

Center for Medicaid and State Operations/Survey and Certification Group

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TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: The Use of Video Cameras in Intermediate Care Facilities for the Mentally Retarded (ICF/MR)

Memorandum Summary

- The use of video equipment in the ICF/MR must be reviewed, approved and monitored by the Specially Constituted Committee authorized by 42 CFR §483.440(f)(3) (i-iii) to ensure client rights are protected.
- Video equipment may be used only in common areas of the ICF/MR. It may never be used in areas where there is an expectation of privacy such as bathrooms, areas for private visitation or areas for private phone calls.
- Video equipment must not be used in lieu of adequate staffing levels.
- The cost of any video equipment must be incurred by the facility and not the residents.

Background

42 CFR §483.420(a) requires that the ICF/MR take steps to ensure the rights of all residents. 42 CFR §483.420(a)(5) requires that the ICF/MR be responsible for ensuring that residents are not subjected to physical, verbal, sexual, or psychological abuse or punishment. 42 CFR §483.420(a)(7) specifically states the facility must provide each resident with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs. 42 CFR §483.420(a)(9) states that the facility must ensure residents the opportunity to communicate, associate and meet privately with individuals of their choice. Surveyors have asked for further clarification as to whether the use of video equipment in the ICF/MR is consistent with the above regulations.

Discussion

The above regulations are clear that the ICF/MR provider must protect the privacy and rights of the individuals who reside in the facility. The regulations do not specifically prohibit the use of video

equipment as a component of that protection. There may be instances where the use of video cameras may actually be helpful in ensuring that residents are free from abuse, neglect, and mistreatment. 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.

Video cameras may only be used in the ICF/MR in common areas or areas where residents have no expectation of privacy and in the normal course of their day encounter visitors, staff, other residents, or medical personnel. Conversely, video cameras may *never* be used in areas where the residents have an expectation of privacy such as resident bedrooms, bathrooms, or areas where residents meet privately with visitors or make private phone calls.

The use of video equipment in common areas must be justified to and approved by the Specially Constituted Committee of the facility authorized by 42 CFR §483.440(f)(3) to ensure that client rights are fully protected during the use of the equipment.

The ICF/MR may not utilize video equipment in lieu of adequate staffing levels. The use of video equipment does not replace or otherwise substitute for the facility responsibility to provide direct care staffing at a sufficient level to protect the residents from harm and to promote active treatment.

ICF/MR facilities must incur the cost of any video equipment utilized in the facility.

If you have additional questions or concerns regarding the video cameras, please contact Edward Poindexter at 410-786-6574 and/or by e-mail Ed.Poindexter@cms.hhs.gov.

Effective Date: Immediately Upon Receipt

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management