



**TO:** Directors of Developmental Disabilities State Operations Office  
Directors of Developmental Disabilities Regional Office  
Executive Directors of Voluntary Providers operating Intermediate Care Facilities (ICF/IIDs)

**FROM:** Megan O'Connor-Hebert, Deputy Commissioner   
Division of Quality Improvement, Office for People With Developmental Disabilities

Lee E. Weissmuller, Director   
Bureau of ICF/IID Quality and Surveillance, Department of Health

**DATE:** December 4, 2013

**RE:** Clarification of ICF/IIDs Investigation Requirements

**The purpose of this memo is to provide direction for ICF/IIDs on requirements for investigations of incidents where the NYS Justice Center for the Protection of People With Special Needs (Justice Center) is conducting the investigation.**

Federal regulation 42 CFR 483.420(d)(4) requires that, “The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with state law within **5 working days** of the incident...” To meet this requirement the facility must conduct and complete an investigation into the incident and provide results of the investigation to the administrator within five working days.

Federal interpretive guidelines for the requirement note that in cases where an incident has been reported to law enforcement and law enforcement is conducting an investigation, the facility is still required to conduct and complete an internal investigation and report those findings to the administrator within the five working day timeframe. The ICF/IID regulations do not apply to law enforcement and therefore they cannot be held to this same timeframe to complete their investigation.

That guidance is applicable in all cases except those cases in which law enforcement has advised the facility **not** to conduct its own investigation.

*In the cases where law enforcement has instructed facility staff not to conduct its own investigation, the facility, **in each instance**, must have clear documentation of who issued the instruction and the date of such instruction. (This documentation has commonly been referred to as a letter of forbearance.) There must also be documentation regarding how the facility will monitor the status of those investigations.*

**For purposes of ICF/IID investigations, the Justice Center is a law enforcement agency. Therefore, even in cases where the Justice Center is investigating an incident, and as with other law enforcement entities, an ICF/IID must complete an investigation and report results to the administrator within five working days of the incident *unless* the Justice Center has instructed the facility not to conduct its own investigation. In those cases, the Justice Center will issue a letter of forbearance specific to that instruction.**

The ICF/IID provider agency is responsible for compliance with the Federal ICF/IID incident management requirements and for maintaining relevant documentation when a law enforcement agency, including the Justice Center, is investigating an incident.

OPWDD's Incident Management Unit is available to assist with any questions or concerns at (518) 473-7032.