

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 9 INCIDENT REPORTING, INTAKE, PROCESSING AND TRAINING REQUIREMENTS

8.370.9.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.9.1 NMAC - N, 07/01/2024]

8.370.9.2 SCOPE: This rule is applicable to persons, organizations or legal entities to include each: adult day care center, adult day care home, adult assisted living 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 or the intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, and rural health clinic.
[8.370.9.2 NMAC - N, 07/01/2024]

8.370.9.3 STATUTORY AUTHORITY: Section 24-1-3, and 24-1-5 NMSA 1978, of the Public Health Act as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) (as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.9.3 NMAC - N, 07/01/2024]

8.370.9.4 DURATION: Permanent.
[8.370.9.4 NMAC - N, 07/01/2024]

8.370.9.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.9.5 NMAC - N, 07/01/2024]

8.370.9.6 OBJECTIVE: This rule establishes standards for licensed health care facilities to institute and maintain an incident management system and employee training program for the reporting of abuse, neglect, exploitation injuries of unknown origin and other reportable incidents.
[8.370.9.6 NMAC - N, 07/01/2024]

8.370.9.7 DEFINITIONS:

- A. "Abuse"** means:
- (1) knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;
 - (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;
 - (3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration; or
 - (4) verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.
- B. "Bureau"** means the health care authority, division of health improvement, health facility licensing and certification bureau.
- C. "Case manager"** means the staff person designated to coordinate and monitor the individual service plan for persons receiving services.
- D. "Complaint"** means any report, assertion, or allegation of abuse, neglect, or exploitation of, or injuries of unknown origin to, a consumer made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility is required to report under applicable law.
- E. "CMS"** means the centers for medicare and medicaid services.
- F. "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.
- G. "Division"** means the health care authority, division of health improvement.
- H. "Employee"** means:
- (1) any person whose employment or contractual service with a licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that 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.

I. “Exploitation” means an unjust or improper use of a person's money or property for another person's profit or advantage, financial or otherwise.

J. “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 incident management reporting procedures or access to the division's incident report form.

K. “Immediate reporting” means reporting that is done as soon as practicable and no later than 24 hours from knowledge of the incident.

L. “Immediate jeopardy” means a provider's noncompliance with one or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.

M. “Incident” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

N. “Incident management system” means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

O. “Incident report form” means the reporting format issued by the division for the reporting of incidents or complaints.

P. “ISP” means a consumer's individual service plan.

Q. “Licensed health care facilities” means any organization licensed by the authority for the following services: adult day care center, assisted living 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 or intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.

R. “Mental anguish” means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

S. “Neglect” means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

T. “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 mission, values and goals.

U. “Quality improvement system” means the adopted or developed licensed health care facility's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin, 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.

V. “Reportable incident” means possible abuse, neglect, exploitation, injuries of unknown origin and other events including but not limited to falls which cause injury, unexpected death, elopement, medication error which causes or is likely to cause harm, failure to follow a doctor's order or an ISP, or any other incident which may evidence abuse, neglect, or exploitation.

W. “Reporter” means any person who or any entity that reports possible abuse, neglect or exploitation to the division.

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 authority on a licensed program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

AA. “Substantiated” 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.

BB. “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.

CC. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the licensed health facility containing policies and procedures for reporting abuse, neglect, misappropriation of consumers' property or other reportable incidents.

DD. “Unsubstantiated” means that the complaint or incident could not be verified based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

EE. “Volunteer” means any person who works without compensation for a licensed health care facility whose services includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility.

[8.370.9.7 NMAC - N, 07/01/2024]

8.370.9.8 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 exploitation to the adult protective services division.

(2) All licensed health care facilities shall report abuse, neglect, exploitation, and injuries of unknown origin or other reportable incidents to the bureau within a 24 hour period, or the next business day when the incident occurs on a weekend or holiday.

(3) All licensed health care facilities shall ensure that the reporter with direct knowledge of an incident has immediate access to the bureau 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 person may report an incident to the bureau by utilizing the DHI toll free complaint hotline at 1-800-752-8649. Any consumer, employee, family member or legal guardian may also report an incident to the bureau directly or through the licensed health care facility by written correspondence or by utilizing the bureau's incident report form. The incident report form and instructions for the completion and filing are available at the division's website or may be obtained from the authority by calling the toll free number at 1-800-752-8649.

(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 that all incident report forms alleging abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents are submitted by a reporter with direct knowledge of an incident, are completed on the bureau's incident report form and received by the division within 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 assists with the preparation of the incident report form.

C. Incident policies: All licensed health care facilities shall maintain policies and procedures which describe the licensed health care facility's immediate response to all reported allegations of abuse, neglect, exploitation, injuries of unknown origin, 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.

E. 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.

[8.370.9.8 NMAC - N, 07/01/2024]

8.370.9.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

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

B. Training curriculum: Prior to working unsupervised with consumers, the licensed health care facility shall provide all employees and volunteers with a written training curriculum and shall train them on incident

policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents. Refresher training shall be provided at annual, not to exceed 12 month, intervals. The training curriculum may include computer-based training. Reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the licensed health care 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 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, and exploitation;
- (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 or exploitation;
- (d) specific instructions on how to respond to abuse, neglect, and exploitation; and
- (e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, or exploitation.

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

D. Training documentation: All licensed health care facilities 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 shall maintain documentation of an employee's or volunteer's training for a period of at least 12 months. Training curricula shall be kept on the premises and made available on request by the authority. Training documentation shall be made available immediately upon a authority representative's request. Failure to provide employee or volunteer training documentation shall subject the licensed health care facility 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 incident reporting processes. The licensed health care facility 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 exploitation. The licensed health care facility 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 shall post two 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 operating 60 or more beds shall post at least three 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 also be posted where employees report each day and from which the employees operate to carry out their activities. Each licensed health care facility shall take steps to ensure that the notices are not altered, defaced, removed, or covered by other material.

[8.370.9.9 NMAC - N, 07/01/2024]

8.370.9.10 ACCESS AND COOPERATION TO FACILITATE AUTHORITY INCIDENT INVESTIGATIONS:

A. The authority will conduct incident investigations and periodic surveys of licensed health care facilities subject to these requirements. These reviews may be either announced or unannounced.

B. All licensed health care facilities shall facilitate immediate physical or in-person access to authority personnel investigating incidents or conducting surveys:

- (1) all records, regardless of media, including but not limited to, financial records, all client records, individual service plans, 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.

C. All licensed health care facilities shall conduct a complete investigation and report the actions taken and conclusions reached by the facility within five days of discovery of the incident.
[8.370.9.10 NMAC - N, 07/01/2024]

8.370.9.11 CONSEQUENCES OF LICENSED HEALTH CARE FACILITY NONCOMPLIANCE:

A. The authority or other governmental agency having regulatory enforcement authority over a licensed health care facility may sanction a licensed health care facility or in accordance with applicable law if the licensed health care facility fails to report incidents of abuse, neglect or exploitation 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, fails to take reasonable measures to protect consumers from abuse, neglect or exploitation, or any other violation of this rule.

B. Such sanctions may include revocation or suspension of license, directed plan of correction, intermediate sanctions or civil monetary penalty up to \$5,000 per instance.

C. All confirmed incident investigations conducted by the authority hold the licensed health care facility responsible for the actions of the employee in their employment with the following exception: any employee found to have caused the abuse, neglect or exploitation shall be held accountable independent of the licensed health care facility when the facility has complied with all requirements of this rule and the employee acts outside of the provider's system. The employee shall be subject to the Employee Abuse Registry Act or referred to the appropriate certification or licensing authority and reported to law enforcement agencies when appropriate.
[8.370.9.11 NMAC - N, 07/01/2024]

8.370.9.12 CONFIDENTIALITY: All consumer information reviewed or obtained in the course of a survey or investigation of a licensed health care facility is confidential in accordance with all applicable federal and state law and regulation. If a complaint is unsubstantiated, no information regarding the substance of the complaint or the alleged individual or provider perpetrator may be released publicly. If a complaint is substantiated, confidential information includes, but is not limited to: identity of the incident report form reporter if confidentiality has been requested, personnel records, dates of birth, drivers' license numbers, social security numbers, personal addresses and telephone numbers, the licensed health care facility's internal incident investigations, financial documents and proprietary business information.
[8.370.9.12 NMAC - N, 07/01/2024]

8.370.9.13 SEVERABILITY: If any provision or application of 8.370.9 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
[8.370.9.13 NMAC - N, 07/01/2024]

History of 8.370.9 NMAC: [RESERVED]