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Director

Technical Bulletin

Bulletin Issued September 2015

Video Monitoring

The Office of Quality Assurance has seen an increase in the number of inquiries by our Developmental Disability Organizations related to questions and concerns on this topic. In response to those questions and concerns the Office of Quality Assurance has developed this technical bulletin.

The purpose of this bulletin is to inform Developmental Disability Organizations that the BHDDH Office of Quality Assurance utilizes CMS Policy S&C: 11-34-ICF/MR (use of video cameras) as guidance when the Office of Quality Assurance investigates complaints related to the use of video monitoring of Participants.

Developmental Disability Organizations should be aware that there are limits on the use of video monitoring intended to ensure that Participants are treated with dignity and that their rights to privacy are respected. Rights of Developmentally Disabled Individuals are specifically set forth in Rhode Island General Laws, section 40.1-26-3 and the "Rules and Regulations for the Licensing of Developmental Disability Organizations, section 20.0"

Under Rules and Regulations for the Licensing of Developmental Disability Organizations, section 23.0. Developmental Disability Organizations have / or affiliate with a Human Rights Committee that would be responsible for reviewing, approving and monitoring interventions, such as video monitoring, to ensure that client's rights are protected.

A copy of CMS Policy S&C: 11-34-ICF/MR (Use of Video Cameras) is attached to this technical bulletin as a recommended resource to be used by Developmental Disability Organizations that currently utilize video monitoring and/or those agencies considering the use of video monitoring.

If you have any questions or need additional information, please contact Christine Emond, the Administrator of the Office of Quality Assurance, at (401) 462-6837.

Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-34-ICF/MR

DATE: July 29, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

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

Memorandum Summary

- **Use of video cameras in ICFs/MR:** To ensure that client's rights are protected, the use of video cameras in the ICF/MR must be reviewed, approved and monitored by the Specially Constituted Committee (SCC) of the facility as constituted per 42 CFR 483.440(f)(3)(i-iii).
- **Informed Consent:** If approved by the SCC, written informed consent must be obtained from every affected client or designated guardian prior to the implementation of video cameras. Video cameras may be used in common areas within the ICF/MR facility.
- **Prohibitions:** Video cameras may *never* be used *for any reason* in areas where there are the highest expectations of privacy such as bathrooms, areas for private visitation or areas for private phone calls. Video cameras may not be used as a substitute for or supplement to adequate staffing or supervision protocols. The cost of the video cameras must be incurred by the facility and not the clients.

I. Background

The regulatory basis for this memorandum is found at the Condition of Participation §483.420 which requires that the facility must ensure the rights of all clients. Specifically, the facility must:

- ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment -§483.420(a)(5);
- provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs -§483.420(a)(7); and
- ensure clients the opportunity to communicate, associate, and meet privately with individuals of their choice -§483.420(a)(9).

State and Federal surveyors have requested clarification as to whether the use of video cameras in the ICF/MR is consistent with the above regulations.

II. Discussion

The above referenced regulations do not unilaterally prohibit the use of video cameras within the ICF/MR. There may be instances where the use of video cameras may be helpful in ensuring that the clients are free from physical, verbal, sexual or psychological abuse, mistreatment or punishment. 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.

Consistent with the regulations which require that the ICF/MR provider protect the privacy and rights of the clients in the facility, video cameras may only be used in the common areas or shared spaces of the ICF/MR where clients have lower expectations of privacy and where, in the normal course of their day, they may encounter visitors, staff, other clients, or medical personnel. Conversely, video cameras may *never* be used in areas where the clients have the highest expectations of privacy, such as client bathrooms, or areas where residents meet privately with visitors or make personal phone calls.

III. Required Safeguard

To ensure that any use of video cameras complies with regulatory requirements that client rights are fully protected, any use of video cameras in the ICF/MR must be approved by the Specially Constituted Committee (SCC) of the facility as constituted per §483.440(f)(3). Affected clients and their families or guardians must be informed of the SCC's approval to use video cameras in a specified area. Written informed consent must be obtained from every client or designated guardian living in the physical unit prior to the implementation of video cameras. If an ICF/MR consists of several physically separate living units, and the clients (and guardians if applicable) of a single unit have consented to the implementation of video cameras, it is not required that the clients residing in the other units (and their guardians as applicable) provide informed consent, since they would be considered guests when visiting this unit. However, the facility administration should still inform all clients living on the grounds (and their guardians if applicable) that camera use is in place on this specific unit.

To ensure the confidential use of the camera recordings, the facility must have policies and procedures in place that:

- a) limit who has access to video viewing or use of the videos;
- b) ensure that all staff with video viewing access are properly trained in the facility policies and the protection of client rights; and
- c) ensure that adherence to the facility policies is monitored and that risks or breeches of the facility policies are promptly addressed.

The ICF/MR may not utilize video cameras in lieu of adequate staffing or supervision protocols. The use of video cameras must not replace or otherwise substitute for trained and available direct care staff at a sufficient level to provide active treatment and ensure client safety.

The ICF/MR must incur the entire cost of any video camera usage in the facility. Clients or their families may not be charged.

If you have additional questions or concerns regarding the use of video cameras in the ICF/MR setting, please contact Ed Poindexter at 410-786-6574 or via e-mail at Ed.Poindexter@cms.hhs.gov

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff members are fully informed within 30 days of the date of this memorandum.

Training: This clarification should be shared with all survey and certification staff, surveyors, managers and the State/RO training coordinators.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management