

Bureau of Managed Care Managed Care Organizations Policy / Procedures

General Contract Monitoring

Health, Safety, and Welfare (HSW) Report Process, Effective January 1, 2024

Process

The External Quality Review Organization (EQRO) may encounter critical incidents or health, safety, and welfare (HSW) concerns through the course of their health plan compliance and reporting reviews. This document provides guidance on how these scenarios will be communicated by the EQRO to the Department, Department oversight and Department health plan sanction actions. This document is not intended to be an all-inclusive description of every possible situation an EQRO may encounter and report to the Department.

The EQRO will determine if a critical incident or HSW concern occurred during the lookback period when reviewing a health plan's required documentation. The EQRO will determine whether the health plan identified and reported the concern (as applicable), and whether the health plan addressed the enrollee's health, safety, and welfare¹. An HSW report will be submitted to the Department by the EQRO if all of the following criteria have been met:

- A critical incident or HSW concern occurred during the lookback period and the health plan did not identify/recognize the incident or concern.
- OR**
- The health plan identified the incident or concern but did not ensure the enrollee's health, safety, and welfare (as applicable to the incident/concern).

The Department will review all submitted HSW reports. Upon Department approval of the reports, the EQRO will distribute the reports to the health plans for remediation.

Definitions

Critical Incidents²

A critical incident is an actual or alleged event that creates the risk of serious harm to the health or welfare of a client receiving waiver services. A critical event occurs during the provision of services to an individual or affects the provision of services to an individual. The Department's critical incident definitions are included in Appendix A.

HSW Concerns

HSW concerns may not rise to the level of a critical incident. However, throughout the course of the review, if the EQRO identifies a scenario, which based on their judgment and experience, potentially places the enrollee's HSW in jeopardy, the EQRO will describe the scenario via an HSW report to submit to the Department.

Examples of HSW concerns include, but are not limited to the following:

¹ Review may require documentation prior to or after the lookback period.

² Managed Care Organizations Policy/Procedure: MCO-035-Critical Incident Reporting. Revised March 2022.

- A significant event has occurred and there is no documentation demonstrating that outreach to the enrollee has been conducted.
- Gaps in service of greater than 30 days are identified, which place the enrollee's HSW in jeopardy, and there is no indication there has been follow up to investigate or rectify.

Department Oversight and Sanctions:

Pursuant to the Managed Care Contracts, the Department may impose civil money penalties, late fees, performance penalties (collectively, "monetary sanction"), and other sanctions, for a health plan's failure to substantially comply with the terms of the contract. The Department may impose penalties for the HSW reports identified during the EQRO reviews or may impose penalties to health plans for performance rates below 86 percent on any CMS HCBS waiver performance measure.

Appendix A: Critical Incident Categorization and Definitions³

This section serves to provide the Departments expectations for categorization of critical incidents. Definitions for each category are provided.

- A. **Critical Incident (CI)** - actual or alleged abuse, neglect, exploitation, or any incident that has the potential to place a member or member's services at risk, including those that do not rise to the level of abuse, neglect, or exploitation; any incident that jeopardizes the health, safety and welfare of a member; this includes events that may cause substantial or serious harm to the physical or mental health of a member or the safety of a member's services.
- B. **"Abandonment"** means the desertion or willful forsaking of an eligible adult by an individual responsible for the care and custody of that eligible adult under circumstances in which a reasonable person would continue to provide care and custody. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abandonment because of health care services provided or not provided by licensed health care professionals.
- C. **Abuse** - the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish (42 CFR Section 488.301), generally used in conjunction with Neglect.

Abuse includes physical abuse, verbal abuse, sexual abuse, or harassment, and mental or emotional abuse.

- D. **Fraud** - a manner of operation that results in excessive or unreasonable costs to the Federal or State health care programs.
- E. **Neglect** - a failure to notify the appropriate health care professional, (ii) to provide or arrange necessary services to avoid physical or psychological harm to a member, or (iii) to terminate the residency of a member whose needs can no longer be met, causing an avoidable decline in function.

Neglect includes passive neglect, willful deprivation, and isolation.

- I. **Passive Neglect** - a non-malicious failure to provide the necessities of life including, but not limited to, food, clothing, shelter, or medical care.
 - II. **Willful Deprivation** - a willful denial of medications, medical care, shelter, food, therapeutic devices, or other physical assistance to a person who, because of age, health, or disability, requires such assistance and thereby exposes that person to the risk of physical, mental, or emotions harm because of such denial; except with respect to medical care or treatment when the dependent person has expressed an intent to forego such medical care or treatment and has the capacity to understand the consequences.
- F. **Exploitation** - the misuse or withholding of a member's assets and resources (belongings and money). It includes, but is not limited to, misappropriation of assets or resources of the alleged

³ HFS Critical Incidents Guide. Revised May 2022.

victim by undue influence, by breach of fiduciary relationship, by fraud, deception, extortion, or in any manner contrary to law.

- G. Behavioral Health** - a serious behavioral health incident that results in emergency treatment. This can include self-neglect, self-injury, property damage, verbal aggression, suicide ideation, attempted suicide, sexually problematic behavior, uncontrolled problematic alcohol or substance abuse, and any other mental health emergency.
- H. Death** - deaths resulting from a new or existing medical condition made unusual because they are related to; a treatment error, medication or omission of medication, poor care, or there was a recent allegation of abuse, neglect or exploitation, or the member was receiving home health services at time of passing. Any death of a member occurring: within 14 calendar days after discharge or transfer of the member from a residential program or facility, within 24 hours after deflection from a residential program or facility, at an agency or facility or at any Department-funded site.
- I. Unanticipated Death**- a death of a member that could not have been anticipated or predicted. Examples include but are not limited to accidental death, death resulting from suicide, death that occurs in questionable circumstances, resulting from any other unexpected or unknown reason.
- J. Legal/Criminal Activity**- (Involves State, Local or Municipal Law Enforcement) includes problematic possession or use of a weapon, arrest, property damage greater than \$50, or other criminal activity. Including:
- Any illegal activity that is allegedly committed by the waiver participant in which there is law enforcement involvement; Examples include, but are not limited to: arrests, incarceration, criminal court appearances/charges, illegal drug use, and shoplifting.
 - Violation of probation or parole that potentially will result in the revocation of probation/parole.
 - Any criminal offense that is committed by a waiver participant that results in immediate incarceration.
- K. Medication Management**- When there is a discrepancy between what a physician prescribes and what a member takes such as a member taking the wrong medication, which includes taking medication after it has been discontinued or taking the incorrect medication because it was improperly labeled. Medical management includes situations of a member taking the wrong dose of medication, a member omitting and not taking a prescribed dose of medication within the 24-hour period of a calendar day, or a member's refusal to take prescribed medication. Also refers to issues with medication dosage, scheduling, timing, set-up, compliance, and administration or monitoring which results in harm or an adverse effect which necessitates medical care. Any instance of missing medication (i.e., stolen medication) should also be reported here.
- L. Restraint, Seclusion, or other Restrictive Intervention**- Unauthorized restraint is any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely. Seclusion is defined as placing a person in a locked or barricaded area that prevents contact with others. Confinement

means restraining or isolating, without legal authority, a person for reasons other than medical reasons ordered by a Physician.

M. Medical Emergency/Injury/Illness –

- Any recurring injury or illness that **requires treatment beyond first aid** which includes lacerations requiring stitches or staples, fractures, dislocations, loss of limb, serious burns, skin wounds, pneumonia, urinary tract infections, etc.
- An injury or illness requiring immediate emergency medical treatment to preserve life or limb.
- An emergency medical treatment that results in admission to the hospital
- **Medical Emergency:** Admission of a member to a hospital or the provision of emergency medical services (treatment by EMS) that results in medical care which is unanticipated and/or unscheduled for the member and which would not routinely be provided by a primary care provider.

N. Missing Person/Elopement

- A person who is identified as missing by law enforcement, hospital elopement or leaving against medical advice, staff, family, caretakers, or other natural supports.
- A person is considered “missing” if they cannot be located and there is reason to believe the person may be lost or in danger.

O. Environmental/Unsafe Housing/Displacement:

- Unsafe housing is any home or living space which does not provide a safe and healthy environment. Loss of utilities, structurally unsafe, etc.
- Displacement is the removal of the client from a home or living space due to natural disaster (fire, flooding, tornado, etc.) or eviction.
- Social environment hazards are the culture that the waiver participant lives in and the people and institutions with whom the waiver participant interacts, would include family, roommates, facility staff and providers.