

Office of Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 12-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 – Locked Areas and Supplies

Memorandum Summary

- **Free Access in the Home:** All ICF/MR clients are expected to have continuous, unrestricted access within their home. Any infringement of this right through the use of locking mechanisms must be supported by assessments, be limited in duration and be employed in conjunction with an active treatment plan (i.e., to eliminate maladaptive behaviors or develop skills), and be approved by a specially constituted committee.
- **Use of Locks Due to Inadequate Staffing Ratios:** Blanket or inappropriate use of locks in the ICF/MR living unit may indicate the use of such locks due to inadequate staffing ratios. Deficiencies written at §483.420(a)(3) or §483.420(a)(12) due to the inappropriate use of locks, should automatically trigger a review of the on-duty staff to client ratios in the particular living unit at §483.430(d). Insufficient staff may never be used as a justification for locking areas and/or items.

Background

The regulations for ICFs/MR require that clients be provided with an individual active treatment program that is directed toward the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible. Inherent in these regulations is the concept that the client must be allowed and encouraged to develop and practice the skills necessary to achieve their highest possible level of independence, in an environment consistent with the usual practices of the community. In the usual community home setting, a person living in the home has free access to all areas and supplies in the home unless another member of the household chooses to restrict access to his/her own personal belongings. Accordingly, surveyors have cited deficiencies when any part of the ICF/MR living area including common areas, personal space areas and supply storage areas were found to be locked and client access was denied without the physical assistance of a staff member.

Discussion

The ICF/MR provider community has voiced concerns that there are instances where it is necessary to lock areas within the facility or to lock certain supplies within the facility in order to ensure client safety. While the Centers for Medicare & Medicaid Services (CMS) does acknowledge the need for an ICF/MR to balance safety with the concept of normalization in the living environment, the regulations do not allow for blanket use of locked areas or supplies. CMS does recognize the need for the isolated, temporary use of locked areas or supplies in the ICF/MR living areas until such time that a client or clients, through a formal training program, may safely access the areas or supplies independently.

Guidance

A. When a client's personal items are locked, determine through interview, observation and record review, why the personal items are locked and whether the client has independent access to and use of the items. Personal items refer to any and all items belonging to the client.

- (1) If individual, personal items are locked by client request and the client can access the items independently, no deficiency should be cited. If individual, personal items are locked by client request but the client is unable to access the items without the assistance of the staff, a deficiency should be written at 42 CFR 482.420(a)(12). *"Client protections: Ensure that clients have the right to retain and use appropriate personal possessions and clothing..."*
- (2) If individual personal items are locked as a safety measure for a client or clients, the following three (3) processes must be in place by the facility. If any one of the processes is not in place, a deficiency should be written at §482.420(a)(12):
 - Each affected client must have an individual assessment in their record which clearly supports the facility assertion that the client cannot safely access the locked items;
 - Each affected client must have an active treatment plan in place to teach the client to access the items safely and slowly reduce the restriction; and
 - The restriction and associated active treatment plan must be approved by the Specially Constituted Committee.

B. When there are locked areas or community supplies in the living unit (i.e., doors with egress to the outside, laundry and cleaning supplies, kitchen sharps and refrigerators), determine through observation and interview why the areas/supplies are locked and whether clients in the living unit have access to the areas/supplies without assistance from the staff.

- (1) If all clients cannot access the locked areas/supplies without assistance, determine the rationale for the locks (client choice or client safety).
- (2) If the locks are reported to be in place for client safety, the facility must comply with the protocol above (2). If the facility does not comply with the above protocol a deficiency should

be cited at §483.420(a)(3). *“Client protections: Allow and encourage individual clients to exercise their rights as citizens of the facility....”*

C. When locks are utilized pursuant to State licensure regulations, all affected clients must still be able to access the area and/or supplies independently of staff, unless an assessment has determined that access to the area and/or item causes a safety risk to the client(s). In these cases refer to the protocol above (2) to determine compliance. If the facility does not comply with the protocol a deficiency should be cited at §483.420(a)(3). *“Client protections: Allow and encourage individual clients to exercise their rights as citizens of the facility....”*

Deficiencies written at §483.420(a)(3) or §483.420(a)(12), for the inappropriate use of locks, should automatically trigger a review of facility staffing levels per §483.430 (d) to ensure that the on-duty staff to client ratios in the particular living unit meet the needs of the clients. Insufficient staff may never be used as a justification for locking areas and/or items.

Conclusion

All ICF/MR clients are expected to have continuous unrestricted access within their home. Any infringement through the use of locking mechanisms must be supported by assessments, be employed in conjunction with an active treatment plan (i.e., to eliminate maladaptive behaviors or develop skills), and be approved by the Specially Constituted Committee. When a specific planned and approved restriction occurs for a single client, mechanisms must be in place to grant independent access for all other clients in the facility, and to accommodate client request to restricted personal items.

If you have any additional questions or concerns regarding the contents of this memorandum, please contact Douglas A. Thomas at (410) 786-0292 or at Douglas.Thomas@cms.hhs.gov

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff 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, their managers, and the State/RO training coordinator.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management