Ohio Administrative Code

Rule 5160-44-05 Nursing facility-based level of care home and community-based services programs and specialized recovery services program: incident management.

Effective: August 27, 2026

This rule sets the standards and procedures for managing incidents that may have a negative impact on individuals. The purpose of this rule is to establish the procedures for reporting and addressing critical incidents and reportable incidents and to prevent and reduce the risk of harm to individuals. This rule applies to multiple programs administered by the Ohio department of aging (AGE) and the Ohio department of medicaid (ODM). AGE and ODM may designate other entities to perform one or more of the incident management functions set forth in this rule.

(A) For the purposes of this rule, the following definitions apply:

(1) "Case Management Agency" or "CMA" means an entity delegated or contracted by AGE or ODM to perform case management activities and related functions for individuals enrolled on a home and community-based services (HCBS) waiver program.

(2) "Health and safety action plan" or "HSAP" means a document developed by the waiver case management agency or recovery management agency that identifies situations, circumstances, and behaviors that without intervention may jeopardize the individual's health and welfare and potentially risk the individual's program enrollment. The HSAP sets forth the interventions necessary to mitigate risks to the health and welfare of an individual and to ensure the individual's needs are met.

(3) "Incident" means an alleged, suspected, or actual event that is not consistent with the routine care of or service delivery to an individual that may have a negative impact on the health and welfare of the individual.

(4) "Incident management system" means the system in which reported incidents are entered, including investigative and review notes, findings and results, and prevention plans.

(5) "Individual" means a person enrolled on an HCBS waiver or in the specialized recovery services (SRS) program.

(6) "Investigative entity" means ODM, AGE, or their designee.

(7) "Recovery management agency" or "RMA" means the agency delegated or contracted by ODM to perform case management activities via the recovery manager and related functions for individuals enrolled in the SRS program.

(8) "Restraint" means as defined in rule 5160-45-01 of the Administrative Code.

(9) "Restrictive intervention" means as defined in rule 5160-45-01 of the Administrative Code.

(10) "Seclusion" means as defined in rule 5160-45-01 of the Administrative Code.

(11) "Substantiated" means there is a preponderance of evidence to indicate the reported incident is more likely to have occurred than not to have occurred.

(12) "Unauthorized restraint" means any restraint which is prohibited by an individual's HCBS waiver or program, inappropriately applied due to lack of necessity, conducted without individual choice, conducted without the appropriate level of authorization as specified by the waiver or program, or not documented within the individual's record.

(13) "Unauthorized restrictive intervention" means any restrictive intervention which is prohibited by an individual's HCBS waiver or program, inappropriately applied due to lack of necessity, conducted without individual choice, conducted without the appropriate level of authorization as specified by the waiver or program, or not documented within the individual's record.

(14) "Unauthorized seclusion" means any seclusion which is prohibited by an individual's HCBS waiver program, inappropriately applied due to lack of necessity, conducted without individual choice, conducted without the appropriate level of authorization as specified by the waiver or program, or not documented within the individual's record.

(B) The following incidents will be reported and investigated or reviewed as described in paragraph (E) of this rule:

(1) Critical incidents:

(a) Abuse: the injury, confinement, control, intimidation, or punishment of an individual that has resulted in physical harm, pain, fear, or mental anguish. Abuse includes, but is not limited to physical, emotional, psychological, verbal, and sexual abuse.

(b) Behavioral support misuse: the use of unauthorized restraint, unauthorized restrictive intervention, or unauthorized seclusion.

(c) Neglect: when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services necessary to maintain the health or welfare of the individual.

(d) Exploitation: the unlawful or improper act of using an individual or an individual's resources through the use of manipulation, intimidation, threats, deceptions, or coercion for monetary or personal benefit, profit, or gain.

(e) Misappropriation: the act of depriving, defrauding, or otherwise obtaining the money or real or personal property (including prescribed medication) of an individual that could potentially impact the health and welfare of the individual.

(f) Unnatural or accidental death: death of an individual resulting from an accident or death that otherwise could not have reasonably been expected, including but not limited to death caused by abuse, neglect, suicide, medication error, and homicide.

(g) Self-harm or suicide attempt: self-harm or suicide attempt that includes a physical attempt by an individual to harm themselves that results in emergency department treatment, in-patient observation, or hospital admission.

(h) Medication error: any medication error that results in a consultation with a poison control center (including telephone calls), an emergency department or urgent care visit, hospitalization, or death, involving:

(i) A medication prescribed to the individual; or

(ii) Any supplement, over-the-counter medication, or medication not prescribed to the individual.

(i) The health and welfare of the individual is at risk due to the individual being lost or missing.

(2) Reportable incidents

(a) Natural deaths that are not due to events such as accidents, injuries, homicide, suicide, or overdoses.

(b) Individual or family member behavior, action, or inaction resulting in the creation of, or adjustment to, a health and safety action plan.

(c) The health and welfare of the individual is at risk due to any of the following:

(i) Loss of the individual's paid or unpaid caregiver;

(ii) Prescribed medication issue not resulting in a consultation with a poison control center, an emergency department of urgent care visit, hospitalization, or death; or

(iii) Eviction or housing crisis.

(d) Suicide attempt that does not result in emergency room treatment, in-patient observation, or hospital admission.

(C) Programs to which this rule applies.

(1) The nursing facility-based level of care HCBS waiver programs administered by AGE and ODM including the assisted living waiver as set forth in Chapter 173-38 of the Administrative Code, the preadmission screening system providing options and resources today waiver as set forth in Chapter 173-42 of the Administrative Code, the Ohio home care waiver as set forth in Chapter 5160-46 of the Administrative Code, and the MyCare Ohio waiver as set forth in Chapter 5160-58 of the Administrative Code.

(2) The SRS state plan program as set forth in Chapter 5160-43 of the Administrative Code.

(D) Upon an individual's enrollment on an HCBS waiver or the SRS program and at the time of each annual reassessment the CMA or RMA will do the following:

(1) Obtain written confirmation that the individual received information about how to report abuse, neglect, exploitation, and all other incidents as defined in this rule.

(2) Document and maintain the written confirmation within the individual's case record.

(E) The following process will be followed upon the occurrence of an incident.

(1) Initial incident report.

(a) Upon discovering an incident, ODM, AGE, their delegates, and all service providers of nursing facility-based level of care HCBS waiver services or services under the SRS program will:

(i) Take immediate action to ensure the health and welfare of the individual.

(ii) Report the incident to the relevant CMA or RMA immediately upon discovery of the incident, but no later than one business day after discovering the incident, unless bound by federal, state, or local law, or the requirements of professional licensure or certification to report sooner.

(b) All incident reports will include the following information when available:

(i) The facts relevant to the incident;

(ii) A description of what happened;

(iii) The incident type;

(iv) The date of the incident;

(v) The location of the incident;

(vi) The names and contact information of all persons involved; and

(vii) All actions taken to ensure the health and welfare of the individual.

(2) Receipt of report and documentation of the incident.

(a) The CMA or RMA will do the following upon discovering or receiving report of an incident.

(i) Ensure immediate action was taken to protect the health and welfare of the individual. If such action was not taken, take action immediately, but no later than twenty-four hours after becoming aware of the incident.

(ii) Notify all of the appropriate entities with investigative or protective authority, and the appropriate additional regulatory, oversight, or advocacy agencies including but not limited to:

(a) Local law enforcement if the incident involves suspected criminal conduct;

(b) The local coroner's office when the death of an individual is reportable in accordance with section 313.12 of the Revised Code;

(c) The local county board of developmental disabilities;

(d) The local child protective services agency (CPS);

(e) The local adult protective services agency (APS);

(f) The Ohio department of health, or other licensure or certification board or accreditation body if the incident involves a provider regulated by that entity;

(g) The local probate court if the incident may involve the legal guardian of the recipient.

(iii) Enter all critical incidents into the incident management system within one business day of becoming aware of the incident.

(iv) Enter all reportable incidents into the incident management system within three business days of becoming aware of the incident.

(3) Critical incident investigation.

(a) The investigative entity will investigate all critical incidents and do the following upon receipt of a reported incident.

(i) Within one business day of receiving a report of an incident, review the reported incident and verify the following:

(a) Immediate action was taken to protect the health and welfare of the individual and any other recipients of service who may be at risk. If such action was not taken, take action immediately, but no later than twenty-four hours after discovering the need for such action.

(b) The appropriate entities with investigative or protective authority, and the appropriate additional regulatory, oversight, or advocacy agencies were notified. If such action was not taken, do so as soon as possible.

(ii) Within two business days of receiving a report of an incident, initiate an investigation.

(iii) Conduct a review of all relevant documents, including person-centered care plans, service plans, assessments, clinical notes, communication notes, results from an investigation conducted by a third-party entity when available, provider documentation, provider billing records, medical reports, police and fire department reports, and emergency response system reports.

(iv) Conduct and document interviews with everyone who may have information relevant to the incident.

(v) Identify, to the extent possible, all causes and contributing factors.

(vi) Determine whether the incident is substantiated.

(vii) Document all investigative activities in the incident management system.

(viii) Conclude the investigation no later than forty-five business days after the investigative entity's initial receipt of the incident report, unless a longer time frame has been previously approved by ODM or AGE.

(ix) For investigations conducted by ODM's designee, at the conclusion of the investigation, provide a summary of the investigative findings and whether or not the incident was substantiated to the appropriate CMA or RMA.

(4) Reportable incident review and remediation: For each reportable incident, the CMA or RMA will address and remediate the incident as determined appropriate by the CMA or RMA.

(5) Follow up and closeout responsibilities of the CMA or RMA.

(a) Upon receipt of the findings for a substantiated incident, review the investigation results and include the information from the results when developing a person-centered prevention plan or updating the care plan to ensure the health and safety of the individual.

(b) Communicate a summary of the investigative findings with the individual and their authorized representative or legal guardian using trauma informed care, unless such action could jeopardize the health and welfare of the individual.

(i) The summary will be provided through verbal communication, unless the individual or their authorized representative or legal guardian requests the summary in writing.

(ii) The CMA or RMA will retain documentation that the summary was provided.

(c) For incidents that resulted in a CPS or APS referral, communicate a summary of the investigative findings to the relevant agency within seven business days after being notified that the investigation is complete.

(d) For all substantiated critical incidents, except in the case of death, enter a prevention plan into the incident management system no later than seven business days after the conclusion of the investigation, indicating closure of the incident.

(e) For all reportable incidents, address and remediate the incident as determined appropriate, and close the incident in the incident management system no later than forty-five business days after submission of the incident in the incident management system.

(F) AGE and ODM may request further review of any incident, conduct a separate independent review or investigation of any incident, determine necessary additional action, or assume responsibility for conducting an investigation or review.