COLORADO
Department of Health Care Policy & Financing

OPERATIONAL MEMO

Title: Health, Safety, and Welfare Roles and Responsibilities for Case Management Agencies, Provider Agencies, and Human Rights Committees	**Topic:** Case Management ,Case Management Redesign
Audience: Home and Community-Based Services (HCBS) Waiver Members, Provider Agencies, Stakeholders, Case Management Agencies, Human Rights Committees	**Sub-Topic:** Human Rights Committee (HRC)
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Purpose and Audience:

The purpose of this Operational Memo is to provide operational guidance to Case Management Agencies (CMAs) and Provider Agencies serving Home and Community Based Services (HCBS) waiver members. This memo outlines the roles and responsibilities of CMAs and Provider Agencies for Psychotropic Medication, Rights Modifications, Incident Reporting (including Critical Incident Reporting), Human Rights Committee (HRC) and Investigations.

Information:

The Department of Health Care Policy and Financing (HCPF) has implemented Case Management Redesign (CMRD). CMRD refers to several initiatives aimed at simplifying access to long-term services and supports (LTSS), creating stability for the case management system, increasing and standardizing quality requirements, ensuring accountability, and achieving federal compliance. It was initiated in 2014, with a federal requirement for a conflict free case management system and was further developed with input from stakeholders to create a more simplified system. HCPF passed HB 21-1187 to implement this effort. Over the course of the past five years, HCPF has worked with stakeholders to develop policies and procedures to support the infrastructure necessary to execute a simplified and conflict-free case management system.

As part of CMRD, HCPF has completed multiple changes to our case management and Provider Agency regulations in 2024 to align and streamline the regulations across the LTSS system. Additional changes to waiver amendments and regulations will be forthcoming as HCPF continues to align regulations while implementing all federal requirements and new initiatives.

Until HCPF can fully align all CMA, Provider Agency, and HRC regulations, the following operational guidance is being provided. The rules cited below can be found at 10 CCR 2505-10 8.7000 Home and Community-Based Services.

Provider Agency Roles and Responsibilities

1. Psychotropic Medications

    a. Provider Agencies ensure that psychotropic medications for waiver members are in compliance with Section 8.7415.A-B.

b. Psychotropic medication for waiver members shall be used only for diagnosed psychiatric disorders and are prescribed after a psychiatric evaluation at the discretion of their medical provider.

c. Psychotropic medication Informed Consent shall be obtained by the Provider Agency. Informed Consents will be reviewed by the Department of Public Health and Environment (CDPHE) at the time of certification surveys. Informed Consents will be provided to CMAs annually according to HRC policies and procedures as outlined herein.

d. Provider Agencies shall comply with all state regulations, including CDPHE.

2. Rights Modifications

a. Member identified teams ensure that Rights Modifications are reviewed no less frequently than every six months. This can be more frequent based on the unique needs of the individual.

b. Provider Agencies must ensure that all Rights Modifications follow the requirements of the Home and Community Based Services Settings Final Rule. (8.7001)

c. Provider Agencies must develop the Rights Modification on HCPF required forms and provide them to the CMA to ensure Informed Consent is obtained and HRC approval is granted before the implementation of the Rights Modification.

3. Incident Reporting

a. Provider Agencies shall ensure all employees and contractors receive Critical Incident Reporting training.

b. Provider Agencies shall complete all reporting necessary for compliance with CDPHE and HCPF. (8.7411)

c. Provider agencies shall follow all mandated reporting requirements for allegation of mistreatment, abuse, neglect, and exploitation. (8.7411.A.4 and 8.7408.4)

d. Provider Agencies shall follow all regulatory requirements of timely Critical Incident Reporting to the member's CMA. (8.7411.B)

e. Provider Agencies shall conduct internal reviews of Incident Reports to determine root causes, determine appropriate and timely follow-up necessary to ensure the health, safety, and welfare of members, immediate action taken by the provider to mitigate risk, and identify trends to prevent future incidents. (8.7411.E and 8.7408.A.4)

f. Provider Agencies shall ensure contingency plans are developed and followed to mitigate undue health, safety, and welfare risk to HCBS waiver members. Contingency plans shall outline the immediate action necessary to provide services in the event that approved services are not available. (8.7408.A.10)

g. Provider Agencies shall make Incident Reports and all review and follow-up available to the CMA, HCPF, and CDPHE upon request. (8.7411.D)

4. Policies and Procedures

    a. Provider Agencies shall ensure they have written policies and procedures for: medication administration; mistreatment, abuse, neglect, and exploitation (MANE), protection of individual rights, dispute resolution, and grievances. (8.7408)

CMA Roles and Responsibilities

1. Informed Consent

    a. The Case Manager ensures that the Informed Consent agreement for a Rights Modification is informed, freely given, and in writing by confirming that the individual (or, if authorized, their Guardian or other Legally Authorized Representative) understands all of the information required to be documented in Section 8.7001.B.4 and has signed the HCPF-prescribed form to that effect.

2. Rights Modification

    a. Rights Modifications, which are developed by the member's Provider Agency, shall be documented in the Person-Centered Support Plan.

b. CMA Monitoring shall include a review of the member's services to ensure there are no violations of HCBS Settings Final Rule (8.7202.K).

c. Case Managers shall report a violation of the HCBS Settings Final Rule as a Critical Incident Report (Other High-Risk Issue) or otherwise applicable, request a Rights Modification form from the Provider Agency immediately, and ensure an Informed Consent is obtained.

d. Case Managers shall report a violation of the HCBS Settings Final Rule that endanger the health, welfare, or safety of a member CDPHE.

e. Case Managers shall report a violation of the HCBS Settings Final Rule that meets the definition of mandated reporting to Law Enforcement and Adult Protective Services per mandated reporting laws.

3. Critical Incident Reporting

a. CMAs shall ensure all employees receive Critical Incident Reporting training.

b. Case Managers shall follow all applicable timelines set forth in regulation and contract for Critical Incident Reporting.

c. Case Managers shall conduct all required follow-up within assigned timelines.

d. Case Managers shall follow all mandated reporting law requirements for allegation of mistreatment, abuse, neglect, and exploitation.

e. Case Managers shall report health, safety, and welfare concerns to the CDPHE.

4. Administrative Review

a. CMAs shall conduct requested activities upon HCPF's request necessary to complete an Administrative Review of a Critical Incident.

5. Policies and Procedures

a. CMAs shall ensure they have written policies and procedures for: rights and responsibilities of members, CMA preservation of member rights, complaint process, Community Advisory Committee review, and use of a Long-Term Services and Supports Representative. (8.7200.B,8., 8.7201.C., 87201.D)

CMA Human Rights Committee (HRC) Roles and Responsibilities

Each CMA shall establish at least one HRC. The HRC is a third-party advisory and review body to the administration of the CMA.

Per Section 25.5-10-209(h), C.R.S, the HRC must "be composed, to the extent possible, of two professional persons trained in the application of behavior development techniques and three representatives of persons receiving services, their parents, legal guardians, or authorized representatives. An employee or board member of a Case Management Agency or an employee of a Service Provider may not serve as a member of the HRC.

The CMA must have HRC operating procedures which include, but are not limited to, HRC responsibilities for the committee's organization, use of Department required universal documents, the review process, mitigation of potential conflicts of interest, and provisions for recording dissenting opinions of committee members in the committee's recommendations. CMAs must also develop and adopt an HRC policy and procedure for the emergency review of Rights Modifications.

HRC Roles and Responsibilities

The HRC does not have the authority to enforce changes to the Member's plan or services, but rather to provide oversight of essential documents, such as the Informed Consents, and to provide recommendations for Rights Modifications.

1. The HRC will review Rights Modifications for all HCBS waiver members by:

    a. Ensuring Informed Consent is fully complete and up to date for all Rights Modifications.

    b. Reviewing Rights Modifications according to the CMAs policy and procedures for emergency review of Rights Modifications.

    c. Provide recommendations for ending/modifying the Rights Modification.

d. Provide recommendations for changes the member identified team may need to implement for restoring rights.

2. The HRC will review Psychotropic Medication for members in the Home and Community Based Services-Developmental Disability (HCBS-DD), Home and Community Based Services-Supported Living Services (HCBS-SLS), Home and Community Based Services-Children's Extensive Supports (HCBS-CES), and Home and Community Based Services-Children's Habilitation Residential Program (HCBS-CHRP) waivers by:

    a. Ensuring Informed Consent is fully complete and up to date.

The HRC does not have the authority to make any changes to medications or dosage. Any and all medication changes must be prescribed through the appropriate medical provider.

Updated HCBS Investigation Process-Now Administrative Review and State Administrative Review

To standardize incident reporting review and evaluation and increase oversight of the review of incidents of waiver members, HCPF requires a tiered review and evaluation of incident reporting dependent on the severity of the incident report and risk mitigation necessary to ensure health, welfare, and safety of the member.

The increased oversight and implementation of the Administrative Review and State Level Administrative Review is otherwise known to stakeholders as incident investigation. Review and evaluation of a reported incident may occur at the lowest level which involves Provider Agency review and evaluation and does not directly require Department involvement. HCPF works collaboratively with CDPHE to review incident reporting, root cause analysis, and immediate action to ensure health, safety, and welfare of waiver members as they conduct compliance surveys of Provider Agencies.

If an incident meets Critical Incident criteria, as outlined in section 8.7202.L, subsequent review will occur as the report is entered in HCPF’s IT system and follow-up is required based on timelines and criteria set by HCPF. As incidents fall into the category of Administrative Review defined herein, further follow-up, documentation, and action may be required at the discretion of HCPF.

As incidents fall into the category of the State Level Administrative Review defined herein, there is increased collaboration of Provider Agencies, CMAs, HCPF, and other state agencies to determine appropriate action needed to ensure the review process and documentation is standardized for all waiver members, there is appropriate oversight related to each agency's roles and responsibilities, and the investigative process meets the expectations of HCPF.

Provider Agencies must follow all roles and responsibilities outlined above and in Section 8.7000 to ensure rights, health, safety, and welfare of HCBS waiver members.

The Administrative Review will include the following:

1. Review of reports and relative documentation obtained by CMAs from Provider Agencies. Including, but not limited to:
    a. Description of the incident,
    b. Immediate action taken to protect the health, welfare, and safety of the member,
    c. Additional reporting (CDHS, CDPHE, Law Enforcement, Guardian), victims assistance referrals,
    d. Root cause analysis of incident-including whether the incident could have been prevented,
    e. Corrective action relevant to the incident.
2. At HCPF's discretion, CMAs and Provider Agencies shall be required to obtain additional documentation to complete a review of a member's health, safety, and welfare through Critical Incident Reporting follow-up.

The State Level Administrative Review will include the following:

1. Documentation of Provider Agencies, CMAs, CDPHE, and as allowed under statutory allowance CDHS.
2. HCPF findings and action recommendations necessary to ensure member's health, safety, and welfare within the purview of HCPF and DPHE.

a. HCPF findings and recommendations shall not supersede member choice and autonomy. HCBS waiver services will continue to be obtained voluntarily.

Opportunities for Engagement

Stakeholders will have an opportunity to engage with HCPF prior to further regulatory development. Future rule promulgation will align past and future Case Management Regulations to ensure compliance of the Home and Community-Based Services Settings Final Rule and the CMS Ensuring Access to Medicaid Services Final Rule. HCPF will communicate engagement opportunities through Constant Contact.

Actions to be Taken:

Provider Agencies, Case Management Agencies, and Human Rights Committees shall be aware of the regulations and operational guidance herein and implement them effectively immediately.

Definition(s):

Informed Consent: Informed Consent means the informed, freely given, written agreement of the individual (or, if authorized, their Guardian or other Legally Authorized Representative) to a Rights Modification.

Rights Modifications: Rights Modification means any situation in which an individual is limited in the full exercise of their rights. Rights Modifications include, but are not limited to the use of Intensive Supervision if deemed a Rights Modification (under the definition in Section 8.7001.A.6, the use of Restraints, modifications to the other rights in Section 8.7001.B.2 (basic criteria applicable to all HCBS Settings) and Section 8.7001.B.3, any provider actions to implement a court order limiting any of the foregoing individual rights, rights suspensions under Section 25.5-10-218(3) and all situations formerly covered by **HCPF**'s processes for rights suspensions or restrictive procedures.

Critical Incident: Critical Incident means an actual or alleged event that creates the risk of serious harm to the health or welfare of an individual receiving services; and it may endanger or negatively impact the mental and/or physical well-being of an

individual. Critical incidents include but are not limited to; Injury/illness; abuse/neglect/exploitation; damage/theft of property; medication mismanagement; lost or missing person; criminal activity; unsafe housing/displacement; or death.

Psychotropic Medications: Psychotropic Medications means any prescribed medication used for the purpose of modifying the behavior of members receiving services in the Home and Community-Based Services-Developmental Disability (HCBS-DD), Home and Community-Based Services-Supported Living Services (HCBS-SLS), Home and Community-Based Services-Children's Extensive Support (HCBS-CES), or Home and Community-Based Services-Children's Habilitation Residential Program (HCBS-CHRP) waiver.

Administrative Review: means the investigation process for the expressed purpose to review the health, safety, and welfare protections taken by provider agencies of HCBS waiver members in reference to a critical incident. Administrative Reviews will be requested at HCPF's discretion and completed by the Case Management Agency for incidents meeting the following criteria including, but not limited to: (1) allegations of mistreatment, abuse, neglect, or exploitations that are reported to be of suspected malicious intent; (2) root causes have not been determined through provider agency review; (3) other state or legal entity has not investigated.

State Level Administrative Review: means the state level investigation process for the expressed purpose to review Critical Incident Reports that require cross-state entity review.

Webpage:

https://hcpf.colorado.gov/human-rights-committee

Attachment(s):

None

HCPF Contact:

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