

This is an emergency amendment to 8.370.8 NMAC, Section 11 effective 2/11/2025.

8.370.8.11 SEVERITY STANDARD: A determination of the severity of all substantiated complaints of abuse, neglect or exploitation is made for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors. In assessing the impact of abuse, neglect or exploitation, a reasonable person standard shall apply when the harmed individual is not able to express their feelings, when there is no discernable response from the harmed individual, or when circumstances do not permit a direct evaluation of the individual's psychosocial outcome. Such circumstances may include, but are not limited to, the individual's death, cognitive impairments, physical impairments, insufficient documentation by the facility, or when an individual's reaction to a deficient practice is markedly incongruent with the level of reaction a reasonable person in the individual's position would have to the deficient practice.

A. Abuse: A substantiated complaint of abuse meets the severity standard if:

- (1) the abuse results in, or is a contributing factor to, death;
- (2) the abuse results in the deliberate infliction of a [significant, identifiable] physical injury. ~~[that reasonably requires or results in medical or behavioral intervention or treatment;]~~
- (3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the abuse results in the infliction of ~~excruciating~~ pain. ~~[or pain that endures over a significant time period.]~~
- (5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, ~~[or significant] behavioral changes,~~ or by applying a reasonable person standard.
- (6) the abuse is sexual abuse; ~~[or]~~
- (7) the abuse is verbal abuse that causes [significant] mental anguish, including psychological or emotional damage, ~~[and which is] as~~ evidenced by [significant] behavioral changes or physical symptoms, or by applying a reasonable person standard.
- (8) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse; or
- (9) the employee used, brandished or threatened to use, a weapon in connection with the substantiated.

B. Neglect: A substantiated complaint of neglect meets the severity standard if:

- (1) the neglect results in, or is a contributing factor to, death;
- (2) the neglect results in the infliction of a [significant, identifiable] physical injury or emotional injury. ~~[that reasonably requires or results in medical or behavioral intervention or treatment;]~~
- (3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the neglect results in the infliction of ~~excruciating~~ pain. ~~[or pain that endures over a significant time period; or,]~~
- (5) the neglect causes [significant] mental anguish as evidenced by the victim's descriptions, or [significant] behavioral changes, or by applying a reasonable person standard; or,
- (6) the employee used alcohol or a controlled substance at or near the time of the substantiated neglect.

C. Exploitation: A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

- (1) ~~[a single instance of]~~ an objectively quantifiable loss, the value of which exceeds the lesser of either:
 - (a) ~~[\$25.00]~~ \$100.00; or,
 - (b) twenty five percent the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

D. Aggravating factors: A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation.

[8.370.8.11 NMAC - N, 07/01/2024; A/E, 2/11/2025]