

Center for Medicaid and State Operations/Survey & 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) - Protection of Clients Rights 42 CFR 483.420 (a) (12).

**Memorandum Summary**

- This memorandum is intended to address only the issue of access to personal possessions of individuals residing in ICFs/MR
- In general, the restriction of free access to an individual's personal possessions is an infringement of rights and is not acceptable in an ICF/MR.
- When the behavior of an individual leads to the prevention of free access to their own personal possessions (e.g., they destroy their own property) or prohibits access of another individual to their own personal possessions (e.g., by taking or disrupting another's private property), the facility must develop an individual program plan (IPP) to address the disruptive behavior while at the same time continuing to ensure that all individuals do not have their rights infringed by restricting accesses to their personal

**Background**

ICF/MR regulation at 42 CFR 483.420 (a) delineates the measures which the facility must implement in order to ensure that the rights of all clients in the facility are protected. Included in these measures at 42CFR 483.420 (a) (12) is the assurance that each client is allowed to retain and use appropriate personal possessions and clothing ....”

**Discussion**

In general, locking or restricting free access by individuals to their personal possessions is an infringement on their rights. Any rights restrictions can only be permitted in an ICF/MR under specific circumstances for use of restrictive techniques described in the regulations in 483.450(b)(1). These techniques must be utilized under the following guidelines: There must be an assessment performed showing the need for that restriction 42 CFR 483.440 (C)(3)(iii); a plan developed to reduce the behavior for which the restriction is necessary 42 CFR 483.440(c)(4); and a review by a specially constituted committee to approve the plan 42 CFR 483.440(f)(3)(i).

It is expected that, in the absence of mitigating circumstances, that all ICF/MR clients will have *free* access to their personal possessions at will without the need for the staff to assist in the access the possessions locked by a securing mechanism (e.g., a key with a pad lock). **Even in the event of mitigating circumstances, each individual must have access to their personal possessions at all times.**

Mitigating circumstances include:

1. One or more clients is infringing upon the rights of others by taking, damaging or otherwise disrupting private property that is not theirs. In order to protect the personal possessions of the other clients in the living area, it may be necessary to temporarily utilize securing mechanisms or locks in these cases. However, such use of securing mechanisms should be considered as a temporary measure utilized only until individual behavior program plans are developed and implemented allowing all clients in the living unit to eventually enjoy *free* access to their possessions. The surveyor must verify that during the temporary use of these securing mechanisms, each client continues to have access to their personal possessions.
2. An individual client exhibits destructive behavior with their own possessions. While it may be necessary to lock this individual's possessions requiring a staff member to unlock the possessions for access, this must be only a temporary measure utilized in conjunction with an individual behavior program. The surveyor must be able to ascertain that the facility is actively working to allow greater *free* access by the client and that the client continues to have access to their possessions upon request.

Any observations made during the survey process of "blanket" locking of all personal possessions in a living area should be thoroughly investigated by the surveyor. Any use of locking mechanisms for personal possessions must be individualized, involve identifiable mitigating circumstances and be temporarily employed in conjunction with behavioral programming which allows increased *free* access as the programming eliminates disruptive behaviors.

If a client requests that their personal possessions be secured, the facility should oblige the client and he/she must be provided and trained in the use of keys or another mechanism which allows free access to his/her possessions.

In summary, this memorandum is intended to address only the personal possessions of the individuals residing in ICFs/MR. The ICF/MR regulations do not address the locking of hazardous substances on the living unit or the locking of communal storage areas. Surveyors should not automatically cite deficiencies when these areas are found to be locked on a living unit. Defer to State regulations covering these areas.

If you have any additional questions/concerns about this guidance may be directed to Douglas Thomas at (410) 786-0292 or via e-mail at [Douglas.Thomas@cms.hhs.gov](mailto:Douglas.Thomas@cms.hhs.gov).

**Effective Date:** Immediately Upon Receipt

/s/  
Thomas E. Hamilton

cc: Regional Office Survey and Certification Management

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