Converting Community Residences into Intermediate Care Facilities for the Mentally Retarded: Some Cautionary Notes

A REPORT BY THE NEW YORK STATE COMMISSION
ON QUALITY OF CARE FOR THE MENTALLY DISABLED

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Thanks are also extended to the Office of Mental Retardation and Developmental Disabilities and the Division of the Budget for their cooperation in the preparation of the report. Special thanks are extended to Robert Norris and Barbara Hawes of the Office of Mental Retardation and Developmental Disabilities and to Alex Rollo of the Division of the Budget for their assistance and thoughtful commentary on issues related to the appropriateness of the conversion of community residences to ICF-MRs.

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PREFACE

The New York Mental Hygiene Law (MHL) requires this Commission, in part, to:

> Review the cost effect of mental hygiene programs and procedures provided for by law with particular attention to efficiency, effectiveness, and economy in the management, supervision, and delivery of such programs. Such review may include but is not limited to: (i) determining reasons for rising costs and possible means of controlling them; (ii) analyzing and comparing expenditures in mental hygiene to determine the factors associated with variations in costs; and (iii) analyzing and comparing achievements in selected samples to determine the factors associated with variations in program success and their relationship to mental hygiene costs. (Section 45.07 MHL)

In conjunction with this responsibility, the Commission has conducted a study of the program initiative of the Office of Mental Retardation and Developmental Disabilities to convert a majority of New York City's community residences for the developmentally disabled to Medicaid-reimbursable intermediate care facilities for the mentally retarded (ICF-MRs).

Proposed to resolve the longstanding difficulty the State has encountered in financing community residences primarily through State appropriations, the conversion of community residences to ICF-MRs will allow the State to shift 50 percent of the costs of these programs to the federal government. While recognizing the urgent need for the State to bring federal fiscal participation into the

community residence program, the Commission was concerned whether this avenue for accessing federal funds would provide a long-term solution to the fiscal problems facing community residences. In addition, the Commission was concerned whether the conversion of community residences to ICF-MRs would affect the widely acknowledged success of these programs in providing quality residential care for the developmentally disabled.

Based on these concerns, the Commission has conducted a study and analysis of the long-range fiscal and programmatic appropriateness of the conversion proposal. This paper presents the findings and conclusions of this study.

It is hoped that this paper will assist decision-makers in all affected sectors--the Office of Mental Retardation and Developmental Disabilities, the voluntary sector, the Division of the Budget, and the Legislature--in taking whatever steps are necessary to preserve and improve the quality of a community residential program for the developmentally disabled that is nationally recognized as highly successful.

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EXECUTIVE SUMMARY

In recent years, the State's financing of small group homes or community residences for the developmentally disabled has been beset with problems. Recognized as one of the State's most successful long-term residential care alternatives for the developmentally disabled, many community residences, particularly in the New York City area, have from the start required supplemental State aid in excess of that provided in the standard Section 41.33 community residence contract. In the New York City area, for example, the average cost per client in a community residence is $19,800 annually or 99 percent in excess of the typical community residence contract of $9,960 provided pursuant to Section 41.33.

In order to finance those community residences requiring State aid in excess of that provided by the basic Section 41.33 contract, the Office of Mental Retardation and Developmental Disabilities (OMRDD) has provided supplemental State aid contracts through other legislative appropriations, primarily purchase of service (POS) and Chapter 620 monies. Many community residences, particularly in the New York City area, have come to rely on these supplemental contracts for over half of their operating expenses.

Long recognized by OMRDD, the Division of the Budget, and the voluntary agencies, as an inappropriate and unstable funding arrangement, the continued large-scale supplementation of community residences' basic Section 41.33 contract through POS and Chapter 620 monies became a virtual impossibility last year. In the 1979-80 fiscal year, the Legislature and the Division of the Budget respectively, placed restrictions on the utilization of POS and Chapter 620 allocations for the long-term financing of community residences. As a result of these restrictions the OMRDD was faced with either closing many community residences requiring substantial State aid in excess of that allowed by the Section 41.33 contract or seeking an alternative funding mechanism for these programs.

Conversion of these community residences to community-based intermediate care facilities for the mentally retarded (ICF-MRs) was seen by the OMRDD as the only solution to the above fiscal dilemma. Designated as a federal health care modality, ICF-MRs have access to the Medicaid funding stream which provides 50 percent federal fiscal participation, significant reductions in the State's financial share as well as a single source funding mechanism for these programs.

While recognizing the immediacy and seriousness of the fiscal situation confronting these community residences and that conversion of these residences to ICF-MRs may provide

immediate fiscal relief, the Commission on Quality of Care for the Mentally Disabled was concerned about the long-term fiscal and programmatic implications of the conversion plan. Based on this concern, as well as requests from several voluntary agencies sponsoring community residences slated for conversion to ICF-MRs, the Commission conducted a study and analysis of the long-term appropriateness of the proposed conversion plan. This paper presents the findings and conclusions of this study.

The Commission's study focused on one general fiscal issue and three related programmatic issues pertaining to the long-range appropriateness of the proposed conversion of these community residences to ICF-MRs:

1. *The ultimate cost-effectiveness of community residential programs for the developmentally disabled in view of the costs emanating from conversion of community residences to ICF-MRs;*

2. *The appropriateness of ICF-MR level of care relative to the needs of clients in community residences converting to ICF-MRs;*

3. *The long-range capability of community-based ICF-MRs to provide homelike, residential care for individuals with developmental disabilities; and*

4. *The long-term programmatic consequences of converting a majority of the traditional community residences in the New York City area to ICF-MRs.*

The Commission's analysis of these issues was based on interviews conducted with senior representatives of voluntary agencies sponsoring 28 of the 54 community residences in the New York City area slated for conversion, as well as representatives of the County Service Group of OMRDD in New York City, the Central Office of OMRDD, and the Division of the Budget. Commission staff also undertook a detailed comparative analysis of the State and federal regulations governing ICF-MRs and the State regulations governing community residences.

In the conduct of this study, the seriousness of the immediate fiscal dilemma of many community residences and the difficulty that OMRDD faced in seeking its speedy solution were clearly identified. Specifically, it became apparent that, in large part, the fiscal problems besetting these community residences derive from the failure of the federal government to provide adequate fiscal assistance to programs like New York State's community residences. Although federal statutes and federal court decisions mandate that states provide care for the developmentally disabled in the least restrictive setting appropriate to their needs, the provision of substantial federal fiscal assistance only to ICF-MRs and not to programs similar to the community residence creates a disincentive for states who may have difficulty establishing and maintaining costly

community residences despite the fact that these latter programs may be the least restrictive appropriate residential setting for many developmentally disabled persons.

While the Commission's study found that there are clear and present benefits of conversion (i.e., access to the more stable Medicaid funding stream, increased federal financial participation, and consequent immediate State fiscal savings), there are also potential fiscal and programmatic problems which may emerge in the future and indicate the need for caution. They are:

1. *The overall cost escalation of 45 to 70 percent resulting from conversion of community residences to ICF-MRs represents a dramatic increase in the budgets of these already costly residences. While State savings should nevertheless be realized in the short-term, these increased costs indicate the need for fiscal vigilance in the State's continuing efforts to contain long-term residential costs for the disabled and elderly.*

2. *The increased Medicaid bill for local governments resulting from conversion of community residences to ICF-MRs places additional financial burdens on New York City and other localities which can ill afford it. This reinforces the need for cost containment as well as other mechanisms to reduce or eliminate the fiscal impact of this program upon localities.*

3. *To avoid the danger of clients being inappropriately placed in a care modality that is potentially more restrictive and more service intensive than they require, there should be a careful assessment of clients' needs in converting community residences to ICF-MR level of care. Such careful planning is*

consistent with State policy mandating that mentally disabled individuals should be placed in the least restrictive residential environment appropriate for their needs.

4. *While the capability of existing community residences to provide homelike, noninstitutional environments has been demonstrated, the ICF-MR program, with its emphasis on intensive services at the residence, needs to be monitored to ensure that it can be implemented without significantly restricting the homelike environment; and*

5. *The conversion of the majority of the traditional community residences for developmentally disabled individuals in the New York City area into ICF-MRs may limit the State's capability to provide a range of residential alternatives appropriate to the diverse needs of this population. This concern ought to be addressed by OMRDD both in the process of implementation of the conversion plan as well as in future planning for community residential programs for the developmentally disabled.*

While these conclusions indicate to the Commission that conversion of existing community residences to ICF-MRs may lead to long-range fiscal and programmatic problems, they do not indicate that limited-bed ICF-MRs should not be established or that all residences slated for conversion to ICF-MRs should not convert. Rather, the Commission's study confirms the important role of the limited-bed ICF-MR for severely impaired developmentally disabled individuals whose disabilities and health-related needs preclude their placement in any other form of community residential care. The Commission also recognizes that some clients in the community residences slated for conversion are probably in need of ICF-MR level of care. We therefore support the priority being given to the development of the small, community-based ICF-MR.

The Commission, however, cautions against a conversion of virtually all community residences in the New York City area to ICF-MRs. Believing that such a conversion will contribute to escalating residential care costs for the developmentally disabled and may lead to the placement of some persons who are inappropriate for ICF-MR level of care, as well as to curtailing the long-term capability of the State to provide quality and appropriate residential care for these individuals, the Commission recommends conservative evaluation of each community residence converting to ICF-MR.

In recommending that OMRDD proceed with caution in converting community residences to ICF-MRs, the Commission recognizes that at the present time conversion of community residences to ICF-MRs is the only means of bringing substantial federal fiscal aid to these residential programs. As such, the Commission believes that the conversion of residences to ICF-MRs should be pursued with care to minimize adverse fiscal and programmatic effects.

The Commission also believes there is a need for OMRDD, over the long term, to seek greater utilization of other, admittedly less substantial, avenues for federal aid to community residences which are not appropriate for conversion. These include greater use of personal care providers

(financed by Medicaid) and CETA trainees as staff in community residences and the more aggressive seeking of HUD subsidies for the residences' leasing costs. The Commission also recommends that OMRDD initiate negotiations with the Health Care Financing Administration within HHS (U.S. Department of Health and Human Services, formerly HEW) to provide for waivers and other necessary accommodations in the federal ICF-MR regulations which will enhance the flexibility of the ICF-MR care modality to more appropriately meet the variable residential and treatment needs of New York State's developmentally disabled citizens.

In conjunction with these recommendations, the Commission also believes that any lasting solution of the fiscal problems facing the community residence program must comprehensively address and revise the current mechanism for providing State fiscal assistance to these programs. In the course of the Commission's study, it was apparent that the current amalgamation of State funding streams flowing to these programs makes it difficult to account for the costs of these programs and may be contributing to an inequitable distribution of State funds among programs.

Specifically, the Commission on Quality of Care for the Mentally Disabled recommends that:

1. *The OMRDD should, whenever possible, avoid inappropriate levels of care for the clients affected by the conversion; ensure the ultimate cost-effectiveness of the converted programs; and seek within the ICF/MR modality a full range of alternative services from more restrictive to less restrictive settings, appropriate to invdividual needs.*

2. *In accord with this cautious approach each community residence slated for conversion should be carefully reviewed:*

   - *to ascertain that the existing operating costs of the community residence appropriately reflect the services provided to clients and that the additional costs incurred by conversion to an ICF-MR will provide improvement of the existing program for clients; and*
   - *to analyze the impact of the conversion of the community residence on the range of residential care alternatives appropriate for the developmentally disabled individuals in the locality.*

3. *The State Legislature and the Division of the Budget should, as an interim measure, permit the continuation of the use of purchase of service and Chapter 620 monies to finance community residences where conversion is not appropriate. This interim measure should remain in effect until comprehensive revisions can be made in funding for community-based residential programs.*

4. *The OMRDD should carefully monitor those community residence programs converting to ICF-MRs to evaluate the programmatic and fiscal effects of the conversion. This deliberate monitoring process, which should continue for at least three years following conversion, should be focused on two broad*

objectives: (1) to assess the immediate and long-term impact of the converted ICF-MRs on State and local governments' costs; and (2) to assess the appropriateness of the converted ICF-MRs to address the residents' needs and to provide a residential setting which is the least restrictive possible in accordance with their needs.

5. *At the same time, the State Legislature, the Division of the Budget, and the Office of Mental Retardation and Developmental Disabilities should develop a sophisticated system of determining the real costs of care in community residences so that State funding of these programs may be more equitable than in the past.*

6. *Based on the data derived from this cost finding system, the statutorily provided formula for State assistance to community residences (Section 41.33 MHL) should be revised to reflect the real costs of operating such residences in different geographical regions of the State for clients of different functional levels and care needs.*

Special attention in this revision process should be directed toward:

- *providing a single source of State fiscal assistance to community residences;*
- *developing an on-going monitoring mechanism to guarantee the cost-effectiveness of community residences' operations;*
- *providing State fiscal incentives for community residence providers to obtain federal and other non-State financial aid for their programs, other than their clients' SSI payments; and*
- *including a provision in the statute requiring OMRDD to clearly show in its Executive Budget request all State fiscal assistance, including monies from allocations outside of Section 41.33 of the Mental Hygiene Law, used for the support of the community residence program.*

In addition to the above recommendations, the Commission also believes that certain other long-term efforts should be initiated by the Office of Mental Retardation and Developmental Disabilities to pursue other avenues for increasing federal aid to community residential alternatives for the developmentally disabled wherever appropriate. While these efforts will not provide an immediate remedy to the fiscal problems facing community residences, they may contribute to a meaningful long-term resolution. These efforts include:

1. *The Office of Mental Retardation and Developmental Disabilities, together with voluntary agencies, should pursue additional avenues to bring federal fiscal participation into the State's community residence program, without the risk of altering the family-like, group home residential model of the community residence.*

   Sources of existing federal financial assistance which appear to be consistent with these criteria include:

   - *increased utilization of personal care providers, financed by Medicaid, in community residences, particularly for 621 eligible clients. The use of personal care providers as staff to a residence allows significant federal fiscal sharing through Medicaid funds without affecting the generally programmatic guidelines of the community residence or substantially increasing existing care costs.*

   - *increased utilization of federal Housing and Urban Development (HUD) funds for rent subsidies by community residences. Currently few community residences, particularly in the downstate region, take advantage of these HUD subsidies which could relieve the State of a significant portion of the leasing costs of these residences.*

- *increased utilization of CETA trainees and other federally funded employee trainee programs in community residences.*

  Expansion of these trainee programs in community residences would reduce the State's staffing costs for these programs, as well as augment the number of trained paraprofessionals in community care of the developmentally disabled.

2. *The OMRDD should actively negotiate with the Health Care Financing Administration within HHS for waivers and other accommodations in the federal ICF-MR regulations which would permit greater flexibility in utilizing the ICF-MR for developmentally disabled clients who require a supervised, supportive, rehabilitative residential environment, but who do not require active treatment on a regular basis in the residential setting. Such waivers or other accommodations would permit New York State to incorporate in its continuum of residential care alternatives a lower level of ICF-MR care which would allow the State to more appropriately serve the majority of developmentally disabled clients in need of congregate residential care in the community. As a result of such efforts the additional costs incurred by compliance with existing ICF-MR regulations would be reduced, and the potential of creating unnecessarily service intensive and restrictive residential settings for clients would be lessened.*

3. *New York State should, in conjunction with the above effort, work with the Federal Housing and Urban Development Agency to consider the possibility of HUD setting aside funds for states to allocate for housing specifically for persons with mental disabilities. At the present time, intense competition for Section 8 HUD rent subsidy funds and Section 202 HUD mortgage funds by other groups often severely limits their utilization by individuals with mental disabilities. By providing a set-aside fund for the mentally disabled administered by the states, HUD would be fostering the development of much needed housing for this population and, at the same time, would be providing financial assistance to states endeavoring to establish such housing.*

CHAPTER I

Overview of the Problem

Since the late 1960's, New York State has increasingly relied on small group homes as a community residential alternative to institutional care for individuals with developmental disabilities. These group homes, or community residence programs, have become a mainstay of the State's deinstitutionalization efforts and a broad policy objective of providing developmentally disabled individuals with residential care in the least restrictive environment according to their needs. Affirming its commitment to the community residence program, the State Legislature in 1972 enacted what is now Section 41.33 of the Mental Hygiene Law providing State aid to private and public agencies sponsoring community residences.

Viewed as providing a homelike, noninstitutional environment for residents, and an effective means of transiting clients out of institutions, as well as preventing unnecessary institutionalization, the community residence program has been acclaimed as among the State's most successful care modalities. As a result of this success and the concerted effort of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and voluntary agencies in

the State, the community residence program for developmentally disabled persons has experienced tremendous expansion. Largely as a result of the Willowbrook Consent Judgment[1] signed by Governor Hugh L. Carey in 1975, the growth of this program has been most pronounced in the New York City metropolitan area where approximately 37 percent of the State's community residences for the developmentally disabled are located.

In recent years, however, latent problems in the State's financing mechanism for the community residence program, provided for in Section 41.33, became apparent. Many community residences, particularly in the New York City area, had from the start required State aid in excess of the maximum 50 percent of the total operating expenses allowed by Section 41.33. In the New York City area, for example, OMRDD estimates that the average per resident cost in these programs is $19,800, or 99 percent in excess of the budget of a typical community residence financed under Section 41.33.[2]

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[1] The Willowbrook Consent Judgment (NYSARC v. Carey, U.S. District Court, E.D.N.Y.) requires in part, that members of the plaintiff class be placed in community residences of ten beds or less and that the census of Willowbrook Developmental Center (now Staten Island Developmental Center) be reduced to a maximum of 250 by March 31, 1981.

[2] The $19,800 per capita average annual cost figure of New York City community residences represents OMRDD's stated cost of community residence care in New York City in May, 1979.

In order to finance these community residences requiring State aid in excess of that provided by Section 41.33, the OMRDD has provided supplemental contracts through other legislative appropriations, primarily purchase of service (POS) and 620[3] monies. Many community residences, particularly in the New York City area, have come to rely on these supplemental contracts for over half of their operating expenses.

Long recognized by the OMRDD and the Division of the Budget (DOB), as well as the voluntary agencies, as a cumbersome and unstable funding arrangement, the problems emanating from the deficiencies in Section 41.33 State aid formula for community residences came to the forefront this year when the Legislature and the Division of the Budget restricted the utilization of supplemental State aid, in excess of that provided by Section 41.33, to support community residences. This restriction was achieved through two measures.

First, the Legislature limited OMRDD's flexibility in using other Maintenance Undistributed allocations for purchase of service contracts to 10 percent above the legislative allocation for POS monies. Previously, since POS was

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[3] Chapter 620 of the Laws of 1974 which provides 100 percent State funding for mental hygiene services to certain long-term patients discharged from State institutions.

included under Maintenance Undistributed in the State Purposes budget, OMRDD was able to shift rather large amounts of monies from other unexpended Maintenance Undistributed allocations to POS. Last year, for example, OMRDD shifted from other Maintenance Undistributed items between $2 and $3 million to POS contracts to sustain community residences and other programs needing supplemental funding.

Secondly, the Division of the Budget put tighter controls on 620 funds which OMRDD directly administered. While most 620 monies are channeled through local governments, 620 funds going to community residences were directly allocated by OMRDD to specific voluntary agency providers. At one time, DOB allowed OMRDD considerable interchange between the general 620 funds, going through local governments, and direct 620 funds, going directly to community residences or other programs. In the 1979-80 budget year, however, DOB denied OMRDD's request to make up deficits in their direct 620 funds through utilization of unexpended general 620 funds.

As a result of these restrictions, the available POS and 620 funds to supplement costly community residence programs were greatly reduced and the OMRDD was faced with either closing many community residences requiring substantial State aid in excess of that allowed by Section 41.33, or seeking an alternative funding mechanism for these programs.

Conversion of these community residences to community-based intermediate care facilities for the mentally retarded (ICF-MRs) was seen by the Commissioner of OMRDD as the only solution to the above fiscal dilemma.[4] Designated as a federal health care modality, ICF-MRs have access to the Medicaid funding stream, which provides maximization of federal fiscal participation, significant reductions in the State's financial share, as well as a single source funding mechanism for these programs. As a result of conversion to ICF-MRs, the operating expenses of these programs, now assumed almost entirely by the State, will be shared 50 percent with the federal government. The State's expenditures for the converting residences are further reduced by the fact that counties in New York State assume 25 percent of the Medicaid expenses for all their residents, except those who had resided in a State institution for five or more years.[5] Finally, Medicaid, a federal entitlement program which does not require annual State legislative approval of funding for qualifying services, is seen as a more stable, simplified funding mechanism for these programs than the

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[4] A letter from Acting Commissioner James Introne of the Office of Mental Retardation and Developmental Disabilities, stating this position, is included in Appendix A.

[5] Chapter 621 of the Laws of 1974 (amended in 1975, 1977) provides that the State will assume all county Medicaid costs for these latter residents. Approximately 53 percent of the residents in the converting community residences are 621 eligible.

existing arrangement which requires agencies to juggle three funding sources, the basic Section 41.33 contract, POS contracts, and 620 contracts. While reducing State expenditures for support of the community residence programs, conversion into ICF-MRs will also make it possible to enrich the staffing and services available to clients.

However, if conversion of these community residences to ICF-MRs does seemingly resolve the immediate fiscal dilemma facing these programs, the conversion plan, as with any major new initiative, also presents its own problems. Among these problems are the overall cost escalation of between 47 and 71 percent required to bring converting residences in compliance with ICF-MR regulations and the new financial burden placed on local governments who for the first time will be required to share 25 percent of these costs. Recognizing that the conversion plan was being urged primarily as a solution to a fiscal problem, the Commission sought to ensure that this proposed solution would achieve the desired results.

The Commission was also concerned about the programmatic effects of the proposed conversion plan upon the long-term quality of care of residents. Specifically, the Commission was concerned about the implications of the conversion of the majority of the traditional community residences in the New York City area, the region of the State where the

program has been, perhaps, most successful. Another significant and related concern was whether the conversion to ICF-MRs, defined by federal regulations as a care modality for those individuals whose needs cannot be addressed "in other than an institutional setting," had the potential to contribute to the placement of individuals with developmental disabilities in inappropriate service intensive and restrictive environments. Such placement would be contrary to both State policy and the Willowbrook Consent Decree's requirement of placement of clients in the least restrictive environment consistent with their needs. If such potential were found to exist, appropriate care would have to be taken in the implementation of the conversion plan to avoid such a result.

Purpose of the Commission's Study

Concerned about these problems and their possible long-term implications for the quality of care, and the cost-effectiveness of the State provision of residential care services for individuals with developmental disabilities, the Commission on Quality of Care for the Mentally Disabled, in accord with its statutory responsibilities, has conducted a study of the programmatic and fiscal appropriateness of the conversion of these community residences to ICF-MRs.

In the conduct of this policy analysis study, the Commission has solicited information and advice from voluntary agencies operating community residences in the New York City area, the county service group of OMRDD in New York City, the Central Office of OMRDD, and the Division of the Budget. These meetings have highlighted the seriousness of the immediate fiscal dilemma of many community residences and the difficulty that the OMRDD faced in seeking its speedy solution.

This paper is not presented, therefore, as a critique of the OMRDD efforts; rather, it is intended to assist decisionmakers in taking whatever steps are necessary to preserve and improve the quality of a community-based residential program for the developmentally disabled that is nationally recognized as highly successful.