P U B L I C H E A R I N G

before

SENATE INSTITUTIONS, HEALTH & WELFARE COMMITTEE

on

ASSEMBLY, NO. 792

(Intermediate Care Facility-Mental Retardation (ICF-MR) Program)

Held:
March 16, 1978
Senate Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Anthony Scardino, Jr. (Chairman)
Senator Anthony E. Russo

ALSO:

Michael A. Bruinooge, Research Associate
Legislative Services Agency
Aide, Senate Institutions, Health & Welfare Committee

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I N D E X

I N D E X - Continued

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ASSEMBLY INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 792

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 1978

This bill will appropriate all additional receipts representing Federal reimbursements for eligible expenses under the Intermediate Care Facility--Mental Retardation (ICF-MR) program to the Division of Mental Retardation for allocation in order to meet certain Federal standards of the ICF-MR program. This would include certain related programs and administrative costs necessary to comply with treatment and facility standards established by the Department of HEW, thus enabling continuation of reimbursements and qualifying additional institutional facilities for the ICF-MR program.

The bill will also permit the use of existing appropriations for the mental retardation program to constitute the required non-Federal matching funds for Medicaid reimbursements for ICF-MR's.

The committee released the bill without amendment.

ASSEMBLY, No. 792

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 16, 1978

By Assemblymen DOYLE and NEWMAN

Referred to Committee on Institutions, Health and Welfare

A SUPPLEMENT to "An act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1978 and regulating the disbursement thereof," approved June 30, 1977 (P. L. 1977, c. 137).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

GENERAL STATE OPERATIONS

DEPARTMENT OF HUMAN SERVICES

760. DIVISION OF MENTAL RETARDATION

1. In addition to all other appropriations heretofore made to the Division of Mental Retardation and to the several institutions within that division for institutional programs and for the purchased residential care program, there are hereby appropriated, for allocation to the several institutions within that division and to the purchased residential care program, all receipts representing reimbursements under the Intermediate Care Facilities-Mental Retardation program, for eligible expenses required to carry out approved corrective action plans and for other related program and administrative costs necessary to maintain eligibility for reimbursement and to qualify additional facilities and programs for eligibility under the Intermediate Care Facilities-Mental Retardation program.

2. Any required portion of the appropriation made heretofore to the Division of Mental Retardation and to any institution or program within that division may be made available to the Division of Medical Assistance and Health Services by transfer or otherwise to constitute the non-Federal matching portion of the payments for medical assistance recipients under the Intermediate Care Facilities-Mental Retardation program.

3. This act shall take effect immediately and shall be retroactive to July 1, 1977.

STATEMENT

Under a Federal program called Intermediate Care Facilities—Mental Retardation, institutions and community facilities which comply with treatment and facility standards established by the Department, of Health, Education and Welfare can become eligible for Federal reimbursement through the Medical Assistance (Medicaid) program for up to 50% of the cost of maintaining and treating residents in those institutions for the mentally retarded.

Prior to July, 1977 the standards for compliance and the time limitations were so difficult to meet that New Jersey had determined that we would not seek to qualify our institutions under this program. As of July, 1977 the Federal government revised the standards somewhat, but more importantly, extended the time period for achieving full compliance to June, 1980, with the possibility for further extension to June, 1982.

Since it now appears to be practicable to qualify a large percentage of our institutional facilities for participation within the new time limits, the Governor has notified the Federal Department of HEW that New Jersey has elected to participate in the program.

In order that the Federal funds which will be received this year can be utilized to upgrade staff and facilities to comply with the Federal standards by the full compliance date, it is necessary to authorize the expenditure of those revenues by an appropriation.

SENATOR ANTHONY SCARDINO, JR. (Chairman): Good morning. I am Senator Scardino. To my right is Senator Anthony Russo of Union County. We hope that other members of the Committee will be joining us very shortly. Senator Hamilton, who is also a member of this Committee, called me last evening and regrets that he cannot be with us today. He has been very active with other legislative business and asked our indulgence in not having his presence with us today.

Originally, the Senate Institutions, Health and Welfare Committee set this day aside because we thought it would be an opportune time for us to discuss further the legislation concerning the rate-setting, or hospital review legislation, sponsored by Senator Merlino. But because there is some extensive work going on in connection with that bill, both by the Senator's staff and by the Executive staff, we were asked to postpone the hearing on that subject for a future date and we intend to announce that, hopefully, within the next few weeks. We thereupon decided that we would still take advantage of having scheduled this date for a meeting and discuss what we consider to be a very timely subject and that is Assembly Bill 792, sponsored by Assemblyman John Paul Doyle of Ocean County. It is legislation that has really been introduced only a short time ago. I understand that it has gone through the Assembly Committee process, has received attention and approval in the Assembly by a vote, I believe, of 75 to nothing -- 75 to 1. I stand corrected. What we are here to find out is: Why did one person vote against that bill? (Laughter)

I quite frankly want to share with you a reaction that I had and that was that I wondered why the bill did not receive the attention and the deliberation of the Senate Committee. Because while I recognize that the legislation requires immediate attention, so we are told, in order for us to participate in the federal program and allow the State to receive millions of dollars in Federal support for intermediate care facilities for the mentally retarded and while the concept and the programs are laudable, I still am very concerned and insist that the Committee, within whatever time it has - and we certainly are limited because of our part-time nature - should avail itself of the opportunity to review the legislation and to proceed with the process so that many questions that I feel ought to be asked, could be asked and then answered.

Some of the questions that came into my mind initially were: How can the Department put in a program of the magnitude that obviously was conveyed by the press releases - and this is the way most of us on the Committee had access to the intent and purpose of the legislation - by June of 1978? I understand that some two thousand employees must be situated by that time. I am not clear as to whether or not many of these employees are presently within the system - it might be a matter of reshuffling, if you will, or reassigning - or whether or not they will be new employees. Therefore, what is the process in terms of hiring? What are the job descriptions? And what is the objective and the purpose and the end result? I ask this because from now to June isn't really that long a period of time. I think this Committee and the general public ought to know, at least to some extent, how the Department intends to do this.

One other question that came to mind - and I am satisfied so far with some of the answers I have received and I am hopeful we will get some more during the discussion this morning - was the question of the duration or the participation of the program. While we can get a picutre of what the fiscal obligation of the State will be in the short run, in the first few years, I think that we ought to try if we can to project ourselves a little bit further down the line to see whether or not the State is adequately preparing itself for whatever the future may hold in this

type of a program. And, of course, one of the questions that we are going to ask the speakers to address - and also perhaps the sponsor of the bill, who is with us this morning - is the question of the need for this legislation inasmuch as one of the questions that we will ask raises a point as to why this wasn't done through the normal appropriations format, which I understand it could have been done through, as an inclusion in the budget, and is there some special reason for the legislation? It is just curious in light of the fact that our staff tells us that it could have been included in the normal budgetary process, into which the Appropriations Committee is now very much involved.

So, without further delay, we will get on with the witnesses, and on that point it is my understanding that of all of the witnesses present today I don't believe - at least I have been told this - that there is anyone who has any opposition - or should I say serious objections - to the bill. I think everyone shares the point of view, or the objective, of the bill itself. If anything, there may be some recommendations for modifications of approach, if you will, and certainly we are here to entertain that.

What I am asking you - and we have 10 witnesses who will appear before us - is to confine your comments or condense them and if you have a written statement, to submit the written statement to our Committee and we will see that it is included in the transcript in its entirety. We would appreciate it if you would capsulize your comments and, after having heard other witnesses please do not be repetitive. If you can do that, we can expedite this hearing this morning. What we want to do is really get to the heart of the matter and to the heart of your concern and your reason for being here. So, I would ask for everyone's indulgence in that respect and in that way I think we will not only get as much as we can out of the hearing but we will expedite it as well.

Without further ado, I would like to ask my colleague on my right, Senator Russo, if he has anything he would like to say before we hear from Assemblyman John Doyle.

SENATOR RUSSO: No, you have covered the subject very well, Senator.

SENATOR SCARDINO: Thank you very much.

I would also like to introduce, on my left, our Committee staff person, Mike Bruinooge, who is responsible for putting this Committee together and, along with other members of the staff, arranging for the material that the Committee has at its disposal. Next to Mike is Peter McHugh, who is with the Office of Fiscal Affairs. So, without further ado, I welcome Assemblyman John Doyle. I would like to have you address the Committee at this time, John.

A S S E M B L Y M A N J O H N P A U L D O Y L E: Mr. Chairman, Senator Russo, thank you very much. It is indeed a pleasure to come before your Committee. It is made all the more of a pleasure because of the reason why I am here.

It is a rare honor to sponsor legislation that is as important and as far-reaching and as meaningful as A-792 can be.

This bill, on its face, would seem to be little more than a bill that allows Federal proceeds and receipts and aid for mental retardation to go into a particular line account. Having said what the bill is, I haven't said what A-792 is all about and what those Federal receipts can mean. To do that, let me go back in time a little bit and as I give you a narrative, let me try, during it, to respond to your particular questions and concerns, Mr. Chairman.

The Federal Government has had, for some few years, this Intermediate

Care Facilities Mental Retardation program. However, because of the rules and regulations that the Federal Government had imposed within that program, it had not seen that it was feasible for New Jersey to become a part of the program, nor did the aims of the Federal program, as it had been proviously, seem consistent with what the State's thrust in the mental retardation area was. I discern the thrust of what the State wanted to do was to train, to educate, and to allow every citizen to advance himself, or herself, to their full potential. Having said that, it is clear that the State's thrust was not warehousing. However, the State seemed to be at cross purposes with the Federal Government.

Fortunately, some time during the middle of the past year, the Federal Government changed the rules and regulations so as to cause the Department to take a new and fresh look at whether the ICFMR program would be appropriate for the State of New Jersey. Having done that, the Governor commited himself to this program in October. As a result, there were discussions which led to finding out by the State what the Federal Government would require of the State to do in order to qualify for the program. The State, during the next several months, stretching into this year, has been in the process of identifying those facilities that, through renovation and other work, could qualify for the program.

The first instituation was qualified in December and, in fact, the State has received an $80 thousand check from the Federal Government because that institution now qualifies. Unfortunately, without this bill it is my understanding from the Director of the Budget that we do not have a repository for that $80 thousand.

Now, having said that, let me look at what we are presently doing in the area of mental retardation. We are spending some $86 million. We would like to spend more. We are all aware of the constraints imposed not only by the caps but the more severe restrictions imposed by the fact that we have not received revenues which would allow us to undertake new programs. It is clear, I think, that the Department, the Governor, legislators interested in this area, and the Legislature as a whole, would like to develop new programs for mentally retarded that would allow for more education, more training, and a better ratio between attendants and those citizens who would be institutionalized.

All of that, though, takes money and we don't have State dollars to do it. What this bill would allow us to do and start us down the road towards is to fully qualify for the Federal ICFMR program. Those 92 institutions - schools - that would qualify would allow us to get from the Federal Government fifty-fifty matching money, not only for the additional monies we would spend over the present $86 million, but would qualify some of the existent $86 million being spent for fifty-fifty aid. As a result, it is likely that we will have a favorable cash flow, that is that in the third year when we are more fully into the program, we would be spending less money - and I think the numbers were $26 1/2 million in the next full fiscal year, as against $30 million in Federal aid. That will not create a boon for the State Treasury, nor can we apply that money to other areas, nor would we want to. We would apply it back into the areas of mental retardation. But, what it would mean is that we could do those things that we wanted to do for the past several years but have not been able to do because we didn't have the money, and to do those things with Federal dollars.

Now, to meet those conditions that the Federal Government imposes, we

will have to take some steps and they are, of course, of great concern to legislators, and ought to be.

For instance, in order to properly qualify, we will have to employ some 2,200 persons more than are presently employed. So, in response to the question about whether these would be new employees or whether they would merely be shifting existing employees, Senator, the answer would be, they would be new employees.

The question was asked about the speed and that is of appropriate concern also. In order to qualify for these Federal dollars to do these things we all agree we want to do, we have to have these people in place by July 15th. I wish we had more time. But, given the time constraints that we were under, and given the fact that the rules and regulations changed less than a full year ago, I think that the Department has moved with appropriate promptness, which was necessitated by the short-time framework it had to work within, and it has come to the Legislature as early as it felt it could and present a rational program.

So, I don't like speed any more than you do when it is something as comprehensive as this, but in this particular field I thought, and still think, that it is necessary.

Your final question, and one that I would like to finally comment on, is the need. There will be other spokesmen today who are, and have for a longer period of time than I have been, concerned with the treatment of citizens who through no fault of their own cannot fulfill themselves to the degree that other human beings perhaps can. But, that is not to say that they do not have unused potential and undeveloped ability, potential and ability that we have, I think, a duty to see to it that they can enjoy. If we do not qualify for this program, then we condemn ourselves to have citizens with less than their full potential and we condemn them never to enjoy that unfulfilled promise.

If we go into this program we can do those things and do them in a financially sensible method of getting Federal dollars that I should point out 35 other states have qualified for under this ICFMR program. So, we are not doing something new and innovative as compared to our sister states, but with these Federal dollars we can do something new and innovative for the State of New Jersey and for the citizens that we want to develop under this program. Thank you very much, Mr. Chairman.

SENATOR SCARDINO: Thank you very much, Assemblyman Doyle. We appreciate your coming today and commenting on your bill.

Senator Russo, do you have any questions?

SENATOR RUSSO: Yes, just one. You told us that one of the institutions is qualified, Assemblyman Doyle, for an $80 thousand appropriation. Which institution is that?

ASSEMBLYMAN DOYLE: It was one cottage at the Hunterdon School.

SENATOR RUSSO: The Hunterdon School?

ASSEMBLYMAN DOYLE: Yes.

SENATOR SCARDINO: Okay, John, thank you very much.

ASSEMBLYMAN DOYLE: Thank you, Senator.

SENATOR SCARDINO: Maurice Kott, Director of the Division of Mental Retardation. We welcome you, Maurice, nice to see you.

M A U R I C E K O T T: Senator, it is good to see you again and Senator Russo. I would like to express to both of you the pleasure of the Department at being

provided this opportunity to elaborate on the ICF program. Commissioner Klein, I believe, mentioned that in January she had a summary meeting with the Senate and Assembly Committees on the appropriate subject, but this is the first opportunity that we have had, in effect, to put some additional meat on the bones of her remarks.

We have filed with the staff, Senator Scardino, considerable material which describes the program in detail and I would be available to answer such questions as you and Senator Russo wish to put to me.

I think the critical thing at this point is to try to address myself to what you and Senator Russo have expressed are your concerns.

Let me elaborate, despite the caution that you gave about repetition, upon some of the remarks that Assemblyman Doyle made. The ICFMR program has been around for a number of years. We have considerable doubt about its application to the State of New Jersey for a variety of reasons. The first of these is that it seemed preeminently a medical program in its initial concept. Subsequent changes in the Federal regulation moved it from an exclusively medical program to a program which inolved habilitation and matched more our public position in the institutions, that they were always the kinds of places that facilitated human development and did not only take care of illness.

A second factor which was of some importance in determining our entering the program at this late date and one which is of pertinence to the issue which you raised about speed and handling this in a normal appropriation is that there were substantive changes in the Federal regulations in July of 1977. These changes delivered certain advantages to the State of New Jersey.

For instance, the renovation of cottages to meet the Federal space standards were extended under the new regulation from 1977, originally, through 1980 and now to 1982. So, in a sense, the new regulations gave New Jersey an opportunity to handle in a systematic, orderly sense, the entire process of conversion of the physical structure of institutions.

When we received word that the Federal opportunity existed in a manner that we could capitalize upon, we had a number of things that we had to do. One of the things was, in effect, wait for the actual promulgation of Federal regulations and that, as I said previously, was not until last July. We didn't wait for last July to get going, but what we had to do was this, Senator Scardino and Senator Russo, we had to analyze the structures and we had to determine which, possibly, could be renovated to meet the Federal space and physical requirements. We also had to undertake an analysis of our existing staff and create predictions as to what kind of staff we would be required to have in the cottages which could be converted, so that we could comply with the Federal regulations, or, indeed, comply with the particulars of the Health Department in their inspection and certification process.

May I digress for one moment, because I introduced the Health Department and Mr. Wagner from the Health Department is here and he can elaborate on it. But, in effect, to participate in this program, you must have an eligible provider if it is a medical facility. May I go back and say that this was originally medical legislation? This facility is one which, in New Jersey, is certified as eligible and, in effect, is licensed - is permitted to operate - under the imprimatur of the Health Department. We didn't know exactly what the Health Department standards were because the Health Department was caught in the same

way we were with a sudden change in the Federal regulations. So, we had to undertake something of an analysis of what conceivably might be required to meet the expressed purpose in the Federal act and regulation. Once having done that, we really attempted to cost out whether there would be any economic advantage to the State of New Jersey to undertake this program and the consequence of that has been reflected in the remarks which have been made and submitted by Assemblyman Doyle and submitted to the Committee staff. We thought that in effect we could meet the staff standards by the investment of 2200 jobs and these would have to be on the line by the 18th of July, 1978 - or at least budgeted by that time because if we didn't meet the staff standards by that date, we wouldn't have until 1982 to meet the space standards. If we missed the July, '78 date, then we are knocked out of the box with respect to the extension of time to meet the renovation problem.

Once we had agreed that we could do it - that it was good - and we identified 92 cottages as having the potential for renovation for this program and the Governor, in effect, signaled the HEW that the State of New Jersey wished to participate in this program, then it was necessary in effect to involve the Health Department, who, in an exemplary response, undertook the inspection of these 92 cottages to determine what they percieved to be,as the regulatory authority, the defects in those cottages. We then had to institute a plan of correction which has been submitted to HEW in the instance of all of the 92 cottages to this point, for which we have received the affirmation of one cottage and, indeed, a check - as Assemblyman Doyle pointed out.

It is our prediction that we will receive a Federal certification and, indeed,begin collecting for all of the cottages by April 1st or shortly thereafter.

Now, the question that you raised, Senator Scardino, as to why this couldn't have been put in the budget -- I don't think it could have been put in the budget because in effect we didn't have the final regulations until we were in this fiscal year, July, 1977. We didn't have any conception of the cost data and we were confronted, coming down to the wire now, with the need to do it by the supplementary route suggested by the Bill which passed the Assembly last week.

One of the additional questions you asked was about the job description. The 2200 positions range all over the lot but the basic -- the largest number of them, approximately 70% to 80% of those positions, are in resident care and in health services. So, the thrust of the program is, in effect, to improve the care of individuals in institutions and to provide secondary prevention of the handicaps that are associated with retardation and cerebral palsy and other developmental disabilities by, in effect, promoting programs which do not necessarily cure the condition, but which protect against further encroachment of the adverse aspects of the condition. That is a complicated sentence; let me give you an example, Senator. Let me take an example from physical therapy. We have cerebral palsy kids in the institution where physical therapy will not be able to teach them to walk that much better but in the event we do not give them physical therapy, their contractions will become more severe and they will become all the more handicapped. In this sense, this program, coupled with the T&E program, which the State of New Jersey enacted about one and one-half years ago, allows us a real opportunity to improve services in institutions and to

facilitate the development of handicapped individuals.

How can we get things in line by the 18th of July, 1978? At this point, we have authorization to put on, on an emergency basis, seven additional personnel officers whose function will be acute recruitment of line individuals, particularly for persons who work in the cottages. We have canvassed and will continue to canvass professional organizations so that we can recruit the kinds of professionals which are implicit in the aspirations of the program. I think we will do it. I think in a sense - not to make an apology for the lateness of the introduction of this program and the haste with which a supplementary appropriation is sought - it is a testimony, in effect, to the capacity of the State of New Jersey to capitalize upon an opportunity that is good for its citizens.

Senator, I think I have exhausted the time you suggested but I would be glad to answer any questions that your or Senator Russo have for me.

SENATOR SCARDINO: Senator Russo?

SENATOR RUSSO: Yes, Mr. Kott, I have a few questions. One is, if you can, would you relate to us the type of renovation and reconstruction that will have to be effected in order to accomplish the objective?

MR. KOTT: Okay. In many instances we have relatively large dormitories that house 18, 20, or 25 individuals. The Federal standards are that we have to reduce them to four bed rooms, rooms with no more than four beds. Under certain circumstances we can extend it to eight beds. We can't have a gang dormitory, Senator, unless we give testimony to the effect that the individual will be handicapped by placing him in a room, so that one of the kinds of renovations which are required is the sub-division of our dormitories into more private, home-like bedrooms. As second aspect of renovation which is required, Senator Russo, is substantial alteration in our bathrooms. Some of our bathrooms represent a mode of caring for individuals that was sanitary and effective 30 years ago but is not necessarily related to the current ideology of normalization so that we would have to restructure the bathrooms.

Another kind of alteration which does not necessarily involve shift in physical characteristics of the cottage is that the Federal standards require more square footage per individual bed than we have in most of our dormitories. As a consequence, there will be a renovation in terms of the census, of the number of persons living in each cottage, and a reduction in the total number of persons who are living in institutions. Is that sufficient detail, Senator?

SENATOR RUSSO: Yes, that's fine. I have one or two other items -- one item. Under the present system, when the county is involved in an indigent case, of course they pick up 50% of the State cost. Now, my question to you is this, do you know, with the advent of this money coming into the State of New Jersey and the costs that we are going to be involved in - including the salaries for the 2200 people - is there any assurance from the Department that there will not be any additional cost imposed upon the 21 counties?

MR. KOTT: A formal communication has gone-- This question was raised in the Assembly, Senator Russo. A formal communication went from Commissioner Klein to Assemblyman Doyle indicating our understanding that the counties will be held harmless. Such a communication also went from Assistant Commissioner Horowitz to the Chairman of the County Adjusters Association. The County Adjusters Association has affirmed to us that it is their understanding that we

are moving toward a hold harmless situation.

SENATOR RUSSO: Because there is a very deep concern on the part of the counties with regard to that particular point and that is why I raised the question.

MR. KOTT: I can understand. It is an issue of considerable economic consequence to a county.

SENATOR RUSSO: Thank you, you have answered my questions. Thank you very much.

Can we assure the counties that the hold harmless situation will go into effect possibly in the form of a written stipulation to that effect some time in the very near future?

MR. KOTT: That is difficult for me to answer. I have a personal impression, without being a lawyer, that the assurance will come only with certain substantive changes in the law, so that the legislative process would have to take place. Senator, I don't mean to be flip about it, but can I assure them what the Legislature will do?

SENATOR RUSSO: You can prod us a little bit. Thank you.

MR. KOTT: I'm betting it goes through that way. I think the counties will want the Legislature to hold them harmless too.

SENATOR RUSSO: I'm sure. I have no other questions.

SENATOR SCARDINO: Thank you very much, Senator Russo.

Doctor Kott -- It is Doctor Kott, isn't it?

MR. KOTT: Yes.

SENATOR SCARDINO: I would like to address myself to a comment that you made concerning the alterations of the facilities. How many facilities are you talking about?

MR. KOTT: At the present time we have persons living in approximately 150 cottages. We have identified 92 of those cottages which in our estimation have the potential to be renovated to meet the Federal physical and space requirements in terms of economic feasibility - that we might renovate them with less cost than building new cottages. Approximately 5500 individuals live in those 92 cottages

SENATOR SCARDINO: Can you describe the present ventilating system in those cottages - the heating and the general ventilating atmosphere?

MR. KOTT: Senator Scardino, it ranges because some of the cottages were built 30 or 40 years ago.

SENATOR SCARDINO: Yes, but you talked about bringing them up to contemporary normalization, as you put it, I think - standards set by ourselves in this present day and age. I am just wondering what you mean, when we get down to the specifics, regarding ventilation.

MR. KOTT: In all the institutions that we built in the State since 1962 we have introduced forced air changes which involves a complete evacuation of the air and replacement by fresh air because of both biological and olfactory smell conditions of a wide number of persons living together.

In the two institutions that have been built since 1962, both Woodbridge State School and Hunterdon State School, we have climate control. We have air conditioning as well as the evacuation and the assurance of fresh air.

In new cottages that we have built in Vineland State School and Woodbine State School there is air conditioning.

We are about to make a commitment on the renovations. The first cottages to meet the ICF standards are at Neuropsychiatric Institute and we will put air conditioning in that.

I hope, really - if this is the thrust of your question, Senator Scardino - that we can have-- We always have heat, now we always have fresh air -- climate control in all the renovated buildings. It is impossible for me to give you an undertaking on that because there are economic and engineering considerations. There may be some cottages where we can't put air conditioning in.

SENATOR SCARDINO: Okay. But, what we are talking about here is arriving at the best possible answer to quality of care within the resources and intelligence at our command in this day and age. I have seen, personally, on visiting some of the institutions in the State - not necessarily those that house those in the mental retardation area - some of our facilities where the heating system goes on 12 months a year. The system itself doesn't know what season it is. When you walk into a facility, as I have - an institution in our State - in the middle of July, you find that the temperature is well over 100 degrees because the heating system is still functioning for the sake of providing hot water, or whatever other rationale is given. You than walk into situations where patients are sitting in a very uncomfortable situation - I don't think I have to describe it to anyone - as a result of this. There are no fans. There is no ventilation. And, there is no air conditioning. We talk about renovation and we talk about alteration and quality of care, but I seem to feel as though we tend to do it on a piecemeal basis.

What I am saying to you is - and this is not a condemnation of the Department, I don't want it to appear that way - I am sure that the Legislature is ready to respond. I know that I am and that our Committee is. If we are going to do things, I think we ought to make sure that we do them right the first time - the best way we possibly can. I am sure that in the long run it is probably the least expensive way to go. I just hope that we are addressing ourselves to those kinds of problems.

I don't want to sit here and say that we are going to pour millions of dollars into our institutions, but I also don't mean to say that we are only going to go one-quarter of the way or half the way when you really need to go all of the way sometimes.

MR. KOTT: Senator, you are quite right. May I make two brief comments on your remarks? First, the ICF program represents an opportunity for us to change some of those things. It represents an infusion of money which will allow us to renovate at a pace which we have not been able to renovate at, in terms of the capital budgets which are available to the Department - or the Division of Mental Retardation - or even the bond issue. Most of the items that we identified for various bond issues are really deferred maintenance. We don't get enough money each year. I can understand the economic problems - or the fiscal problems - of the State Government. But, to do a sensible alteration of a maintanance system, to put in new thermostats, or to put in new electrical distribution systems, we virtually have to wait for bond issues. Leaving aside the wisdom of financing things on that basis, this program gives us the possibility of renovation of the kinds of things which will make life not only more effective but which will make life more normal and

comfortable in a whole series of cottages.

I think moreover, Senator, the contemplation of the ICFMR program affords even a broader scope of opportunity than I have suggested so far.

I have spoken about the renovation of possibly 92 of 150 cottages. It seems to me morally and fiscally unfeasible to leave the remaining 60 cottages unmodified. So, the State of New Jersey will have to have some kind of a commitment to alter the other living places.

SENATOR SCARDINO: Okay. I don't want to get into too much detail but I think that the Legislature should have an understanding, specifically, of what a typical modification and alteration would be like. What is it that you are trying to achieve at a cottage? You know, you don't have to go into detail now. I am satisfied that you are going to make every effort to provide for the best quality of care, based on the most comfortable conditions. You know, I don't have to sit here and impress anybody with the fact that unless you can make that person comfortable you are certainly not going to be providing them with what I consider to be adequate care.

You go into some of our institutions in the summer time and you find people sitting there under conditions that we wouldn't allow our worst enemy to live under because of poor ventilation or because the heating system is still functioning. In my judgment, this is not providing quality care.

I think the Legislature ought to have a clear understanding and a typical example of what this modification, or alteration, will provide, compared to what we have. It is as simple as that.

MR. KOTT: Senator, we will file on that.

SENATOR SCARDINO: Thank you very much.

To get back to the question concerning the need for the legislation - and I don't want to get hung up on that either - the reason we raised the question was because it is our understanding that the appropriations act itself gives the executive the authority to both appropriate Federal receipts and transfer funds from one department account to another. This is according to the information supplied to us by the Office of Fiscal Affairs.

So, again, the reason we asked the question was, we thought there was some other underlying factor that just didn't come out and there was a little curiousity. Certainly, it really does not harm to have the Legislature go through its process in this case.

MR. KOTT: The technical answer to that, I think, could better be provided by other persons. I notice Mr. Hofgesang is here. He has forgotten more about those technical things than I ever knew.

SENATOR SCARDINO: One question. Were the Standing Committees on Institutions, Health, and Welfare notified last summer or fall that the Department was contemplating entry into the ICFMR program?

MR. KOTT: I don't recall that, sir. I am certain that there was a communication - an oral communication - from Commissioner Klein to the Committees. I think it was in January.

SENATOR SCARDINO: What was the makeup of the group of people insofar as as their qualifications are concerned?

MR. KOTT: They were members of my staff who had institutional experience. Then, the subsequent survey for certification by the Health Department was by their formal inspection teams. I think Mr. Wagner is here

from the Health Department and he can provide you with particulars on that, Senator Scardino.

SENATOR SCARDINO: Did you mention any goals that are being set by the Division in terms of deinstitutionalization? Did you discuss that at all?

MR. KOTT: I did not. That is--

SENATOR SCARDINO: Would you get into that then?

MR. KOTT: I did, inferentially. One of the things that is a consequence of the Federal standards as far as states are concerned is that we will have to depopulate,to some extent,some of our cottages. We predict that we will lose approximately 2,000 individuals - or beds - from the 92 cottages. This loss is to meet Federal standards and in order to make swing space for renovation. Our contemplation, Senator Scardino, is that, in the main, these individuals will be placed in the community.

SENATOR SCARDINO: By when? What is your deadline?

MR. KOTT: By 1982. Again, that is the--

SENATOR SCARDINO: What is the total population now in the institutions?

MR. KOTT: In all institutions? 8,000.

SENATOR SCARDINO: Are you limited to the 2,000, or are there future numbers that you must project beyond 1982?

MR. KOTT: Let me try to answer this way: 2,000 persons out of the institutions by 1982, considering the floor space which presently exists in those 92 cottages will enable us to meet the Federal space standards. Now, after 1982, we will still have people more jammed in cottages then we will have in these converted cottages. I think the State of New Jersey will have -- I use the term political and moral obligation to repair and redress the population density in those other cottages after we have met the Federal standards in those first 92 cottages.

SENATOR SCARDINO: What is your projection in terms of numbers in the institutions in 1982?

MR. KOTT: 6,000. By 1987, however, I would hope it will drop to something like 5100 or 5,000 - again, shrinking the population in the other 60 cottages.

SENATOR SCARDINO: You expect the numbers to remain static? In other words, we are going to maintain approximately an 8,000 population throughout the State, whether they are institutionalized or not, is that correct?

MR. KOTT: If you consider the non-institutionalized population.

SENATOR SCARDINO: I mean those that would ordinarily have been institutionalized.

MR. KOTT: I anticipate a kind of equilibrium between demand and space as it exists at the present time.

SENATOR SCARDINO: Okay.

MR. KOTT: What I don't know is going to happen concerns certain things such as the birth rate, what happens to young girls who have babies - because the chance of a young girl having a handicapped baby is much greater than a 23 year old having a baby. I don't also know what is going to happen if we we have a measles epidemic. I don't know what is going to happen, Senator, with doing do-it-yourself abortions.

SENATOR SCARDINO: We may have three or four blackouts too between now and 1980.

MR. KOTT: They don't necessarily contribute to the handicapped children.

SENATOR SCARDINO: I understand. The reading I have is that population is declining. But, as you said, we don't know in the State of New Jersey if it is going to go the other way. No one can really project that.

You mentioned that 2,000 people will be moved into the community. What provisions are being made? What do we have? At this time, if you had to remove 2,000 people - today - could you do it?

MR. KOTT: No.

SENATOR SCARDINO: Okay. What makes you think that you will be prepared to do it within the next four years?

MR. KOTT: We are establishing a mechanism and we will have money. The mechanism that we are establishing is the funding and the encouragement of a whole variety of community housing opportunities for this kind of handicapped person - foster homes, community training homes and group homes. Then, the ICF program permits a community intermediate care facility for mentally retarded, both small and large, which has also the component of 50% of the cost met by the Federal Government.

SENATOR SCARDINO: It will be a shifting of funds, so to speak, from one area to another. Do you expect it to cost more or less, or do you feel that it will remain approximately the same?

MR. KOTT: Well, at this point I think it should cost less, but my problem is, what is going to happen with inflation and what is going to happen to costs?

SENATOR SCARDINO: All things remaining equal I am saying.

MR. KOTT: The important issue in this is the language of Assemblyman Doyle's Bill, which the Senate will consider when next it meets, and the language which is suggested in Governor Byrne's appropriation act, which allows us to use the Federal receipts not only for the staff in the institutions to meet the staffing standards and not only possibly for renovation, but also for the development of community programs because associated with the plan of correction that we are required to file through the Health Department with HEW is the depopulation aspect. It is my understanding we have an appropriate call on that money to shift some persons from care in residential institutions to care, for instance, in group homes, such as the kind that exists in Bergen County - the one that you know about, Senator.

SENATOR SCARDINO: Okay. Are there any other questions of Dr. Kott?

(no response)

Thank you very much.

MR. KOTT: Thank you. We appreciate the opportunity to appear.

SENATOR SCARDINO: We appreciate having you.

Our next speaker will be Ed Hofgesang, the Director of the Division of Budget and Accounting. Good morning, Ed.

E D W A R D H O F G E S A N G: Good morning, Senator. I have no prepared remarks. Bob Cubberley, here on my right, is the Supervisor of the Budget Bureau and he has been most active working for us with the Department in developing this particular program. If you have any future questions, we will attempt to answer them.

We have participated with the Department in the preparation of this

Bill. We have officially endorsed the program. We have been working with the Department - as Dr. Kott indicated - for quite some time now to get the program started and to monitor the program as it has been progressing.

The Bill, as it is drawn, appropriates the dollars which we will be collecting and it makes it possible to match the Federal Medicaid funds, using the funds which are already now appropriated in the institutions for the retarded as our share of the fifty-fifty match.

Without this Bill, the Federal Medicaid funds coming into the institutions together with the State funds would just come in as receipts to the General Treasury. This Bill will permit the recycling of the money back into the Medicaid account to match the Federal money. That is the main reason why the bill has been suggested.

As Dr. Kott also indicated, it permits the use of the fund not only for staffing but for renovation expenditures and for the development of community facilities, which we thought we also needed some legislative approval for.

I think that the appropriations act currently being discussed includes language in it which is similar to the language in this bill, which authorizes the program to start in the current fiscal year.

If you have any questions, I would be very happy to answer them.

SENATOR SCARDINO: Senator Russo?

SENATOR RUSSO: Yes, Mr. Hofgesang. It appears from the testimony that there are going to be very few restrictions, if any, with regard to the use of these funds, since we have covered just about everything in those three items - renovation, services, and development of community facilities.

MR. HOFGESANG: Well, Senator, it is a program that has implications in the areas that Dr. Kott mentioned - the requirements for staffing and the requirements for physical changes to the facilities and since patients will be moved out of the institutions into the community, a responsibility to take care of those people in the community.

SENATOR RUSSO: Thank you.

SENATOR SCARDINO: Ed, can you just take us through the numbers - the physical picture in terms of where the State is at now and where we will be once this program is put into place, whether the obligation increases on the part of the State, in terms of dollars, or not and where we will be by 1982, for instance? Have you made any projections of that nature?

MR. HOFGESANG: Well, Senator, we have not really been quite that specific - going all the way into 1982. We would not expect that there would be any additional obligations on the State over and above what you might consider to be normal increases in the operating budgets of the institutions. This permits us to take the current funds and the funds which we would normally provide for institutional operations, and to put them over into the Medicaid program and match the Federal money and pick up that additional money then from the Federal Government to use for the things that we have been talking about.

SENATOR SCARDINO: You say additional money. What is that State contributing now?

MR. HOFGESANG: Well, as Assemblyman Doyle indicated, it is roughly about $86 million that is appropriated for the operation of the institutions.

SENATOR SCARDINO: That is between the State and county? That is all

contributions?

MR. HOFGESANG: That is gross State appropriation.

SENATOR SCARDINO: That is just State?

MR. HOFGESANG: Yes. You see, the county money comes in as revenue into the general treasury.

SENATOR SCARDINO: Oh, I see. Okay. But, as I understand it, if you broke it down, though, it would be approximately fifty-fifty?

MR. HOFGESANG: It would be roughly fifty-fifty.

SENATOR SCARDINO: Okay. Just in terms of rough figures because I understand it may be difficult to pin it down at this time, we therefore can conceivably say that the State has been contributing $43 million as its share. Once we get involved with the Medicaid program, you are saying that we now take this $46 million and apply that toward the Medicaid program in order to get funding from the Federal Government. How much do we get as a result of putting up $46 million?

MR. HOFGESANG: Well, it would be calculated based on the number of patients as they become eligible in these 92 cottages that Dr. Kott referred to. In some part of that $46 million that represents what is related to those patients in those cottages, it would then be recycled through the Medicaid program and match the Federal money.

SENATOR SCARDINO: Is it matched dollar for dollar?

MR. HOFGESANG: Yes.

SENATOR SCARDINO: Is it conceivable that the identification process itself is altered as a result of this program, or does that remain the same? I shouldn't really ask this question of you. Perhaps I can direct that to someone from the Department.

MR. HOFGESANG: I am not sure what you mean, Senator, by identification.

SENATOR SCARDINO: Well, I am not sure whether or not the Federal standards call for any different description in terms of what those standards are and I guess this would be a question that would have to be answered by the-- It is a rather technical question. I am just curious. The reason I raise this question, if there is a justification, is because we got involved in categorical programs in the educational deliberations on thorough and efficient and what we ended up with ultimately was a far cry and different in definition from what we had previously - in the previous legislation. I didn't know whether the same kind of impact might apply here, where you might increase the numbers eligible, for example.

MR. HOFGESANG: Well, Senator, I think that perhaps an answer to your question is that the Health Department makes these surveys and the Department has to file a corrective action plan for each cottage and those patients in the cottage and once that is accepted by the Health Department and HEW, I think that is tied down pretty well then as to what is expected and what is required.

SENATOR SCARDINO: So, just to follow this up in a simplistic fashion, I suppose, you would then in effect be gaining - that is, we would be gaining in effect $40 or $43 million overall?

MR. HOFGESANG: There would be a substantial gain.

SENATOR SCARDINO: Okay. Without the State putting up or putting in any less than it has in the past - into the program?

MR. HOFGESANG: That is correct.

SENATOR SCARDINO: And, it is with this $43 million that we intend to hire some 2,200 people and we intend to provide for the alterations and modifications of the 92 cottages which have been identified?

MR. HOFGESANG: Yes. One item that has not been mentioned by either of the two previous people is that the Federal money - the reimbursement from the Medicaid program - can not only be used for the actual renovations, if so required, but can be used on debt service if the State should decide that it would be proper to get a bond issue approved to provide some of these renovations.

SENATOR SCARDINO: Has there been a projection - a prospectus, as we call it in the business world - in terms of how this -- You know, how do we see these monies being spent? Is there some specific breakdown at this point as to how the Department intends to spend $43 million? Realizing that some 2,200 people are going to be paid a salary out of that, I think that would be easy enough to identify once the Department determines the professional capacities that they want to fill. I did ask Dr. Kott to give us an indication of a typical renovation of a cottage. But, I think the Legislature should have a clear picture for its own edification as to how this $43 million is going to be spent.

MR. HOFGESANG: I think the Department is working on something like that now and they have most of the staffing situation resolved. They can probably make that available to you, Senator.

SENATOR SCARDINO: Fine. Good. It will be something that we can all look at in 1982 and say, "There is what we said we were going to do" and have an opportunity to see if we have done it. I would like to see that.

Thank you very much, Ed. I appreciate your coming.

MR. HOFGESANG: You are welcome.

SENATOR SCARDINO: You are not Dr. Wagner.

R A L P H C O P L E M A N: I am not Dr. Wagner. My name is Ralph Copleman.

SENATOR SCARDINO: I know.

MR. COPLEMAN: I am with the Association for Advancement of the Mentally Handicapped.

SENATOR SCARDINO: Very good, proceed.

MR. COPLEMAN: Dr. Wagner has very graciously agreed to allow me to proceed him because I have another engagement.

I would like to read a brief statement.

SENATOR SCARDINO: Do you have copies of the statement?

MR. COPLEMAN: Yes, I do.

SENATOR SCARDINO: Would you mind handing them to us?

MR. COPLEMAN: As I say, I am from the Association for Advancement of the Mentally Handicapped, otherwise known as the AAMH.

The AAMH wholeheartedly supports the idea of deinstitutionalizing - or what Dr. Kott called "depopulating" - state schools. I am specifically going to refer to the question you raised earlier, Senator Scardino, about the possibilities for placing 2,200 mentally handicapped people in the community that are currently in State institutions.

We agree with the Department of Human Services, Dr. Kott, and the Division of Mental Retardation, that it is time to implement the ICFMR plan for the State. Specifically, it is time to give several thousand retarded men, women, and children who no longer need institutional settings, the chance to

live in the community.

The problems that one associates with returning mentally handicapped people to the community stem from the absence of comprehensive support services, the kind that assures each person the support they need to remain in the community, to become a productive member of the community and to remain outside an institution.

The challenge of ICF occurs on many levels. Physical changes at the State institutions you have heard about, new staffing patterns you have talked about, management, and community acceptance are just a few where much work has to be done. The AAMH would like to congratulate the Department and the Division of Mental Retardation for wanting to take on these challenges. The AAMH stands ready and able to help.

We will continue to make available our ability to make communities respond to the needs of mentally handicapped people living within them - just as we have in our continuing program to deinstitutionalize residents of the State's Johnstone Training Center in Bordentown.

In our work over the past four years, we have learned several important lessons that State should bear in mind as we approach what I like to call the "ICF era." We would like to share some of these briefly with you.

1. Providing substitute housing alone is not enough, even if it includes, as it would in group homes, on-premises staff.

2. Housing is only one of what we see as six basic areas of necessary human support. The others are: employment, or some other form of self-fulfilling occupation for those that are unemployable; social life opportunities; access to a full range of community medical and dental care, preventive as well as curative; assistance in money management and planning long-term financial security; and personal growth - provision of adult education courses, supportive counseling, and other needs.

3. The "forever factor." A mental handicap simply doesn't go away. The programs of our new era must take that into account. We already do. We know that we have to be available forever - as long as having a mental handicap means you will face difficulties negotiating community systems. At the AAMH, we have seen that our program of permanent follow-up for mentally handicapped people living in the community is the key to their success.

4. Finally, each person who returns to the community from an institution needs a "personal support system" - just as you or I do - a closely linked network of people - friends, relatives, physicians, clergy, and, very importantly, a professional support coordinator who ties the network together and who is the key to the "forever factor" I cited earlier.

The AAMH is confident that the ICF era can represent not merely change for the sake of change in service for mentally handicapped people, but true growth for them as well as for their communities. I urge you to pass A-792. Thank you.

SENATOR SCARDINO: Thank you very much, Ralph. Senator Russo, do you have any questions?

SENATOR RUSSO: Yes. I would be interested in hearing some comments concerning your follow-up program - the extent of it, the nature of it, and so forth, if you can.

MR. COPLEMAN: In the statement I read you a list of six basic concerns

that we are dealing with - employment, housing, medical care, and so on. Our professional staff, as well as finding jobs and placing people in jobs, as well as making sure they have an attending physician, as well as placing them in a living facility in a community, make sure that the situations we put them into can remain permanent. Having a job does not mean you are able to keep a job necessarily. To do a job, if you are mentally handicapped, means you must learn the skills, you must have the talent to do the actual job. We do such things as making sure that co-workers understand that the person is mentally handicapped. We help employers understand what the problems are. We don't expect employers and co-workers to be experts in the problems of mentally handicapped people; that's what we do.

People lose jobs too. That can't be the end of their life. I have lost jobs. We have all lost jobs. We have all changed jobs. We want to make sure that a person has a way of having an income. So, if a person loses a job or wants to change a job, we will help them.

The same thing in housing - rents go up. Sometimes people who are capable of maintaining themselves in an apartment don't understand why a rent goes up, they don't understand why sometimes a landlord won't fix a leak. We have to be able to intervene on those levels and it has to be available anytime a person needs it.

SENATOR RUSSO: I would assume then that it is an on-going situation once that patient has been released from the institution and you get involved; you stay with that person forever.

MR. COPLEMAN: We never close a case.

SENATOR RUSSO: How many cases do you have in your files that are active?

MR. COPLEMAN: Well, in the two counties where we are operative we have over 250.

SENATOR RUSSO: What two counties are they?

MR. COPLEMAN: Mercer and Middlesex.

SENATOR RUSSO: That is interesting.

MR. COPLEMAN: Thank you. I will send you some information.

SENATOR RUSSO: That is good service. Thank you very much.

SENATOR SCARDINO: Thank you very much, Mr. Copleman.

Dr. Wagner will be our next speaker. Good morning, it is nice to see you.

D R. D A V I D W A G N E R: Good morning. It is nice to see you. I have no prepared comments. I am here essentially to tell you how the inspection process works and to answer any of the questions you may have.

As was indicated earlier, the Health Department is the designated State agency for the Federal Government in the Medicaid program for inspections and certifications of health facilities for the Medicaid program. So, in that role, the Health Department has been performing the inspection process for the cottages that are under the auspices of the mental retardation folks.

We began that process this past year and we had to send our folks up to New York to get thoroughly trained because we didn't have that many people who were experts in the process of inspecting for mental retardation facilities. Then, we mounted a very strenuous crash program with the full cooperation of Human Services to go through every facility under the State's jurisdiction.

The inspection teams include a wide variety of specialties. They

include nursing, dietitians, social workers, sanitary architects and engineers, and we have, as you might expect because it is a Federal program, a rather horrendous list of things that we have to go through, adding up to perhaps some better than 500 check points on any one facility.

After that process is completed, we send over to Human Services our findings at all the cottages and they in turn have to go through that list and present us with a plan of correction. Subsequently, after the plan of correction has been accepted by us and by the Federal Government, we must go back and inspect to make sure that that plan of correction has been followed.

As was indicated earlier, it is necessary for us to state to the Federal Government that the funds are available to implement this program and of course that is one of the issues that we are dealing with today.

Also, as previously indicated, to participate in the Federal program with full financial participation, this program must be completed by July 18th. In terms of construction the intitial date is 1980, with extensions of one year each for good reason, into '81 and '82. We will be involved in that process also - the review of the plans for correction of the facilities.

So, in a very brief fashion that is our role and how we have been involved in this process and I welcome any questions that you might have.

SENATOR SCARDINO: Thank you very much, Dr. Wagner.

SENATOR RUSSO: I have no questions.

SENATOR SCARDINO: There is a question, Dave, and I don't know if it should be directed toward you, but perhaps you might know the answer. That is: The placements that would be required at the facilities - other than those that are institutions, in essence - is the emphasis going to be on making sure that the placements remain within the State of New Jersey if they are going to be community based placements, or might we also contract outside the State?

DR. WAGNER: Well, I really shouldn't answer that question because it does come under Human Services. I know that as a matter of policy it is their policy to place in New Jersey to the greatest extent possible. There are certain rare instances where only the services they need are located somewhere else and they have to go to them. But, their policy is to locate in New Jersey.

SENATOR SCARDINO: Okay. I have no further questions, Dr. Wagner. I just want to thank you for taking the time to be with us this morning.

DR. WAGNER: Thank you very much for having me.

SENATOR SCARDINO: Mr. Hinkle - Herbert Hinkle, Director of Office of Advocacy for the Developmentally Disabled.

H E R B E R T H I N K L E: That is a mouth-full.

SENATOR SCARDINO: And how. Good morning.

MR. HINKLE: Good morning. The Department of the Public Advocate supports the decision of the State of New Jersey to participate in the ICFMR program. Consequently, the Public Advocate supports Assembly Bill No. 792 as a technical necessity.

The Department has engaged in a dialogue with representatives from the Division of Mental Retardation concerning potential problems with this program and I would like to briefly outline some of the problem areas for the Committee today.

SENATOR SCARDINO: Do you have a prepared statement?

MR. HINKLE: I have a prepared statement which I have capsulized for

presentation here.

SENATOR SCARDINO: Okay. Do you have a copy that you can leave? We can have it xeroxed if you want.

MR. HINKLE: I anticipated, Senator, that I would elaborate a little bit on the comment that I will submit to the Committee. So, I would like to submit something tomorrow.

SENATOR SCARDINO: Okay, fine.

MR. HINKLE: Basically, as has been outlined here, approximately 2,000 individuals will be displaced from the institutions by 1982 and about 1,000 of those residents will be moved into a small group setting. We view this as a positive effort. However, it appears to be motivated chiefly by the exigencies of the ICFMR program rather than by recognition of the fact that many people now residing in institutions can lead richer and more productive lives in the community. The Public Advocate is concerned that residents who will be discharged from State facilities for the mentally retarded be properly trained in living skills before they are placed in the community. At present, no mechanism exists to train such a large number of individuals before they leave the institutions.

In addition, the adjustment for some individuals who have lived in an institution to the atmosphere of a group home or another community residence will be difficult. Some of these residents may be unable to adjust to this alternative setting. The Public Advocate hopes that the Department of Human Services will leave bed space available in the State institutions so that residents who cannot properly adjust to the community can be returned to the institutions without delay. This would be a source of comfort to parents of residents who are concerned that if a community placement does not work out, their child will have to face a waiting list in order to return to an institution.

The Public Advocate is also concerned that day programs and other support programs ,which have been outlined and which I won't go into here, be made available and be in place at the time the institutionalization process occurs. At this point, we do not see substantial evidence that these associated services will be completely in place, as necessary.

There is also a need that substantial training be provided to the group home parents and other family care providers who are going to have supervision over people that are placed in the community. This is an area of considerable need.

The Department is also concerned that the Legislature has not passed a zoning bill that would prevent municipal bodies from unreasonably denying, preventing, or otherwise restricting the use or conversion of a home into a community residence for the mentally retarded. Numerous planning and zoning boards of adjustment have denied such variances to potential group home operators in the past. Litigation is not always the solution since this can often polarize the community. For the Department of Human Services' ICFMR program to be effective, such legislation must be passed and an efficient monitoring mechanism must also be established to assure that the residents who are placed in families and other community settings are being properly and adequately cared for, otherwise some of the abuses which have recently been uncovered with regard to residents in boarding homes may occur in this area

as well.

The conversion plan which the Division of Mental Retardation has prepared relies upon sending an additional 500 persons into out-of-state facilities by 1982. The Public Advocate does not have sufficient information about the quality of existing services purchased by the Division of Mental Retardation to take a stand on this issue. In fact, our experience has been that the programs used by the Division of Mental Retardation has been purchasing are of a high quality. However, we would like to call this to the Legislature's attention.

SENATOR SCARDINO: May I interrupt you for a moment?

MR. HINKLE: Yes, Senator.

SENATOR SCARDINO: Would you go over that point that you made about 500 outside the State placements?

MR. HINKLE: Yes.

SENATOR SCARDINO: Is that a current number or is that a projection?

MR. HINKLE: That is the figure that I have. The Division of Mental Retardation estimates that approximately 2,000 people will be displaced from the community. At this point they are anticipating,on the information that is supplied us,that about 500 of those individuals whose bed space has been displaced will be moved into out-of-state programs.

SENATOR SCARDINO: Five hundred additional - over the 2,000?

MR. HINKLE: No, 500 of the 2,000, which is 500 over and above those who are already out-of-state now.

SENATOR SCARDINO: I see, okay. And, how many of those are there at the present time?

MR. HINKLE: I don't have that information, Senator.

SENATOR SCARDINO: About 700 we are told --?

MR. HINKLE: Yes, Senator.

DR. KOTT: There are about 450 out of state at the present time.

SENATOR SCARDINO: Four hundred and fifty?

DR. KOTT: Yes.

SENATOR SCARDINO: Maybe we will add them together, divide by two and we will come up with an average.

DR. KOTT: Seven hundred are there. There are 700 in the program, of which 250 are in the state at the present time.

SENATOR SCARDINO: Okay. So, the projection is that there might be another 500 over the 450, obviously without an emphasis on trying to find suitable placement within the State. Is this your point?

MR. HINKLE: Well, no, Senator. I think there will be an emphasis on providing - or finding - placement in the state. But, we are talking about a substantial number of people. At present, there are very few group homes existing and there are very limited other kinds of alternative arrangements in the State.

SENATOR SCARDINO: You can continue. I have other questions but they can wait.

MR. HINKLE: Senator, the Department of Human Services maintains that 25 or more of the existing cottages housing some 1900 to 2,000 people cannot be brought into compliance with the ICFMR level of care. The Public Advocate is concerned with the care that will be provided to these residents.

The disparity in care between non-ICF and ICF residential beds will be dramatic. While some discrepancy may be permissible if these 1900 residents are receiving the "minimally adequate level of habilitation," which the courts in some jurisdictions have mandated, the Public Advocate has observed situations in which the level of care is far from minimally adequate. In fact, in one case, captioned in the Matter of C.S., the trial court described the conditions under which persons are maintained in one of our State schools as "shocking and indefensible." Last month the New Jersey Supreme Court granted certification of this case while pending unheard before the Appellate Division.

The Department of Human Services has indicated that a substantial number of residents will be moved during the conversion process to ICF. We have questions concerning where these residents will be temporarily housed and what assurances are being provided that they will be provided with adequate care and treatment during this conversion process.

We have other questions, such as: How will the Department of Human Services--

SENATOR SCARDINO: How do you propose monitoring that?

MR. HINKLE: Our program relies upon parents and other individuals coming to our office and bringing matters to our attention. And, there are a number of organizations also. In some situations, with cooperation from the Division of Mental Retardation, they have referred people to us who have complaints or problems. We don't have the capacity to do much more than rely upon individuals calling it to our attention.

SENATOR SCARDINO: Your point is well taken and I am, without qualification, sure that Senator Russo agrees that we share it with you wholeheartedly. As a matter of fact it is - among the other reasons - one of the underlying purposes for this hearing today - to get every assurance from the people involved with the process that it will be developed and will proceed on the basis that will insure the best attention and care possible for the patients. Because, obviously, that is the basic point.

If people from the Division, from the Department of Human Services, and from the Department of Health, working cooperatively in this respect, and professionals - as you are in your field - sit here and tell us about a laudable program, one that has a great deal of merit - you agreed with it - and then in the next breath tell us that they are going to do everything they can to make sure that no one is "hurt" in the process, what more can we do other than to take their word for it?

MR. HINKLE: Well, Senator, there is no question in my mind that the agencies involved are operating in good faith. However, to date we have not seen specific plans on what is going to happen on a cottage-by-cottage level.

SENATOR SCARDINO: I have asked for that in previous questioning.

MR. HINKLE: Well, I haven't seen such, Senator.

SENATOR SCARDINO: I asked for it today.

MR. HINKLE: Yes. If that material is forthcoming, as I expect it will be, and it does indicate that adequate precautions are being taken, I would assume that that would satisfy the need for assurances.

SENATOR SCARDINO: An interim review of the process might be in order. I am just thinking out loud for a minute. Maybe a year, a year and one-half, or eighteen months down the line the Legislature or somebody may want to look at

the process. We will have beforehand an indication of the objectives and the goals that have been set and how those goals are being achieved. Perhaps sometime down the line a recommendation should be made that the Legislature ought to confer with the Division and with the departments involved and find out what progress there has been up to that point. Would that be satisfactory, do you think?

MR. HINKLE: Ah--

SENATOR SCARDINO: Or, do you think that it requires more than that? I personally feel that that is essential. I call for that not only on this particular question but the Committee has asked for a similar approach on other matters as well. I am just wondering from your point of view and in your capacity in the Advocate's office, whether or not we can do more than that?

MR. HINKLE: I am not certain, Senator, whether the Legislature, with its many burdens, can do a lot more than that.

SENATOR SCARDINO: No, I agree with you there.

MR. HINKLE: I am not certain whether that is the only thing that can be done because a year and one-half from now a number of things will happen and while I am not suggesting that--

SENATOR SCARDINO: What is the responsibility of the Public Advocate's office, say, in the interim period? Suppose the Legislature sets such a responsibility for itself and we establish that 18 months down the line-- We don't have to do this by amending the bill, I am sure we can just write to the Department and I know from the past that they will cooperate and they will tell us. In 18 months time we will remind ourselves that we will get together and find out.

In the meantime, what can your office, or any other office, do - that has an interest or any involvement in this case - to insure that the steps are, in fact, being carried out?

MR. HINKLE: Well, if I might, Senator, let me describe what we intend to do.

SENATOR SCARDINO: Okay.

MR. HINKLE: Our program is - with the exception of a grant we receive from the State Developmental Disability Council - entirely federally funded and is a small program. We have nine full-time professional staff persons and our mandate is broader than the mentally retarded and broader than the institutionalized mentally retarded. Notwithstanding that, we have - or I have - assigned one of our staff attorneys to the ICF problem and he is working along with the Division of Mental Retardation and keeping constant check on that and receives information that comes to our attention.

In addition, and in cooperation with the Division of Mental Retardation, we have established an office in one of the State schools for the mentally retarded - the New Lisbon State School. The focus of that program is on monitoring the State efforts to deinstituionalize the population there and throughout the State. While its focus is not on what happens during this transition stage, we should be in the position to receive information and if it is suggested that there is a problem percolating, we would be in a position to take further action. However, there are a number of State institutions around the State and we will not be at all those State institutions until someone calls the matter to our attention.

So, we will, on a piecemeal basis, be monitoring what happens, but

not on a complete basis.

SENATOR SCARDINO: And, what you do between now and the 18 month deadline can certainly be helpful to the Committee when we decide to review this matter. So, we have the assurance that between now and that 18 month deadline you will in fact be looking into the situation from your perspective and be available to the Committee in the event that we require an opinion, if you will, as to the progress that has been made?

MR. HINKLE: You have our assurance, Senator, yes.

SENATOR SCARDINO: Fine. Very good. Is there anything else?

MR. HINKLE: I have one or two more very brief comments.

In addition to the questions that I outlined, we also have questions concerning how will the Department of Human Services determine which resident will receive the benefit of the ICFMR program and which residents will remain in the institutions and not partake of that program.

We are also questioning how will it be determined who will remain in the institutions and who will leave? What input from the residents, their family, or friends will be solicited? And, how can an aggrieved party have such a decision reviewed?

At present, no administrative or judicial mechanism is in place to afford a minimal level of due process in matters which are of paramount importance to the developmental disabled. The Department of the Public Advocate cautions the Legislature with regard to the ICFMR program, although we do support this program in principle. The concerns outlined should be given the Legislature's attention.

SENATOR SCARDINO: One other question that you raised, Mr. Hinkle, is the question concerning the 25 cottages that are not going to come under the ICFMR program. I think it is an excellent point and one also that I would like to publicly ask for a clearer indication on from the Department as to exactly what is going to happen at those 25 cottages and to the patients that are housed there, and also how they fit into the whole process as it evolves over the next several years.

MR. HINKLE: Senator, when you say the Department, are you talking about Human Services or the Public Advocate?

SENATOR SCARDINO: I am talking about the Department of Human Services who will be responsible for carrying out the program.

MR. HINKLE: Yes.

SENATOR SCARDINO: That is the Department I am talking about. I stand corrected if you misunderstood that.

I want to thank you very much for your presence today. I think that many of the observations that you made we share with you wholeheartedly. I think that the emphasis you placed on those observations are absolutely essential. We appreciate the fact that you took the time to bring them to our attention today.

MR. HINKLE: Thank you, we appreciate the opportunity.

Senator Russo, do you have any questions?

SENATOR RUSSO: I just want to make this one comment. I enjoyed your remarks. You made some very strong, valid points and I want to make sure that you are going to furnish us with a copy of those remarks.

MR. HINKLE: I will furnish them, sir. (full statement on page lx)

SENATOR SCARDINO: Thank you very much.

Catherine Rowan, Executive Director of State Developmental Disabilities Council. Good Morning, nice to see you.

C A T H E R I N E R O W A N: Good morning. Thank you, Senator. I have no prepared remarks. I will be happy to answer any questions you may have. Other than that, I think a lot of the points I would have otherwise made have already been made.

In my opinion, to summarize, I think this is an important program for the State to get into. I think there are some legitimate concerns, legitimate problems that may occur that need to be looked at now and looked at as we get into the program in order to avoid them becoming serious problems. Nevertheless, I think this is something we should enter into. It is something that gives us a real major chance to do some good for people in the institutions and to embark on developing community alternatives.

I do not share Mr. Hinkle's concern to the degree that he expressed it in terms of out-of-state placement of people. I am more concerned about the need to develop a network of good community alternatives within the State. There are a lot of people in the State that are interested in developing everything from very small group home types of arrangement to much larger ICFMR's on a community level. I am concerned that those be done in an orderly fashion and I am concerned that other support services that exist now be extended and others that don't exist be developed in the community for people to be moved out. I am not concerned so much about people being placed out-of-state.

SENATOR SCARDINO: Catherine, would you tell us something about the State Developmental Disabilities Council?

MS. ROWAN: The Developmental Disabilities Council is a State agency existing pursuant to the requirements of Federal legislation. It is composed of 30 members who are appointed by the Governor, 18 of whom are public members - citizens who are representative of consumer services, private providers, and the general public - and 12 official State agency representatives of major agencies.

SENATOR SCARDINO: This is by Executive Order?

MS. ROWAN: Yes.

SENATOR SCARDINO: How long has it been in existence?

MS. ROWAN: About seven years.

SENATOR SCARDINO: And, what is your - if you can give it to me in one or two sentences - purpose? What is your goal?

MS. ROWAN: Essentially, looking at the needs of the developmentally disabled population on the one hand, the service system in its entirety on the other, and trying to plan and coordinate for the service system and impact on it so that it will better meet the needs of the developmentally disabled.

SENATOR SCARDINO: I assume - forgive my ignorance on this matter - that you have issued reports periodically?

MS. ROWAN: Yes, we publish an annual state plan, and so on.

SENATOR SCARDINO: Okay. We have access to that. We get so much I guess that is among it. Okay, we will take a look and see what we can find out.

MS. ROWAN: All those mailings come in.

SENATOR SCARDINO: Yes. What do you think you can do -- or what can your role be in this interim process that we were discussing with Mr. Hinkle just

a few moments ago, in terms of making sure that what the Department tells us it intends to do is, in fact, done?

MS. ROWAN: Well, I think, first of all, we work very closely with Mr. Hinkle's office and we will, of course, cooperate with him in any way we can in what he is doing.

In addition to that, I think the Council provides a forum for two things. One is, keeping aware of what is happening and the second thing is perhaps bringing together people in the private sector and people from various agencies of State Government, where cooperation and communication becomes important.

SENATOR SCARDINO: In other words, you will be prepared to feed the Legislature with information and data - or what have you - between now and the 18 month period that we have set for ourselves so that you can, in fact, offer to us observations, criticisms, points of view, or whatever, pertaining to this matter?

MS. ROWAN: Sure.

SENATOR SCARDINO: Okay. We would appreciate your cooperation, as we would the cooperation of any agency, body, or group in that respect because I think it is important that we work together in that capacity so that 18 months from now we can really refresh ourselves on the subject but at the same time find out how much we have progressed.

MS. ROWAN: I couldn't agree with you more, Senator. Furthermore, I think the more that we do work together and explore the issues as we go along, the better position we will be in in 18 months to be very proud of what we have done.

SENATOR SCARDINO: That's good. Senator Russo?

SENATOR RUSSO: Yes. Catherine, you alluded to the fact a moment ago that you would like to see some of these support services expanded. I would ask you which services and to what degree - if you can answer that?

MS. ROWAN: I can answer it at great length, which I won't do here. In brief, I think we have a need to develop and expand services of all kinds in the community, from early intervention and infant stimulation kinds of things for young children, to work activities, sheltered workshop, vocational training, day activities, recreation programs for people living in the community, transportation to get them from one place to another - specialized transportation services - and a host of things in that ilk, as well as medical care -- the whole spectrum of the kinds of services that all of us need but handicapped people need more so if they are living in the community, that would otherwise be furnished in a total care institutional setting.

SENATOR RUSSO: You have answered my question. Thank you very much.

MS. ROWAN: Thank you.

SENATOR SCARDINO: All right, thank you very much.

MS. ROWAN: Thank you.

SENATOR SCARDINO: John Scagnelli. Hi, John. It is now no longer good morning, it is good afternoon.

J O H N S C A G N E L L I: Good morning and good afternoon. First of all, if I might, Senator, I would like to recognize some of our volunteers and professionals who have attended the hearing this morning because of their vital concern and vital interest in this whole program. We view this as a major

undertaking in the State of New Jersey and recognize that there is much still to be done.

SENATOR SCARDINO: We thank you for introducing the group that has accompanied you. We welcome you, as we welcome anyone - any citizen of the state - to participate in the legislative process, particularly areas as vital as the one we are concerned with today. So, we thank you for taking the time and the interest, of course, and for being with us.

MR. SCAGNELLI: Senator, I respectfully address the Committee today first to express the support of the New Jersey Association for Retarded Citizens for Assembly Bill 792 and for the overall goals of the ICFMR program in and of itself, and also to tell you about the uncertainties and concerns we have now about some aspects of the program that has been developed by the Department of Human Services and the Division of Mental Retardation.

Approval of Assembly Bill 792 is necessary as we view it, to lawfully set in motion the dedication of Federal funds for the massive undertaking of deinstitutionalization through the ICFMR program. We, of course, categorically endorse that proposed legislation. We also sanction what the program will ultimately achieve, namely a better quality of care that will go with the upgrading of institutional staff, improved living conditions resulting from compliance and meeting higher standards of physical plant, an unmistakable commitment in expanding community-based residential facilities, and the development of supplemental community services. All of these, we wholeheartedly applaud since we have, as an Association, constantly fought for these improvements.

Even so, while we enthusiastically embrace the concept of the ICFMR program as presented, we are nevertheless apprehensive. This is not due to tangible mistakes in the plan, but rather to the possibility that as the program comes to life and takes on substance, it might assume unintended and unwanted features as it becomes translated into reality. We wish to make clear also that we are not hyper-critical of those who conceived of the plan, since it would be virtually impossible for anyone to anticipate all the eventualities and shortcomings. But, we have had some time to study the plan and consider it our responsibility to relate to you the deep concerns of our professionals and volunteers.

Let's realize that one of the core principles embodied in the ICFMR program has to do with deinstitutionalization and it is in fact one of the most significant consequences in converting state schools for the mentally retarded to meet ICFMR Federal standards.

Our strong belief is that the processes of deinstitutionalization, by their very nature, motivate and help mentally retarded individuals attain their own highest degree of functioning. To us, the idea of deinstitutionalization also acknowledges and incorporates the right of each individual to live in an environment that least restricts his ability to achieve his personal goals, regardless of his level of functioning.

These are the things we are concerned about. We question the ability of the Division of Mental Retardation to adequately locate, deinstitutionalize, if you will, and provide - or have provided - services in the community for 2,000 persons by 1982 and nearly 4,000 - or approximately one-half the current state school population - by 1978. Those imposed deadlines are relatively immediate and we have difficulty believing that the required number of facilities

can be put in place in the allotted periods of time. What happens if they cannot? Do we fall back then to other options, all of which would tend to dilute the best principles of deinstitutionalization? There is no clue indicated in the written plan about how or by what criteria persons will be chosen for relocation.

Officially, we know nothing of those necessary procedures and we feel extremely uncomfortable with the idea of having no guidelines that will help us choose who will go where and how they will be served.

Those doctrines of most appropriate and least restrictive are, by the way, legal mandates of state and federal law, respectively Chapter 82 of 1977 - The Rights of the Developmentally Disabled Act - and the Rehabilitation Act of 1973, Section 504. Nevertheless, in the absence of defined criteria for placement out of institutions, we have no way to monitor either the selection of the people or the placements.

We hold some reservations about whether the best interest of retarded persons will be served by the construction of skilled nursing facilities on the grounds of existing institutions. This speaks again to the issue of the least restricted environment and causes us to wonder about the wisdom and appropriateness of perpetuating the institutional image.

Implementing the ICFMR plan clearly indicates a substantial expansion of the purchase of care program. We do not out of hand quarrel with that, but do worry about the lack of collateral expansion of supervisory staff. Here too the machinery for monitoring such a large part of the conversion program is unseen. Existing staff is hard put now to reassure the continued adequacy of present purchase of care placement. We simply cannot assume on the basis of proposals outlined that the investigative capability will markedly improve.

We are somewhat bewildered to notice no mention of individualized programing in the ICFMR plan. It is clear that the plan has to deal with the material aspects of conversions of plan and personnel but the quality of programs and services - the very guts of what all of this means - particularly in a program system, is left unmentioned.

Are we left to take for granted the legal mandates for individualized habilitation plans because the law says so? Will it necessarily be so? I would feel much more at ease if those legal principles that we fought a long time to acquire were reinforced by an expression or an intent. We do not care for presumptions.

The ICFMR program calls for the construction of 25 cottages on the grounds of state schools and for the building of another complete institution. We are unequivocally opposed to the construction of a new institution irrespective of its size. That proposal is the only one in the entire plan that we are against absolutely. Very close to outright opposition is our feeling about the construction of 25 new cottages contiguous to existing institutions. That plan provokes our suspicions about fall-back options, which I mentioned before. It occurs to us that should community facility components of the plan fail to be put in place in time, institutional type cottages will be used to absorb the slack. We question this dependence upon cottage construction on institutional grounds, as we see it as a possibility of subverting the creation of community oriented facilities and services.

Perhaps the largest and most important part of the conversion program

is the blueprint for community based residence, or group homes. That proposal deals with approximately one thousand persons who, according to the ICFMR program, will be placed in either ICF or non-eligible group homes. We question, seriously, how those residences are to be provided. Aside from the plan's declaration that the group homes will be utilized, we are skeptical that sufficient numbers will be in place by 1982.

Today, there are only eight group homes in the entire State, most of which are operated by our local ARC units and they serve a clientele of fewer than 75 persons. New Jersey has nearly one-quarter million mentally retarded citizens and it has eight group homes. All of our neighboring states have many more than that and Montana, which is a small state, has 200 alone.

The ICFMR plan indicates the provision of community group homes to house and serve 1,000 mentally retarded persons. To us, that is an entirely acceptable proposition on paper. It does not wash in the reality of our experience. One of the paramount explanations for there being but eight group homes in New Jersey is the tremendous restrictions imposed by municipal zoning laws. Until only one month ago, those restrictions, combined with the licensing requirements of the State Department of Health, made things even tougher.

The authority for licensing now rests in the Department of Human Services but the harassing, discriminatory restrictions of local zoning laws remain and we see no possibility of providing group homes in communities, whether it is ICFMR or not, unless these restrictions are overcome or at least eased. Therefore, we see a major portion of the ICFMR program as being virtually still-born. It is all the more perplexing if we accept - and we do - the conclusions of a report last year by the Office of Fiscal Affairs that the per capita cost of living in a group home is less than it is in an institution.

We entertain no assurance at all that the group home component of the plan is realistic within existing circumstances and the relatively brief time assigned for its development. If zoning were not a problem and if the terrible reluctance of people to allow group homes in their neighborhoods were not a problem, we would still be confronted with the problem of the scarcity of available capital to develop group homes. That problem is especially acute with respect to the plan's partial dependence on private agencies, such as ours, to provide group homes, perhaps 30 of them, in the few years that phase I of the plan considers. There is little or no mention in the plan, for that matter, about how the capital funds to start those homes would be provided.

A final concern of ours is the plan's omission of any mechanism that would provide for consumer veview of the implementation of the program or the operation of it. We ourselves represent a membership of fifteen thousand persons who in turn are advocates for a quarter of a million mentally retarded individuals. Yet, there is no provision in the ICFMR program to establish a government sanction forum that would enable and encourage our involvement. We believe there should be and call upon this Committee to establish a citizens and professional committee to be involved in subsequent planning and/or implementation of the plan with the appropriate State agency.

I appreciate your time in listening to our concerns and our interests and I am grateful for your support. I am sure that you are well aware that we, as

an Association stand ready whenever we can in order to offer our assistance. I would be very happy to answer any questions.

SENATOR SCARDINO: Thank you, John, for your comments and your presence. Senator Russo do you have any questions?

SENATOR RUSSO: Yes. John, tell me a little something about a group home. How many patients does it accommodate? What are the requrements? How does one quality, and that sort of thing? And, what happens within a group home?

MR. SCAGNELLI: Well, the concept, as we have it in the Association, State of New Jersey,-- we have stipulated that group homes limit the residents to no more than eight individuals, eight individuals who live in a normal environment, a home in a given community which is no different than any other home that is in the community. These individuals live with house parents, who, in effect, might be considered surrogate parents. These individuals have their responsibilities within that home. Many of them work within the community. They hold competitive jobs. Some attend sheltered workshops, which are for those who are not capable of competitive employment and others utilize whatever facilities are available. In other words, Senator, it is no different from any family living in a neighborhood and these individuals have the right to utilize whatever community facilities there may be. If they are of school age, they can go to school and if they are of working age, they can find employment in between. As a result, this then requires variance because as you come into a given community you are specifying a particular use and it is not, in a sense, a family, although this has been tested in the courts.

So, this is the very nature of the group homes.

SENATOR RUSSO: Does the charge to the State vary according to age?

MR. SCAGNELLI: No, it doesn't. At the present time there are several means of funding, funding through the purchase of care through the Division of Mental Retardation for which there is a per diem cost which may vary between $16 a day to $21 or $22 a day, depending upon the special types of services that might be brought into that home.

In many cases the individuals themselves help to support the cost of the home, either through their wages or, if not, under the supplemental security income that they are eligible for under the Federal Government.

SENATOR RUSSO: I see.

MR. SCAGNELLI: So, there is a supportive kind of situation occuring.

SENATOR RUSSO: John, I have one other question, if you don't mind, and that relates to the point that you raised earlier that you would be opposed to the construction of another institution. I didn't know that another institution was encompassed within this plan.

MR. SCAGNELLI: Yes.

SENATOR RUSSO: If it is, why would you be opposed to it?

MR. SCAGNELLI: Well, if we, in fact, said that we embrace and accept the concept of deinstitutionalization, which is an approach that has, in effect, taken hold in many, many of our states, and recognize that an individual can perhaps grow to his greater potential in a setting that is more conducive to that growth, we are, in effect, perpetuating the institutional image in our state if we continue to go on and build more and more institutions. It has been proven that people do better out in the community. As a matter of fact,

in the Penhurst decision, which was handed down just recently, it declared institutions in that state unconstitutional. It is now saying that all individuals must be moved out and put in other appropriate facilities. We don't go quite that far. We are not saying that there is no room in this state for institutions. We are saying while we have the opportunity and new money is coming in to the state, let us take advantage of this because this is something that we have been fighting for and we have always been told there is not enough money. Now that the money is going to be made available, let's take this opportunity. Let's provide the leadership in this state - and I think New Jersey always has been a leader in the area of mental retardation. Let's continue that leadership. Let's have an opportunity to do some interesting and innovative things.

I think that having some kind of an input with people, such as our own Association and others, will at least help to shape and hammer out an acceptable program.

SENATOR RUSSO: You have answered my question. Thank you.

SENATOR SCARDINO: John, you have raised what I consider to be some very interesting questions and some concerns in my mind. Your quote is that this program, if anything, is stillborn. We are all familair with that connotation. I can't help but read into that your strong reservations about the ICFMR -- let us not say about the program but about the approach that the State is using in the implementation of that program. Your comments are well taken and understood. Your reservations are understood. But, how do you rationalize your position with the obvious need to expedite matters in order to receive the Federal funding that the Department feels is absolutely essential in achieving its goals? On the one hand, they are assuring us that they can achieve those goals with this additional $40-some-odd million in Federal funding, which is in effect everybody's money, and on the other hand you are saying that that is $43 million that will not go anyplace - if I read your comments correctly.

MR. SCAGNELLI: Well, I think I might answer that in this way: We have particularly made reference to the small group community facilities where we visualize that this is where the greatest difficulty will take place in the implementation phase, simply because of the fact that if we honestly say that we want to move people out into the community and develop small group facilities, we have to go through the process of making it possible for the establishment of these homes and we can't do it unless we can address the question of zoning. I know there are several bills which you have co-sponsored, Senator. Unless we can get that in place, it is going to be exceedingly difficult. What we are saying is, if that is impossible to do and we are under a time factor to get 2200 people out by 1982, the absence of any facilites in the community will mean we will have to bring them back on institutional grounds into the new cottages that are being built, and so forth. Then, it means that it wasn't that we were not in agreement with small group facilities, but it was impossible for us to implement, therefore, we have to draw people back. That is one of our major concerns.

SENATOR SCARDINO: Not meaning to put you on the spot, but respecting your capacity and your position, what then would you suggest the Division do at this point? What do you suggest the Legislature do? Tomorrow, as a matter of fact, the Senate intends to vote on this measure and, as far as my reading is concerned, favorably. Once we do that and the Governor signs it, we are

ready to move. It is also our understanding that aside from legislation this could be done by a simple executive motion through the appropriations process. So, either way it is going to go.

Do you have any objection to the program itself?

MR. SCAGNELLI: No, I do not.

SENATOR SCARDINO: All right. Do you feel that it ought to proceed?

MR. SCAGNELLI: I think we should proceed. I think that I have raised some legitimate questions and concerns that we have simply on the basis that there is not enough information in the plan as presented for us to really feel secure about some of the points that we have raised. It is for that reason that we are suggesting that there should be some way of having involvement.

SENATOR SCARDINO: I am going to get to that point.

MR. SCAGNELLI: Okay.

SENATOR SCARDINO: I agree with that and I think I said that in a sense when I called for this Committee to review the status of the program 18 months down the line - set a date and the time for ourselves now and have Committee staff remind us when the time is near that we are to do that. I have also asked all of the groups interested,directly or indirectly, in this matter to prepare themselves between now and then to come before us and tell us how they feel about it and how they feel about the process. Certainly, that is as open to you as it is to anyone else. We would welcome your participation. But, again, I have to react to your comments in this respect: We sat here and we listened to Catherine Rowan who represents the Executive and we heard the Department, represented by its staff, and we have John Scagnelli representing another group in the State and there are also other groups here and, you know, I sit in a position of naivete because I think everybody gets along with everyone else and that they have a general sense about where they are going and how they are going to get there. Generally, I realize that there are going to be some minor philosophical differences along the way, if you will, in terms of approach, but I can't help but detect in your comments - and correct me if I am wrong, I hope I am - that there seems to be a split, a severe split, in the conduit that should exist between you and other groups, and your organization - to use that example - and the Division in working matters out and having accessibility and an opportunity for input - not only by being able to just voice your opinion but actually having something tangible done about it if your ideas are worthwhile. I would like you to react to that.

MR. SCAGNELLI: Well, I think - if you will allow me - I want to allay any feelings that we are in any way opposed to the plan, or to the program. We do have, certainly, a good feeling about the ICFMR program. I recall that when ICFMR programs were first available through Title 19 that we in effect recommended that the State of New Jersey in fact do something about moving into the program. We are merely stating, as I have tried to repeat, that we are concerned about one specific area which deals with the construction and development of community group homes. We really see this as an extremely beneficial approach to taking individuals out of the institutions. We are a little frustrated - and you must pardon us - because we have gone through, in our local units, exceedingly frustrating times in order to develop group homes. We have been stymied in the State simply because of the lack of sufficient capital for these group homes. We see this as an opportunity, in the ICFMR program,

to now say, "Hey, it is all being put together; let's see that we can now move with it."

So, we are saying, "Great. Let us support the program." I believe it would be a kind of abridgment of our responsibility if we didn't point out the things as we see them in the plan at the moment. Now, maybe with proper explanation of the developing plan we may be able to see things in a different light.

SENATOR SCARDINO: Aren't you in a front line, or haven't you put yourself in a front line position, in terms of knowing - obviously - more then most people in the general public just what is going on both at the institutional and the community level in the field of mental retardation? Wouldn't you therefore be in a prime position in terms of monitoring, if you will, from your own perspective,the implementation of the ICFMR program? And, in that monitoring aren't you satisfied that you could have a voice or express your reservations or commendations - or whatever the case - to the Division? Will they listen to you? Will they hear you out?

MR. SCAGNELLI: Oh, yes. I think Dr. Kott and his staff have always been extremely cooperative and have considered many, many of the points of view that we have expressed that might be counter to some of the things that are being done. But, I believe we have a good working relationship. I see no problem with that at all. I am just saying that I think there might be a need in view of the enormity of this plan. When you consider that over half of the population is to be moved out of the present institutions, it is indeed a tremendous undertaking and I think it is going to require a lot of people pulling together on this to see how we can come up with the kind of a plan we can all be very proud of and very happy with. That is really the reason for being here today, to express our Association's concerns with some of the elements in the plan. But, I am sure that we can work some of these out.

SENATOR SCARDINO: Okay. While we proceed with the ICFMR program and its legislation?

MR. SCAGNELLI: Right. We are in support of it.

SENATOR SCARDINO: Very good. Fine. Okay, John. I do appreciate the reservations you had to offer. I think that they are good.

MR. SCAGNELLI: Thank you.

SENATOR SCARDINO: Senator Russo, do you have any further questions?

SENATOR RUSSO: I have no further questions.

SENATOR SCARDINO: Thank you very much, John.

MR. SCAGNELLI: Thank you.

SENATOR SCARDINO: Al Wurf, American Federation of State, County and Municipal Employees. You are the Executive Director of that, aren't you?

A L F R E D W U R F: We had more coming here. I should have sent them.

I want to address myself to a philosophical question. I think you said everybody here has a vested interest in this program and isn't there any communication between you. The fact is, there isn't any communication with legislators, such as yourself, who are deeply involved in programs like this. I might say in passing - not in hostility because he is running for Governor - we tried to get Senator Menza a number of times to meet with us - meet with the leaders of the public employees who are in State hospitals. We never succeeded because he was busy.

I might say too that I have a relationship in other states with the Association for the Retarded. They are generally the most active in the health care field. In this State we don't have that relationship. In many of the institutions I think they are hostile to the employee organizations. I am not completely sure why. I sort of suspect that the heads of the institutions encourage some hostility between us.

So, in short, those who have vested interest and who have possibly the same goals are either too busy or they have preconceived ideas of why they shouldn't work together.

Just let me end on this point: I am available and we represent the employees. We will speak with and deal with anybody who will meet with us. Does that address your--?

SENATOR SCARDINO: Yes, I think it does. Senator Russo, do you have any questions?

SENATOR RUSSO: I have no questions.

MR. WURF: All right, wait a minute. I am not finished. Don't cut me off. I am just starting.

SENATOR RUSSO: You said in conclusion, Al.

MR. WURF: I said in conclusion on your philosophical point.

First of all, we totally support the program. Any program that puts in more facilities and more people in the institutions for the retarded - of course, it is self-serving in a way - in effect, will be a greater service and show greater concern and we support the program. For the State to put 2,200 workers to work is a phenomenon that is mind-boggling.

One of the things that hit me was the statement on the bill - 792 - which seemed to beg some parts of the meaning of the legislation itself. I foresee a grest deal of problems, problems of course which will be overcome.

As I was sitting here - and I don't want to digress from the problems - it occurred to me that there should be a sum of money that could be used for training to address the transition period. I might add my own editorial: The State has $370 thousand in training money annually. But, I don't know of any monies which have been spent for low salaried workers and in particular institutional workers in the category of health care.

But, there will be problems. I can see problems such as the selection of who will work in cottages with numbers of employees and who will work in cottages by temselves - one cottage being in the program and one cottage being outside the program. The employees will have to be educated as to what is happening.

I can see even greater problems from the parents of the residents or the relatives of the residents. I don't know - I haven't read the report or the details - how the selection process is going to take place. It would seem to me that if you have residents in one cottage with two employees and residents in the next cottage with six employees, you are going to have problems - a great, great deal of problems.

There are going to be problems in the shuffle - you know, when you close down a cottage and move residents from one place to another - and this is going to create misunderstandings that will be hard to deal with. I suspect that in some cases it will be impossible to deal with this.

While I was sitting here it occured to me that the best type of

training program is a program that is earmarked for money - and I am not talking about in-service, superficial programs. If there is any way of getting our hands on part of that $40 or $50 million that is coming in so that we can deal with this through literature, through in-person discussion, and through on-going programs and tell people why they are in this cottage or why they are not in that cottage or why you have to close a cottage, and so forth, it would be well used.

You raised the question earlier as to how many employees there are. If you like, I can give you the numbers and if you don't want them, I won't. I have a breakdown as to the number of new employees going into the seven institutions. Do you want that?

SENATOR SCARDINO: Well, how many employees are there?

MR. WURF: How many employees are there now? There are about 7,000. Two thousand two hundred are going in. For instance, Vineland will get 367. The North Jersey Training School will get 72. Woodbine will get 396. New Lisbon will get 556. Incidentally, in that area that kind of--

SENATOR SCARDINO: Yes, we have that.

MR. WURF: Do you have all of that? Okay.

SENATOR RUSSO: Let me complete that, Al. The Psychiatric Clinic, how many will go there?

MR. WURF: Where were we?

SENATOR RUSSO: How about Hunterdon?

MR. WURF: Hunterdon - 261.

SENATOR RUSSO: New Jersey Neuropsychiatric Institute?

MR. WURF: One hundred and ninety four.

SENATOR RUSSO: Vineland -- how many?

MR. WURF: Where was I? Vineland? Three hundred and sixty seven.

SENATOR RUSSO: Woodbridge?

MR. WURF: Three hundred and ninety six.

SENATOR RUSSO: I have Woodbridge, Vineland, Woodbine, North Jersey, New Lisbon, New Jersey Neuropsychiatric Institute and Hunterdon. Have I missed any?

MR. WURF: Do you have seven?

SENATOR RUSSO: Yes, I have seven.

MR. WURF: There are eight.

SENATOR RUSSO: Which one is the eighth?

MR. WURF: Vineland, North Jersey Training, Woodbine, New Lisbon, Woodbridge, Hunterdon, NPI, and -- oh, this is just a composite. No.

Okay, I'm done.

SENATOR SCARDINO: I want to make sure. (laughter) Do you have any other questions, Senator Russo?

SENATOR RUSSO: No, I have no further questions.

SENATOR SCARDINO: Okay, one quick question now on the training program that you mentioned. During the developmental stages where this Council of people representing various disciplines were determining the efficacy of the State's involvement in the ICFMR program and how we were going to approach that, was there any indication in that development - first of all, was there any input from the employee sector - to lead you to believe that the question of employee training or retraining had not been addressed?

MR. WURF: Right now our Union has its own training program that is

going on for training cottage technicians - that is the title. I am not talking about that. After sitting here for two hours and hearing the kinds of problems that are developing, it occurred to me that there are Federal funds that could possibly be used here. The kind of training that I am talking about is not so much the on-the-job training; it is informational training - the preparation of employees and even residents for the kinds of shuffling and the kinds of judgments that are going to be made.

SENATOR SCARDINO: Have you made this in the form of a formal--

MR. WURF: No, I just thought of it. Maurice is here and I am making this suggestion to him.

SENATOR SCARDINO: Okay. I am going to ask Dr. Kott,if he would, to respond to that. But, before he does and you leave, would you develop your program more formally and perhaps present it to the Division in terms of what specifically you are suggesting?

MR. WURF: Well, if he can get the money, we can work out something.

SENATOR SCARDINO: All I am saying is, we would all like to have a clearer picture of what you are suggesting.

MR. WURF: I just want to say a nice thing about him, which I don't normally say about bureaucrats or politicians, he is probably the most successful person in State Government.

SENATOR RUSSO: In terms of what?

MR. WURF: In terms of dealing with human problems, whether they are resident problems or employee problems.

SENATOR SCARDINO: Very good. It is nice to hear that.

DR. KOTT: I refuse to resume the chair after that remark because I can only lose at this point.

SENATOR SCARDINO: Would you be kind enough, Doctor Kott, to respond to the question of employee involvement in this program, particularly the training aspect?

DR. KOTT: Yes. I think, Senator, if anybody makes an assumption about that fellow they can be my guest. It is, in a sense, a real pleasure to come back here because Mr. Wurf and I agree that the quality of services to individuals always depends to a tremendous extent upon the quality of staff and the degree to which a public body can, in effect, improve, elevate, or escalate upwards the skill, the satisfaction, and the dollars which are available to its employees has a direct rebound on the quality of services to individuals. So, I share Mr. Wurf's aspiration for employee training.

MR. WURF: Ask him to share the "guelt."

DR. KOTT: I am not quite certain that public money should be turned over to the union. (laughter)

MR. WURF: Oh, no.

DR. KOTT: Let me put it to you--

SENATOR SCARDINO: Unfortunately, we can't get the laughter in the transcript. I hope that this reads as well as it sounds.

DR. KOTT: Well, let me then say for the record that Mr. Wurf's remarks are not suggestive of any acrimony or disagreement between us.

MR. WURF: No, I was talking about Federal money for educational purposes.

DR. KOTT: Okay. I was going to say that such money should be

available and I think that to a degree it is.

Critical, it seems to me - if I may continue for a moment, Senator - is the contemplation of how a child or an adult is selected for a particular cottage or for a community placement. This has been raised here by a number of individuals. One of the persons who must participate in our program and the selection of individuals is the person who has primary care responsibility, like the attendant or the technician. We have moved, consistently, for the incorporation of those individuals for our classification, student review, or prescriptive programming in committees - in effect, those who make the decision as to who is going to go into an ICF cottage or who will, in 1982, remain in a non-ICF cottage, or who has the capacity for release into the community and who doesn't. It is a systematic way and the group that Mr. Wurf represents makes a substantial contribution because they are, in effect, the substitute parents and they have minute-to-minute information that the professionals don't have. We approach them with a great deal of respect.

Now, I want to maximize, as indeed he does, their ability to perceive; I want to maximize and almost systematize the latent good sense of the individual that we recruit so that we can continue this process of making a systematic selection of individuals for various programs and, in effect, improve it.

SENATOR SCARDINO: I appreciate that.

MR. WURF: Does that mean that we will get some Federal money to educate?

SENATOR SCARDINO: Excuse me. I have to interrupt you at this point, Al. I suggested to you earlier that you detail specifically what you are talking about, what you are recommending. I think Dr. Kott has indicated full cooperation and review of any point that you wish to make. Thank you very much, gentlemen.

I would now like to call upon our final witness for today, Michael Lottman, Executive Director of Education Law Center. Michael, do you have something for the Committee?

M I C H A E L L O T T M A N: Mr. Chairman and Senator Russo, as the Director of a public interest law firm that is primarily concerned these days with issues of education of the handicapped, I am happy to have this opportunity to comment on the ICFMR plan. I find it difficult to be in the position of last but least. Most of my best lines have already been taken by somebody else and I really have very little left to say that hasn't already been said.

Mr. Scagnelli is from the New Jersey Association for Retarded Citizens and the Association is a frequent client of my Education Law Center and my views are substantially the same as his.

SENATOR SCARDINO: The Education Law Center is incorporated so it is a private non-profit organization. Can you describe your --?

MR. LOTTMAN: Yes, sir, it is a private, non-profit, tax exempt public interest law firm that provides free legal advice to consumers in the public education system.

SENATOR SCARDINO: How are you funded?

MR. LOTTMAN: We have one Federal grant and the greatest portion of our budget comes from the Ford Foundation.

SENATOR SCARDINO: Fine.

SENATOR RUSSO: How big is the firm?

MR. LOTTMAN: The firm has four lawyers, plus myself, in Newark - I am not admitted in New Jersey - and three lawyers in Philadelphia, plus a number of support staff. There are 17 people altogether.

SENATOR RUSSO: You say most of the money comes from the Ford Foundation?

MR. LOTTMAN: Yes.

SENATOR RUSSO: Thank you.

MR. LOTTMAN: Like most of the other witnesses, I think that the bill before the Committee is desirable and, as I understand it, a technical necessity in order to qualify the State for participation in the ICFMR program.

I don't read the bill as implying that the Legislature, by passing the bill, is approving the Division of Mental Retardation's ICFMR plan in toto. If that is, in fact, the effective bill - Number 792 - then I would think that it should not be enacted at this time because I think there are a number of questions that need to be answered before the Division's plan can be approved, the way it is written at the present time.

I think these are important questions. I think this plan is a watershed in New Jersey's treatment of its developmentally disabled citizens. The way it is fleshed out and the way it is implemented will affect the way education and other mental retardation services are delivered in this State for at least the next generation.

The plan has two objectives -- to upgrade the State's schools while, at the same time, accelerating the movement toward community placement. These are both objectives that no one could quarrel with but even to state these two objectives is to bring out the inherent tension between them. I know that in a number of states that I am familiar with states have had difficulty going in both these directions at the same time.

Questions arise as to whether resources should be targeted primarily on bringing institutions up to the Medicaid standards or on creating residences and programs in the community. There is the problem of managerial capacity in trying to do both of those things at the same time. There is the question of whether the vast sums of money that are planned to be spent should, in fact, be spent to meet the institutional ICFMR standards if, in fact, the locus of education and habilitation is shifting, as it should, into the community. Once the State schools are brought up to standard, we are afraid there will be an almost irresistible pressure to keep them filled with clients, regardless of individual need in order to maintain the maximum level of Medicaid reimbursement.

In developing this plan, and from the descriptions we have heard this morning, there was an analysis of the regulations. There was an analysis of existing buildings. There was an analysis of staffing patterns. There was an analysis of cost. But, as Mr. Scagnelli pointed out, nothing was said today, and there is not much in the plan, about analysis of individual needs. What kind of clients in the system now need what kind of placements? It seems to us that that sort of analysis has to be the basis for planning for the next decade.

In this planning we believe, as does the NJARC, that the balance must be struck in favor of deinstitutionalization. Enough has already been said here today about the principle of the least restrictive alternative

which we believe is a constitutional imperative and, therefore, is something we subscribe to. This doctrine of the least restrictive alternative - of confining people and depriving them of liberty to the least extent necessary - is, if anything, more prominent and more firmly established in the area of education. As you may know, Education Law Center attorneys are representing the New Jersey Association for Retarded Citizens and a class composed of institution residents in what amounts to a right-to-education case against the Hunterdon State School. I am certainly not going to argue that case here today. I don't think that would be proper and I, myself, am not a lawyer in the case. But, I think it is fair to say that the statutory bases for the right to special education are unequivocal in requiring such services to be provided in the least restrictive and most normal setting feasible. This is a requirement of the new Federal laws in the area and the same philosophy is inherent in New Jersey's special education law and in the new regulations recently proposed by the State Department of Education. Therefore, one of our primary concerns is that implementation of an overly institution-oriented ICFMR plan will interfere with this basic right to be educated in the least restrictive and most normal setting feasible.

Aside from legal arguments, we believe that deinstitutionalization is right. We believe that mentally retarded and other developmentally disabled persons have a right to live in freedom in the community and I am speaking not only of the mildly retarded, physically intact individuals who tend to be the first to move out of institutions, but also of severely and profoundly retarded, multiple-handicapped people who can also be maintained in the community with appropriate education and support services.

SENATOR SCARDINO: Excuse me, for the sake of the stenographer, this is all part of the transcript so you could probably just take it from here, unless you feel you want to read it further.

MR. LOTTMAN: Whether this happens in New Jersey depends on this ICFMR plan and the answers to the questions it presents.

For questions -- to begin with, there is the basic assumption - the basic step - of bringing some 92 existing cottages into compliance with the Medicaid requirements. This represents an enormous investment - $19 million for additional staff in the first year and as yet an undetermined amount for renovation and construction. While no one could dispute the need for additional staff and for physical improvements, you would have to question whether it is advisable to fully upgrade every institutional cottage which can conceivably qualify for Medicaid reimbursement. If more emphasis were given to prevention, to early identification, and to development of community programs, we doubt that all these Medicaid-eligible institutional beds would be necessary. But, again, once all this money has been invested into meeting the standards, we are afraid that these beds are going to be kept occupied, regardless of individual need in order to keep the Federal money flowing in.

How many institutional beds does New Jersey really need? I think that is the first question that needs to be answered and I don't believe that it has been answered. We don't think the answer is the current figure of 8,000. We don't think the answer is the figure of 5,050 that is estimated in the ICFMR plan to remain in 1987. We think the number is much, much lower than any figures mentioned to date. But, in any event, an accurate answer, based on

appropriate assumptions about the potential of handicapped individuals should be determined before these major financial and programmatic commitments are made.

My statement details at some length some other questions we have about specific elements of the plan and I won't repeat them now. Let me just mention that to us, as to NJARC, one of the most disconcerting features of the plan is the "fail safe" approach of including a 900 bed excess in Phase I of the plan, which really is a residue of institutional beds to serve clients for whom the projected community placements do not materialize.

It seems to us - and I think it would seem to any disinterested reader of the plan - that the scheduled events in the plan most likely to occur are the construction of the new skilled nursing facility and institutional beds on the grounds of existing facilities and the erection of a whole new 500-bed State school. We would like to see, instead, a plan where these events do not occur at all and where sufficient resources and attention are committed at last to the legal and moral imperative of deinstitutionalization. Like NJARC, we are unalterably opposed to the construction of any new institutions in a State that we feel is already surfeited with institutional beds. We find this legally and morally unacceptable.

Moreover, if, as we suspect and has been the case in the past, the majority of persons who are moved into the community under the ICFMR plan are adults, then what we will have done in New Jersey, contrary to national trends in education and habilitation of the retarded, is to lock our mentally retarded children away in large, remote institutions and, because of a host of practical considerations, we will have deprived them, permanently, of the right to be educated and habilitated in as normal and open a setting as possible.

We don't want to see the ICFMR plan produce this result. As it is written now, we are afraid that that is the result that it will produce and we think that much more information needs to be gathered and much more deliberation needs to occur before a final ICFMR plan can be adopted.

Thank you and I will be glad to answer any questions. (full statement on p. 5x)

SENATOR SCARDINO: Thank you very much, Michael. Senator Russo, do you have any questions?

SENATOR RUSSO: I have no questions.

SENATOR SCARDINO: You have made some very keen observations, I think, in your statement and I want you to know that I appreciate your summarizing your comments, rather than reading 14 pages, word for word.

The highlights that you did bring to our attention are very interesting. I think it leads me to the basic question as to whether or not you feel that the Legislature ought to proceed with the bill favorably at this point in light of the fact that the State would be, in effect, losing some $43 million in aid that it would otherwise get.

MR. LOTTMAN: Well, I think that the first part of any answer to that is that what we are talking about is the Department of Human Services. To me, that means services to humans. Obviously, it is unrealistic to ignore financial considerations but I think one of the problems with this ICFMR plan now is it is based entirely on financial considerations and not enough on considerations of human needs.

I don't have any problem - if I were any judge - with going ahead with Assembly Bill No. 792. I view that as primarily a sort of bookkeeping step

that is necessary to participate in the program at all. Like the other witnesses, I don't have anything against the ICFMR program, per se. But, again, to repeat what I said earlier, I don't view this bill as an endorsement of the ICFMR plan, as it is presently written and as it would be carried out for the next decade. If I am missing something, and that is what the bill really does, then I would be very much opposed to its passage.

SENATOR SCARDINO: That was a good political answer. I had asked for an opinion from a member of my staff as to whether or not you answered my question.

MR. LOTTMAN: I'm sorry, I don't mean to be evasive. The way I read the bill, I don't have any problems with its being passed.

SENATOR SCARDINO: Good. But, you have problems with the program as it has been established and outlined and defined by the Department of Human Services?

MR. LOTTMAN: Yes, sir, and I think there is time to make the necessary corrections without delaying the entry into the program.

SENATOR SCARDINO: Okay. I have an academic question, can the proposal developed by the Division be altered in the process? Is there room for modification, or is the Division fixed to that, or married to that program permanently? Can anyone answer that question? Dr. Kott?

DR. KOTT: We are not fixed, Senator. I think what we attempted to do at that moment, at the moment that we defined what we call our impact plan, was to suggest the distribution and the impact of the plan on a population. The refinements which are necessary - and I accept them as legitimate criticism no matter what the source - would be the development of programs for individuals and these include the definition of access to the community and the nature of improved programming in the institutions.

I would submit, however, Senator, that as an impact plan we had to take into account certain of the factors that speakers have addressed themselves to. With respect to Mr. Scagnelli's remarks about the ARC and Mr. Lottman's remarks about his organization not being in love with the construction of a new institution, I would say that we had contemplated the possibility that no institution would be needed.

By the same token, we have to respect the very factors to which John Scagnelli made reference - the difficulty that may exist in the State of New Jersey in developing small community facilities that are adequate alternatives to the institution. The one thing that I am sure Mr. Lottman and Mr. Scagnelli and I don't want, Senator, is a replication of what happened in certain other states where people were dumped out of institutions without adequate--

SENATOR SCARDINO: Okay. Dr. Kott, I asked one question, specifically.

DR. KOTT: I'm sorry.

SENATOR SCARDINO: We are getting into other areas. I think your point is well taken and we understand.

DR. KOTT: It is not fixed and concrete.

SENATOR SCARDINO: Okay. That is the answer to the question. So, there is some room for modification, obviously, somewhere along the line. I wanted clarification of that point and I am glad that you raised the question in your statement.

Do you have any other comments?

MR. LOTTMAN: No, sir, except that I guess, in response to what Dr. Kott has said, - again, returning to the point of constructing a new institution - it may sound unfeeling to say this but I think it is true that if you have the fall-back, if you know there is a 500-bed institution that is always there and if you don't make the community placement, you can always resort to that, I think that removes a powerful incentive to go ahead and develop the kind of community program that needs to be developed. Again, it is something that I have seen happen in other states. I think it is something that has been recognized,at least by the court in the Willowbrook case which I have been involved in.

One of the strongest reasons for not building a new institution is to remove that mentality that if community placement doesn't work, or if we don't muster enough resources to do the job right, we can always fall back on the institution.

SENATOR SCARDINO: Thank you very much, we appreciate your comments.

That concludes the hearing of the Senate Institutions, Health, and Welfare Committee on the ICFMR program and Assembly Bill 792.

I see somebody is trying to get my attention.

MEMBER OF AUDIENCE: Yes, Senator. I just wanted to make a clarification comment, if I may?

SENATOR SCARDINO: Would you come forward and identify yourself, please?

M A R V I N M I L L S: My name is Marvin Mills. I am immediate past President of the New Jersey Association for Retarded Citizens. I want to correct, perhaps, an impression that was created in John's presentation to you. There is no serious split at all between the New Jersey Association for Retarded Citizens and the Division of Mental Retardation, as was indicated.

SENATOR SCARDINO: In all due respect to Mr. Scagnelli, he did not give me that impression. I am speaking strictly for myself. As a matter of fact, if anything he conveyed the contrary - that, in fact, he feels as though the cooperation is good between his Association and the Division.

MR. MILLS: And continuing. I did want you to know that. The other point was, we do, thoroughly, endorse both the bill and the concept, recognizing that at this point it is not a fully fleshed out program and we look forward to working with the Division closely on getting it worked out.

SENATOR SCARDINO: Thank you very much, Mr. Mills.

MR. MILLS: Thank you.

SENATOR SCARDINO: Now, just to conclude for the Committee and the staff, I would like to repeat that I am going to recommend that special notes be made of the questions and the apprehensions that have been raised here today with an indication as to who raised them - whether it is individual or group opinion - and that the staff of the Senate Institutions, Health, and Welfare Committee remind the Committee, some 18 months from now, to ask for a review of the status concerning the implementation at that time of the ICFMR program.

I would also ask the staff to communicate with the individuals who have taken the time and made the effort to be here today, in terms of keeping them posted from time to time whenever information is available and is of interest concerning this matter.

I would also ask that each of the groups represented here today continue in their quest and also to indicate that they intend to maintain as close a scrutiny as possible in the interim in terms of the implementation of this program and be prepared, either before or at the time this Committee

decides to review the matter once again.

I want to extend special thanks to everyone present. I particularly want to thank the members of the staff of the Senate Institutions, Health and Welfare Committee and I also want to say a special thanks to our stenographers who have had the patience and the strength to bear with us. I would like to mention them by name: Barbara Smith, Terry Doll, and Ginny Floyd. Thank you very, very much for your cooperation.

(hearing concluded)

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March 17, 1978

The Honorable Anthony Scardino, Jr.
Chairman, Senate Institutions, Health,
and Welfare Committee
Room 318-A
State House
Trenton, New Jersey 08625

Dear Senator Scardino:

I would like to thank you and the other committee members for this opportunity to comment on behalf of the Department of the Public Advocate on Assembly Bill 792 and on the program for Intermediate Care Facilities for the Mentally Retarded (ICF/MR).

The Public Advocate supports the decision of the State of New Jersey to participate in the ICF/MR program and also supports Assembly Bill 792 as a technical necessity to implement this program. Under this program, a total of 92 cottages will be brought up to ICF/MR standards. The space standard used for this conversion will be 70 square feet per bed. Approximately 2000 beds will be lost as a direct result of this conversion. Additional staff will be hired by the Department of Human Services in order to comply with the ICF/MR regulations. The level of care provided to residents living in the 92 cottages mentioned above should improve. Also, the living space of affected residents will increase.

The Public Advocate has engaged in a dialogue with representatives from the Division of Mental Retardation concerning potential problems with the program in general. They involve three areas: the displacement of 2000 persons from the state schools for the mentally retarded by 1982 to make room for ICF/MR conversion; the exclusion of another 1900 residents from the program because certain cottages cannot be renovated to meet federal standards; and the hiring of 2000 additional staff persons necessitated by this program. I would like to outline these problems to the committee.

By 1982, the Department of Human Services intends to move approximately 1000 of the 2000 displaced residents into small group facilities located in the community. We view this as a positive effort; however, it appears to be motivated chiefly by the exigencies of the ICF/MR program rather than by recognition of the fact that many of the people now residing in institutions can lead richer and more productive lives in the community. The Public Advocate is concerned that residents who will be discharged from state facilities for the mentally retarded are properly trained in independent living skills before they are placed in the community. At present, no mechanism exists to train such a large number of individuals.

It will be difficult for individuals who have lived in an institution to adjust to the atmosphere of a group home or other community residence. Some residents may be unable to make this adjustment. The Public Advocate hopes that the Department of Human Services will leave bed space in state facilities available so that residents who cannot make this transition can be returned to the state institutions without delay. This would also be a source of comfort to the parents of residents who are concerned that if community placement does not work out, their child will have to face a waiting list in order to return to a state institution.

The Public Advocate hopes that day programs and other support systems will be set up and operating before residents are placed into group homes or other community facilities. Discharging 1000 people into various community homes throughout the state without adequate services (e.g., medical, therapeutic, recreational, work activities) would be disastrous to their well-being.

Group home "parents" and family care providers must be properly trained before the home is operating. Their understanding of the special needs of the mentally retarded individual is essential. Economic training, specifically, budgeting for a large household, must be incorporated into the orientation of these group home "parents."

The Public Advocate is concerned that the Legislature has not yet passed a zoning bill that would prevent municipal bodies from unreasonably denying, preventing, or otherwise restricting the use or conversion of a home into a community residence for developmentally disabled people. Numerous planning and zoning boards of adjustment have denied variances to potential group home operators. Litigation is not always the solution since this can polarize the community. If the Department of Human Services' program is to be effective, protective legislation must be passed. An efficient monitoring system must also be established to ensure that residents placed with families in the community or in group homes are being adequately cared for; otherwise, some of the abuses which have recently been uncovered with regard to residents of boarding homes may occur in this area as well.

The conversion plan relies upon sending an additional 500 persons into out-of-state facilities by 1982. The Public Advocate does not have sufficient information about the quality of existing services purchased by the Division of Mental Retardation to take a stand on this issue. (In fact, our limited experience has been that the programs used by the Division of Mental Retardation are of high quality.) Thus, we simply call this to the Legislature's attention.

The Department of Human Services maintains that 50 cottages housing 1900 people cannot be brought into compliance with ICF/MR level of care. The Public Advocate is concerned with the care which will be provided those residents. The disparity in care between nonICF and ICF residential beds will be dramatic. While some discrepancy may be permissible if these 1900 residents are receiving the "minimally adequate level of habilitation," which the courts in some jurisdictions have mandated, the Public Advocate has observed situations in which the level of care is far from minimally adequate. In fact, in one case, In the Matter of C.S., the trial court described the conditions under which persons are maintained in one of our state schools as "shocking and indefensible." Last month the New Jersey Supreme Court granted certification of this case while pending unheard before the Appellate Division.

The Department of Human Services has indicated that a substantial number of residents will be moved during the conversion to ICF/MR. The Public Advocate is concerned about the conditions under which these residents will be temporarily housed. We are hopeful that the Department of Human Services will soon provide assurances and a detailed plan to demonstrate that adequate care and habilitation will be provided these persons.

The Public Advocate observes that a number of other important questions have not been addressed:

1) How will the Department of Human Services determine which residents will receive the benefits of the ICF/MR program, and which residents will remain in the institution and not partake of this program?

2) How will it be determined who will remain in the institutions and who will leave?

3) What input from the residents, their family, or friends will be solicited?

4) How can an aggrieved party have such a decision reviewed?

No administrative mechanism exists to afford even a minimal level of due process in matters which are of paramount importance to mentally retarded persons and their families.

New personnel hired under this program must have appropriate training. The exigencies of recruiting a large number of new staff should not be permitted to result in the hiring of unqualified personnel or as an excuse to seek a waiver to downgrade federal standards.

The Department of the Public Advocate cautions the Legislature with regard to the ICF/MR program, although we support this program. The concerns outlined should be dealt with in detail as the process unfolds. The Public Advocate commends the committee on its efforts to monitor this program and is anxious to assist the committee in whatever way it can.

Sincerely,

Herbert D. Hinkle
Project Director

HDH:nls

cc: Honorable William J. Hamilton, Jr.
Honorable Anthony E. Russo
Honorable Garrett W. Hagedorn
Honorable James P. Vreeland, Jr.
Michael Bruinooge

Education Law Center, Inc.
Suite 800
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201·624·1815

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STATEMENT OF
MICHAEL S. LOTTMAN, DIRECTOR
EDUCATION LAW CENTER, INC.
ON
NEW JERSEY ICF/MR PLAN

To the Chairman and Members of the Senate Institutions, Health, and Welfare Committee:

As the Director of a public interest law firm specializing in issues of public education, particularly those relating to education of the handicapped, I am pleased to be invited to comment on Assembly Bill No. 792, and especially upon the Division of Mental Retardation's plans for participation in the "ICF/MR" component of the Medicaid program.

My comments today are directed, not at Bill No. 792 (which is innocuous in itself), but at the document entitled "Plan to Address the Impact of the Conversion of New Jersey State Schools for the Retarded to ICF/MR Facilities on the Displaced Population," which was submitted to DMR Director Kott by his Mental Retardation Planning Project in December, 1977, and which apparently indicates the direction in which the Division intends to move. On the basis of my experience at ELC and as an advocate for the rights of the developmentally disabled, I can see both promise and peril in this ICF/MR plan, but of one thing I am certain: This plan represents a watershed in New

Jersey's treatment of its developmentally disabled citizens, and the way it is fleshed out and implemented will affect the way education and other mental retardation services are delivered in this State for at least the next generation.

The ICF/MR plan seeks to accomplish two unexceptionable objectives -- upgrading New Jersey's State schools for the mentally retarded and accelerating the movement toward community residences and community-based programming for developmentally disabled individuals. But even to state these two objectives is to emphasize the tension between them: Should resources be targeted primarily on bringing institutions up to Medicaid standards, or on creating residences and programs in the community? What is the point of spending vast sums of money to meet the institutional ICF/MR requirements if the locus of education and habilitation is shifting to the community? Once the State schools are brought up to standard, will there not be an almost irresistible pressure to keep them filled with clients, regardless of individual need, in order to maintain the maximum level of Medicaid reimbursement?

It is clear to us that the balance, if any, must be struck in favor of deinstitutionalization and maximization of personal liberty. Federal court decisions from the Wyatt case in Alabama[1/] to the Willowbrook case in New York[2/] to the U.S. Supreme Court ruling in the case of Kenneth Donaldson[3/] have emphasized the right of mentally and developmentally disabled individuals to live and to receive services in the least restrictive appropriate setting. This principle has been embodied in Federal law[4/] and in the laws of New Jersey.[5/] Most recently, in the Pennhurst case in Philadelphia,[6/]

Federal Judge Raymond R. Broderick held that

> . . . since the law recognizes that habilitation other than in the least restrictive setting is a violation of one's constitutional rights, there is no question that Pennhurst, as an institution for the retarded, should be regarded as a monumental example of unconstitutionality with respect to the habilitation of the retarded.[7/]

If it does not actually do so, the Pennhurst decision comes very close to declaring institutionalization of the mentally retarded to be per se discriminatory and unconstitutional.[8/]

The doctrine of the least restrictive alternative is, if anything, more prominent and more firmly established in the area of education. As you may know, Education Law Center attorneys are representing the New Jersey Association for Retarded Citizens and a class composed of institution residents in what is essentially a right-to-education suit against the Hunterdon State School;[9/] a major feature of this case is the application of the least-restrictive-alternative principle. While I do not intend to argue the Hunterdon case here today, for it would not be proper to do so, I think it is fair to say that the statutory bases for the right to special educational services are unequivocal in requiring such services to be provided in the least restrictive and most normal setting feasible. The Education for All Handicapped Children Act of 1975,[10/] the major Federal legislation in this area, mandates the development of procedures to ensure that

> . . . to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the

> regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, . . .[11]

The same philosophy is inherent in New Jersey's special education laws[12] and in the regulations recently proposed by the State Department of Education.[13] One of ELC's primary concerns is that implementation of an overly institution-oriented ICF/MR plan will interfere with this basic educational entitlement.

Legal arguments aside, moreover, we come down on the side of deinstitutionalization because it is right. Mentally retarded and other developmentally disabled persons have a moral, as well as legal, right to live in freedom in the community; and I speak not only of the mildly retarded, physically intact individuals who tend to be the first to move out of institutions, but also of severely retarded, multiply handicapped people who can be maintained in the community with appropriate education and support services and who can profit from the varied and stimulating experiences that community living provides. This assertion is not based on theory alone, but on the actual and documented successes that have been achieved in States like Massachusetts, Michigan, Nebraska,and New York. There is no reason why the same kind of successes cannot be achieved in New Jersey; but everything depends on this ICF/MR plan and the answers to the questions it presents.

The plan is designed to bring certain existing institutional beds into compliance with Medicaid standards, and to accomplish the client relocations necessary to meet space requirements and to vacate

beds which cannot be brought up to standards. The plan is roughly divided into two phases, 1977-82 and 1982-87, although there is some overlap between the two, and the latter phase, as might be expected, is somewhat lacking in detail.[14/] The first phase consists of the following:

1. Renovation of existing institutions (and hiring of staff) necessary to meet all ICF/MR standards no later than July, 1982;[15/]

2. Construction of three 70-bed "skilled nursing facilities," one each at New Lisbon, Woodbine, and Vineland, to be financed through the 1976 State bond issue;[16/]

3. A 400-bed expansion in the Division of Mental Retardation's "special residential services" program, under which the Division purchases residential care from private licensed facilities both in and out of state;[17/]

4. Establishment of a new, 500-bed "community training home" program, in which private "sponsors" will be trained and paid by DMR to provide room, board, and specialized services to small groups of clients;[18/] and

5. Generation of 1,000 community placements in "small group facilities," 750 of which would be eligible for Medicaid reimbursement under the "small group ICF/MR program."[19/]

Phase II, to be carried out between 1982 and 1987, purports to deal with those 1,800 to 1,900 institutional beds which can never be brought into compliance with the Medicaid standards. This phase involves 1,000 additional placements in "small group community facilities," replacement of 300 existing institutional beds with new cottages on institutional grounds (200 of these to be financed by the 1976 bond issue), and construction of a new 500-bed State school in the northern part of the State.[20/] Actually, though, the facility

construction component of Phase II is scheduled to begin in Phase I,[21] with special emphasis on quick completion of the new State school,[22] in order to keep Medicaid reimbursement flowing if there are delays in the non-institutional elements of the first phase of the plan.[23]

Each of these phases, and each element thereof, raises serious and troubling questions which should be answered before DMR is allowed to plunge into implementation of the ICF/MR plan. To begin with, the basic step of bringing some 92 existing cottages into compliance with Medicaid requirements represents an enormous investment -- $19,201,000 for additional staff[24] and an as yet undetermined amount for renovation and reconstruction.[25] While no one would dispute the need for additional staff and for physical improvements at existing institutions, one must question the advisability of fully upgrading every institutional cottage which can conceivably qualify for Medicaid reimbursement. If more emphasis were given to prevention, early identification, and the development of community residences and programs, we doubt that all these Medicaid-eligible institutional beds (5,300 until 1982, 3,300 plus new construction thereafter)[26] would be necessary; but once all this money has been invested in meeting the ICF/MR standards, we are afraid that these beds are going to be kept occupied, regardless of individual need, so that Medicaid reimbursement will continue. Moreover, even when institutional populations are reduced, it is extremely difficult, in labor-management and human terms, either to lay off or to retrain and relocate excess staff hired to reach a staffing level which no longer applies.

How many institutional beds does New Jersey really need for its mentally retarded and developmentally disabled citizens? We do not think the answer is 8,000 (the current figure),[27/] or 5,050 (the estimated 1987 figure),[28/] but rather a number far lower than any mentioned to date. But an accurate answer, based on appropriate assumptions about the potential of handicapped individuals, should be determined before major financial and programmatic commitments are made.

Further questions arise with the plans for construction of 210 new "skilled nursing facility" beds, to be added to the 400 already in existence.[29/] First, the ICF/MR plan fails to indicate how the persons who will fill these beds have"already been identified"as in need of this highly restrictive and medically oriented type of care.[29A/] Skilled nursing facilities are defined in the Medicaid law as those providing 24-hour nursing care and related services for "patients who require medical or nursing care" or "rehabilitation services for the rehabilitation of injured, disabled, or sick persons."[30/] It is at least doubtful that 600 current institutional residents need this type of care, which necessarily restricts their exposure to any type of external stimulation and usually results in virtual elimination of any form of education or other affirmative, developmental programming. Thus we need to know what criteria were applied in determining the number of clients to be placed in skilled nursing facilities (or indeed in any of the types of placements described in the ICF/MR plan). Further, to what extent will education and other needed services be provided to such clients, and how will they be provided? Why must these SNF's, if they are needed at all, contain

70 individuals, all of whom are retarded, and why must they be constructed on the grounds of existing institutions?

With regard to the "special residential services" component of Phase I, clarification is necessary as to the types of settings to which clients will be moved, the criteria to be utilized in matching clients to residential spaces, and, especially if school-age children are involved, the manner in which educational and other programmatic entitlements will be guaranteed. [31/] As described in the ICF/MR plan, the facilities to which clients will be moved could be anything from an out-of-state institution to a nursing home to a true community placement. For many such clients, the result of the ICF/MR plan may be a transfer from one institution to another, the value of which is questionable to say the least -- especially when it simultaneously becomes more difficult, if not impossible, to ensure the provision of special education and other necessary and/or mandated services. Finally, the availability of adequate funding for this part of the plan seems questionable at best.[32/]

The community placement aspects of Phase I must be viewed in the context of the Division of Mental Retardation's past record in this regard. At present, according to our information, there are seven State-funded group homes for the mentally retarded in New Jersey, serving approximately 50 clients.[33/] Thus it is plain that the ICF/MR plan contemplates an exponential increase in this effort. While we would emphatically favor any movement toward a community-based service delivery system, we question the availability of resources and commitment necessary to place some 1,500 clients in the community by 1982

(and another 1,000 in the following five years), while at the same time meeting the demand for residential and programmatic services on behalf of developmentally disabled individuals already living in the community or, indeed, yet to be born.

For one thing, we would like to be assured that the 1,500 Phase I community placements are really what the name implies. In particular, the "small group" ICF/MR homes which will account for 750 of these placements could consist of eight beds, or 80 beds, or even more. The ICF/MR plan, in its cost estimates, seems to assume a 16-bed average for the 1,000 ICF and non-ICF group homes in Phase I,[34/] but the physical plant and staffing requirements applicable to ICF homes in the community[35/] can be a powerful incentive to cluster inappropriate numbers of clients together, and the plan is noncommittal on what the exact ICF/non-ICF mixture will be.[36/] (In the Willowbrook case, it should be noted, group residences of more than 15 beds for mildly retarded adults, and of more than 10 beds for all others, are not considered to be community placements at all.)[37/] Thus again, there is a danger that as a result of the ICF/MR plan, even those clients ticketed for "community placement" (by whatever criteria) will only be moved from one institution to another.

Nor is it clear from the ICF/MR plan that sufficient staff and other resources will be available to support the projected placement effort. The projected reimbursement rates for ICF and non-ICF group homes in 1980 ($30-$35 per day)[38/] may not, in our opinion, be sufficient to cover the costs of room, board, and house-parent staff,

let alone the day programming that does not seem to be provided for elsewhere in the plan (except in the case of adult activities for residents of non-ICF group homes).[39] The same may be true of the $19 per day rate projected for the 500 placements in community training homes. In addition, the source of the $6,000,000 in start-up capital assistance for the proposed group homes[40] is nowhere specified in the plan. Finally, while the plan's 1:25 case manager ratio for clients in community placement is probably appropriate,[41] it is less evident that the plan includes sufficient additional resources for crisis intervention, professional backup services, program development staff, architects, lawyers, and community education efforts which are all necessary components of a successful community placement program.

That the Division itself recognizes these uncertainties is evident in one of the most disconcerting features of the plan -- the "fail safe" approach of including a 900-bed "excess" in Phase I[42] which is, in less ambiguous terms, a residue of institutional beds to serve clients for whom the projected community placements do not materialize. It would seem to a disinterested reader of the plan that the scheduled events most likely to occur as planned are the construction of new SNF and institutional beds on the grounds of existing facilities, and the erection of a new 500-bed State school. We would like to see, instead, a plan where these events do not occur at all and where sufficient resources and attention are committed at last to the legal and moral imperative of deinstitutionalization.

For we wish to make it abundantly clear that we regard the addition of cottages to existing institutions, and especially the construction of a new large State facility in a State already surfeited with institutional beds, as legally and morally unacceptable. The determination to build more institutions reflects a basic weakness of what is in many ways a carefully thought-out and well executed document -- the planning of mental retardation services on the basis of maximum Federal funding rather than on the basis of individual determination of client needs and maximum development of human potential. If, as we suspect, the majority of persons to be moved into the community under the ICF/MR plan are adults,[43/] then what we will have done in New Jersey, contrary to national trends in education and habilitation of the developmentally disabled, is to lock our mentally retarded children away in large, remote institutions and, because of a host of practical and logistical considerations, to deprive these children permanently of their right to be educated and habilitated in as normal and open a setting as possible.

This scenario, particularly with respect to the proposed new institution, is strikingly similar to that which confronted the court in a post-judgment phase of the Willowbrook case. There, the New York State Department of Mental Hygiene proposed to move clients, mostly children at first, from Willowbrook to a new 384-bed facility (the Bronx Developmental Center) which was closer to their homes and which presumably would have met the ICF/MR requirements as well as the institutional standards of the Willowbrook Consent Judgment.[44/]

Indeed, the Department was willing to limit the population of this new facility to 144 at any one time.[45/] Nonetheless, Judge John R. Bartels enjoined the Department from using the facility as a residential placement for persons protected by the Willowbrook judgment,[46/] and made the following findings:

> The goals of normalization and development of the mentally retarded cannot be met until every effort is made to physically and socially integrate the class members into the mainstream of the community. Their activities should be oriented to community activities and the services delivered to them should be in the same context as community services delivered to others. Such services have been and can be provided by utilization of non-profit agencies as vendors of services for persons coming out of institutions.
>
> The court has been told that in a new institution with university affiliations, a fresh, highly motivated staff and with a fresh approach to the training of the mentally retarded, any residents at the Bronx Developmental Center are likely to receive better training and care than those at Willowbrook. While it is refreshing to learn of the improved treatment that will be available at the Bronx Developmental Center, the question is raised why such treatment has not been and cannot now be provided at Willowbrook as required by the Consent Judgment. [Citation omitted.] The court is concerned about the deleterious effect the transfers to the Bronx Developmental Center of Willowbrook class members might have on their community placement in the future . . . The evidence against such transfers is more in accordance with recent experience and is more persuasive than the evidence in favor of such transfers. Therefore the court is convinced that transfers to the Bronx Developmental Center will create a risk of loss of present improvement and also delay in community placement, where the only real improvement in the handicapped and retarded can be expected. [47/]

By the same token, on the basis of legal, educational, and moral considerations, we believe the ICF/MR plan should be, not discarded or condemned, but re-examined and re-oriented so that it will accomplish what we hope are its underlying objectives and go even further in the direction of freedom and normalization. Moreover, we believe that the momentous decisions embodied in the ICF/MR plan should not be made by DMR officials alone, but in full and open consultation with clients, parents, advocates and others interested in the welfare of developmentally disabled individuals. Perhaps a legislative hearing would be the proper forum for such a public discussion; in any event, these major and far-reaching policy determinations should not be implemented without full and searching public inquiry.

Footnotes

1. Wyatt v. Stickney, 344 F.Supp. 387, 396 (M.D. Ala. 1972), aff'd sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

2. New York State Association for Retarded Children and Parisi v. Carey, No. 72-C-356/357 (E.D.N.Y., April 30, 1975), Appendix A at 1, 27-28, approved 393 F.Supp. 715 (E.D. N.Y. 1975).

3. O'Connor v. Donaldson, 422 U.S. 563 (1975).

4. 42 U.S.C. 6010(2).

5. P.L. 1977, c.82, §9.

6. Halderman v. Pennhurst State School and Hospital, No. 74-1345 (E.D. Pa., December 23, 1977).

7. Id., slip opinion at 60.

8. Id., slip opinion at 60, 63-65, 67-69.

9. New Jersey Association for Retarded Citizens v. New Jersey Department of Human Services, No. C-2473-76 (Sup. Ct. of Hunterdon Cty., Chancery Div., filed March 16, 1977).

10. Pub. L. 94-142, 20 U.S.C. 1401 et seq.

11. 20 U.S.C. 1412(5)(B); cf. 45 C.F.R. §121a.550 et seq., 45 C.F.R. §84.34(a).

12. N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28-1.1 et seq.

13. Proposed revision of N.J.A.C. 6:28, proposed N.J.A.C. 6:28-2.1(a)(2), 6:28-2.2(b); 10 N.J.R. 57.

14. Plan, p.7-9, 11.

15. Plan, p.v, 1-2.

16. Plan, p.4, 10.

17. Plan, p.4-5, 10.

18. Plan, p.5, 10.

19. Plan, p.5-7, 10.

20. Plan, p.7-9, 11.

21. Plan, p.8-9, 10-11.

22. Plan, p.9, 10-11.

23. Plan, p.11.

24. Plan, p.v; Department of Human Services FY 1979 budget request, p.48.

25. Plan, p.1-2.

26. Plan, p.2, 27.

27. Plan, p.2.

28. Plan, p.27.

29. Plan, p.27.

29A. Plan, p.4.

30. 42 U.S.C. 1395x(j); 42 U.S.C. 1396a(a)(28).

31. Plan, p.4-5.

32. Plan, p.5, 16-18.

33. See New Jersey State Legislature, Office of Fiscal Affairs, Division of Program Analysis, Mental Retardation: A Comparison of Costs and Income Sources for Maintaining Similar Persons in Institutions and Group Homes (October, 1977), at 2 (hereinafter "OFA Study").

34. Plan, p.21-22.

35. 45 C.F.R. §§249.12(a)(5), 249.13(c).

36. Plan, p.6.

37. NYSARC and Parisi v. Carey, supra, Appendix A at 27.

38. Plan, p.20.

39. Plan, p.24. Of course, if some of the clients involved are school-age children, their day programs may be financed from local, State, or Federal education funding sources.

40. Plan, p.22.

41. Plan, p.7, 19, 21; NYSARC and Parisi v. Carey, supra, Order of March 10, 1977, at 1-2.

42. Plan, p.11.

43. See OFA Study at A-4 through A-7.

44. NYSARC and Parisi v. Carey, supra note 2.

45. NYSARC and Parisi v. Carey, Order of June 10, 1977, at 5.

46. Id. at 2, 13.

47. Id. at 11-12.

B A C K G R O U N D M A T E R I A L

submitted to

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

ANN KLEIN
COMMISSIONER

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
TRENTON, N.J. 08625

March 2, 1978

Honorable John Paul Doyle
674 Overlook Court
Brick Town, New Jersey 08723

Dear Assemblyman Doyle:

This is in response to your question on Assembly Bill 792 as to whether or not the counties would be affected adversely as a result of the State's participation in the Intermediate Care Facilities-Mental Retardation (ICF-MR) Program.

This past January 27, I met with the officers of the New Jersey Association of Counties, including President Leana Browne and Counsel Harvey Stern. Frank Moore, the President of the County Adjusters Association, was also present. The county people raised a number of issues at that meeting including a concern as to whether or not the counties would be adversely affected by the State's participation in the ICF-MR Program since they might be prevented from collecting payments from responsible relatives to offset their share of the cost of these programs.

I indicated to them that while I hoped the current collection system might be maintained, I could not say with certainty at this time that this could be the case, since a number of legal issues would have to be worked out before any definitive statement could be made. Regardless of the disposition of that question, I stated that there was no intent to impose problems on the counties as a result of this decision, and that when New Jersey first announced its intention to participate in the program, both the Governor and myself had made clear that this would be done without additional cost to the counties.

We agreed at that time that Assistant Commissioner Horowitz would work with Frank Moore and Doris Dealman of Monmouth County to work out any problems which might arise in a manner which would assure that our commitment to the counties would be carried out.

Mr. Horowitz indicated to me that he spoke with Frank Moore on February 28 and he indicated that the county officials present were quite satisfied with the commitment made at our January meeting and that he so intended to inform his fellow county adjusters

at their next meeting on March 7, 1978.

I think it is worth noting that as a result of New Jersey's participation in the ICF-MR Program, both the State and the counties will not be burdened with the need to provide additional funds for needed improvements which now can be covered by these federal revenues.

Sincerely,

Ann Klein

Ann Klein
Commissioner

AK:7

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON
08625

Ann Klein

BRENDAN T. BYRNE
GOVERNOR

October 19, 1977

Mr. Cesar A. Perales
Principal Regional Official
U. S. Department of Health,
Education and Welfare
26 Federal Plaza
New York, New York

Dear Mr. Perales:

In June 1976, I created an inter-agency task force in New Jersey to explore the possibility of having New Jersey's mental retardation facilities participate in the Medicaid Intermediate Care Facilities Program for Mental Retardation (ICF-MR). The staff work done by the Department of Human Services and the Department of Health indicates that such participation by New Jersey would, in the long run, provide added program and financial benefits to the individuals served and the State. In the short run, New Jersey will need to make staffing and capital improvements to bring our facilities into compliance with the federal standards. The rate at which particular facilities or sections within a facility will be able to comply with the standards will vary by the age of the buildings and the severity of deficiencies involved. We are confident that many of our units can qualify with some relatively marginal improvements in staffing.

It is New Jersey's intention to move as quickly as possible to participate under the ICF-MR Program. To that end, I have asked my counsel, John Degnan, to be responsible for working with your office in implementing the ICF-MR Program in New Jersey.

I have directed the New Jersey Budget Bureau and the Department of Human Services to take the following actions:

.... To amend the State Medicaid plan to reflect inclusion of the ICF-MR Program.

.... To use additional staffing resources provided by the 1978 Appropriation Act to bring facilities into compliance with federal regulations and guidelines to the extent that such resources will accomplish that end.

.... To assure that currently available capital funds for new construction and renovations for mental retardation facilities be used for projects consistent with ICF-MR requirements whenever possible. (There are some immediate improvements that are needed in our facilities regardless of eventual determination as to that particular facility's ability to qualify as an ICF-MR).

.... To set aside the additional funds available because of the Federal Financial participation in the ICF-MR Program, for upgrading staffing and program improvements, and for providing upgraded or new facilities to insure compliance with ICF-MR regulations.

I have also directed the Department of Health to inspect the various facilities for mental retardation to identify improvements needed to fully comply with ICF-MR standards.

In closing, I wish also to ask your office to assist New Jersey in implementing this important administration initiative.

Sincerely,

GOVERNOR

DEPARTMENT OF HUMAN SERVICES

INTER - OFFICE COMMUNICATION

TO David Einhorn, Esquire
Deputy Commissioner

DATE January 18, 1978

FROM John S. Eberhardt, Chief
Bureau of Personnel Services & Employee Relations

SUBJECT Intermediate Care Facility Program - Mental Retardation

I am writing to you to explain what steps this Bureau has taken concerning the implementation of this new Program.

ACTION TO DATE

1. Notified Department of Civil Service and provided them with a list of titles, positions and locations for the 2211 positions under the ICF-MR Program.

2. Have notified the Division of Employment Security, Department of Labor and Industry of the size of the program and the fact that we will be providing them with a list of titles, positions and locations for these positions and that the seven institutions involved will be dealing directly with their local employment offices for assistance in recruiting.

3. Have established 17 positions in the Central Office Division of Mental Retardation for the development and supervision of this new program. Seven of these positions are Senior Personnel Assistants who will be on the Central Office Payroll but will be assigned at individual institutions for the retarded. The other positions are presently being circularized throughout the Department.

4. Have met with Mr. Oudenne, Division of Mental Retardation to coordinate the orderly establishment of this program.

5. Have prepared individual letters to go out with the Civil Service Certification Notices for the seven Senior Personnel Assistant vacancies to expedite the hiring process.

6. On January 9, 1978, three members of the Bureau met with Mr. Sootkoos, Superintendent at Hunterdon and three members of his staff to plan strategies in order to expedite the recruitment and the employment process at his institution since this is the first institution to receive positions; the other institutions will follow.

7. We were notified by the Department of Civil Service on 1/9/78 that they have added thirteen titles to the Department of Civil Service February listing of open competitive examinations; this is a result of our request at an earlier meeting with Civil Service.

   In addition, they have provided us with a breakdown of promotional and open competitive examination lists, which will be very helpful to the seven Senior Personnel Assistants in the recruitment process; copies will be forwarded to the seven institutions.

8. A member of the Bureau will attend a meeting on January 26 at the Vineland State School to meet with the Personnel Directors from New Lisbon, Woodbine and Vineland as well as representatives from several minority groups in an attempt to facilitate the filling of approximately two hundred non-competitive positions at these three institutions. A representative from the Commissioner's Office on Equal Employment Opportunity is coordinating this meeting.

ACTIONS TO BE TAKEN

1. At the request of the Bureau, the Department of Civil Service is to announce, under a special notice, the Civil Service open competitive examination for the position of Cottage Training Technician and to place this title on a continuous recruitment program to help provide us with sufficient candidates for these positions.

2. Once an agreement is reached between Dr. Kott and Mr. Sootkoos on the number and title of positions at Hunterdon, we will notify the Personnel Director at Hunterdon to submit the necessary CS-21's to establish these positions. These CS-21's will be walked through Central Office, Department of Civil Service and the Budget Bureau in order to expedite this process. In addition, departmental circularization will be made, and certifications will be obtained from the Department of Civil Service open competitive lists for the various titles.

Plans have been made to have a press release forwarded to the following newspapers to be followed by advertising vacancies in the newspapers which service the Hunterdon area: Hunterdon Democrat, Eastern Empress, Newark Star Ledger, New Brunswick Home News, Hackettstown Gazette, Plainfield Courier, Somerset Gazette, Phillipsburg Free Press, and the Trenton Times.

3. The press release also will be forwarded to Radio Stations WCRV in Washington, WOR in New York as well as WEST and WEGX in Eastern Pennsylvania.

4. Once the recruitment has begun at Hunterdon, arrangements will be made to visit the N.J. State Employment Offices in Flemington, Phillipsburg and the Pennsylvania State Employment Office in Easton. If necessary, arrangements may be made to send interviewers to these employment offices to interview applicants on the spot.

5. Copies of the press releases should be sent to the churches in the area.

6. Announcement of vacancies should be posted on the bulletin boards at the institution in order to acquaint the employees with the various titles so they can notify their friends in the local communities. "Word of mouth" advertising by employees is one of the most effective methods of recruitment of future employees.

7. Traditionally Hunterdon has had the highest turnover rate of all institutions in the department. The Personnel Director feels the present hiring rate is competitive but they have problems retaining the employees once they are hired. Two of the biggest causes for turnover and inability to hire applicants is the lack of transportation and/or housing.

   Possible areas that could be explored are to provide bus transportation from Trenton and/or Newark to the institution for the three shifts.

   Another possible solution is to make some arrangement for employee rooms. Prior to the closing of Glen Gardner, Hunterdon was given 20 employee rooms for their use. The employees who utilized these rooms had far less turnover than those commuting from long distances.

If these and additional rooms could be obtained from Glen Gardner even if it means opening up employee dormitories there, this could be extremely beneficial.

Another possibility would be to take over a vacant building at the Correctional Institution for Women at Clinton and renovate it for employee rooms for Hunterdon. Mr. Sootkoos and Mr. Dore, Personnel Director, indicated that if they had 100 single rooms they could fill them with employees which would retain these employees for longer periods of time, and would cut down on the turnover rate considerably. In addition, they could recruit further into Pennsylvania, especially high unemployment areas, if they could provide rooms for the employees.

The Bureau realizes that the present thinking of the Department is to phase out employee housing, but in remote areas employee rooms are vital to the recruitment and retention of employees.

8. Many of the above suggested techniques could be utilized for the other institutions as they begin to establish and recruit for the ICF-MR positions.

Individual visits will be made by members of my staff prior to beginning the recruitment for each institution in order to be aware of the unique problems at each, and to provide every bit of assistance in solving these problems.

JSE:LED:dv

cc: Mr. Horowitz
Mr. Sootkoos
Mr. Oudenne
Mr. Gordon

DIVISION OF MENTAL RETARDATION

INTERMEDIATE CARE FACILITIES

February 22, 1978

GOALS OF THE ICF-MR PROGRAM

Improve the quality of environment and direct care for residents of New Jersey's schools for the retarded

Provide the "least restrictive" living alternatives for DMR clientele

Meet federal and state standards for safe and humane physical facilities and for staffing ratios which provide high quality direct care

Maximize human qualities of residents, increase complexity of individual behavior, and enhance ability of individual to cope with his environment

Maximize New Jersey's participation in sharing of available federal funds

ICF/MR Eligibility Requirements

Provider

Must be a facility which meets licensure requirements for ICF as certified by the designated State survey agency which, in New Jersey, is the Department of Health.

Must have as its primary purpose the provision of health or rehabilitative services for mentally retarded individuals or persons with related conditions.

Must meet a complex set of HEW standards governing physical plant, staffing and service requirements.

If it does not yet meet HEW physical plant or staffing standards, must have a plan of compliance approved by the state survey agency and/or the Secretary of HEW which outlines the steps to be taken to meet staffing standards by July 18, 1978 and physical plant standards by July 18, 1980 (July 18, 1982 under certain waiver circumstances).

Recipient

1. An eligible recipient is one who is eligible for subsidized public assistance payments (AFDC or SSI), or
2. If a resident of a public institution, would be eligible for AFDC or SSI upon discharge, or
3. Must be under 21 and medically needy. (A medically needy individual or family has low income but does not qualify for public assistance.)

NOTE: Recipient eligibility is keyed to general medicaid eligibility which varies from state to state.

Services

1. An eligible service is any service provided by an eligible provider in accordance with an evaluation of individual need.
2. Three categories of eligible services are detailed at length in federal regulations, general services, professional and special program services and resident living services.

Relevant Agencies

Department/Agency/Division	Responsibility
I. New Jersey Department of Human Services	
A. Division of Mental Retardation	- Personnel recruitment and training - Program administration and implementation - Program proposal development
B. Division of Medical Assistance	- Rate setting - Resident evaluations
C. Division of Public Welfare	- SSI/Medicaid eligibility determination
D. Commissioner's Office	
1. Capital planning	- Facility standards compliance
2. Comptroller	- Comptrollership
3. Management and Budget	- Overall coordination - Technical assistance - Program proposal review and approval
II. New Jersey Department of Health	- Inspection - Certification - Waivers (pre-1980)
III. Department of Treasury	- Accounting and budgetary mechanisms
IV. U.S. Department of H.E.W. (Region II)	- Overall program compliance monitoring - Waivers (post-1980)

ICF-MR PROGRAM CHRONOLOGY

January, 1974

First ICF-MR regulations promulgated under Medicaid program

June 24, 1976

Inter-departmental ICF-MR task force formed to study New Jersey participation

June 3, 1977

Revised ICF-MR standards published (for July 18, 1977 to July 18, 1978)

July 25, 1977

Commissioner submits detailed proposal for state participation to Governor

October, 1977

Governor announces New Jersey will participate in ICF-MR and commits the state to the program via letter to H.E.W.

October - November, 1977

Health Department surveys 92 buildings at MR schools

December 20, 1977

18 cottages at Hunterdon State School submitted to Health Department for certification

December 29, 1977

First cottage at Hunterdon State School formally accepted in program.

February 24, 1978*

Vineland, New Lisbon, and Neuro-Psychiatric Institute submitted to Health Department and/or H.E.W. for certification

March 3, 1978*

Woodbine, Woodbridge, and Totowa submitted to Health Department and/or H.E.W. for certification

July 18, 1978

All additional staff at schools required by ICF standards must be hired and "on board"

July 18, 1980

Deadline for compliance with waivers granted by Health Department for correction of life safety deficiencies or other environmental standards

July 18, 1982

Deadline for complaince with physical facility waivers granted by H.E.W. under certain conditions

*Certification decisions for all cottages should be accomplished no later than April, 1978.

BUDGET

	FY 1978 Adjusted Appropriation[1]	FY 1979 Governor's Recommendation
Vineland	$16.5M	$ 17.2M
Totowa	8.4	8.9
Woodbine	9.6	10.2
New Lisbon	8.6	8.9
Woodbridge	10.5	11.0
Hunterdon	10.6	11.9
Johnstone	4.8	4.7
N. P. I.	9.3	9.5
Purchase of Care	5.2	6.7
Social Supervision	1.1	1.2
Adult Activities	.9	1.7
Education and Day Training	5.1	6.6
Division Management	6.6[2]	3.5
Total	$97.4M	$102.0M

[1]Reflects inclusion of funds allocated for FY 1978 salary program.

[2]Includes the $4.0 million "T and E" education allocation which was transferred from the Department of Education. This amount was redistributed to the institutions in developing the FY 1979 request.

ESTIMATED COSTS ASSOCIATED WITH ICF-MR
FY1978-79

Type	Estimated Amount ($Millions)	Frequency (A = annual, O = one-time)
Institutional Staff (2,200)	19.2	A
Fringe Benefits	3.8	A
Community Program Development	16.9*	A
Capital Improvements Facility Renovation Community Construction New Beds at Schools	51.1	O
Administrative Overhead and Miscellaneous	4.0	A
Total	$95.0	

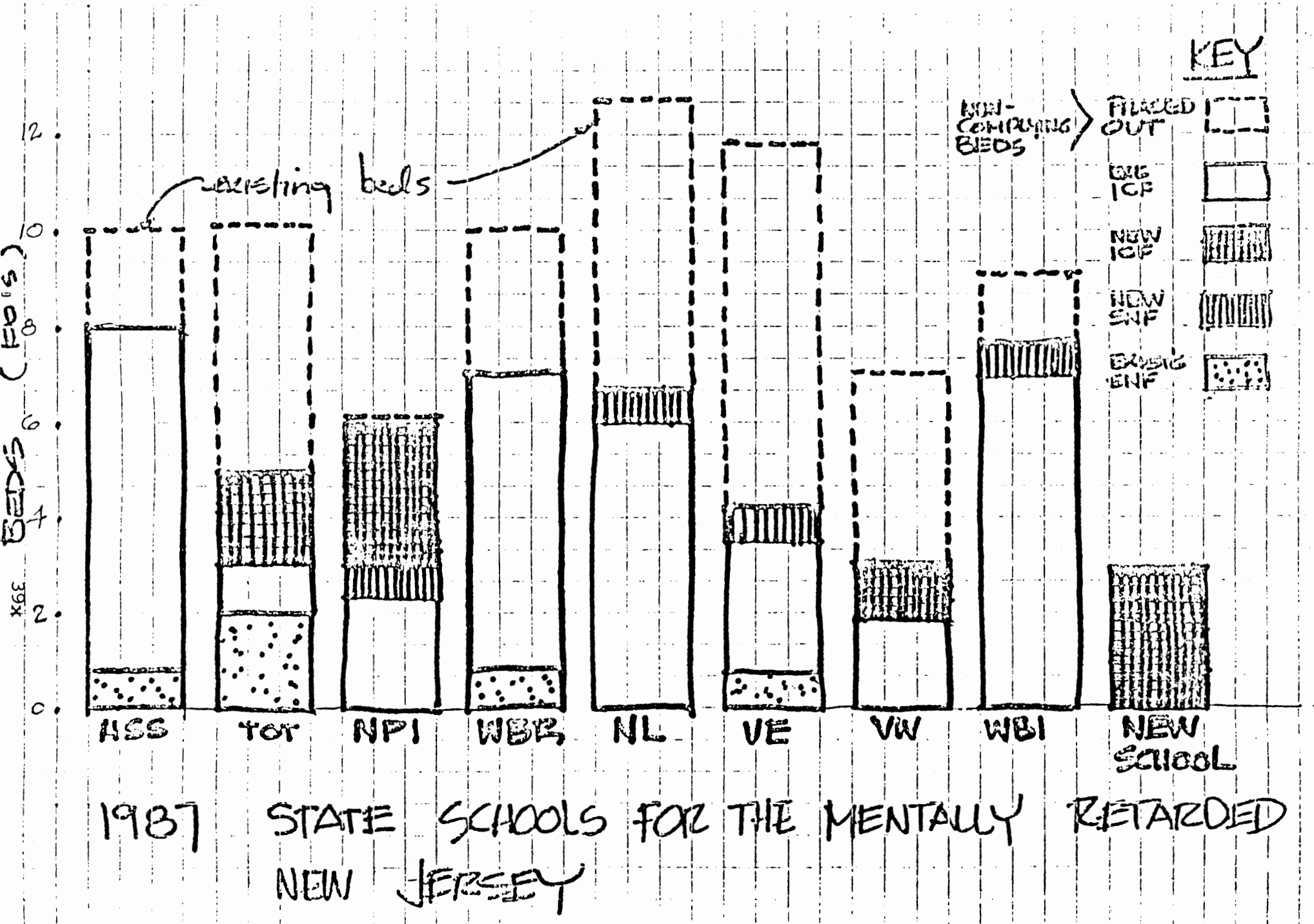
*This is a gross amount which will be reduced by SSI recoveries.

SOURCES OF FUNDING
FY1978-79

Type of Funding	Amount ($Millions)	Frequency (A = annual, O = one-time)
State Appropriation	102.0	A
Net Federal Reimbursement (Medicaid)	31.3	A
Existing Bond Issues	9.5	O
Future Bond Issues Health Care Facilities Financing Authority (HCFFA)	42.0	A/O
Other		
Total	$184.8	

ICF CONVERSION POPULATION SHIFTS

	Total # Beds	1978 SNF Beds	ICF Beds In waived Compliance by 1978	ICF Beds Compliance by 1982	1982 SNF Beds	Non-Complying Beds to be Replaced
Woodbridge	1,000	100	900	612	100	
NPI	621		323	230	60	298
Vineland	1,854	100+	776	434	160	978
New Lisbon	1,252		1,252	606	60	
Woodbine	1,000		960	547	60	40
Totowa	1,041	200	98	96	200	743
Hunterdon	1,000	100	900	688	100	
Johnstone	350					
38x						
Total	8,118	500	5,209	3,213	740	2,059



1987 STATE SCHOOLS FOR THE MENTALLY RETARDED

NEW JERSEY

PHASED FACILITY RENOVATION SCHEDULE

	(1) Total # of buildings	(2) Total # of buildings to be renovated for compliance	(3) # of buildings renovated by July 18, 1978	(4) # of buildings renovated by July 18, 1980	(5) # of buildings renovated by July 18, 1982
Vineland	23	12		8	12
Totowa	12	2		2	2
Woodbine	18	17			17
New Lisbon	20	20		14	20
Woodbridge	19	18			18
Hunterdon	18	18		18	18
Johnstone	6	---		---	---
N. P. I.	12	5	3	5	5
Total	128	92	3	47	92

*Buildings are still being structurally studied; 3-5 may be dropped from program because of projected renovation costs.

DMR PERSONNEL

	Existing Staff (FY 78)	Additional ICF Staff	Total Staff After Conversion (FY 79)
VINELAND	1,377	367	1,744
TOTOWA	717	72	789
WOODBINE	847	396	1,243
NEW LISBON	668	556	1,224
WOODBRIDGE	891	365	1,256
HUNTERDON	890	261	1,151
JOHNSTONE	355	---	352
NPI	728	194	922
TOTAL	6,473	2,211	8,681

SCOPE OF WORK
ICF/MR IMPROVEMENTS
HUNTERDON STATE SCHOOL

1. Provide 1 hour ceiling in electrical room -- first floor (typical).

2. Seal supply grill, corridor to medicine room.

3. Re-seal louvers in storage rooms, visitors room and activity room closet doors (NOTE: Where such doors are located in the smoke partition, new B-label doors will meet this requirement).

4. Seal louvers in bathroom doors to achieve proper fire separation. (Provision of B-label doors in smoke partition will meet this requirement).

5. Provide smoke compartmentation in compliance with Life Safety Code Requirements.

6. Provide facilities for the use of the handicapped at the lobby locations. Architect should insure that the code provisions are met (ANSI A117) in one toilet room per building per sex for visitors and general use.

7. Provide 1 toilet fixture per resident toilet room which meets handicapped access requirements. Allow space for a compartment but consider the partition as an option at this time. Provide 1 lavatory per resident toilet room meeting handicapped requirements. Provide 1 mirror shelf and dispenser combination per toilet room to meet the 40" maximum height requirement.

8. Provide grab bars at sides of water closets.

9. Insulate or enclose exposed hot water pipes which are susceptible to contact by residents.

10. Provide 1 drinking fountain equipped for use by the handicapped in an appropriate location.

11. Visible warning lights should be provided which are tied in to fire alarm system. Locations shall be consistent with appropriate sections of ANSI standard, A117.1.

12. Provide for improvements to trouble alarms in fire detection systems. In certain sections of the detection system, control wiring affecting supervision of the system is not properly connected. Verify condition with the Engineer-in-charge of Maintenance and make improvements.

13. GENERAL NOTES: a) Architect will identify any secondary impacts of meeting ICF compliance items (such as ventilation or other unforeseen problems ensuing from ICF deficiencies). b) Inspection report deficiences not included in this list are being handled as waivers due to program and operational considerations.

PLAN TO ADDRESS

THE IMPACT OF THE

CONVERSION OF NEW JERSEY STATE SCHOOLS

FOR THE RETARDED TO ICF/MR FACILITIES

ON THE DISPLACED POPULATION

Submitted To

Maurice G. Kott, Ph.D.
Director, Division of Mental Retardation

by

The Mental Retardation Planning Project

Claire E. Mahon, Project Director
Rita N. Silverstein, Planning Associate
Dale E. Robinson, Secretary

INTRODUCTION:

In December of 1971 Congress passed legislation (P.L. 92-233) which placed the authority for intermediate care facilities under Title XIX of the Social Security Act and permitted payment of medicaid benefits to residents of public as well as private residential facilities for the mentally retarded provided that certain eligibility standards are met. Since the ICF/MR program is not a federally mandated medicaid service, states must choose to participate before any facility may be certified as an ICF/MR. Although the program is designated ICF/MR, intermediate care for all developmental disabilities is covered.

Intermediate care facilities for the mentally retarded (ICF/MR) are defined in regulation as "institutions or distinct parts thereof, primarily for the diagnosis, treatment or rehabilitation" of the developmentally disabled, "which provide, in a protected, residential setting, individualized, on-going evaluation, planning, 24-hour supervision, coordination and integration of health or rehabilitative services to help each individual reach his maximum of functioning capabilities."

In order to qualify for medicaid benefits under the ICF/MR program, both the provider and the recipient must meet certain eligibility standards. The services being rendered must also be "eligible" services.

Chart I lists the major eligibility requirements.

CHART I

ICF/MR Eligibility Requirements

Provider

1. Must be a facility which meets licensure requirements for ICF as certified by the designated State survey agency which, in New Jersey, is the Department of Health.

2. Must have as its primary purpose the provision of health or rehabilitative services for mentally retarded individuals or persons with related conditions.

3. Must meet a complex set of HEW standards governing physical plant, staffing and service requirements.

4. If it does not yet meet HEW physical plant or staffing standards, must have a plan of compliance approved by the state survey agency and/or the Secretary of HEW which outlines the steps to be taken to meet staffing standards by July 18, 1978 and physical plant standards by July 18, 1980 (July 18, 1982 under certain waiver circumstances).

Recipient

1. An eligible recipient is one who is eligible for subsidized public assistance payments (AFDC or SSI), or

2. If a resident of a public institution, would be eligible for AFDC or SSI upon discharge, or

3. Must be under 21 and medically needy. (A medically needy individual or family has low income but does not qualify for public assistance.)

Note: Recipient eligibility is keyed to general medicaid eligibility which varies from state to state.

Services

1. An eligible service is any service provided by an eligible provider in accordance with an evaluation of individual need.

2. Three categories of eligible services are detailed at length in federal regulations, general services, professional and special program services and resident living services.

The Congressional intent of the extension of medicaid benefits was to give states the financial incentive to upgrade the quality of care in institutions for the retarded. Several states amended their medicaid plans to permit participation in the program shortly after its inception. Other states, New Jersey among them, had certain reservations about the program.

In a meeting with Allen Saperstein, Director of the Office of Long Term Care, Region II, Department of Health, Education and Welfare, during the summer of 1976 Dr. Maurice Kott, Director, Division of Mental Retardation stated that before he could recommend to the Commissioner of Human Services and to the Governor that New Jersey participate in the ICF/MR program he would have to be assured,

1. That there would be significant improvement in the quality of the program and of the environment of residents living in ICF qualifying cottages, and

2. That the existing level of programs for those residents in non-qualifying cottages be maintained during the waiver period, and that, subsequent to the federal waiver period, their living units be replaced with qualifying facilities.

The intent of these conditions was to prevent the possibility of permanently unequal levels of care within a state school based solely on the location of the resident.

Several states, including New Jersey, expressed the fear that the medical orientation of the Title XIX program might interfere with the goals of a service delivery system based on a developmental model.

The 1974 regulations promulgated by the Department of Health, Education and Welfare justified that concern. Staffing requirements, particularly at the administrative level, were modeled after nursing home standards. Physical plant standards were so stringent as to raise doubt that compliance could be achieved at all in states with older physical plants.

Subsequent revisions of federal ICF/MR regulations addressed some of these concerns and in July, 1977 final regulations were promulgated. Physical plant and staffing standards were modified in such a way that they allowed compatibility with a developmental model. These revisions made the program more attractive for states such as New Jersey.

Still, renovation to meet ICF/MR space standards would result in a sizeable loss of capacity. It is true that the loss could be made up entirely by construction of new, complying institutional bed space, but such a course of action is inconsistent with the move toward community programming in the field today. If, however, some portion of the loss is to be made up in the community, the inadequacy of non-institutional residential and programmatic alternatives must be addressed.

Therefore, participation in the ICF/MR program requires major policy decisions on the part of the Division of Mental Retardation and the Department of Human Services which affect existing policies.

1. Should the entire institutional system, individual institutions or merely "distinct parts" of institutions be qualified?

2. How should the loss in bed capacity be addressed?

The only acceptable rationale for entering the ICF/MR program is the anticipated enhancement in the quality of life for all residents. For this reason, it was decided that all institutional beds must ultimately conform to either ICF or SNF standards. Since only portions of existing institutions are potentially capable of renovation to meet standards, it was decided to identify and qualify those buildings first.

This interim goal would be achieved by the 1982 waiver date specified in federal regulations. As a long range goal, all non-qualifying beds would be replaced by 1987.

This decision requires the service system to address a broad range of problems such as the hiring of 2200 staff persons by July, 1978, the provision of alternate living space during renovation, etc. These are primarily logistical problems, however, and are not the subject of discussion here.

This document addresses the second policy question, the loss of institutional bed space. It assumes a constant need for residential space which need not mean institutional space. It embodies the aspirations of the Division of Mental Retardation for a greatly expanded community program coupled with a smaller, though much improved institutional program.

The reader must be cautioned that all estimates used are approximate. The information necessary for exact estimates is presently unavailable. We have chosen to use those figures which reflect the maximum size of the population to be addressed.

It should be recognized that the placement options outlined in this document have been proposed in conformity with the Division's

wider goals for an expanded community service system. The need to compensate for the loss of institutional capacity resulting from ICF conversion is a specific, time-limited objective in an overall plan to provide for the residential needs of New Jersey developmentally disabled citizens.

PLACEMENT PROJECTIONS

It has recently been decided that the State of New Jersey will participate in the Title XIX program for Intermediate Care Facilities for the Mentally Retarded (ICF/MR). This decision will permit the State to obtain 50 percent federal financial participation in an ambitious program to upgrade the physical plant and staffing standards in state schools for the retarded. The result will be a significant improvement in services to the client population.

The program requires major capital investment on New Jersey's part as well as large increases in the staff complements at each of the state schools.

In addition, considerable bed capacity will be lost at each of the state schools as a result of conversion to meet the federal space standards. Therefore, the Division of Mental Retardation will be faced with the need to provide for a sizeable population displacement.

At this time we are able to provide plans for dealing with the population displacement together with the contingencies which must be met if each option is to be fully exploited. We are also able to identify the cost centers implied by the use of each option. We are not yet able, however, to provide cost estimates for renovation of those buildings being considered for ICF conversion. That step must be taken in conjunction with the preparation of our plan of compliance which awaits the results of the survey of our facilities presently being undertaken by the Department of Health in accordance with federal regulations. Until we have that survey we will not know exactly what steps must be taken to bring each potentially convertible

building into compliance with ICF/MR regulations, nor will we know the exact number of beds to be lost. Obviously, accurate cost estimates are dependent on that figure as well as on architectural and engineering studies which must be prepared on a building by building basis.

We have prepared a preliminary estimate which gives an indication of the maximum size of the population to be addressed. These estimates were generated internally by the Division of Mental Retardation and are based on our assumptions that:

1. a total of 92 cottages can be brought up to ICF/MR standards;

2. that the space standard used is 70 square feet per bed retained in accordance with the Division's existing standards.

The following figures are derived from an institutional survey and exclude the Johnstone Training Center which is not being considered for conversion because of its specialized population. Chart #2 shows existing institutional bed space by category.

CHART 2

SNF Qualifying Beds - 1977	ICF/MR Beds Qualifying Under Waivers 1977 - 1982	Beds Which Cannot be Renovated To Comply	Total Bedspace
500	5200	2050	7750

Notes:

1. Johnstone Training and Research Center excluded from all totals
2. All totals rounded to the nearest 50
3. Column 3 includes beds for which ICF/MR reimbursement cannot be claimed because they cannot be brought into compliance under any circumstances.

Chart #3 shows the Division's projection of beds to be lost as a direct result of conversion to meet ICF/MR space standards.

CHART 3

Bed Loss Projection

ICF/MR Qualifying Under Waivers 1977 - 1982	Full Compliance After Conversion to ICF/MR Standards - 1982	Conversion Loss
5200* (92 Cottages)	3200 (92 Cottages)	2000

*Note: This number will decrease gradually during the five year period as conversion progresses.

It is clear that the Division of Mental Retardation must replace, by 1982, those beds lost in order to remain in compliance with ICF/MR standards and to avoid substantial loss in Medicaid receipts. The maximum number of such beds which must be replaced is 2000. In addition, the Division takes the position that the approximately 2060 beds which cannot be brought into compliance (Column 3, Chart #2) must also be replaced since the population using those beds will qualify for ICF/MR level care. The retention of substandard institutional beds, moreover, is an untenable policy both morally and politically. It will not be necessary, nor is it possible, to replace these additional beds by 1982, but a projected date of 1987 for completion of the program is attainable.

Therefore, the Division is faced with the need to replace a maximum of 4000 institutional spaces, 2000 of them by 1982. Bed replacement can be achieved through institutional construction and/or through the development of an adequate community residential program. The Division proposes to combine those options in a two phase operation entailing the replacement of at least 2000 beds by 1982 as required by

*Bed loss projections generated by Mr. Leonard A. Davis, Administrative Analyst, Division of Mental Retardation

ICF/MR regulations and the replacement of an additional 2000 beds by 1987. (We must actually plan to replace more than 2000 beds by 1982 in order to insure compliance should one or more options be delayed.)

The replacement operation the Division has chosen involves a more extensive state financial commitment to community residential placement than has been the case to date, and a more intensive "deinstitutionalization"program than the Division has mounted since the late 1950's and early 1960's.

This project is consonant with the Governor's policy on bed replacement as stated in an interview given to the New Jersey Association for Retarded Citizens in the fall of 1977.

> I would make up for any resulting loss of bed space through an expanded program of group homes and community support services for the many retarded citizens who could function outside of an institution, if the proper housing and social supports were in place. Deinstitutionalization and emphasis on community programs in both mental health and mental retardation have been, and continue to be, major initiatives of my Administration.

The replacement operation also involves a program of institutional construction and reconstruction which will replace all substandard beds with beds meeting either ICF/MR or SNF standards. (Again excepting Johnstone.) The total number of state school beds would be reduced from the present 7750 to 4850 by 1987 (excluding Johnstone).

Therefore, the Division of Mental Retardation intends to replace approximately 4000 institutional bed spaces by 1987 as follows:

I. 400 Special Residential Services Beds

Four hundred beds will be replaced through expansion of the existing special residential services program through which the Division now

purchases residential care from private licensed facilities for the mentally retarded. This program would be expanded from the present 700 placements to 1100 placements by 1982.

This option can be fully used if and only if the Division is permitted to continue to purchase space both in and out of state, and if it is able to purchase ICF/MR and SNF level care in private facilities through the medicaid mechanism and/or through an increase in allowable purchase of care rates.

We anticipate that most of these beds will be generated in New Jersey since private providers can be expected to open larger ICF/MR's as they have in other states. Careful controls on the number and size of these facilities must be instituted through the certificate of need procedure. Nevertheless, we will not be able to meet this goal unless present out of state placements can be maintained throughout both phases of the replacement operation.

II. 2500 Community Placement Beds

The Division proposes to replace 2500 institutional beds in the community by 1987. Fifteen hundred of these beds will be replaced during Phase I, that is by 1982. Five hundred beds will be replaced through the establishment of a new community training home program. (Under this program a sponsor, trained by the Division of Mental Retardation, will be paid a basic rate to provide room and board and will be paid a supplement to carry out a prescribed training program.) One thousand Phase I beds will be replaced in small group facilities which the Division proposes to generate through a combination of direct

purchase of service, and state ownership and contracted operation. The majority of these facilities would be of the group home type. (Other modes of service which will be provided, i.e., supervised apartment living, are included in this number, but such arrangements are subsumed under this heading because their numbers cannot be projected accurately.) The remaining 1000 beds would be replaced during Phase II in small group community facilities. This will represent a continuation of the community program begun in Phase I.

In order to achieve this end, a substantial commitment of state resources to a community residence program for the mentally retarded must be made. Capital funds must be provided for grant programs to private non-profit organization's to assist them in opening bed space as well as for state construction or acquisition and renovation of facilities.

It is also clear that a rate structure adequate to support the purchase of service of the more intensive nature implied would have to be established and funded. Without a competitive rate structure it would be impossible to generate large numbers of community residential beds. The establishment of a small group ICF/MR program in the state would help to offset some of the costs of this program since it would provide the same percent of federal match as the institutional ICF/MR program. Capital cost per bed, however, would be much lower than the institutional program. The Division anticipates that approximately 750 of the 1000 required placements could be eligible for the small group ICF/MR program with the remaining 250 non-medicaid fundable. There is,

of course, no accurate way to predict the exact mix of ICF/non-ICF homes but this estimate is consistent with the expectation of other state jurisdictions.

The Division of Mental Retardation is not presently staffed adequetely to undertake such a major initiative. Additional central office staff would be needed to provide the technical expertise required to encourage the growth of private vendors, to contract for the initiation of new programs, to establish monitoring and regulation systems and to assist in site selection and community relations. One of the most critical areas in the establishment of a major community initiative is this need to provide the management capacity necessary to assure the quality of widely dispersed programs. Additional staff at regional offices would be required to provide day to day oversight of programs. The community service system proposed here will require close case management supervision as well. We project one case manager for every twenty-five clients.

Since it is the Division's policy that persons placed in the community should be provided services at least equivalent to institutional programs, there would also have to be a concommitant growth in day programs for persons living in community residences; i.e., adult activities programs. While approximately three million dollars is available for the construction of adult activities centers from the 1976 bond issue, staffing would have to be provided directly or through a purchase arrangement.

III. 1100 Institutional Beds (new construction and reconstruction).

Eleven hundred beds should be replaced with SNF and ICF conforming

small cottage institutional beds. Of these at least 500 institutional beds should be available prior to 1982 in order to provide capacity during renovation, to avoid overcrowding and to assure back-up in the event the community placement program proceeds more slowly than anticipated. This will guarantee that sufficient space to maintain 1978 case load levels in compliance with ICF/MR regulations will be available on the waiver cut-off date.

Approximately 240 beds will be replaced through construction of four 60-bed skilled nursing facilities to accomodate persons already identified as in need of this level of care. Since funds are available through the 1976 bond issue, this capacity can be generated readily by 1982. Capital funding for approximately 200 ICF beds in 25 8-bed cottages is also available from 1976 bond issue funds. Therefore, construction of these beds can be begun immediately. Infact, an architect has been engaged and is currently working with the Division of Mental Retardation and the Department of Human Services' Capital Planning staff to develop a design for normalized living units which will still be able to accomodate more severely disabled individuals. Capital funding for the remaining beds is not presently available but should be earmarked relatively quickly because of the long lead time involved. For this reason we have assigned all capital construction to Phase II.

The 1100 figure was arrived at jointly by the Division of Mental Retardation and the Department of Human Services' Capital Planning Unit and reflects our judgements that:

1. The placement of 2500 persons in the community residential programs by 1987 as outlined in Section II is the maximum number that can be expected, and
2. New construction is preferrable to renovation where mechanical systems are obsolete and the institutional character of buildings cannot be modified.

We do believe the community placement program is achievable at the projected level if adequate resources are provided. External constraints, however, make it unrealistic to anticipate its expansion much beyond that number within the proposed time frame. These constraints include community resistance to the placement of previously institutionalized persons and the time necessary to develop community support systems. It is also true that demand for these types of placements is likely to increase as persons who have never been institutionalized seek service. For this reason, 1100 reconstructed institutional spaces for a total institutional capacity of 4850 by 1987 is necessary.*

Should the community program exceed present expectations, those spaces would be used (after 1987) to return some of the 700 persons who will still be residing in out of state special residential services placements at that date. We do not believe this replacement of 1100 of the 4,000 beds lost to conversion or obsolescence with newly con-

* Excluding Johnstone

structed beds will place the Division in the position of being over-bedded in 1987.

The 92 existing buildings identified for inclusion in the ICF program are in sufficiently good physical condition that replacement, as opposed to renovation, would be fiscally irresponsible. (Engineering studies may, of course, indicate exceptions.) There are additional buildings which could be included but the costs of renovating them would be extremely high relative to replacements costs. Furthermore, the living space in such buildings would still be so institutional that the expense could not be justified on humanitarian grounds. Where this is the case, new construction of the small cottage model would permit far more normal residential settings. Moreover, the ICF conversion program also offers the Division of Mental Retardation and the Department of Human Services the opportunity to use new construction as an instrument of policy to:

1) redistribute institutional bed space,
2) reduce the size of institutions generally (and the older facilities in particular), and
3) implement modern modes of residential care for the developmentally disabled.

The Division of Mental Retardation's planning staff, together with the Department's Capital Planning Unit, examined several options for location of new construction. Consideration was given to the availability of space for construction, size of existing institutions, geographical distribution of institutional bed space and the condition of existing

buildings and support services.

The chart on page 12 demonstrates institutional bed space by institution and category through the conversion period. Column V represents the bed loss which must be addressed by 1982, while Column VI represents beds which cannot be brought up to ICF physical standards because of plant limitations. Again the reader must be cautioned that Column III through VI represent divisional and departmental estimates which will change somewhat as architectural and engineering studies are received.

Unfortuantely, available space on institutional grounds is located primarily in the southern part of the State, New Lisbon, Woodbine and Vineland, and at N.P.I., while the greatest bed need is in the north. Woodbridge and Hunterdon, which are the only two schools to draw their populations with regional origin as a consideration, will lose an estimated total of 600 beds. There is no space at Woodbridge or Hunterdon for replacement. Additionally, the displaced population of these two institutions, being predominantly severely and profoundly retarded, contains a high proportion of persons who will continue to require state school placement. Were all these beds to be replaced in the southern portion of the state, the geographic distribution of institutional beds would be further distorted.

Only two buildings at Totowa are being considered for ICF conversion. Although additional buildings could be included in the program, it is estimated that the renovation costs would exceed the cost of new construction and would result in very little improvement in the residential

ICF CONVERSION POPULATION SHIFTS

	Column I Total # Beds 1978	Column II SNF Beds 1978	Column III ICF Beds in Compliance Under Waivers 1978-1982	Column IV ICF Beds in Full Compliance 1982	Column V Beds Lost to Conversion by 1982 (Col III less Col IV)	Column Non-Comp ing Bed
Woodbridge	1,000	100	900	512	288	
N.P.I.	621		323	230	93	298
Vineland	1,854	100+	776	434	342	978
New Lisbon	1,252		1,252	606	646	
Woodbine	1,000		960	547	413	40
Totowa	1,041	200	98	96	2	743
Hunterdon	1,000	100	900	688	212	
Johnstone	350					
TOTAL	8,118	500	5,209	3,213	1,996	2,059

61x

atmosphere. (This option would also add to the displacement problem and to the need for swing space since buildings must be evacuated to be renovated in most cases.) Land is available at Totowa, but the proximity of the land to Interstate Highway 80 makes it a poor choice for residential use. Therefore, construction at Totowa will have to involve demolition of existing buildings thus limiting the number of residential units which can be built.

Totowa will lose only two beds as a result of ICF conversion. It will, however, have some 743 substandard beds in 1982. Therefore, the elimination of substandard beds and the ICF conversion loss would drop Totowa's capacity from 1041 in 1977 to 296 by 1987. Maintenance of the institution at that level would be programmatically unwise because of its northern location. Therefore, we recommend the construction of 200 new ICF beds at Totowa for a 1987 capacity of approximately 500 persons.

Although ample land is available at New Lisbon, Woodbine and Vineland, the isolation of New Lisbon and the size and geographic location of all three schools militate against the construction of large numbers of beds at these institutions.

New Lisbon's capacity will drop from 1252 to 646 solely as the result of ICF conversion. Some additional buildings could be added to the ICF program here but we do not believe the expenditure would be justified because of the physical condition of the buildings. (Again, detailed engineering studies may dictate otherwise.) These buildings should not be demolished, however, but rather converted to program space which is very scarse at the institution.

Since New Lisbon already has a need for SNF beds which we do not anticipate will be eliminated as the population becomes more severely disabled, we recommend construction of one 60-bed SNF at this facility for a 1987 capacity of approximately 700. No further new construction should be contemplated here.

The capacity of Woodbine will decrease from 1000 beds to approximately 547 as a result of conversion loss. Woodbine, too, has a need for SNF beds. We recommend the construction of a new 60-bed SNF facility at Woodbine to address this need. Because of its size and location, however, we recommend no further new construction at Woodbine in spite of the availability of land.

Vineland, the largest institution and one of the oldest, will drop from a capacity of 1854 to an SNF-ICF complying capacity of 534 by 1987. The large number of obsolete beds at Vineland is attributable to the old, very large three story buildings which cannot be brought into compliance. Furthermore, the limited (1987) capacity is located on two separate campuses with approximately 300 beds at Vineland East and 200 at Vineland West. Since the capacity would be too limited we recommend the construction of one 60-bed SNF at Vineland East which already has approximately 100 SNF beds. One hundred ICF beds should be constructed at Vineland West for a total of 300 complying beds on that campus. This distribution is recommended because Vineland East already has the medical support facilities appropriate to the SNF level population while Vineland West has new program space available to service the ICF population.

N.P.I. is the only institution in the system with adequate land for large scale new construction and an acceptable geographic location. The present population of N.P.I. is 601, a figure which will drop to 230 because of ICF conversion and elimination of non-complying beds. We recommend that new construction at N.P.I. be limited to replacement of lost capacity so that N.P.I. will remain at or below its present census. One 60-bed SNF should be constructed at N.P.I. to service residents in need of this level of care.

This would bring N.P.I. to an SNF-ICF complying capacity of approximately 300 by 1987. We considered recommending no further construction at N.P.I. in order to advance toward the goal of the smallest institutional size possible consistent with efficient management. This is impractical, however, since N.P.I. has so much land available and is in an acceptable geographic location. Therefore, we recommend the construction of no more than 300 ICF beds at N.P.I. preferrably as a separate campus, an arrangement the available space allows.

We also recommend construction of a new 300 bed ICF facility in the northern part of the State. As with all recommended construction, the design should reflect small living units which permit training for normalized living.

We initially considered the possibility of constructing this capacity at N.P.I. in addition to the buildings we have recommended at that facility. But that alternative would defeat at least one of

our major program goals, the overall reduction of institutional size and would raise the capacity of N.P.I. to approximately 900 beds. Furthermore, N.P.I., though in an acceptable location, is not close enough to the major population centers in the north to make access by New Jersey's limited public transportation systems feasible. This is a critical factor in maintaining ties between the resident and his family. Woodbridge State School has the highest percentage of residents whose families visit regularly of any facility in the system. While there are a number of interacting factors which affect this situation, we believe that the location of Woodbridge is partially responsible. It is accessible even to persons who do not have private automobiles.

Modern residential care for the developmentally disabled must be aimed at training and returning a resident to his community whenever possible and maintaining him or her in as normal a residential setting when this is not possible. We believe that new small facility construction provides a greater opportunity to achieve this end and should, therefore, be the chosen policy.

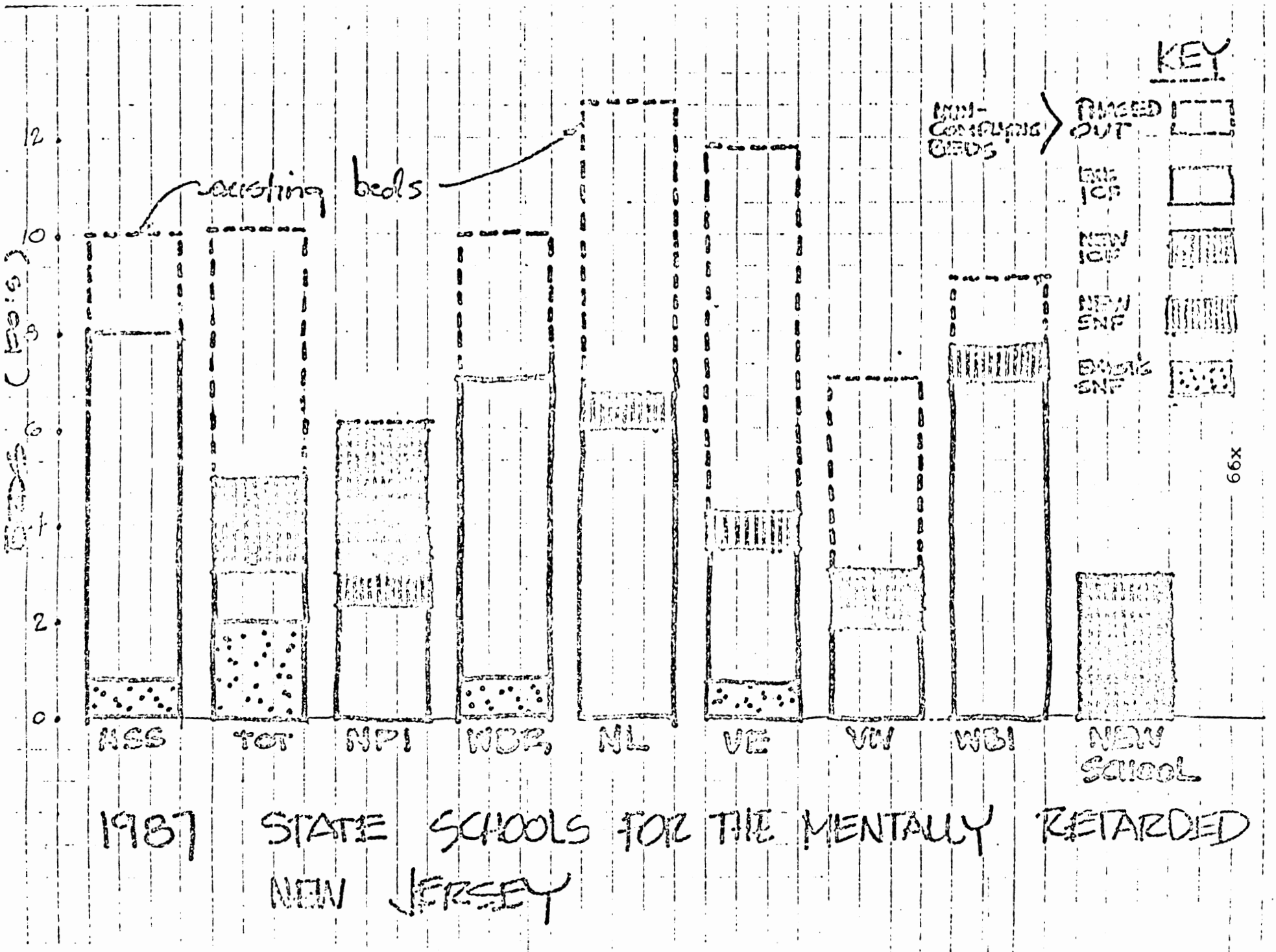
The graph on the following page shows the distribution of institutional bed space by category in 1987 if the recommended options are adopted.

This recommendation exhibits the following advantages:

1) all state schools will be reduced in size,

2) geographical distribution of bed space is much improved,

3) new construction provides a better living environment.



1987 STATE SCHOOLS FOR THE MENTALLY RETARDED

NEW JERSEY

SUMMARY OF PLACEMENT PROJECTIONS

This summary shows the proposed program of replacement of 4000 institutional bed spaces through a combined community placement and institutional construction program.

I. Increase of 400 placements in the Special Residential Services program. (Purchase of Care in private residential facilities.)

II. 2500 community placements using
   a. 500 community training homes
   b. 2000 small group facilities.

III. Construction of 1100 institutional replacement beds
   a. 240 SNF beds in 60-bed units at N.P.I., Vineland East, Woodbine and New Lisbon
   b. 300 ICF beds at N.P.I.
   c. 300 bed new institution (ICF)
   d. 100 ICF beds at Vineland West
   e. 200 ICF beds at Totowa.

Because ICF regulations require that at least 2000 beds be replaced by 1982, and because it is not possible to replace all 4000 spaces by that date, we recommend a two-phase program, Phase I running until 1982 and Phase II running until 1987. The long lead time necessary for capital planning impells us to assign all construction projects to Phase I.

PHASE I - Present to 1982

I. Increase Special Residential Services placements from 700 to 1100.

II. Establish 500 community training home placements.

III. Establish 1000 small group community placements.

IV. Complete construction of 240 SNF beds (funding available).

V. Complete construction of 300 ICF beds at N.P.I. (funding available for 200 of the beds).

VI. Begin construction of 100 ICF beds at Vineland West (funding not presently available).

VII. Design and begin construction of 200 beds at Totowa.

VIII. Design and begin construction of 300 bed new institution.

If the Phase I target date is met approximately 2340 spaces will have been replaced. (Four hundred special residential services beds, 1500 community placements and the 440 institutional beds which are already in the planning stages and for which funding is available.) We believe funding should be provided rather quickly for additional components of the construction program so that some of that capacity can be generated by the 1982 date. It is advisable to plan for at least a 500 bed excess replacement over the 2000 space mandatory goal to provide for some "slippage" in one or more of the programs.

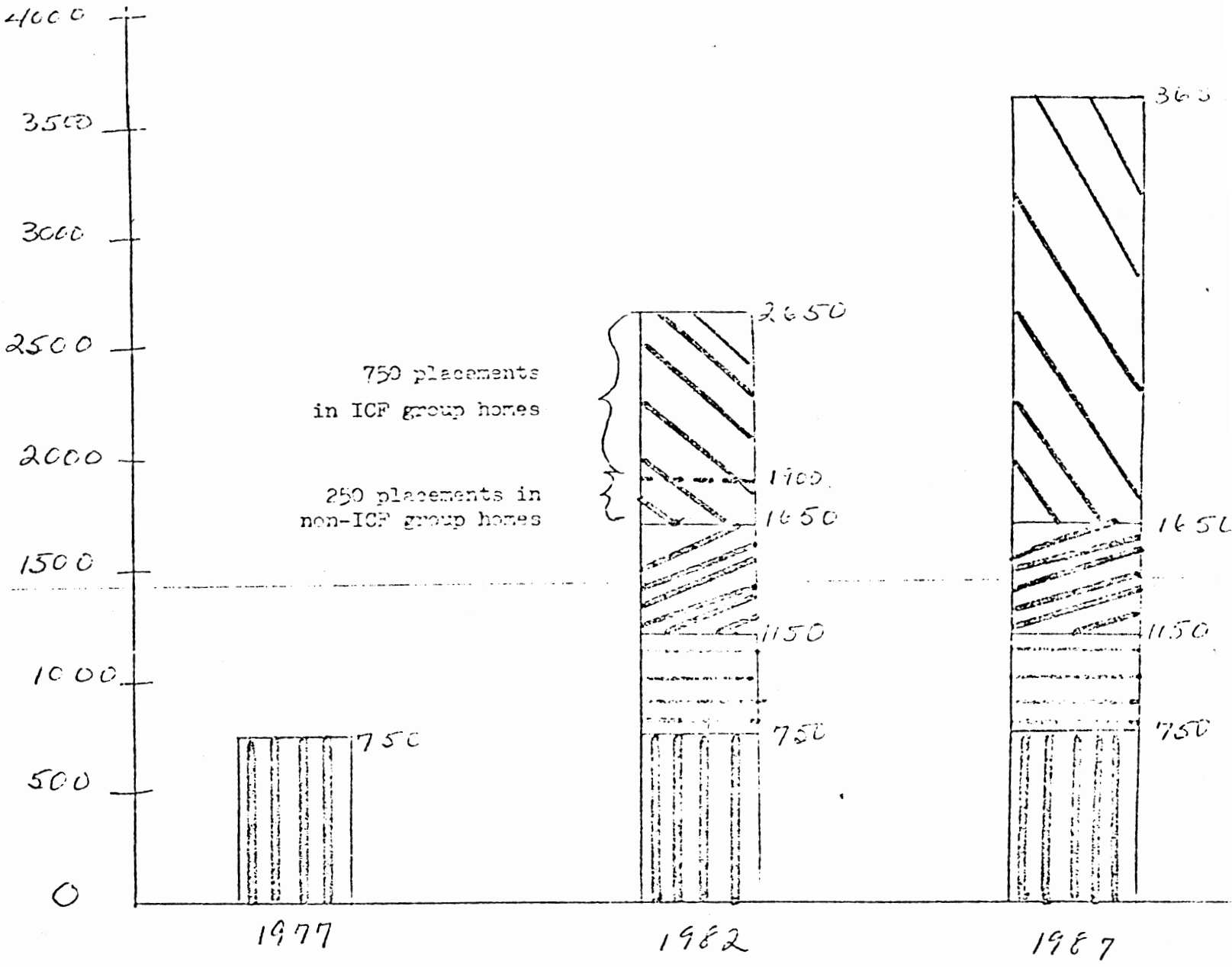
PHASE II - 1982 - 1987

I. Establish 1000 additional small group community placements.

II. Continue construction begun in Phase I.

The following bar graph illustrates the increase in community residential placements over the next 10 years. It does not include non-residential services such as social supervision, day training, or adult activities to persons residing in the community.

COMMUNITY RESIDENTIAL PLACEMENTS



Residential placements in private facilities for the mentally retarded and community placements

Purchase of Care in private residential facilities for the mentally retarded

Residential placements in community training homes

Residential placements in ICF and non-ICF group homes. We cannot accurately predict the exact mixture of service modes beyond 1982.

70x