

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-47

DATE: July 10, 2009

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Intermediate Care Facilities for the Mentally Retarded (ICF/MR): Clarification of Protection of Client's Rights at 42 CFR §483.420(a)(4) - Ensure Right to Manage Financial Affairs

Memorandum Summary

- **Citing Deficiencies:** Surveyors currently cite a deficiency during the ICF/MR survey process if every client in the facility does not have a formal money management program in place.
- **Regulatory Provisions:** The regulations at 42 CFR 483.420(a)(4) state that clients in the ICF/MR must be allowed to manage their financial affairs and be taught to do so to the extent of their capabilities.
- **Determination of Compliance:** The determination as to the appropriateness of a formal money management program for an ICF/MR client is based upon the results of a comprehensive functional assessment and a consensus by the interdisciplinary team.

Background

Currently, surveyors cite a deficiency during the survey process if every client in an ICF/MR does not have a formal money management training objective included within their Individual Program Plan (IPP). For any instance where a client does not have a formal objective in place, regardless of the determination of appropriateness by the team, a citation is written at 42CFR 483.420(a)(4).

Discussion

42 CFR 483.420(a)(4) states that the facility must, "Allow individual clients to manage their financial affairs and to teach them to do so to the extent of their capabilities." The regulation is clear that in those cases where a client already possesses the skills necessary to independently manage their own financial affairs, the facility will allow the client to continue to do so. Formal training in financial management must be provided for all other clients in the facility to the *extent of their capabilities*. The regulation places the responsibility for determining the extent of the client's capabilities in this matter upon an assessment and interdisciplinary process within the facility.

To reach a determination as to whether a money management program is appropriate, the facility interdisciplinary team (IDT) uses the comprehensive functional assessment (CFA) to evaluate the ability of each client to participate in such a program. Under 42 C.F.R. 483.440(c)(3), the team evaluation must establish, through documentation, that the IDT considers all of the objective data within the assessment in reaching their determination, especially the identification of client skills which can be used across training programs. Assessment findings to be considered by the team include skills that can be cross-utilized in training programs such as:

1. Fine motor coordination;
2. The ability to make choices;
3. The ability to identify preferences; and
4. Cognitive abilities including tracking, attention span, communication, and the individual's understanding of cause and effect. (The individual's understanding of cause and effect is significant in the determination.)

During surveyor observations note any client who is of the chronological age to utilize money management and exhibits the skills necessary to be on a formal money management program. Through observation and interview, determine the extent of any financial management program in which the client is involved. Review the client's CFA to confirm that the program is consistent with the findings of the assessment. The IPP must include measurable, individualized objectives to meet the various training goals consistent with the findings of the CFA and the IDT determination. The programs and strategies used to meet objectives should be detailed, understandable, and readily available for review and updating by staff in order to ensure a client's progress toward self-determination, choice, and independence. Such programs and strategies used to meet objectives may be established through documentation.

If the client is not on a formal money management program, the surveyor must review the IDT evaluation to determine whether the team addressed the results of the CFA and the identification of skills which can be cross-utilized in training programs. If this cannot be confirmed through documentation, a citation may be written.

Money management includes a broad spectrum of programs with varying levels of participation by the client ranging from the use of choice in money expenditures, to an understanding of the concept of money, and ultimately to actual money handling and budgeting. The IDT must not conclude that a money management program is inappropriate based solely upon the level of retardation or physical disability of the client.

The CFA must be reviewed at least annually per 42 C.F.R. 483.440(f)(2). As a part of this annual review, a client's ability to participate in money management will also be reviewed. The annual review should always include an update to the CFA and take into consideration any changes in the individual's circumstances since the last IDT.

Conclusion

The need for a formal money management program must be addressed in every client's IPP by the IDT on an annual basis.

The determination of the appropriateness of a formal money management program is made by the IDT and must be based upon a CFA. The IDT discussions resulting in that determination must be established through documentation in the client's IPP.

Surveyors will question and cite any IDT team decision that a formal money management program is not appropriate when the client clearly exhibits and the CFA supports the skills needed to implement such a program.

If you have any additional questions, you may contact Kelley Tinsley, either by phone at 410-786-6664 or via e-mail at Kelley.Tinsley@cms.hhs.gov.

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management



Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-14-ICF/MR

DATE: March 18, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Self-Administration of Medications at 42 CFR §483.460(k)(4)
Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

Memorandum Summary

It has been the expectation of ICF/MR surveyors pursuant to previous Centers for Medicare & Medicaid Services interpretations of §483.460(k)(4), that every client residing in an ICF/MR must participate at some level in a formal, self-administration program for medications.

- **Regulatory Requirement for Self Administration Programs:** There is no regulation that requires every client to have a formal, self-administration program for medications. The appropriateness of such a program for a client is determined by the interdisciplinary team in consideration of the comprehensive functional assessment data.
- **Regulatory Requirement for Those Clients Not in Self-Administration Programs:** The concept of continuous active treatment at §483.440(d)(1) requires that the facility utilize the time during medication administration by staff as a teaching opportunity for clients who have formal training programs for the development of skills that are transferrable to the drug administration process.

Discussion

Self administration of medication refers to the intentional, independent application or ingestion of over the counter or prescribed medications by an individual without assistance, instruction or direction. The regulation at §483.460(k)(4) requires the interdisciplinary team to develop and implement training objectives for individuals, “determined” to be appropriate for self administration of medications unless the client’s physician specifies otherwise.

The interdisciplinary team must determine, based on comprehensive assessment, whether an individual possesses, or has the potential to develop, the requisite skill set needed to safely self administer medications and individually tailor training objectives to advance the individual toward the goal of self administration.

§483.460(k)(4) does not require that all individuals in an ICF/MR be engaged in self administration training programs. The interdisciplinary team decision that a self administration program is appropriate, as is the case for all formal training objectives, must be based upon accurate, current, valid assessment of the individual's skills and potential. The determination as to the appropriateness of a self administration program must never be made singularly on the individual's diagnosis or current functional abilities.

For individuals assessed to be inappropriate for a self administration program, but determined by the interdisciplinary team to possess the capacity to functionally, cognitively, emotionally or developmentally benefit from participation in the drug administration process, it is expected that the facility will provide opportunities for the client to participate in the medication administration process under direct supervision. This participation can include but is not limited to identifying the medication taken, reaching/grasping a cup of water during the process and placing oral medications in the mouth, etc.

During drug passes observe whether clients are offered the opportunity to participate consistent with their functional skill level and verify that the programs are being carried out consistently and in accordance with the written objective. For individuals not in need of formal self-administration programs who are not provided opportunities to participate in administration process, cite a deficiency at §483.440(c)(6)(vi).

If, as a result of observations and interviews, there are any concerns as to why a client is not on a formal program, the surveyor should review the associated assessments and interdisciplinary discussions. During this review look for evidence that the interdisciplinary team documented a justification as to why the client was not appropriate for a formal self-administration program and that the justification provided was based on an evaluation of the assessment results. Deficiencies for a failure by the facility to properly assess, to develop written self administration objectives or to carry out the self-administration programs consistently should be cited at §483.460(k)(4).

If you have additional questions or concerns regarding self administration programs in the ICF/MR please contact Kelley Leonette at (410)786-6664 or via electronic mail at Kelley.Leonette@cms.hhs.gov.

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff members are fully informed within 30 days of the date of this memorandum.

Training: This clarification should be shared with all survey & certification staff, surveyors, managers and the State and Regional Training Coordinators.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-15-ICF/MR

DATE: March 18, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Reporting Mistreatment, Neglect and Abuse and Injuries of Unknown Source at 42 CFR § 483.420(d)(2) –Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

Memorandum Summary

- **Reporting Requirements:** The regulations for ICFs/MR at 42 CFR § 483.420(d)(2) require that the facility ensure that all allegations of mistreatment, neglect or abuse, as well as *injuries of unknown source*, are reported *immediately* to the administrator or to other officials in accordance with State law through established procedures.
- **Clarification of Definitions:** This memorandum clarifies the definitions for the terms “injury of unknown source,” and “immediately”. It also clarifies that the Centers for Medicare & Medicaid Services (CMS) expects that all allegations will be reported to the administrator of the facility unless he/she is suspected to be a party to, or otherwise involved in, the occurrence.

Background:

Section 42 CFR § 483.420(d)(2) of the ICFs/MR regulations addresses the obligation of the facility staff to report allegations of mistreatment, neglect or abuse, and injuries of unknown source immediately to the administrator of the facility or to other officials in accordance with State law through established procedures. Both State and Federal surveyors have requested further clarification regarding the parameters surrounding what constitutes “injuries of unknown source”, the definition of “immediate” and to whom such allegations/injuries must be reported.

Discussion:

An injury should be reported as an “injury of unknown source” when:

1. The source of the injury was not witnessed by any person and the source of the injury could not be explained by the client; and

2. The injury raises suspicions of possible abuse or neglect because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

It is important to note that members of the ICF/MR population are a mobile population and lead active lives. Therefore, they experience normal day-to-day bumps and minor abrasions as they go about their lives. These minor occurrences which are not of serious consequence to the individual and do not present as a suspicious or repetitive injury (as discussed above) should be recorded by the facility staff once they are aware of them and follow-up should be conducted as indicated. For injuries that do not rise to the level of reportable “injuries of unknown source”, the facility should follow its policies and procedures for incident recording, investigation, and tracking.

42 CFR § 483.420(d)(2) further requires that allegations of mistreatment, neglect or abuse and injuries of unknown source must be, “reported immediately to the administrator or to other officials in accordance with State law, through established procedures”. For the purpose of this regulation “immediately” means there should be no delay between staff awareness of the allegation and reporting to the administrator or other officials in accordance with State law unless the situation is unstable at the time the allegation comes to the attention of the staff. In this case, reporting should occur as soon as the safety of all clients is assured and all necessary emergency measures have been taken.

This reporting must be done on a 24/7 basis. Conformity with this definition will necessitate that the facility administration have procedures in place to receive reports, even on off-duty hours (e.g., electronic mail, answering machine, voice mail, and fax). It is critical that the administrator, as designated by the Governing Body under 42 CFR § 483.410(a)(2)-(3), be notified of such occurrences as quickly as possible to ensure the safety of all residents. There must also be evidence that the information was received, in a timely manner, by that facility administrator. When the administrator is not on duty, the facility policies and procedures should detail who (either by name or title) will be acting in the administrator’s absence. The person(s) acting for the administrator must have the authority to immediately take whatever corrective action is necessary to ensure client health and safety. For example if an employee is to be removed from client contact pending an investigation, the acting administrator must have the authority to take this action without approval from another official.

CMS expects that such reporting is always made to the administrator of the facility (unless the administrator is suspected to be involved in the mistreatment, neglect or injury) and that the administrator then ensures that the appropriate State officials are notified. In any instance where a staff member is concerned that the administrator of the facility may have been involved in an incident of mistreatment, neglect, abuse or injury, the staff member should follow the facility policy for reporting to the appropriate person above the level of the administrator. The facility should have a written policy that directs the staff in these situations.

If you have any additional questions or concerns regarding the contents of this memorandum, please contact Douglas A. Thomas at (410) 786-0292 or at Douglas.Thomas@cms.hhs.gov

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Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

Training: This clarification should be shared with all survey and certification staff, surveyors, their managers, and the State/RO training coordinator.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-34-ICF/MR

DATE: Friday, July 29, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: The Use of Video Cameras in Common Areas in Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

Memorandum Summary

- **Use of video cameras in ICFs/MR:** To ensure that client's rights are protected, the use of video cameras in the ICF/MR must be reviewed, approved and monitored by the Specially Constituted Committee (SCC) of the facility as constituted per 42 CFR 483.440(f)(3)(i-iii).
- **Informed Consent:** If approved by the SCC, written informed consent must be obtained from every affected client or designated guardian prior to the implementation of video cameras. Video cameras may be used in common areas within the ICF/MR facility.
- **Prohibitions:** Video cameras may *never* be used *for any reason* in areas where there are the highest expectations of privacy such as bathrooms, areas for private visitation or areas for private phone calls. Video cameras may not be used as a substitute for or supplement to adequate staffing or supervision protocols. The cost of the video cameras must be incurred by the facility and not the clients.

I. Background

The regulatory basis for this memorandum is found at the Condition of Participation §483.420 which requires that the facility must ensure the rights of all clients. Specifically, the facility must:

- ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment -§483.420(a)(5);
- provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs -§483.420(a)(7); and
- ensure clients the opportunity to communicate, associate, and meet privately with individuals of their choice -§483.420(a)(9).

State and Federal surveyors have requested clarification as to whether the use of video cameras in the ICF/MR is consistent with the above regulations.

II. Discussion

The above referenced regulations do not unilaterally prohibit the use of video cameras within the ICF/MR. There may be instances where the use of video cameras may be helpful in ensuring that the clients are free from physical, verbal, sexual or psychological abuse, mistreatment or punishment. However, great care must be exercised to prevent any unintended violation of an individual's rights and privacy when such equipment is used in the facility.

Consistent with the regulations which require that the ICF/MR provider protect the privacy and rights of the clients in the facility, video cameras may only be used in the common areas or shared spaces of the ICF/MR where clients have lower expectations of privacy and where, in the normal course of their day, they may encounter visitors, staff, other clients, or medical personnel. Conversely, video cameras may *never* be used in areas where the clients have the highest expectations of privacy, such as client bathrooms, or areas where residents meet privately with visitors or make personal phone calls.

III. Required Safeguard

To ensure that any use of video cameras complies with regulatory requirements that client rights are fully protected, any use of video cameras in the ICF/MR must be approved by the Specially Constituted Committee (SCC) of the facility as constituted per §483.440(f)(3). Affected clients and their families or guardians must be informed of the SCC's approval to use video cameras in a specified area. Written informed consent must be obtained from every client or designated guardian living in the physical unit prior to the implementation of video cameras. If an ICF/MR consists of several physically separate living units, and the clients (and guardians if applicable) of a single unit have consented to the implementation of video cameras, it is not required that the clients residing in the other units (and their guardians as applicable) provide informed consent, since they would be considered guests when visiting this unit. However, the facility administration should still inform all clients living on the grounds (and their guardians if applicable) that camera use is in place on this specific unit.

To ensure the confidential use of the camera recordings, the facility must have policies and procedures in place that:

- a) limit who has access to video viewing or use of the videos;
- b) ensure that all staff with video viewing access are properly trained in the facility policies and the protection of client rights; and
- c) ensure that adherence to the facility policies is monitored and that risks or breeches of the facility policies are promptly addressed.

The ICF/MR may not utilize video cameras in lieu of adequate staffing or supervision protocols. The use of video cameras must not replace or otherwise substitute for trained and available direct care staff at a sufficient level to provide active treatment and ensure client safety.

The ICF/MR must incur the entire cost of any video camera usage in the facility. Clients or their families may not be charged.

If you have additional questions or concerns regarding the use of video cameras in the ICF/MR setting, please contact Ed Poindexter at 410-786-6574 or via e-mail at Edward.Poindexter@cms.hhs.gov

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff members are fully informed within 30 days of the date of this memorandum.

Training: This clarification should be shared with all survey and certification staff, surveyors, managers and the State/RO training coordinators.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management