

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