



COMMISSIONER
Chris Traylor

January 27, 2012

To: All Intermediate Care Facilities for Persons with an Intellectual Disability (ICFs/ID)

Subject: **Provider Letter 12-03** – Use of Video Surveillance Cameras to Monitor Common Areas (**Replaces Provider Letter 11-11**)

The Department of Aging and Disability Services (DADS) is issuing this letter to provide guidance and clarification related to the use of video surveillance cameras to monitor common areas in ICFs/ID. This letter is supported by the Centers for Medicare and Medicaid Services (CMS), [Survey and Certification Letter 11-34](#) titled "The Use of Video Cameras in Common Areas in ICFs/MR" dated July 29, 2011.

There is no state rule or federal requirement that specifically addresses the use of video surveillance cameras in ICFs/ID; however, 42 Code of Federal Regulations (CFR) §483.420(a) (W122), §483.420(a)(5) (W127), §483.420(a)(7) (W129 and W130) and §483.420(a)(9) (W133) require an ICF/ID to protect the privacy and rights of the individuals who reside in the facility. When an ICF/ID chooses to use video surveillance cameras to monitor common areas, it must:

1. **Obtain approval before implementation from the facility's specially constituted committee (SCC).** 42 CFR §483.440(f)(3) (W262) requires the facility's SCC (sometimes referred to by CMS as the Human Rights Committee or the Constituted Advisory Committee) to review and approve programs and practices that might involve risks to individual rights before implementation. This is intended to ensure individual's rights are fully protected. Therefore, the facility's video surveillance camera policies and procedures must be reviewed and approved by its SCC before cameras may be installed.

The facility must also ensure that its SCC meets the requirements of W261 regarding committee members to consist of facility staff, parents, guardians, individuals receiving services, qualified persons with experience or training in contemporary practices to change inappropriate behavior, and persons who have no ownership or controlling interest in the facility. A roster of SCC members and a signature sheet of those in attendance must be kept with the minutes of any meeting in which the facility's video surveillance camera policy and procedures are reviewed. **Note that for State Supported Living Centers and the ICF/ID component of the Rio Grande State Center, Section 1 does not apply as the installation of their video cameras was legislatively mandated.**

2. **Develop video surveillance camera policies and procedures.** The facility's policies and procedures must address:
- where the cameras will be installed;
 - how and when the cameras will be used;
 - how the cameras and video equipment will be secured;
 - where the video will be stored;
 - who will maintain the cameras and video equipment to ensure that they are functioning properly;
 - who will be authorized to view the video;
 - who will train staff authorized to maintain the cameras and video equipment or authorized to view the video;
 - what the content of the staff training will be;
 - how the video will be used in the reporting and investigation of suspected abuse, neglect and exploitation (A/N/E) and other reportable incidents;
 - what will be documented if the video is are used in the reporting and investigation of suspected A/N/E and other reportable incidents; and
 - how adherence to the policies and procedures will be monitored, so risks of breeches and actual breeches of the facility's policies are promptly addressed.

42 CFR §483.410(a)(1) (W104) requires an ICFs/ID governing body to exercise general policy and operating direction over the facility. If the facility's governing body has determined that video surveillance cameras are necessary, it must provide, monitor and revise, as necessary, the facility's policies and procedures to ensure the proper use of these cameras and to protect the privacy and rights of individuals who reside in the facility.

3. **Notify all individuals and their parents or guardians before installation and obtain written consent from the affected individuals or from their legally authorized representative (LAR).** 42 CFR §483.420(c)(6) (W148) requires an individual's parents or guardian to be informed of any significant incident or change in the individual's condition. A significant incident includes any type of occurrence or event that could have some level of importance to the individual, family or guardian. 42 CFR §483.420(a)(1) (W123) requires an individual to be informed of his or her rights and the rules of the facility. Before the installation of video surveillance cameras, the facility must notify all individuals living on the grounds and their parents or guardians, as applicable, that video surveillance cameras will be installed to monitor public spaces. Written informed consent must be obtained from the individuals living in the affected physical unit or from their legally authorized representatives (LARs), before installation.

Before the installation of the video surveillance cameras, the facility must inform individuals residing in other units of a facility that video surveillance cameras will be installed and used in common areas. Individuals should be strongly assured that cameras will never be used in private spaces, such as individual bedrooms, bathrooms, or areas where individuals meet privately with visitors or where individuals make private telephone calls. When the appropriate written consent is obtained and steps have been taken to educate all individuals, there is no requirement that parents, LARs, families or friends be given notice for a specific period of time before implementing video surveillance cameras.

An ICF/ID may not utilize video equipment in lieu of adequate staffing levels or supervision requirements. The use of video equipment does not replace a facility's responsibility to care for and protect individuals from harm or provide active treatment. Furthermore, the ICF/ID must incur the entire cost of any video camera usage in the facility. **Note that for State Supported Living Centers and the ICF/ID component of the Rio Grande State Center, Section 3 applies only to individuals who were admitted after July 29, 2011. Informed consent signed by a State Supported Living Center official (e.g., Director or Human Rights Officer) will not be accepted as complying with this requirement.**

If you have questions about the content of this letter, please contact an ICF/MR policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

[Signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

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