



COMMISSIONER
Jon Weizenbaum

November 19, 2013

To: All Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICFs/IID)

Subject: **Provider Letter 13-25** – Centers for Medicare and Medicaid Services (CMS) Clarification of the Definition of Injuries of Unknown Source and Reporting Requirements (**Replaces Provider Letter 11-18**)

The Texas Department of Aging and Disability Services (DADS) is re-issuing this provider letter to replace references to the memorandum of understanding entitled “*Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Department of Human Services (TDHS), and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICFMR)*”, effective March 25, 1996.

This letter emphasizes [Federal Survey & Clarification Letter 11-15-ICF-MR](#) (Clarification of Reporting Mistreatment, Neglect and Abuse and Injuries of Unknown Source at 42 Code of Federal Regulations (CFR) §483.420(d)(2)) issued on March 18, 2011.

42 CFR §483.420(d)(2) (W153) requires an ICF/IID to 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.

CMS clarified the definitions of the terms “injury of unknown source” and “immediately,” as well as its expectations for reporting allegations of mistreatment, neglect or abuse and injuries of unknown source.

Definition of “Injury of Unknown Source”

Prior to CMS’ clarification of the definition of injury of unknown source, all injuries of unknown source were required to be reported and investigated, no matter how minor.

CMS' clarification of the definition of an injury of unknown source requires an injury to 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 **suspicious** 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.

CMS recognizes that clients lead active lives, experiencing normal day-to-day bumps and minor abrasions. These minor occurrences that are not of serious consequence to the client and do not present as a suspicious or repetitive injury should be recorded by the ICF/IID's staff (with follow-up as indicated) once they are aware of the occurrence. For injuries that do not rise to the level of reportable "injuries of unknown source," the ICF/IID should follow its policies and procedures for incident recording, investigation and tracking.

Definition of "Immediately"

"Immediately" means that no delay occurs between staff awareness of the allegation and staff reporting the allegation to the administrator or other officials in accordance with state law. In the event that the situation is unstable at the time the allegation comes to the attention of the staff, reporting should occur as soon as the safety of all clients is assured and all necessary emergency measures have been taken.

Reporting Requirements

CMS requires such reporting to always be made to the administrator of the ICF/IID (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.

DADS rules at Texas Administrative Code, Title 40 , Part 1, §[3.302\(a\)-\(b\)](#), §[4.554\(d\)\(1\)\(A\)](#) and §[90.212\(a\)](#) requires an ICF/IID to report allegations of abuse, neglect or exploitation to the Department of Family and Protective Services at 1-800-647-7418 within one hour of learning of or suspecting the incident.

Policy and Procedure

42 CFR §483.420(d)(1) (W149) requires an ICF/IID to develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

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The ICF/IID, through implementation of its policies, sets up a structure that protects individuals from mistreatment, neglect and abuse. Therefore, an ICF/IID's policy and procedure should include the following:

- Procedures to receive reports even on off-duty hours (e.g., electronic mail, answering machine, voice mail, and fax)
- Who (either by name or title) will be acting in the administrator's absence
- Procedures for staff to follow in the event that the ICF/IID administrator may have been involved in an incident of mistreatment, neglect, abuse or injury

If you have questions regarding this letter, please contact an ICF/IID policy specialist in the Policy, Rules and Curriculum Development unit at 512-438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services

MTH:cg