

Critical Incident Reporting Requirements

For Community Centered Boards
and Service Provider Agencies

**DIVISION FOR INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES**

May 2017



Our Mission

Improving health care access and outcomes for the **people** we serve while demonstrating sound stewardship of financial **resources**



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Purpose

- Ensure the health, safety and welfare of waiver participants.
- Educate case management and provider agencies, including Regional Centers, on the statutory, waiver and regulatory requirements for:
 - Mandatory reporting
 - Incident reporting
 - Critical incident reporting
 - Investigations



Presentation Topics

- Mistreatment definitions
- Mandatory reporting requirements
- Incident reporting requirements
- Critical incident reporting requirements
- Investigation requirements



Right to Humane Treatment

All service agencies shall prohibit mistreatment, exploitation, neglect, or abuse in any form of any person receiving services.

C.R.S. 25.5-10-221(2)



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Caretaker Definition

“Caretaker” means a person who:

- Is responsible for the care of a person with an intellectual and developmental disability as a result of a family or legal relationship;
- Has assumed responsibility for the care of a person with an intellectual and developmental disability; or
- Is paid to provide care, services, or oversight of services to a person with an intellectual and developmental disability.

C.R.S. 25.5-10-202 (1.6) (a)-(c)



Mistreatment

"Mistreated" or "Mistreatment" means:

- Abuse;
- Caretaker neglect;
- Exploitation;
- An act or omission that threatens the health, safety, or welfare of a person with an intellectual and developmental disability; or

C.R.S. 25.5-10-202 (29.5) (a)-(d)



Mistreatment

"Mistreated" or "Mistreatment" means *(cont'd)*:

- An act or omission that exposes a person with an intellectual and developmental disability to a situation or condition that poses an imminent risk of bodily injury to the person with an intellectual and developmental disability.

C.R.S. 25.5-10-202 (29.5) (e)



Undue Influence

"Undue influence" means the use of influence to take advantage of a person with an intellectual and developmental disability's vulnerable state of mind, neediness, pain, or emotional distress.

C.R.S. 25.5-10-202(37.5)



Abuse

"Abuse" means any of the following acts or omissions committed against a person with an intellectual and developmental disability:

- The non-accidental infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

C.R.S. 25.5-10-202 (1) (a)



Abuse (cont'd)

- Confinement or restraint that is unreasonable under generally accepted caretaking standards; or
- Subjection to sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.

C.R.S. 25.5-10-202 (1) (b)-(c)



Caretaker Neglect

"Caretaker neglect" means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or other treatment necessary for the health and safety of a person with an intellectual and developmental disability is not secured for a person with an intellectual and developmental disability or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise, or a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for an at-risk adult with IDD.

C.R.S. 25.5-10-202 (1.8) (a)



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Caretaker Neglect (cont'd)

Notwithstanding the provisions of paragraph (a) of this subsection (1.8), the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect.

C.R.S. 25.5-10-202 (1.8) (b)



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Caretaker Neglect (cont'd)

As used in this subsection (1.8), "medical directive or order" includes a medical durable power of attorney, a declaration as to medical treatment executed pursuant to section 15-18-104, C.R.S., a medical order for scope of treatment form executed pursuant to article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to article 18.6 of Title 15, C.R.S.

C.R.S. 25.5-10-202 (1.8) (c)



Exploitation

“**Exploitation**” means an act or omission committed by a person who:

- Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive a person with an intellectual and developmental disability of the use, benefit, or possession of any thing of value;
- Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the person with an intellectual and developmental disability;

C.R.S. 25.5-10-202 (15.5) (a)-(b)



Exploitation (cont'd)

- Forces, compels, coerces, or entices a person with an intellectual and developmental disability to perform services for the profit or advantage of the person or another person against the will of the person with an intellectual and developmental disability; or
- Misuses the property of a person with an intellectual and developmental disability in a manner that adversely affects the person with an intellectual and developmental disability's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

C.R.S. 25.5-10-202 (15.5) (c)-(d)



Mandatory Reporting to Law Enforcement

On and after July 1, 2016, a person specified in paragraph (b) of this subsection (1) who observes the mistreatment of an at-risk elder or an at-risk adult with IDD, or who has reasonable cause to believe that an at-risk elder or an at-risk adult IDD has been mistreated or is at imminent risk of mistreatment, shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.

C.R.S. 18-6.5-108 (1) (a)



Mandatory Reporting to Law Enforcement

The following persons, whether paid or unpaid, shall report as required by paragraph (a) of this subsection (1):

- Staff, consultants, or independent contractors of service agencies as defined in section 25.5-10-202 (34), C.R.S.
- Persons performing case management or assistant services for at-risk elders or at-risk adults with IDD.
- Employees, contractors, and volunteers operating specialized transportation services for at-risk elders and at-risk adults with IDD.

C.R.S. 18-6.5-108 (1) (b) (X), (XII), & (XVII)



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Mandatory Reporting to Law Enforcement

Willful violation of the mandatory reporting requirements is considered a class 3 misdemeanor.

C.R.S. 18-6.5-108 (c)

Penalties for a class 3 misdemeanor are found in the Colorado Criminal Code, C.R.S. 18-1.3-501.



Mandatory Reporting to Adult Protective Services (APS)

A person specified in paragraph (b) of this subsection (1) who observes the mistreatment or self-neglect of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated OR is self-neglecting and is at imminent risk of mistreatment is urged to report such fact to a county department not more than twenty-four hours after making the observation or discovery.

C.R.S. 26-3.1-102 (1) (a)



Incident Reporting Requirements

Community Centered Boards, service agencies and regional centers shall have a written policy and procedure for the timely reporting, recording and reviewing of incidents which shall include, but not be limited to:

10 CCR 2505-10 8.608.6 A



Incident Reporting Requirements

- Injury to a person receiving services
- Lost or missing persons receiving services
- Medical emergencies involving persons receiving services
- Hospitalization of persons receiving services
- Death of person receiving services
- Errors in medication administration

10 CCR 2505-10 8.608.6.A.1-6



Incident Reporting Requirements

- Incidents or reports of actions by persons receiving services that are unusual and require review
- Allegations of mistreatment, abuse, neglect, or exploitation
- Use of safety control procedures
- Use of emergency control procedures
- Stolen personal property belonging to a person receiving services

10 CCR 2505-10 8.608.6 A.7-11



Incident Reporting Requirements

Reports of incidents shall include:

- Name of the person reporting
- Name of the person receiving services involved in the incident
- Name of persons involved or witnessing the incident
- Type of incident

10 CCR 2505-10 8.608.6 B.1-5



Incident Reporting Requirements

Reports of incidents shall include *(cont'd)*:

- Date and place of occurrence
- Duration of the incident
- Description of the action taken
- Whether the incident was observed directly or reported to the agency

10 CCR 2505-10 8.608.6 B.6-9



Incident Reporting Requirements

Reports of incidents shall include *(cont'd)*:

- Names of persons notified
- Follow-up action taken or where to find documentation of further follow-up
- Name of person responsible for follow-up

10 CCR 2505-10 8.608.6 B.10-12



Incident Reporting Requirements

- Allegations of abuse, mistreatment neglect and exploitation, and injuries which require emergency medical treatment or result in hospitalization or death shall be reported immediately to the agency administrator or designee, and to the community centered board within 24 hours.
- Reports of incidents shall be placed in the record of the person.
- Records of incidents shall be made available to the Department upon request.

10 CCR 2505-10 8.608.6 D.-F.



Incident Reporting Requirements

- Community centered boards, program approved service agencies and regional centers shall review and analyze information from incident reports to identify trends and problematic practices which may be occurring in specific services and shall take appropriate corrective action to address problematic practices identified.

10 CCR 2505-10 8.608.6 F



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Critical Incidents

- The Home and Community Based Services- for Persons with Developmental Disabilities (HCBS-DD), Supported Living Services (HCBS-SLS) and Children's Extensive Supports (HCBS-CES) waivers require certain types of incidents be reported to the Department of Health Care Policy and Financing (the Department).
- These incidents are identified as Critical Incidents.



Critical Incident Types

- Serious Injury: resulting in emergency treatment or hospitalization to preserve life or limb.
- Medical Crisis: physical or psychiatric illness resulting in unplanned hospitalization.
- Missing Person: person is not immediately found, their safety is at serious risk or there a risk to public safety.

Critical Incident Types

- Emergency Control Procedure: resulting in injury to waiver participant.
- Safety Control Procedure: resulting in injury to waiver participant.
- Medication Error: resulting in adverse health outcome.

Critical Incident Types

- Death: expected or unexpected.
- Unusual Incidents Requiring Review:
 - A serious criminal offense that is committed by a person.
 - A violation of parole or probation that potentially will result in the revocation of parole/probation.
 - Any criminal offense that is committed by a person receiving services that results in immediate incarceration.

Critical Incident Types

- Mistreatment, Abuse, Neglect and Exploitation (MANE):
 - Involve injury, death, adverse medical outcome, crime committed against a participant or by a participant, exploitation in excess of \$300 or police involvement.
 - Allegations identified through trend analysis of incident data (e.g., pattern of suspicious bruising, multiple medication errors, etc.).

Critical Incident Reporting Requirements (Providers)

The Department requires all PASAs to report critical incidents to the CCB immediately upon detection via telephone, e-mail or facsimile but no more than 24 hours after the incident occurrence.

Subsequent to initial reporting, the agency must submit a written incident report to the CCB within 24 hours of discovery of the incident.



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Critical Incident Reporting Requirements (CCBs)

The Department requires all CCBs to report critical incidents, to the Department, as soon as possible after discovering the incident but no later than noon of the next business day.

CCBs report critical incidents to the Department through the Department's web-based critical incident reporting system, the DDDweb.



Critical Incident Reporting Requirements

Critical incidents must include:

- Detailed description of the incident.
- Names of persons involved in the incidents.
- Immediate action taken to ensure the waiver participants health, safety and welfare.
- Parties notified including guardians, law enforcement, Adult Protective Services and Child Protective Services.
- Immediate follow-up action taken or to be taken.
- Names of persons/agencies responsible for follow-up.



Critical Incident Reporting Requirements

Critical incident reports must include *(con't)*:

- The outcome of an investigation (as applicable).
- Follow-up as requested by the Department.
- Actions taken as a result of an investigation (as applicable).
- Address or name of group home (as applicable).
- Changes to services or service plan as a result of incident (as applicable).
- Check mortality box (as applicable).



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Critical Incident Reporting Requirements

- Do not use abbreviations.
- Do not use titles in substitute of the names of agency personnel.
- Use full names for any non-waiver participants.
- Do not enter “See investigation report”.
- Provide clear timelines, including antecedent(s).
- Check all applicable boxes and fields.
- Complete investigation field for allegations of Mistreatment.



Critical Incident Reporting Requirements

- Document outcome of law enforcement, APS and agency investigations.
- Thoroughly describe how incident was addressed and remediated to prevent recurrence.
- Document training, disciplinary actions or changes in policies/procedures/protocols.
- Write the critical incident so that anyone reading it can get a clear understanding of the incident.
- Complete requested follow-up by the due date.



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Investigations

Agencies must:

- Ensure prompt action to protect the safety of the person receiving services. Such action may include any action that would protect the person(s) receiving services if determined necessary and appropriate by the service agency or community centered board pending the outcome of the investigation. Actions may include, but are not limited to, removing the person from his/her residential and/or day services setting and removing or replacing staff.
- Provide necessary victim supports.

10 CCR 2505-10 8.608.8.B.8 & 9



Investigations

Appendix G of the Home and Community Based Services-for Persons with Developmental Disabilities (HCBS-DD), Supported Living Services (HCBS-SLS) and Children's Extensive Support (HCBS-CES) waivers require that all incidents of Mistreatment are investigated.

An investigation is required for any questions not resolved by law enforcement or APS investigation (e.g. provider training, program management, supervision, etc.).



Investigations

- Agencies shall maintain a written record of all investigations.

- Investigative record shall include:
 - Incident report and preliminary results
 - Summary of the investigative procedures utilized
 - Full investigative findings
 - Actions taken
 - The Human Rights Committee review of the investigation

10 CCR 2505-10 8.608.8.D.2.a-e.



Investigations

Agencies shall ensure that appropriate actions are taken, including support for the victim, when an allegation against an employee or contractor is substantiated, and that the results of the investigation are recorded, with the employee's or contractor's knowledge, in the employee's personnel or contractor's file.

10 CCR 2505-10 8.608.8.D.3



Questions?



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Thank You!



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