



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 15-23-ICF/IID

DATE: January 30, 2015

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Use of Audio Surveillance Devices in Common Areas in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

Memorandum Summary

- **Use of audio surveillance devices in ICF/IID:** To ensure that client's rights are protected, the use of audio surveillance devices in the ICF/IID 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 audio surveillance devices. Audio surveillance devices may be used in common areas within the ICF/IID.
- **Prohibitions:** Audio surveillance devices 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. Audio surveillance devices may not be used as a substitute for or supplement to adequate staffing or supervision protocols. The cost of the audio surveillance devices 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 audio surveillance devices in the ICF/IID is consistent with the above regulations.

II. Discussion

The above referenced regulations do not unilaterally prohibit the use of audio surveillance devices within the ICF/IID. There may be instances where the use of audio surveillance devices 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/IID provider protect the privacy and rights of the clients in the facility, audio surveillance devices may only be used in the common areas or shared spaces of the ICF/IID 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, audio surveillance devices 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 audio surveillance devices complies with regulatory requirements and that client rights are fully protected, any use of audio surveillance devices in the ICF/IID must be approved by the SCC's 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 audio surveillance devices 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 audio surveillance devices. If an ICF/IID consists of several physically separate living units, and the clients (and guardians if applicable) of a single unit have consented to the implementation of audio surveillance devices, clients residing in other units (and their guardians as applicable) are not required to 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 audio use is in place on this specific unit.

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

- a) Limit who has access to audio recordings or use of the audio surveillance devices;
- b) Ensure that all staff with audio recording 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/IID may not utilize audio surveillance devices in lieu of adequate staffing or supervision protocols. The use of audio surveillance devices 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/IID must incur the entire cost of any audio device usage in the facility. Clients or their families may not be charged.

If you have additional questions or concerns regarding the use of audio surveillance devices in the ICF/IID setting, please contact the ICFIID@cms.hhs.gov email mailbox.

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