

**Issue:** Are QMRPs required by federal law and/or regulation to provide certain waiver services? May a QMRP be redefined so that individuals with more experience but not a qualifying degree can receive the QMRP designation or may additional degree fields be included in those that qualify an individual for a QMRP designation?

**Findings:** Intermediate care facility for persons with mental retardation (ICF/MR) services are an optional Medicaid benefit, defined at 42 CFR 440.150 as facilities with the primary purpose of providing health and rehabilitation services to persons with mental retardation (MR) or related conditions. One condition of participation is the provision of “active treatment” to residents of an ICF/MR. Active treatment is defined as the “aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services . . .” consisting of a comprehensive functional assessment; individual program plan; program implementation; program documentation; and program monitoring and change.[42 CFR 483.440(a)] Facility staffing requirements set forth in federal regulations provide that each client’s active treatment program must be integrated, coordinated and monitored by a qualified mental retardation professional who 1) has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and 2) who is either i) a doctor of medicine or osteopathy; ii) a registered nurse; or iii) an individual who hold at least a bachelor’s degree in a professional category specified in the federal regulation. [42 CFR 483.430(a)] Clearly QMRP’s are required in an ICF/MR setting and there is no provision in federal regulation to substitute experience for a degree or to expand the list of qualifying degrees.

Home and community-based waiver services became an option in 1981. Section 1915(c) of the Social Security Act provides that home and community-based services “which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded . . .” may be included as medical assistance. There is, however, no specific mention of active treatment in the applicable regulations.

DHHS performed a lengthy self-evaluation as a result of President Bush’s New Freedom Initiative and Executive Order No. 13217 of June 2001, and issued its findings in a report, “Delivering on the Promise: HHS Self-Evaluation to Promote Community Living for People with Disabilities.” It is described as a “comprehensive policy framework to guide and coordinate the activities of the multiple HHS components involved in supporting community living for people with disabilities.” The report states as follows: “HCBS waivers may only serve individuals who require the level of care typically provided in a Medicaid-funded institution. Active treatment is a service that all ICF/MRs are required to provide. This action would clarify that the need for active treatment is not required for HCBS waiver eligibility and that the requirement for a facility to provide active treatment is distinct from an individual’s need for a particular level of care.” This action was identified as an “impediment” to the states ability to offer community alternatives and its removal was characterized as a way to reduce institutional bias.

(Source: <http://www.hhs.gov/newfreedom/final/hhspart3.html>)

**Conclusion:** The requirement of a QMRP comes into play because of the active treatment requirement for ICF/MRs. If active treatment is not a required component of home and community-based waiver services, there is no requirement of a QMRP because this designation is

not otherwise required in the regulations pertaining to home and community-based waiver services. Although there is no additional CMS guidance on this topic, the fact that the assessment report states that the action would “clarify” tends to support the position that CMS had not intended for active treatment to be a requirement of waiver eligibility.

Further support for the position that active treatment is not required in HCBS waivers is the Section 1915(c) waiver application itself. The Waiver Application template Appendix C-3 (Version 3.5) requires the state to set forth provider qualifications for each service to be included in the waiver, but does not reflect any mandated requirements. Federal regulations and the application do require the Medicaid agency to make assurances to CMS that necessary safeguards have been taken to protect the health and welfare of the recipients of services by assuring that adequate standards for all types of providers that furnish services under the waiver are met. Standards must be reasonably related to the requirements of the waiver service to be furnished and any applicable state licensure or certification requirements must be met. In addition, the qualifications of individuals performing the waiver assessment must be as high as those of individuals assessing the need for nursing facility care [42 CFR 441.352(c)]

It appears that QMRP requirements are not federally mandated for home and community-based waiver services but rather have been imposed at State option. If the state can assure CMS that the health and welfare of the clients is not jeopardized by changing the licensure, certification, or qualification standards for staff, the state could revise current staffing requirements.

**Further Federal Clarification of Qualifying Degrees:** The CMS “State Operations Manual, Appendix J – Guidance to Surveyors: Intermediate Care Facilities for Persons With Mental Retardation”, is a survey protocol designed to assist surveyors. It provides operating instructions based on statutes, regulations, and guidelines. With respect to the provision of Section 483.430(b)(5)(x) which states that to be designated as a human services professional an individual must have at least a bachelor’s degree in a human services field (including but not limited to sociology, special education, rehabilitation counseling, and psychology), the instructions provide as follows:

*‘Human services field’ includes all the professional disciplines stipulated in Section 483.430(a)(3)(i)(ii) and 483.430(b)(5)(i)-(ix), as well as any related academic disciplines associated with the study of: human behavior (e.g., psychology, sociology, speech communication, gerontology etc.), human skill development (e.g., education, counseling, human development), humans and their cultural behavior (e.g., anthropology), or any other study of services related to basic human care needs (e.g., rehabilitation counseling), or the human condition (e.g., literature, the arts).*

*An individual with a ‘bachelors degree in a human services field’ means an individual who has received: at least a bachelor’s degree from a college or university (master and doctorate degrees are also acceptable) and has received academic credit for a major or minor coursework concentration in a human services field, as defined above.*

Source: [http://www.cms.hhs.gov/manuals/downloads/som107ap\\_j\\_intermcare.pdf](http://www.cms.hhs.gov/manuals/downloads/som107ap_j_intermcare.pdf)