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To: Facilities Serving People with Developmental Disabilities **FDD 02**

From: Michael Steinhauer, Chief
Resident Care and Review Section

Via: Susan Schroeder, Director
Bureau of Quality Assurance

**Reporting All Allegations
of Mistreatment, Neglect, Abuse and Injuries of Unknown Source
Immediately to Administrator
as Required at 42 CFR 483.420(d)(2) – (W Tag 153)**

Federal Monitoring Surveys (FMS) in Intermediate Care Facilities serving persons with Mental Retardation (ICF/MR) have identified an emerging issue related to the Code of Federal Regulation 42 CFR 483.420(d)(2). BQA is sending this memo to clarify the requirement at W153 as specified by the federal Centers for Medicare & Medicaid Services (CMS).

42 CFR 483.420(d)(2) requires the following:

The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are to be reported immediately to the Administrator or to other officials in accordance with State law through established procedures.

CMS provides verbal guidance that there are three key areas within W tag 153.

- All allegations of mistreatment, neglect, abuse and injuries of unknown source must be reported immediately to assure prompt detection
- All allegations of mistreatment, neglect, abuse and injuries of unknown source must be reported to the administrator and cannot be delegated to other staff
- Reporting must be done via a “reproducible mechanism” (CMS term taken from State Operations Manual Transmittal 278 TASK 2 page J-9.)

The regulation requires immediate reporting. By immediate reporting, it is expected that any allegation of mistreatment, neglect, abuse and injuries of unknown source is reported as soon as staff becomes aware of the incident. This does not allow for delay based on the time of the day or night or convenience of staff. Injuries of unknown source discovered when the administrator is

not in-house would require immediate notification to the administrator. The injury must be reported immediately, regardless of the size of the facility, how minor the incident or the number of allegations.

The requirement to report directly to the administrator does not allow for delegation to an alternate staff member. Facility policy should specify who has the authority of the administrator when the administrator is unable to assume his/her functions. During these times, the administrator may appoint an acting administrator who has full authority to take prompt and necessary action to assure health and safety of clients (including termination of employees). The administrator or acting administrator with full authority is responsible to receive and act on reports of allegations 24 hours every day.

A “reproducible mechanism” would show evidence of the administrator being notified that corresponds to a written signature with time and date. According to CMS, sending an e-mail or voice mail does not meet the intent of this regulation. Though these methods may be reproducible, they do not ensure the administrator received the information in a timely manner.

The above clarification and guidance does not reflect a change in the federal regulations. It is a CMS clarification of the intent of the regulations. The intent is to ensure that there is an effective system in place to protect clients from abuse and neglect. Staff must understand and practice the procedures used to report all allegations of mistreatment, neglect, abuse and injuries of unknown source as required.

BQA encourages prompt review of your reporting process. Failure to comply with each and all of the above components each and every time will result in a citation of W tag 153 and possibly other related W tags.

If you have further questions about reporting requirements, please contact the BQA Regional Field Operations Director in your area, Jean Kollasch, BQA Provider Regulation Consultant at (608) 267-0466 or Dinh Tran, BQA Social Services Consultant at (608) 266-6646.