



COMMISSIONER
Jon Weizenbaum

November 19, 2013

To: Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICFs/IID) Exempt from Licensure

Subject: **Provider Letter 13-26** –Texas Department of Family and Protective Services (DFPS) Investigations and Facility Investigations in ICFs/IID Exempt From Licensure (Replaces Provider Letter 12-16)

The Texas Department of Aging and Disability Services (DADS) is re-issuing this provider letter to replace references to the memorandum of understanding 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.

This letter provides guidance for conducting a facility investigation when DFPS does not investigate an allegation of abuse, neglect or exploitation (ANE), DFPS does not investigate a complaint that was reported by a person who is not affiliated with the ICF/IID, or DFPS conducts an in-home investigation of an ANE allegation in the ICF/IID.

The Code of Federal Regulations (CFR), Title 42, §483.420(d)(3) (W154) requires an ICF/IID to “have evidence” that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are “thoroughly investigated.” Also, per 42 CFR §483.420(d)(4) (W156), the results of all investigations must be reported to the administrator in accordance with State law. The facility, therefore, should have a reproducible mechanism to ensure its responsiveness to concerns of individuals, their families and others. While no particular system is required, the facility’s system must ensure prompt resolution of complaints.

An ICF/IID exempt from licensure must conduct an investigation if:

- DFPS does not investigate an ANE allegation that was reported by an employee of the ICF/IID because it does not meet DFPS’ definition of ANE in Texas Administrative Code (TAC), Title 40, Part 19, [Chapter 711](#), Investigations in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs (as described in [§711.5](#));
- DFPS does not investigate a complaint that was reported by a person who is not affiliated with the ICF/IID because it does not meet DFPS’ definitions in 40 TAC [§711.5](#) of [Chapter 711](#) (when DFPS receives a complaint that is listed in 40 TAC [§711.7](#), DFPS will not investigate the complaint, but will forward the complaint to the ICF/IID that the complaint pertains to); or
- DFPS Adult Protective Services (APS) conducts an in-home investigation related to an individual of the ICF/IID who was allegedly abused, neglected or exploited by a family

member, or a person with an ongoing relationship with the individual, who is not an employee of the ICF/IID where the individual resides, and the facility was not responsible for supervision at the time the ANE was alleged. (The DFPS APS handbook for in-home investigations at http://www.dfps.state.tx.us/handbooks/APS_Facility/Files/AFC_pg_1400.jsp states that the facility will **not** receive a copy of the APS investigation report, but the investigator will give the facility information to:

1. implement measures to limit or prohibit the alleged perpetrator's access to the person served when necessary, and
2. prevent future ANE by the alleged perpetrator.)

While conducting its investigation, a non-licensed ICF/IID must not interfere with the DFPS in-home investigator.

Upon the conclusion of investigations related to the three situations listed above, a non-licensed ICF/IID must keep these investigation reports for review by DADS surveyors at the next recertification survey. If the incident is reportable to DADS as outlined in DADS rules at 40 TAC Part 1, Chapter 9, Subchapter E, Division 4, §[9.225](#) (effective November 4, 2013), a non-licensed ICF/IID must send its investigation report to DADS on DADS Form 3613-A within five working days.

If you have questions regarding the content of 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

Attachment

Non-licensed ICFs/IID Alleged ANE Reporting and Investigation Requirements Flow Chart

