

May 31, 1

Robert D. DiCenso, Chief
Division of Facilities Regulation
Department of Health
75 Davis Street
Providence, Rhode Island 02908

Dear Bob,

Re: Dr. Joseph H. Ladd Center, Medicaid Provider #41-G018

This letter will follow-up our discussion in your office on May 20, 1985 concerning the Medicaid certification issues presented by circumstances at the Ladd Center. That same day, I also had the opportunity to meet with Nancy Bordeleau, Commissioner, Department of Social and Rehabilitative Services, as well as with Ladd Superintendent George Gunther and Dr. Robert Carl, Executive Director, Retardation, Department of Mental Health and Rehabilitation Hospitals, to express our concerns about this large State ICF/MR. Our office has received several general complaints about current conditions at Ladd, relating mostly to the shortage of staff, from the Rhode Island Association for Retarded Citizens, and we have noted the recent media attention.

A federal survey was conducted at Ladd in June of 1984. Although several deficiencies were noted at that time, the general finding was that Ladd was providing active treatment as required by federal regulations to a difficult population with only minimally adequate staff resources. The overall staff to client ratio was then approximately 2 to 1. It is our understanding that the current staffing ratio is approaching 1.6 to 1 and may go even lower if current budgetary proposals affecting the Center are enacted. While federal regulations do not prescribe specific overall staff to client ratios for such an ICF/MR, our experience with comparable institutions in New England and elsewhere suggest strongly that ratios below 2:1 will predictably jeopardize continuing Medicaid certification. Such is now the case for the Ladd Center.

We have received the Statement of Deficiencies from the March 4, 1985 State survey and note that a total of 10 Medicaid standards are out of compliance in varying numbers throughout most of Ladd's residential buildings. Most of those standards represent serious deficiencies in the facility's capacity to render adequate care to clients. Moreover, most of the unmet standards are amenable to correction only through the availability of adequate staffing resources. The extensive use of staff overtime can also be a dangerous practice if continued for months as it predictably leads to "burn-out" and accelerated attrition of often experienced staff, which in turn can create circumstances jeopardizing patient health and safety.

We further note that the recent IPR/UR findings identify 66 Ladd clients who are not now, and who have not been in the past months, receiving active treatment. This finding represents a reduction in Ladd's active treatment rate of about 10% since the federal survey of a year ago. This rate will predictably fall much lower still in the coming months if staffing resources remain at existing levels. As you know, the rendering of active treatment is one of the statutory bases for the claiming of FFP for individual clients in ICFs/MR. (See citations at 42 CFR 435.1009 and the Social Security Act, Section 1905(d)(2)) Efforts to economize by closing off campus day programs will also predictably lower active treatment rates.

We are aware that the Consent Decree applicable to the Ladd Center, monitored by the Federal District Court, requires that Title XIX certification be maintained. This Decree calls for significant further deinstitutionalization of the Ladd client population. Other States have recognized that clients who have been actively treated at a large State institution are more likely to make the transition to an often less restrictive and less costly community setting more successfully than those who have not been so treated. In these States, plans have been made for staff to move with clients to such new treatment settings.

It further is our understanding that your office has just extended Ladd's Medicaid Provider Agreement for a 60 day period to September 1, 1985 as provided for in regulations located at 42 CFR 442.16. We presume the State's decision to extend was made in conformity with these applicable regulations. We also would presume that any decision to recertify Ladd beyond September 1, 1985 will be made in conformance with the federal certification requirements set forth in 42 CFR 442.105.

It is also our understanding that your office has properly rejected one Plan of Correction already submitted by the facility because resources could not be identified that made the implementation of the POC feasible or credible. If no acceptable POC has been or can be submitted by the end of the current provider agreement, September 1, 1985, applicable regulations at 42 CFR 442.105(b) call for your office to effect a termination of this provider from the Medicaid program, with an attendant annual loss of \$20 million in FFP. Under our office's "look behind" authorities, Social Security Act, Section 1910(c) or 42 CFR 442.30(a)(2), the Secretary can move to cancel the provider agreement independently and unilaterally if Ladd has been improperly recertified beyond September 1, 1985.

Our estimation is that approximately 1.5 million dollars worth of new and restored staffing positions, approximately 100 staff, will be needed to avoid the decertification of Ladd Center and the loss of 20 million dollars in federal revenues.

By June 15, 1985, please submit to this office the following:

- a) Acknowledgement of your receipt of this letter and your sharing of our concern regarding the continued certification of the Ladd Center with other State agencies and officials who are involved in the resolution and/or the consequences of the problems that exist.
- b) Copies of the recent IPR/UR documents for the 66 Ladd clients found not to be receiving active treatment.

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- c) Your plans for the periodic monitoring of the possible deteriorating conditions at Ladd between now and any recertification decision made by September 1, 1985.
- d) Your documentation of the basis for the decision to extend the facility's provider agreement per 42 CFR 442.16.

Please also submit, as they become available, any POC's, communications from the Federal District Court, or consultant reports pertaining to the Ladd Center.

Thank you for your immediate attention to this set of concerns and our requests for response.

Sincerely yours,

Lawrence W. Osborn, M.D.
Associate Regional Administrator

cc: George Gunther
Robert Carl
Nancy Bordeleau

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