

Policy Title: **Home and Community Based Services (HCBS) Provider Reportable Incidents Policies and Procedures**

**Policy Number: CW0004**

**Effective date: April 1, 2021**

**Revised:**

**Purpose**

This policy defines the requirements for HCBS providers to identify, receive, investigate, resolve, and record reportable incidents, including a continuous quality improvement process to track and identify trends to reduce risk and minimize the potential for future occurrence of the same or related incidents.

A *reportable incident* is an event involving a participant, which has, or may have, an adverse effect on the life, health, or welfare of the participant. A list of reportable incidents is below. Please see pages 3-4 for definitions of each of these incident types.

1. Allegation of abuse, including
  - Physical abuse
  - Psychological abuse
  - Sexual abuse/sexual contact
  - Neglect
  - Misappropriation of member funds
2. Suicide attempt
3. Death
4. Crime Level 1
5. Missing person
6. Violation of Protected Health Information (PHI)
7. Exploitation
8. The use of restrictive interventions, including restraints and seclusion

HCBS providers must have a system in place to effectively manage reportable incidents for their members and report incidents to the NYS Department of Health (the Department) via the Incident Reporting System<sup>1</sup>. **Until such time the Incident Reporting System is implemented, HCBS providers must collect, record, and track all reportable incidents within their agency/organization and have them accessible for review upon request, in addition to other notifications mentioned in this policy.** HCBS providers must have policies and procedures in place that clearly define what is *reportable* in accordance with this policy and the responsibility for managing reportable incidents, including assurance that appropriate and timely intervention(s) occur and corrective action is implemented as appropriate. Additionally, HCBS providers must also maintain a quality improvement process to track, analyze, and mitigate incidents.

---

<sup>1</sup> *The Incident Reporting System will be launched after February 2021; a procedures document will be posted at the time the system is launched.*

## **Policy**

The Department requires that HCBS providers have policies in place to handle any reportable incidents and to ensure the establishment of quality management policies and procedures to:

- Identify, document, report and review individual incidents on a timely basis
- Report incidents to the appropriate parties as outlined below
- Review individual incidents to identify appropriate preventive or corrective action
- Identify incident patterns and trends through the compilation and analysis of incident data
- Review incident patterns and trends to identify appropriate preventive or corrective action
- Implement preventive and corrective action plans

If a HCBS participant is also receiving services in a program under the jurisdiction of another State agency (e.g. Office of Mental Health (OMH); Office of Addiction Supports and Services (OASAS); Office for People with Developmental Disabilities (OPWDD); or Office of Children and Family Services (OCFS)) which has stated incident, abuse, neglect, or maltreatment reporting requirements, this policy does not relieve the obligation to report in accordance with such regulations.

*The Protection of People with Special Needs Act* requires persons who are Mandated Reporters under that Act to report abuse, neglect, and significant incidents involving vulnerable persons to the Vulnerable Persons' Central Register (VPCR) operated by the NYS Justice Center for the Protection of People with Special Needs. For additional information and requirements, please see:

<https://www.nysmandatedreporter.org/NYSJusticeCenter.aspx>

N.Y. Social Services Law 413 – *Persons and Officials Required to Report Cases of Suspected Child Abuse or Maltreatment* require Mandated Reporters to report suspected child abuse or maltreatment to the New York State OCFS-maintained Statewide Central Register of Child Abuse and Maltreatment (SCR, also known as the “hotline”) for reports made pursuant to the Social Services Law. For additional information and requirements, please see:

<https://ocfs.ny.gov/main/cps/default.asp>

## **HCBS Provider Reporting Responsibilities**

HCBS providers must utilize the Incident Reporting System (once implemented) to inform the following parties of a reportable incident within 24 hours of notification or discovery (or where applicable, by the next business day), including the known facts and circumstances of the incident, the date of the incident, last contact date and type, and current location, if known. HCBS providers must log incidents in the Incident Reporting System following the *Incident Reporting System Procedures*.

Additionally, the HCBS provider must notify the Health Home care manager, C-YES family support coordinator (if applicable), and the Medicaid Managed Care Plan (if applicable) to ensure the coordination of services, appropriate changes to the Plan of Care if needed, and notification of any changes to the HCBS service plan.

Health Home care managers and C-YES family support coordinator do not need to also report the incident as this would be duplication of reporting, unless the reportable incident was also reported to them separate and apart from the HCBS provider. Within the Incident Reporting System, Health Homes and C-YES will be able to verify the HCBS provider reporting the reportable incident.

*For children/youth enrolled in Health Homes Serving Children (HHSC):*

- The HHCM will follow incident reporting protocols as outlined in *Health Home Monitoring: Reportable Incidents Policies and Procedures #HH0005*, located at [https://www.health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/incidents.htm](https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/incidents.htm)

*For children/youth receiving care management through Children and Youth Evaluation Services (C-YES):*

- C-YES will follow incident reporting protocols

Until, the Incident Reporting System implementation, if the reportable incident implicates the child/youth’s care manager (i.e. HHCM or C-YES), the HCBS providers will notify the lead Health Home and will report the incident to the Department via the managed care complaints contact information (1-800-206-8125 or [managedcarecomplaint@health.ny.gov](mailto:managedcarecomplaint@health.ny.gov)), regardless if the participant is enrolled in a Medicaid Managed Care Plan.

**Resource List**

NYS Justice Center/Vulnerable Persons Central Registry	855-373-2122	<a href="https://www.justicecenter.ny.gov/">https://www.justicecenter.ny.gov/</a>
Managed Care Complaints	800-206-8125	<a href="mailto:managedcarecomplaint@health.ny.gov">managedcarecomplaint@health.ny.gov</a>
The Statewide Central Register of Child Abuse and Maltreatment	800-342-3720	<a href="https://ocfs.ny.gov/main/cps/">https://ocfs.ny.gov/main/cps/</a>

## Definitions

1. **Abuse:** Any of the following acts:
  - a. **Physical Abuse:** any non-accidental physical contact with a participant which causes or has the potential to cause physical harm. Examples include, but are not limited to, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment.
  - b. **Psychological Abuse:** includes any verbal or nonverbal conduct that is intended to cause a participant emotional distress. Examples include, but are not limited to, teasing, taunting, name calling, threats, display of a weapon or other object that could reasonably be perceived by the participant as a means of infliction of pain or injury, insulting or coarse language or gestures directed toward a participant which subjects the patient to humiliation or degradation; violation of participant rights or misuse of authority.
  - c. **Sexual Abuse/Sexual Contact:** includes any sexual contact and a participant. Examples include, but are not limited to, rape, sexual assault, inappropriate touching and fondling, indecent exposure, penetration (or attempted penetration) of vagina, anus or mouth by penis, fingers, or other objects. For purposes of this policy, sexual abuse shall also include sexual activity involving a participant and a service provider; or any sexual activity involving a member that is encouraged by a service provider, including but not limited to, sending sexually explicit materials through electronic means (including mobile phones, electronic mail, etc.), voyeurism, or sexual exploitation.
  - d. **Neglect:** any action, inaction or lack of attention that breaches a service provider's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of the participant.
  - e. **Misappropriation of Member Funds:** use, appropriation, or misappropriation by a service provider of a participant's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the participant of those resources. Examples include the deliberate misplacement, theft, or wrongful, temporary, or permanent use of a participant's belongings or money.
2. **Suicide Attempt:** An act committed by a participant in an effort to cause his or her own death.
3. **Death:** The death of a participant resulting from an apparent homicide, suicide, or unexplained or accidental cause; the death of a participant which is unrelated to the natural course of illness or disease.

4. **Crime Level 1:** An arrest of a participant for a crime committed against persons (i.e. murder, rape, assault) or crimes against property (i.e. arson, robbery, burglary) **AND** is perceived to be a significant danger to the community or poses a significant concern to the community.
5. **Missing Person:** When a member 18 or older is considered missing **AND** the disappearance is possibly not voluntary or a Law Enforcement Agency has issued a Missing Person Entry, **OR** when a child/youth's (under the age of 18) whereabouts are unknown to the child/youth's parent, guardian or legally authorized representative.
6. **Violation of Protected Health Information:** Any violation of a participant's rights to confidentiality pursuant to State and Federal laws including, but not limited to, 42 CFR Part 2 or the Health Insurance Portability and Accountability Act (HIPAA), and Article 27F. The HCBS provider / care manager has a responsibility to review to determine whether the incident is a breach of security versus a breach of privacy.
7. **Exploitation:** taking advantage of a participant for personal gain through the use of manipulation, intimidation, threats, or coercion.
8. **Restrictive Interventions** – According to the CMS Final Rule 42 CFR Part 482 (Federal Register/Vol 71, No. 236, pg. 71427):
  - a. A **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; or a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition. A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm (this does not include a physical escort).
  - b. **Seclusion** is the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving. Seclusion may only be used for the management of violent or self-destructive behavior.