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April 6, 2009

Ms. Peggy Wilkerson, Deputy Director  
Division of Continuing Care Providers  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 22144-1850

VIA ELECTRONIC MAIL

Dear Ms. Wilkerson:

Thank you for providing the American Health Care Association (AHCA) with the opportunity to comment on the following draft Survey and Certification (S&C) letters for ICFs/MR:

- Clarification of Interpretive Guidance, Allegations of Mistreatment, Abuse, Neglect or Injury
- Protection of Clients' Rights
- The Use of Video Cameras in ICF/MR
- Clarification of Clients' Rights: Money Management

AHCA is a federation of state associations representing nearly 11,000 non-profit and proprietary long term care providers, including ICFs/MR and group homes for individuals with developmental disabilities. On behalf of these providers, we appreciate CMS' clarification on such important ICF/MR client rights issues as are discussed in these letters.

Our comments for each letter are as follows:

**Clarification of Interpretive Guidance, Allegations of Mistreatment, Abuse, Neglect or Injury**

We are in general agreement with this letter, but additional clarification on a few points would be useful:

- 1) In practice, the program director or another specific, full-time staff person performs the functions of the "Administrator" daily in ICFs/MR. Therefore, stating that an alternatively titled individual should only serve in the place of the "Administrator" when that person is not on duty is inappropriate. Clarification on this technical point is necessary.

Recommendation: To alleviate this issue, AHCA recommends that CMS amend the letter to reflect that the term “Administrator” is not used in all facilities. The facility-specific title for this individual should be acceptable.

- 2) Clarification of “injuries of unknown source” is needed. A small skin scratch could be construed as an injury by a surveyor, while facility staff may evaluate it, see that no treatment of any kind is needed, and not report it to the Administrator or equivalent staff person. This could render the facility vulnerable to an inappropriate citation.

Recommendation: AHCA recommends using the term “significant injuries of unknown source” to better clarify what should be reported to the Administrator-equivalent employee.

### **Protection of Clients’ Rights**

Overall, we are very pleased with this letter, especially as CMS defers to State regulations regarding the locking of hazardous substances in living units or communal storage areas. Our other comments include:

- 1) Please note that at the end of the “Memorandum Summary” there is some text missing.

Recommendation: Complete this text.

- 2) In rare cases, individual behavior program plans may not be effective in stopping a client(s) from “taking, damaging, or otherwise disrupting private property that is not theirs;” long-term securing mechanisms may be needed in such cases. For such unusual situations, it would not be feasible for each individual to have access to their personal possessions at all times.

Recommendation: Revise the letter to acknowledge that, occasionally, long-term securing may be needed to protect residents’ property. However, the owner of the private property should be given free access to their possessions, which may require staff assistance due to individual functioning, for the length of the security measure.

### **The Use of Video Cameras in ICFs/MR, and Clarification of Clients’ Rights Regarding Money Management**

We are in agreement with these letters and have no revision suggestions. The video camera letter acknowledges that each situation is different and that the Specially Constituted Committee of the facility will ensure protection of client rights, and the money management letter recognizes that the assessment and interdisciplinary team process determines the extent of resident capabilities in regards to money management training. AHCA is pleased with CMS’ clarification and support of these points.

AHCA appreciates the opportunity to comment on these ICF/MR S&C letters. We encourage CMS to contact us at any time for additional information.

Thank you,



Bruce Yarwood  
President & CEO

Cc: Van Moore