

TITLE 7 HEALTH
CHAPTER 1 HEALTH GENERAL PROVISIONS
PART 13 INCIDENT REPORTING, INTAKE, PROCESSING AND TRAINING REQUIREMENTS

7.1.13.1 ISSUING AGENCY: New Mexico Department of Health.
[7.1.13.1 NMAC - Rp, 7.14.3.1 NMAC, 02/28/06]

7.1.13.2 SCOPE: This rule is applicable to persons, organizations or legal entities to include: developmental disability waiver, developmental disability general fund, disabled and elderly waiver, medically fragile waiver and traumatic brain injury programs, adult day care center, adult day care home, adult residential care facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic;
[7.1.13.2 NMAC - Rp, 7.14.3.2 NMAC, 02/28/06]

7.1.13.3 STATUTORY AUTHORITY: Department of Health Act, NMSA 1978 Section 9-7-6 (E) and Section 24-1-2 (D) Sections 24-1-3 (I) (L) (O) (T) (U) and 24-1-5, NMSA 1978, of the Public Health Act as amended.
[7.1.13.3 NMAC - Rp, 7.14.3.3 NMAC, 02/28/06]

7.1.13.4 DURATION: Permanent.
[7.1.13.4 NMAC - Rp, 7.14.3.4 NMAC, 02/28/06]

7.1.13.5 EFFECTIVE DATE: February 28, 2006, unless a later date is cited at the end of a section.
[7.1.13.5 NMAC - Rp, 7.14.3.5 NMAC, 02/28/06]

7.1.13.6 OBJECTIVE: This rule establishes standards for licensed health care facilities and community based service providers to institute and maintain an incident management system and employee training program for the reporting of abuse, neglect and misappropriation of property.
[7.1.13.6 NMAC - Rp, 7.14.3.6 NMAC, 02/28/06]

7.1.13.7 DEFINITIONS:

A. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

B. "Case manager" means the staff person designated to coordinate and monitor the individual service plan for persons receiving community based services.

C. "Complaint" means any report, assertion, or allegation of abuse, neglect, or misappropriation of a consumer's property made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility or community based service provider is required to report under applicable law.

D. "CMS" means the centers for medicare and medicaid services.

E. "Community based service providers" means any person, organization or legal entity providing the following services:

(1) **"developmental disability general funded services"** means a state general funded services for persons with developmental disabilities through contract with the department;

(2) **"developmental disability waiver services"** means a medicaid funded home or community based services for persons with developmental disabilities;

(3) **"disabled & elderly waiver services"** means a medicaid funded home or community based services for persons who are elderly or disabled;

(4) **"medically fragile waiver services"** means a medicaid funded home or community based services for persons who are medically fragile; or

(5) **"traumatic brain injury services"** means state general funded service or medicaid home or community based services for persons with traumatic brain injury.

F. "Confirmed" means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

G. "Consumer" means any person who engages the professional services of a medical or other health professional on an inpatient or outpatient basis, or person requesting services from a hospital.

H. "Department" means the New Mexico department of health.

- I.** "Division" means the department of health, division of health improvement, incident management bureau.
- J.** "Employee" means:
- (1) any person whose employment or contractual service with a community based service provider or licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that community based service provider or licensed health care facility; or
 - (2) any compensated persons such as employees, contractors and employees of contractors; or guardianship service providers or case management entities that provide services to people with developmental disabilities; or administrators or operators of facilities who are routinely on site.
- K.** "Immediate access" means physical or in person direct and unobstructed access, to electronic or other access needed by employees, consumers, family members or legal guardian to the licensed health care facility's or community based service program's incident management reporting procedures or access to the division's incident report form.
- L.** "Immediate reporting" means reporting that is done as soon as practicable and no later than twenty four hours from knowledge of the incident.
- M.** "Immediate jeopardy" means a provider's noncompliance with one (1) or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.
- N.** "Incident" means any known, alleged or suspected event of abuse, neglect, misappropriation of consumers' property and where applicable to community based service providers, unexpected deaths or other reportable incidents.
- O.** "Incident management system" means the written policies and procedures adopted or developed by the licensed health facility or community based service provider for reporting abuse, neglect, misappropriation of consumers' property and where applicable to community based service providers, unexpected deaths or other reportable incidents.
- P.** "Incident report form" means the reporting format issued by the division for the reporting of incidents or complaints.
- Q.** "Licensed health care facilities" means any organization licensed by the department for the following services: adult day care center, adult day care home, adult residential care facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.
- R.** "Misappropriation of property" means the deliberate misplacement of consumer's property, or wrongful, temporary or permanent use of a consumer's belongings or money without the consumer's consent.
- S.** "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.
- T.** "Non-responsible provider" means, any reporter who is reporting an incident in which they are not the responsible community based service provider or licensed health care facility during the time of the incident.
- U.** "Quality assurance" means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative and clinical practices in meeting the needs of persons served as well as achieving the licensed health care facility's or community based service provider's mission, values and goals.
- V.** "Quality improvement system" means the adopted or developed licensed health care facility's or community based service provider's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, misappropriation of consumers' property and where applicable to community based service providers, unexpected deaths or other reportable incidents for the continuous study and improvement of the efficiency and efficacy of organizational, administrative and preventative practices in employee training and reporting.
- W.** "Reporter" means any person who or any entity that reports possible abuse, neglect or misappropriation to the department's incident management system.
- X.** "Restraints" means use of a mechanical device, or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer's freedom of movement, performance of physical activity, or normal access to his body.
- Y.** "Revocation" means a type of sanction making a license null and void through its cancellation.
- Z.** "Sanction" means a measure imposed by the department on a licensed or contract program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

AA. "Suspension" means a temporary cancellation of a license pending an appeal, hearing or correction of the deficiency. During a suspension the provider's medicare or medicaid agreement is not in effect.

BB. "Training curriculum" means the instruction manual or pamphlet adopted or developed by the licensed health facility or community based service provider containing policies and procedures for reporting abuse, neglect, misappropriation of consumers' property and where applicable to community based service providers, unexpected deaths or other reportable incidents.

CC. "Volunteer" means any person who works without compensation for a community based service provider or licensed health care facility whose services includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that community based service provider or licensed health care facility. [7.1.13.7 NMAC - Rp, 7.14.3.7 NMAC, 02/28/06]

7.1.13.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR LICENSED HEALTH CARE FACILITIES:

A. Duty To Report:

- (1) All licensed health care facilities shall immediately report abuse, neglect or misappropriation of property to the adult protective services division.
- (2) All licensed health care facilities shall report abuse, neglect, misappropriation of property, and injuries of unknown sources to the division within a twenty-four (24) hour period.
- (3) All licensed health care facilities shall ensure that the reporter with direct knowledge of an incident has immediate access to the division incident report form to allow the reporter to respond to, report, and document incidents in a timely and accurate manner.

B. Notification:

(1) **Incident Reporting:** Any consumer, employee, family member or legal guardian may report an incident either independently or through the licensed health care facility to the division by telephone call, written correspondence or other forms of communication utilizing the division's incident report form. The incident report form and instructions for the completion and filing are available at the division's website, <http://dhi.health.state.nm.us/elibrary/ironline/ir.php> or may be obtained from the department by calling the toll free number (insert toll free number).

(2) **Division Incident Report Form and Notification by Licensed Health Care Facilities:** The licensed health care facility shall report incidents utilizing the division's incident report form consistent with the requirements of the division's incident management system guide and CMS regulations as applicable. The licensed health care facility shall ensure all incident report forms alleging abuse, neglect or misappropriation of consumer property submitted by a reporter with direct knowledge of an incident are completed on the division's incident report form and received by the division within twenty-four (24) hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday. The licensed health care facility shall ensure that the reporter with the most direct knowledge of the incident prepares the incident report form.

C. Incident Policies: All licensed health care facilities shall maintain policies and procedures which describes the licensed health care facility's immediate response to all reported allegations of incidents involving abuse, neglect, misappropriation of consumer property, injuries of unknown sources, and deaths, as applicable.

D. Retaliation: Any individual who, without false intent, reports an incident or makes an allegation of abuse, neglect or exploitation will be free of any form of retaliation.

F. Quality Improvement System for Licensed Health Care Facilities: The licensed health care facility shall establish and implement a quality improvement system for reviewing alleged complaints and incidents. The incident management system shall include written documentation of corrective actions taken. The provider shall maintain documented evidence that all alleged violations are thoroughly investigated, and shall take all reasonable steps to prevent further incidents.

[7.1.13.8 NMAC - N, 02/28/06]

7.1.13.9 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR COMMUNITY BASED SERVICE PROVIDERS:

A. Duty To Report:

- (1) All community based service providers shall immediately report abuse, neglect or misappropriation of property to the adult protective services division.
- (2) All community based service providers shall report to the division within twenty four (24) hours: abuse, neglect, or misappropriation of property, unexpected and natural/expected deaths; and other reportable incidents to include:

(a) an environmental hazardous condition, which creates an immediate threat to life or health; or
(b) admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care which is unanticipated or unscheduled for the consumer and which would not routinely be provided by a community based service provider.

(3) All community based service providers shall ensure that the reporter with direct knowledge of an incident has immediate access to the division incident report form to allow the reporter to respond to, report, and document incidents in a timely and accurate manner.

B. Notification:

(1) **Incident Reporting:** Any consumer, employee, family member or legal guardian may report an incident independently or through the community based service provider to the division by telephone call, written correspondence or other forms of communication utilizing the division's incident report form. The incident report form and instructions for the completion and filing are available at the division's website, <http://dhi.health.state.nm.us/elibrary/ironline/ir.php> or may be obtained from the department by calling the toll free number (1-800-797-3260).

(2) **Division Incident Report Form and Notification by Community Based Service Providers:** The community based service provider shall report incidents utilizing the division's incident report form consistent with the requirements of the division's incident management system guide. The community based service provider shall ensure all incident report forms alleging abuse, neglect or misappropriation of consumer property submitted by a reporter with direct knowledge of an incident are completed on the division's incident report form and received by the division within twenty-four (24) hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday. The community based service provider shall ensure that the reporter with the most direct knowledge of the incident prepares the incident report form.

(3) **Legal Guardian or Parental Notification by Reporter:** The community based service provider shall ensure that an alleged incident is reported concurrently with the division within twenty-four (24) hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday to the consumer's legal guardian or family member if the consumer is a minor. Exception. If the parents or legal guardian are suspected of committing the alleged abuse, neglect or misappropriation of property the community based service provider will defer the matter to the division's investigative representative.

(4) **Case Manager Notification by Community Based Service Providers:** Community based service providers shall notify the consumer's case manager that an alleged incident involving abuse, neglect, or misappropriation of property has occurred and been reported to the division within twenty-four (24) hours of an alleged incident or the next business day if the incident occurs on a weekend or a holiday. It is acceptable to redact names of other consumers and employees before the document is forwarded to a case manager.

(5) **Non-responsible Reporter:** Reporters who are reporting an incident in which they are not the responsible community based service provider shall notify the responsible community based service provider concurrently with the division within twenty-four (24) hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday.

(6) **Community Based Service Providers Notification of Law Enforcement Intervention:** The community based service provider shall report to the division all instances of law enforcement intervention that results in the arrest or detention of a consumer which involves an incident, as defined by this rule, within twenty-four (24) hours of occurrence.

C. Incident Policies: All community based service providers shall maintain policies and procedures, which describe the community based service provider's immediate response to all reported allegations of incidents involving abuse, neglect, or misappropriation of property; all unexpected deaths or natural/expected deaths, and other reportable incidents required as required in Paragraph (2) of Subsection A of 7.1.13.9 NMAC.

D. Retaliation: Any individual who, without false intent, reports an incident or makes an allegation of abuse, neglect or exploitation will be free of any form of retaliation.

E. Quality Improvement System for Community Based Service Providers: The community based service provider shall establish and implement a quality improvement system for reviewing alleged complaints and incidents. The incident management system shall include written documentation of corrective actions taken. The community based service provider shall maintain documented evidence that all alleged violations are thoroughly investigated, and shall take all reasonable steps to prevent further incidents. The community based service provider shall provide the following internal monitoring and facilitating quality improvement system:

(1) community based service providers funded through the long-term services division to provide waiver services shall have current incident management policy and procedures in place, which comply with the department's current requirements;

- (2) community based service providers providing developmental disabilities services must have a designated incident management coordinator in place;
 - (3) community based service providers providing services under the disabled & elderly waiver must have current incident management policy and procedures in place, which comply with department's current requirements;
 - (4) community based service providers providing developmental disabilities services must have an incident management committee to address internal and external incident reports for the purpose of looking at internal root causes and to take action on identified trends or issues.
- [7.1.13.9 NMAC - N, 02/28/06]

7.1.13.10 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

A. General: All licensed health care facilities and community based service providers shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The licensed health care facility or community based service provider shall ensure that the incident management system policies and procedures requires all employees to be competently trained to respond to, report, and document incidents in a timely and accurate manner.

B. Training Curriculum: The licensed health care facility and community based service provider shall provide all employees and volunteers with a written training curriculum on incident policies and procedures for identification, and timely reporting of abuse, neglect, misappropriation of consumers' property, and where applicable to community based service providers, unexpected deaths or other reportable incidents, within thirty (30) days of the employees' initial employment, and by annual review not to exceed twelve (12) month intervals. The training curriculum may include computer-based training. Periodic reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the licensed health care facilities or community based service provider's facility. Training shall be conducted in a language that is understood by the employee and volunteer.

C. Incident Management System Training Curriculum Requirements:

(1) The licensed health care facility and community based service provider shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

- (a) an overview of the potential risk of abuse, neglect, misappropriation of consumers' property;
- (b) informational procedures for properly filing the division's incident management report form;
- (c) specific instructions of the employees' legal responsibility to report an incident of abuse, neglect and misappropriation of consumers' property.

(d) specific instructions on how to respond to abuse, neglect, misappropriation of consumers' property;

(e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, misappropriation of consumers' property; and

(f) where applicable to employees of community based service providers, informational procedures for properly filing the division's incident management report form for unexpected deaths or other reportable incidents.

(2) All current employees shall receive training within ninety (90) days of the effective date of this rule.

(3) All new employees shall receive training within thirty (30) days of the employees initial hire date.

D. Training Documentation: All licensed health care facilities and community based service providers shall prepare training documentation for each employee to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The licensed health care facility and community based service provider shall maintain documentation of an employee's training for a period of at least twelve (12) months, or six (6) months after termination of an employee's employment. Training curricula shall be kept on the provider premises and made available on request by the department. Training documentation shall be made available immediately upon a division representative's request. Failure to provide employee training documentation shall subject the licensed health care facility or community based service provider to the penalties provided for in this rule.

E. Consumer and Guardian Orientation Packet: Consumers, family members and legal guardians shall be made aware of and have available immediate accessibility to the licensed health care facility and community based service provider incident reporting processes. The licensed health care facility and community based service provider shall provide consumers, family members or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect or misappropriation. The licensed health care facility and community based service provider shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in the consumer's file. The appropriate consumer, family member or legal guardian shall sign this at the time of orientation.

F. Posting of Incident Management Information Poster: All licensed health care facilities and community based service providers shall post two (2) or more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and Internet addresses. All licensed health care facilities and community based service providers operating sixty (60) or more beds shall post three (3) or more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and Internet addresses. The posters shall be posted where employees report each day and from which the employees operate to carry out their activities. Each licensed health care facility or community based service provider shall take steps to insure that the notices are not altered, defaced, removed, or covered by other material.
[7.1.13.10 NMAC - N, 02/28/06]

7.1.13.11 ACCESS AND COOPERATION TO FACILITATE DEPARTMENT INCIDENT INVESTIGATIONS:

A. The department will conduct incident investigations and periodic quality assurance reviews of licensed health care facilities and community based service providers subject to these requirements. These reviews may be either announced or unannounced in accordance with the procedures set forth in 7.1.12 NMAC.

B. All health care facilities and community based service providers shall facilitate immediate physical or in-person access to department personnel investigating incidents or conducting quality assurance reviews:

- (1) all records, regardless of media, including but not limited to, financial records, all client records, individual service plans, IFSPs, personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys and agency policy /procedures manuals;
- (2) all necessary employees with direct knowledge of the incident;
- (3) all necessary clients currently receiving services, guardians, representatives and family members with direct knowledge of the incident; and
- (4) all administrative and service delivery sites.

[7.1.13.11 NMAC - Rp, 7.14.3.12 NMAC, 02/28/06]

7.1.13.12 CONSEQUENCES OF LICENSED HEALTH CARE FACILITIES OR COMMUNITY BASED SERVICE PROVIDER NONCOMPLIANCE:

A. The department or other governmental agency having regulatory enforcement authority over a licensed health care facility or community based service provider may sanction a licensed health care facility or community based service provider in accordance with applicable law if the licensed health care facility or community based service provider fails to report incidents of abuse, neglect or misappropriation of consumers property or fails to provide or fails to maintain evidence of an existing incident management system and employee training documentation as set forth by this rule.

B. Such sanctions may include revocation or suspension of license, directed plan of correction, intermediate sanctions or civil monetary penalty up to five thousand dollars (\$5000) per instance, or termination or non-renewal of any contract with the department or other governmental agency.

C. All confirmed incident investigations conducted by the department hold the licensed health care facility or community based service provider responsible for the actions of the employee in their employment with the following exception. Any employee found to have caused the abuse, neglect or misappropriation of consumer property, shall be held accountable independent of the licensed health care facility or community based service provider. This exception applies only when the licensed health care facility or community based service provider has complied with all requirements of this rule and the employee acts outside of the provided system. When this occurs the employee shall be subject to the Employee Abuse Registry Act, Sections 29.27.1 - 8 NMSA (2005).

[7.1.13.12 NMAC - Rp, 7.14.3.11 NMAC, 02/28/06]

7.1.13.13 CONFIDENTIALITY: All consumer information reviewed or obtained in the course of quality assurance reviews of a licensed health care facility or community based service provider is confidential in accordance with all applicable federal and state law and regulation and with all applicable contract provisions. Other confidential information includes, but is not limited to: identity of the incident report form reporter, personnel records, the licensed health care facility's or community based service provider's internal incident investigations, financial documents and proprietary business information.

[7.1.13.13 NMAC - Rp, 7.14.3.10 NMAC, 02/28/06]

7.1.13.14 SEVERABILITY: If any provision or application of 7.1.13 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
[7.1.13.14 NMAC - N, 02/28/06]

HISTORY OF 7.1.13 NMAC:

Pre-NMAC History: None.

History of Repealed Material: 7.14.3 NMAC, Incident Reporting and Investigation Requirements for Providers of Community Based Services (filed 01/10/03) repealed 02/28/06.

NMAC History:

7.14.3 NMAC, Incident Reporting and Investigation Requirements for Providers of Community Based Services (filed 01/10/03) was renumbered and replaced by 7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements, effective 02/28/06.