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:** Rights and Critical Incidents
Audience: Members Enrolled in Home and Community-Based Services, Provider Agencies, Stakeholders, Case Management Agencies, Human Rights Committees	**Sub-Topic:** Human Rights Committee and Administrative Review
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Purpose and Audience:

The purpose of this Operational Memo is to provide additional clarification regarding the operational guidance provided to Case Management Agencies (CMAs) and Provider Agencies previously outlined in OM 24-036 regarding the roles and responsibilities of CMAs and Provider Agencies for Psychotropic Medication, Rights Modifications, Incident Reporting (including Critical Incident Reporting), Human Rights Committees

(HRCs), Administrative Reviews, and State Level Administrative Reviews. In addition, this memo introduces the new Health, Safety, and Welfare: Roles and Responsibilities for Case Management Agencies, Provider Agencies, and Human Rights Committees Factsheet.

Definition(s):

Administrative Review - 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 the Department of Health Care Policy and Financing's (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, and exploitation 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.

Critical Incident - 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 Medication - Any prescribed medication used for the purpose of modifying the behavior of Members receiving services in HCBS-Children's Extensive Support (CES), HCBS-Children's Habilitation Residential Program (CHRP), HCBS-Developmental Disability (DD), or HCBS-Supported Living Services (SLS).

Rights Modification - 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 §8.7001.A.6, the use of Restraints, the use of Restrictive or Controlled Egress Measures; modifications to the other rights in §8.7001.B.2 (basic criteria applicable to all Home and Community-Based Services (HCBS) Settings) and §8.7001.B.3 (additional criteria for HCBS Settings), any Provider actions to implement a court order limiting any of the foregoing individual rights, and rights modification under §25.5-10-218(3).

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

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

Information:

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 CMA 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.

The following operational guidance identifies key roles and responsibilities for CMAs, Provider Agencies, and HRCs for Members enrolled in HCBS-DD, HCBS-SLS, HCBS-CES, HCBS-CHRP and State General Fund programs. The rules cited below can be found in 10 CCR 2505-10 §8.7000.

Action To Be Taken:

Provider Agencies, CMAs, and HRCs shall be aware of the regulations and operational guidance herein and implement them effective immediately.

Provider Agency Roles and Responsibilities

Psychotropic Medications

- Provider Agencies ensure that psychotropic medications for Members are in compliance with §8.7415.
- Psychotropic Medication for Members shall be used only for diagnosed psychiatric disorders and are prescribed after a psychiatric evaluation at the discretion of their medical provider.
- Psychotropic Medication Informed Consent shall be obtained and maintained in the Member record by the Provider Agency. Informed Consents will be reviewed

by the Department of Public Health and Environment (CDPHE) at the time of certification surveys follow-up, as applicable. Informed Consents will be provided to CMAs by Provider Agencies annually according to HRC policies and procedures as outlined herein.
- Provider Agencies shall comply with all applicable state and federal regulations, including CDPHE.

Rights Modifications

- Provider Agencies shall collect data in correlation with each Rights Modification and present this data at each six-month review.
- Provider Agencies shall ensure that all Rights Modifications follow the requirements of the HCBS Settings Final Rule (§8.7001.B) and OM 24-062.

Incident Reporting

- Provider Agencies shall ensure all employees and contractors receive Critical Incident Reporting training.
- Provider Agencies shall complete all reporting necessary for compliance with CDPHE and HCPF (§8.7411).
- Provider Agencies shall follow all incident reporting requirements for allegations of mistreatment, abuse, neglect, and/or exploitation (§8.7411.A.4 and §8.7408.A.4).
- Provider Agencies shall follow all regulatory requirements of timely Critical Incident Reporting to the Member's CMA (§8.7411.B-F).
- 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, determine immediate action taken by the provider to mitigate risk, and identify trends to prevent future incidents (§8.7408.A.4 and 8.7411.E).
- Provider Agencies shall ensure contingency plans are developed and followed to mitigate undue health, safety, and welfare risk for Members. Contingency plans shall outline the immediate action necessary to provide services in the event that approved services are not available (section 8.7408.A.10).
- Provider Agencies shall make Incident Reports and all reviews and follow-up available to the CMA, HCPF, and CDPHE upon request (§8.7411.D).

Policies and Procedures

- Provider Agencies shall ensure they have written policies and procedures for:
    - Medication Administration (§8.7408.A.2),
    - Mistreatment, abuse, neglect, and/or exploitation (§8.7408.A.4),

- Protection of Individual Rights (§8.7408.A.5),
- Dispute Resolution (§8.7408.A.7), and
- Grievances and Complaints (§8.7408.A.8).

CMA Roles and Responsibilities

Informed Consent

- 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 §8.7001.B.4 and has signed the HCPF-prescribed form to that effect.

Rights Modification

- Rights Modifications, which are developed by the Member's Provider Agency and consented to by the Member (or, if authorized, their Guardian or other Legally Authorized Representative), shall be documented in the Person-Centered Support Plan.
- CMA Monitoring Contacts shall include a review of the Member's services to ensure there are no violations of HCBS Settings Final Rule (§8.7202.K)
- Case Managers shall report a violation of the HCBS Settings Final Rule as a Critical Incident Report and labeled as "Other High-Risk Issue".
- Case Managers shall report a violation of the HCBS Settings Final Rule that presents imminent danger to a Member and when a Provider Agency does not have actions outlined to protect the health, welfare, or safety of a Member to CDPHE.
  - CDPHE Health Facilities Complaint Form
- Case Managers shall report a violation of the HCBS Settings Final Rule that meets the definition of mandatory reporting to Law Enforcement and Child or Adult Protective Services per mandatory reporting laws (§18-6.5-108 (wrongs to at-risk adults), §19-3-304 (persons required to report child abuse), and 26-3.1-102 (reporting requirements), C.R.S.).

Critical Incident Reporting

- CMAs shall ensure all employees receive Critical Incident Reporting training.
- Case Managers shall follow all applicable timelines set forth in regulation and contract for Critical Incident Reporting.
- Case Managers shall conduct all required follow-up within assigned timelines.
- Case Managers shall follow all mandatory reporting law requirements for allegation of mistreatment, abuse, neglect, and/or exploitation.

- CMAs shall report all allegations of mistreatment, abuse, neglect, and/or exploitation that as a complaint to CDPHE.

Administrative Review

- CMAs shall conduct requested activities as necessary, upon request and at the discretion of HCPF, for the purpose of a Critical Incident Administrative Review.

Policies and Procedures

- CMAs shall ensure they have written policies and procedures meeting applicable State statutes, rules, and contract for:
    - Complaint Process (§8.7201.D),
    - Preservation of Member Rights (§8.7201.J.1),
    - Incident Reporting (§8.7201.L.1),
        - This includes Critical Incidents and Mandatory Reporting.
    - Mistreatment, abuse, neglect, and/or exploitation (§8.7201.L.1), and
    - HRC (§8.7202.Q.8).

<u>CMA Human Rights Committee (HRC)</u>

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

The HRC shall be composed, to the extent possible, of two professional persons trained in the application of behavior development techniques and three representatives comprised of one or more of the following: persons receiving LTSS, parents, Guardians, or Legally Authorized Representatives of a person receiving LTSS, persons with lived experience having long-term care needs, or persons caring for a loved one with long-term care needs. An employee or board member of a Provider Agency within the CMA's designated service area shall 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 HCPF 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.

<u>HRC Roles and Responsibilities</u>

- The HRC does not have the authority to enforce changes to the Member's support plan or services, but rather to provide oversight of essential documents, such as the Informed Consents, and to provide recommendations for Rights Modifications.
- The HRC will review Rights Modifications for HCBS-DD, HCBS-SLS, HCBS-CES, HCBS-CHRP and State General Fund Members by:
    - Ensuring Informed Consent is fully completed in its entirety to include a valid, non-expired signature.
    - Providing recommendations for modifying and/or ending the Rights Modification.
    - Providing recommendations for modifying the reinstatement plan.
- The HRC will review Psychotropic Medication for Members receiving Residential Habilitation services in HCBS-DD and HCBS-CHRP waivers by:
    - Ensuring Informed Consent is completed in its entirety to include a valid, non-expired signature.
    - 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.

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 HCPF 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 §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 §8.7000 to ensure rights, health, safety, and welfare of HCBS waiver Members.

The Administrative Review will include the following:

- Review of reports and relative documentation obtained by CMAs from Provider Agencies including, but not limited to:
- Description of the incident,
- Immediate action taken to protect the health, welfare, and safety of the Member,
- Additional reporting (CDHS, CDPHE, Law Enforcement, Guardian), victims assistance referrals,
- Root cause analysis of incident-including whether the incident could have been prevented, and
- Corrective action relevant to the incident.
- 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:

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

Links:

10 CCR 2505-10 8.7000

HCBS Critical Incident Reporting Website

HCBS Settings Final Rule Webpage

Health, Safety, and Welfare: Roles and Responsibilities for Case Management Agencies, Provider Agencies, and Human Rights Committees-Fact Sheet

Human Rights Committee Webpage

Memo Series Website

Attachment(s):

None

HCPF Contact:

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