



COMMISSIONER
Jon Weizenbaum

November 19, 2013

To: Intermediate Care Facilities for Persons with an Intellectual Disability (ICFs/IID)
Exempt from Licensure

Subject: **Provider Letter 13-29** – Guidelines for Reporting Incidents in ICFs/IID Exempt From
Licensure to the Texas Department of Aging and Disability Services (DADS)
(Replaces **Provider Letter 09-02**)

DADS is issuing this letter to provide guidance on reporting and investigating incidents that are reportable to DADS. Effective November 4, 2013, these guidelines supersede those set forth in Texas Administrative Code (TAC), Title 40, Part 1, Chapter 9, §9.225 and the memorandum of understanding (MOU) entitled “*Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Department of Human Services (TDHS), and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICFMR)*”, effective March 25, 1996.

Although the new rules were effective on November 4, 2013, DADS surveyors will not begin to cite providers for non-compliance with the rules until November 25, 2013.

Background

The Code of Federal Regulations (CFR) at 42 CFR §483.420(d)(2)-(4), requires an ICF/IID to comply with the following:

“(2)(W153) *The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.*

(3)(W154-W155) *The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.*

(4)(W156-W157) *The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.”*

Reporting Incidents to DADS

Effective November 4, 2013, 40 TAC §[9.225](#), as amended, governs the reporting of incidents to DADS. Non-licensed ICFs/IID should no longer follow the MOU previously referenced in that section.

40 TAC §[9.225](#) (a) and (b) states:

“(a) In this section, ‘serious physical injury’ is defined as in [Chapter 711](#) of this title (relating to Investigations in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs).

(b) A program provider that, in accordance with Texas Health and Safety Code, §252.003, is exempt from licensure under THSC, §252.031, must report the following incidents to DADS Consumer Rights and Services at 1-800-458-9858 within one hour after suspecting or learning of the incident:

- 1. alleged (Class I) physical abuse of an individual, as defined in Chapter 711 of this title, that caused or may have caused serious physical injury;*
- 2. alleged (Class I) sexual abuse of an individual, as defined in Chapter 711 of this title;*
- 3. sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual;*
- 4. sexual activity involving an individual who is less than 18 years of age;*
- 5. the pregnancy of an individual;*
- 6. individual-to-individual aggression that results in serious physical injury;*
- 7. the death of an individual; and*
- 8. the inability to locate an individual if:*
 - (A) the individual’s health or safety is at risk; or*
 - (B) the individual’s location has been unknown for more than eight hours.”*

DO NOT Report the Following Incidents to DADS:

1. Neglect allegations – Report the allegation to the Texas Department of Family and Protective Services (DFPS).
2. Drug diversions – Notify the local police department.
3. Accidental injuries – If neglect is suspected, report the suspicion to DFPS.
4. Injuries of unknown origin – If there is reason to suspect that an injury of unknown origin was the result of abuse or neglect, report the suspicion to DFPS.
5. Self-injurious behavior - If neglect is suspected, report the suspicion to DFPS.
6. Routine hospitalizations due to illness – Promptly notify the individual’s legally authorized representative of any significant illnesses (42 CFR §483.420(c)(6), W148).
7. Burglary of facility – Notify the local police department.
8. Theft of facility property – Notify the local police department.

Written Investigation Reports

Effective November 4, 2013, 40 TAC §[9.225](#) (c) states:

“(c) Within five working days after making a report described in subsection (b) of this section, the program provider must:

- (1) conduct a thorough investigation of the incident; and*
- (2) send a written investigation report on Form 3613A, Provider Investigation Report, to DADS Consumer Rights and Services.”*

If DFPS is the investigative authority in accordance with Texas Health and Safety Code §252.121(a), DFPS investigates the incident. If DFPS investigates the incident, a non-licensed ICF/IID must do the following to satisfy the requirement in 40 TAC §9.225(c). The non-licensed ICF/IID must send the DFPS preliminary investigation report to DADS on DADS [Form 3613-A](#) within five working days after making the report to DADS. Upon conclusion of the DFPS investigation, DFPS will send its final investigation report to the ICF/IID. The ICF/IID must then send the DFPS final investigation report to DADS on DADS [Form 3613-A](#).

Mail or fax DADS [Form 3613-A](#) to:

Texas Department of Aging and Disability Services
Consumer Rights and Services — Complaint Intake Unit
P.O. Box 149030, Mail Code E-249
Austin, TX 78714-9030
Toll-free FAX (877) 438-5827 or (512) 438-2722 or 2724

A flow chart that outlines the new reporting requirements is attached to this letter.

If you have questions regarding this letter, please contact an ICF/IID policy specialist in the Policy, Rules and Curriculum Development unit at 512-438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services

MTH:cg

Non-Licensed ICFs/IID Incident Reporting Flow Chart for DADS Reportable Incidents

40 TAC §9.225(b) requires the following incidents to be reported to DADS. The definition of serious physical injury is in 40 TAC [Chapter 711](#).

1. alleged (Class I) physical abuse of an individual, as defined in [Chapter 711](#) of this title, that caused or may have caused serious physical injury;
2. alleged (Class I) sexual abuse of an individual, as defined in [Chapter 711](#) of this title;
3. sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual;
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8. the inability to locate an individual if:
(A) the individual's health or safety is at risk; or
(B) the individual's location has been unknown for more than eight hours."

