

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-12-25  
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-XX

**DATE:**

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Intermediate Care Facilities for the Mentally Retarded (ICF/MR) – Clarification of Interpretive Guidance for 42 CFR §483.420(d)(2), Allegations of Mistreatment, Abuse, Neglect, or Injury.

**Memorandum Summary**

- The regulations for Intermediate Care Facilities for the Mentally Retarded (ICF/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.
- Surveyors have surfaced a question as to whether this regulation gives the facility staff the option to report such occurrences to either the facility administration *or* to an outside agency.
- This memorandum clarifies that the Centers for Medicare & Medicaid Services (CMS) expects that all such occurrences will be reported to the administration of the facility unless the Administrator is responsible for the occurrence.

**Background**

The regulations for ICF/MR facilities at 42 CFR 483.420(d)(2) (W153) state that, “the facility must 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.”

Surveyors have requested further clarification of the interpretive guidance for this regulation. The insertion of the word “or” appears to give the staff of the facility an option as to whom they may report such occurrences.

While the interpretive guidance for this regulation does not address this issue specifically, the regulations were not meant to imply that the facility staff may choose to whom they report incidents. CMS does expect that reporting is always made to the Administrator of the facility (unless the Administrator is suspected to be involved in the mistreatment, abuse, neglect or injury) and the Administrator will then ensure that the appropriate State officials are notified.

It is critical that the Administrator be notified of such occurrences immediately in order to promptly safeguard the client(s).

The Administrator is the person appointed by the Governing Body as required by W106. When the Administrator is not on duty (weekends, vacation, holidays, etc) the facility policies and procedures should detail who (either by name or title) will be acting in the Administrator's absence. The person acting as Administrator must have the authority to immediately take whatever corrective action is necessary to assure client health/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.

In those rare situations 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 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 Dianne Smith at (410)786-6642 or by e-mail at [Dianne.Smith@cms.hhs.gov](mailto:Dianne.Smith@cms.hhs.gov).

**Effective Date:** This clarification is effective immediately.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management