

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 10 ABUSE, NEGLECT, EXPLOITATION, AND DEATH REPORTING, TRAINING AND RELATED REQUIREMENTS FOR COMMUNITY PROVIDERS

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

8.370.10.2 SCOPE: This rule is applicable to persons, organizations or legal entities receiving developmental disability waiver funds and developmental disability medically fragile waiver funds acting as community-based service providers as defined in this rule.
[8.370.10.2 NMAC - N, 07/01/2024]

8.370.10.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6, NMSA 1978, Subsection D of Section 24-1-2, Subsections I, L, O, T and U of Sections 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.
[8.370.10.3 NMAC - N, 07/01/2024]

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

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

8.370.10.6 OBJECTIVE: This rule establishes standards for community-based service providers to institute and maintain an incident management system and employee and volunteer training programs for the reporting of abuse, neglect, exploitation, suspicious injuries, environmentally hazardous conditions and death.
[8.370.10.6 NMAC - N, 07/01/2024]

8.370.10.7 DEFINITIONS:

- A. "Abuse"** including verbal 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; or
 - (3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration.
- B. "Abuse, neglect, exploitation, or report of death form"** means the reporting format issued by the division for the reporting of incidents which may relate to abuse, neglect, or exploitation of a consumer, including suspicious injuries, or for reporting any death.
- C. "Case manager"** means the staff person designated to coordinate and monitor the individual service plan for persons receiving community-based services.
- D. "Community-based service providers"** means any person, organization, or legal entity, including mi via consultants, providing the following services, and having any provider agreement with the health care authority:
- (1) **"developmental disability waiver services"** means a medicaid funded home or community-based services for persons with intellectual and developmental disabilities; and
 - (2) **"medically fragile waiver services"** means medicaid funded home or community-based services for persons with intellectual and developmental disabilities who are medically fragile.
- E. "Consultant"** means the person or entity supporting the mi via consumer to make informed choices among the services offered through the mi via waiver, develop service and support plans (SSP), and providing on-going assistance with SSP implementation.
- F. "Consumer"** means any recipient of services from a community-based service provider.
- G. "Division"** means the health care authority, division of health improvement, incident management bureau.

H. “Employee” means any person whose employment or contractual service with a community-based service provider, or with a consumer, which includes direct care or routine and unsupervised physical or financial access to any care recipient served.

I. “Environmental hazard” means a condition in the physical environment which creates an immediate threat to health or safety of the individual.

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

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 guardians to the community-based service program's incident management reporting procedures or access to the division's abuse, neglect, exploitation or report of death form.

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

M. “Immediate reporting” means reporting that is done immediately. A report may only be delayed while the provider is taking immediate action to prevent harm to a consumer.

N. “Incident” means any known, alleged, or suspected event of abuse, neglect, exploitation, suspicious injury, or any death.

O. “Incident management system” means the written policies and procedures adopted or developed by the community-based service provider for reporting abuse, neglect, exploitation, suspicious injuries, or for making a report of death as required in Subsection A of 8.370.10.8 NMAC.

P. “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.

Q. “Natural support” means an uncompensated person such as a family member, friend, or any person in a supportive relationship with the consumer.

R. “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.

S. “Non-responsible provider” means any reporter who is reporting an incident of abuse, neglect, exploitation, suspicious injury or death in which they are not the responsible community-based service provider during the time of the incident.

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 community-based service provider's mission, values and goals.

U. “Quality improvement system” means the community-based service provider's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, suspicious injuries, and all deaths for the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and preventative practices in employee training and reporting.

V. “Report” means any assertion or allegation of abuse, neglect, exploitation, suspicious injuries, or report of death made by a reporter to the incident management bureau and includes any incident that a community-based service provider is required to report under applicable law.

W. “Reporter” means any person who, or any entity that, reports possible abuse, neglect, exploitation, suspicious injury, or makes a report of death to the authority's incident management bureau.

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. “Sanction” means a measure imposed by the authority on a provider, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

Z. “Sexual abuse” means the inappropriate touching of a recipient of care or services for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch another for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming, or depiction of acts considered pornographic. Sexual conduct engaged in by an employee with a person for whom they are providing care or services is sexual abuse per se.

AA. “Substantiated” means the verification of an allegation of abuse, neglect, or exploitation based upon a preponderance of reliable evidence obtained from an investigation of an allegation of abuse, neglect, or exploitation.

BB. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the community-based service provider containing policies and procedures for reporting abuse, neglect, exploitation, suspicious injury, or any death.

CC. “Unsubstantiated” means that an allegation of abuse, neglect, and exploitation could not be verified based upon a preponderance of reliable evidence obtained from an investigation of a complaint of abuse, neglect, or exploitation.

DD. “Verbal abuse” means profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

EE. “Volunteer” means any person who is not a natural support who works without compensation for a community-based service provider and whose services includes direct care or routine physical or financial access to any consumer serviced by that community-based service provider.

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

8.370.10.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR COMMUNITY-BASED SERVICE PROVIDERS:

A. Duty to report:

(1) All community-based providers shall immediately report alleged crimes to law enforcement or call for emergency medical services as appropriate to ensure the safety of consumers.

(2) All community-based service providers, their employees and volunteers shall immediately call the division of health improvement (DHI) hotline at 1-800-445-6242 to report abuse, neglect, exploitation, suspicious injuries or any death and also to report an environmentally hazardous condition which creates an immediate threat to health or safety.

B. Reporter requirement. All community-based service providers shall ensure that the employee or volunteer with knowledge of the alleged abuse, neglect, exploitation, suspicious injury, or death calls the division’s hotline to report the incident.

C. Initial reports, form of report, immediate action and safety planning, evidence preservation, required initial notifications:

(1) **Abuse, neglect, and exploitation, suspicious injury or death reporting:** Any person may report an allegation of abuse, neglect, or exploitation, suspicious injury or a death by calling the division’s toll-free hotline number 1-800-445-6242. Any consumer, family member, or legal guardian may call the division’s hotline to report an allegation of abuse, neglect, or exploitation, suspicious injury or death directly, or may report through the community-based service provider who, in addition to calling the hotline, must also utilize the division’s abuse, neglect, and exploitation or report of death form. The abuse, neglect, and exploitation or report of death form and instructions for its completion and filing are available at the division’s website or may be obtained from the authority by calling the division’s toll free hotline number, 1-800-445-6242.

(2) **Use of abuse, neglect, and exploitation or report of death form and notification by community-based service providers:** In addition to calling the division’s hotline as required in Paragraph (2) of Subsection A of 8.370.10.8 NMAC, the community-based service provider shall also report the incident of abuse, neglect, exploitation, suspicious injury, or death utilizing the division’s abuse, neglect, and exploitation or report of death form consistent with the requirements of the division’s abuse, neglect, and exploitation reporting guide. The community-based service provider shall ensure all abuse, neglect, exploitation or death reports describing the alleged incident are completed on the division’s abuse, neglect, and exploitation or report of death form and received by the division within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division’s website; otherwise it may be submitted via fax to 1-800-584-6057. The community-based service provider shall ensure that the reporter with the most direct knowledge of the incident participates in the preparation of the report form.

(3) **Limited provider investigation:** No investigation beyond that necessary in order to be able to report the abuse, neglect, or exploitation and ensure the safety of consumers is permitted until the division has completed its investigation.

(4) **Immediate action and safety planning:** Upon discovery of any alleged incident of abuse, neglect, or exploitation, the community-based service provider shall:

(a) develop and implement an immediate action and safety plan for any potentially endangered consumers, if applicable;

(b) be immediately prepared to report that immediate action and safety plan verbally, and revise the plan according to the division’s direction, if necessary; and

(c) provide the accepted immediate action and safety plan in writing on the immediate action and safety plan form within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division's website; otherwise it may be submitted by faxing it to the division at 1-800-584-6057.

(5) **Evidence preservation:** The community-based service provider shall preserve evidence related to an alleged incident of abuse, neglect, or exploitation, including records, and do nothing to disturb the evidence. If physical evidence must be removed or affected, the provider shall take photographs or do whatever is reasonable to document the location and type of evidence found which appears related to the incident.

(6) **Legal guardian or parental notification:** The responsible community-based service provider shall ensure that the consumer's legal guardian or parent is notified of the alleged incident of abuse, neglect and exploitation within 24 hours of notice of the alleged incident unless the parent or legal guardian is suspected of committing the alleged abuse, neglect, or exploitation, in which case the community-based service provider shall leave notification to the division's investigative representative.

(7) **Case manager or consultant notification by community-based service providers:** The responsible community-based service provider shall notify the consumer's case manager or consultant within 24 hours that an alleged incident involving abuse, neglect, or exploitation has been reported to the division. Names of other consumers and employees may be redacted before any documentation is forwarded to a case manager or consultant.

(8) **Non-responsible reporter:** Providers who are reporting an incident in which they are not the responsible community-based service provider shall notify the responsible community-based service provider within 24 hours of an incident or allegation of an incident of abuse, neglect, and exploitation.

D. Incident policies: All community-based service providers shall maintain policies and procedures which describe the community-based service provider's immediate response, including development of an immediate action and safety plan acceptable to the division where appropriate, to all allegations of incidents involving abuse, neglect, or exploitation, suspicious injury as required in Paragraph (2) of Subsection A of 8.370.10.8 NMAC.

E. Retaliation: Any person, including but not limited to an employee, volunteer, consultant, contractor, consumer, or their family members, guardian, and another provider who, without false intent, reports an incident or makes an allegation of abuse, neglect, or exploitation shall be free of any form of retaliation such as termination of contract or employment, nor may they be disciplined or discriminated against in any manner including, but not limited to, demotion, shift change, pay cuts, reduction in hours, room change, service reduction, or in any other manner without justifiable reason.

F. Quality assurance/quality improvement program for community-based service providers: The community-based service provider shall establish and implement a quality improvement program for reviewing alleged complaints and incidents of abuse, neglect, or exploitation against them as a provider after the division's investigation is complete. The incident management program shall include written documentation of corrective actions taken. The community-based service provider shall take all reasonable steps to prevent further incidents. The community-based service provider shall provide the following internal monitoring and facilitating quality improvement program:

(1) community-based service providers shall have current abuse, neglect, and exploitation management policy and procedures in place that comply with the authority's requirements;

(2) community-based service providers providing intellectual and developmental disabilities services must have a designated incident management coordinator in place; and

(3) community-based service providers providing intellectual and developmental disabilities services must have an incident management committee to identify any deficiencies, trends, patterns, or concerns as well as opportunities for quality improvement, address internal and external incident reports for the purpose of examining internal root causes, and to take action on identified issues.

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

8.370.10.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

A. General: All community-based service providers shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The community-based service provider shall ensure that the incident management system policies and procedures requires all employees and volunteers to be competently trained to respond to, report, and preserve evidence related to incidents in a timely and accurate manner.

B. Training curriculum: Prior to an employee or volunteer's initial work with the community-based service provider, all employees and volunteers shall be trained on an applicable written training curriculum including incident policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, suspicious injury, and all deaths as required in Subsection A of 8.370.10.8 NMAC. The trainings shall be reviewed at annual, not to exceed 12-month intervals. The training curriculum as set forth in Subsection C of 8.370.10.9 NMAC 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 community-based service provider's facility. Training shall be conducted in a language that is understood by the employee or volunteer.

C. Incident management system training curriculum requirements:

(1) The community-based service provider shall conduct training or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum provided electronically by the division that includes but is not limited to:

- (a) an overview of the potential risk of abuse, neglect, or exploitation;
- (b) informational procedures for properly filing the division's abuse, neglect, and exploitation or report of death form;
- (c) specific instructions of the employees' legal responsibility to report an incident of abuse, neglect and exploitation, suspicious injury, and all deaths;
- (d) specific instructions on how to respond to abuse, neglect, or exploitation;
- (e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, exploitation, or suspicious injury.

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

(3) All new employees and volunteers shall receive training prior to providing services to consumers.

D. Training documentation: All community-based service providers shall prepare training documentation for each employee and volunteer to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The community-based service provider shall maintain documentation of an employee or volunteer's training for a period of at least three years, or six months after termination of an employee's employment or the volunteer's work. Training curricula shall be kept on the provider premises and made available upon request by the authority. Training documentation shall be made available immediately upon a division representative's request. Failure to provide employee and volunteer training documentation shall subject the 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 access to the community-based service provider incident reporting processes. The 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, exploitation, suspicious injury, or death. The 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. Availability of incident management and abuse, neglect, exploitation, suspicious injury, or report of death reporting information: All community-based service providers shall provide written information to be furnished by the division at its website, which states all incident management reporting procedures, including contact numbers and internet addresses. The written information shall be on-site and available to staff.

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

8.370.10.10 ACCESS AND COOPERATION TO FACILITATE AUTHORITY INCIDENT INVESTIGATIONS:

A. The authority will conduct incident investigations of community-based service providers subject to these requirements. These investigations may be either announced or unannounced.

B. All community-based service providers programs shall facilitate immediate physical or in-person access, and assist with scheduling of interviews, by authority personnel investigating incidents to all of the providers:

(1) formal and informal records, regardless of media, including but not limited to, financial records, all consumer records, individual service plans, volunteer and personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys, and agency policy and procedures manuals;

(2) employees and volunteers with knowledge of the incident;

(3) necessary clients currently receiving services, guardians, representatives, and family members with knowledge of the incident; and

(4) administrative and service delivery sites.

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

8.370.10.11 CONSEQUENCES OF COMMUNITY-BASED SERVICE PROVIDER NON-COMPLIANCE:

A. The authority may sanction a community-based service provider in accordance with applicable law if the community-based service provider fails to report incidents of abuse, neglect, exploitation, suspicious injury, or any death; fails to provide or maintain evidence of an existing incident management system and employee and volunteer training documentation as set forth by this rule; for any failure to adequately protect consumers from abuse, neglect or exploitation; or for any other violation of this rule.

B. Such sanctions may include a directed plan of correction, intermediate sanctions, or civil monetary penalty up to \$5,000 per instance, or high level sanctions up to and including termination or non-renewal of any provider agreement with the authority or other governmental agency.

C. All substantiated incident investigations conducted by the authority hold the community-based service provider responsible for the actions of the employee, volunteer, or contractor with the following exception: any employee, volunteer, or contractor found to have caused the abuse, neglect, or exploitation of a consumer shall be found individually responsible independent of the community-based service provider when the community-based service provider has complied with all requirements of this rule, and the employee acts outside of the provider's system. When this occurs, the individual shall be subject to the Employee Abuse Registry Act, Sections 29-27-1 through 29-27-8 NMSA 1978, or referred to the appropriate professional licensing board and law enforcement where appropriate. [8.370.10.11 NMAC - N, 07/01/2024]

8.370.10.12 NOTIFICATION OF INVESTIGATION RESULTS: The division will inform the provider, the guardian, or alleged victim, the case manager or consultant, the developmental disabilities supports division regional office, and the reporter of the conclusion reached by the investigator(s) when the report is final. The responsible provider must notify the alleged perpetrator. [8.370.10.12 NMAC - N, 07/01/2024]

8.370.10.13 INFORMAL RECONSIDERATION OF FINDINGS:

A. An aggrieved person or provider agency may request an informal reconsideration of findings (IRF) of a decision made by the division regarding a substantiation of abuse, neglect, or exploitation in accordance with the provisions set forth in this section.

B. A request for an IRF must be submitted in writing along with all relevant evidence to be considered by the bureau within 10 calendar days of the date of the letter of substantiation. The bureau may reverse the substantiation at any time at or before the IRF review.

C. Informal reconsideration of findings process.

(1) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(2) The person conducting the IRF shall issue a written decision within 30 days of the review, giving the reason why the substantiation, by preponderance of evidence, is modified, affirmed, or reversed. The written decision will be mailed to the aggrieved party and placed in the case record no later than the 30th day after receipt of the request for the IRF.

(3) The decision by the person conducting the IRF is final and non-appealable except as otherwise provided for by law.

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

8.370.10.14 CONFIDENTIALITY:

A. In the case of substantiated cases of abuse, neglect, or exploitation, the written report may be shared publicly upon request and subject to all other applicable federal and state laws and regulations. Unsubstantiated incident investigation reports shall not be shared publicly in relation to any accused person or provider other than to confirm that an allegation of abuse, neglect, or exploitation was unsubstantiated.

B. All consumer information reviewed or obtained in the course of an investigation of a community-based service provider is confidential in accordance with all applicable federal and state laws and regulations and with all applicable contract provisions. If the consumer's identity may not be sufficiently de-identified even after redaction, then the report may not be released except upon the request of that consumer or their legally authorized representative.

C. Other confidential information includes, but is not limited to: identity of the reporter of the alleged abuse, neglect, and exploitation if confidentiality is requested, personnel records, dates of birth, driver's license numbers, social security numbers, personal addresses, and telephone numbers, the community-based service provider's internal incident investigation, if any is received by the authority, financial documents, and proprietary business information.

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

8.370.10.15 SEVERABILITY: If any provision or application of 8.370.10NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

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

HISTORY OF 8.370.10 NMAC: [RESERVED]