security Act, approved July 30, 1965 (79 Stat. 349; 42 U.S.C. § 1396b(w)(3)(B)), the exclusions shall not be made.

(d) The assessment imposed under § 47-1273 shall not be due at the time required by this chapter, or by rules issued pursuant to § 47-1277, if the Department of Health suspends or postpones regular Medicaid payment to ICF-IDDs beyond the regular monthly payment cycle, but shall be due when the regular monthly payment cycle resumes.

(e) The assessment imposed under § 47-1273 shall be null and void if either of the following occurs:

(1) The rate methodology for ICF-IDDs is altered or amended such that the overall average Medicaid per diem rate for ICF-IDDs is decreased or on, an overall average per diem basis, the altered or amended rates are less than they would have been if the reimbursement methodology had not been changed; or

(2) Following fiscal year 2006, general funding levels for Medicaid rates for ICF-IDDs fall below the fiscal year 2006 level of funding, on a per-Medicaid-resident, per-day basis.

(Mar. 8, 2006, D.C. Law 16-68, § 2(b), 53 DCR 47; Sept. 26, 2012, D.C. Law 19-169, § 33(b)(11), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "ICF-IDD" for "ICF-MR" and "ICF-IDD's" for "ICF-MR's".

Legislative History of Laws

For Law 16-68, see notes following § 47-1270.

For history of Law 19-169, see notes under § 47-1270.