

5160-43-06 **Specialized recovery services program incident management system.**

(A) The Ohio department of medicaid (ODM) or its designee (hereafter referred to as ODM) shall operate an incident management system that includes responsibilities for reporting, responding to, investigating and remediating incidents. This rule sets forth the standards and procedures for operating that system. It applies to ODM, its designees, individuals and providers of specialized recovery services (hereafter referred to as providers). ODM may designate other agencies or entities to perform one or more of the incident management functions set forth in this rule.

(B) When the individual is a MyCare Ohio member, this rule is not applicable. Refer to rule 5160-58-05.3 of the Administrative Code for incident management responsibilities.

(C) ODM shall ensure the health and welfare of individuals enrolled in the program. ODM and providers are responsible for ensuring individuals in the specialized recovery services program are protected from abuse, neglect, exploitation and other threats to their health, safety and well-being.

(D) Upon entering into a medicaid provider agreement, and annually thereafter, all providers, including all employees who have direct contact with individuals enrolled in the program, must acknowledge in writing they have reviewed this rule and related procedures.

(E) Upon an individual's enrollment in the program, and at the time of each annual reassessment, the recovery manager shall provide the individual and/or the individual's authorized representative or legal guardian with documentation about how to report abuse, neglect, exploitation and other incidents. The recovery manager shall secure from the individual, authorized representative and/or legal guardian written confirmation of receipt of the documentation and it shall be maintained in the individual's record.

(F) Incidents include, but are not limited to, all of the following:

(1) Abuse: the injury, confinement, control, intimidation or punishment of an individual by another person that has resulted in, or could reasonably be expected to result in physical harm, pain, fear or mental anguish. Abuse includes, but is not limited to physical, emotional, verbal and/or sexual abuse and use of restraint, seclusion or restrictive intervention that results in, or could reasonably be expected to result in, physical harm, pain, fear or mental anguish to the individual.

(2) Neglect: when there is a duty to do so, the failure to provide goods, services and/or treatment necessary to assure the health and welfare of an individual.

(3) Exploitation: the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit or gain.

- (4) Misappropriation: depriving, defrauding or otherwise obtaining the money or real or personal property (including medication) of an individual by any means prohibited by law.
- (5) Death of an individual that meets the criteria for a suspicious death as described in paragraph (J)(2)(a) of this rule.
- (6) Death of an individual that does not meet the criteria for a suspicious death as described in paragraph (J)(2)(a) of this rule.
- (7) Hospitalization or emergency department visit (including observation) as a result of:
- (a) Accident, injury or fall when someone's action or inaction may have caused or contributed to the occurrence, including inadequate oversight of medication or misuse of medication;
 - (b) Injury or illness of an unknown cause or origin; and
 - (c) Reoccurrence of an illness or medical condition within seven calendar days of the individual's discharge from a hospital.
- (8) Unauthorized use of restraint, seclusion and/or restrictive intervention that does not result in, or cannot reasonably be expected to result in, injury to the individual.
- (9) An unexpected crisis in the individual's family or environment that results in an inability to assure the individual's health and welfare in his or her primary place of residence.
- (10) Inappropriate service delivery including, but not limited to:
- (a) A provider's violation of the requirements set forth in rule 5160-43-04 of the Administrative Code and/or any other Administrative Code rules referenced therein that results in an inability to assure the individual's health and welfare, or could reasonably be expected to place the individual's health and welfare in jeopardy;
 - (b) Services provided to the individual that are beyond the provider's scope of practice; and
 - (c) Medication administration errors involving the individual.
- (11) Actions on the part of the individual that place the health and welfare of the individual or others at risk including, but not limited to:

(a) Activities that involve law enforcement;

(b) Misuse of medications;

(c) Use of illegal substances; and

(d) The individual cannot be located.

(G) Incident reporter responsibilities.

(1) Individuals and/or their authorized representative or legal guardian should report incidents to the individual's recovery manager and the appropriate authorities.

(2) ODM and all providers are required to report incidents and shall do all of the following:

(a) Take immediate action to ensure the health and welfare of the individual which may include, but is not limited to, seeking or providing medical attention.

(b) Immediately report any incident(s) set forth in paragraphs (F)(1) to (F)(5) of this rule to the recovery manager and the appropriate authorities set forth in paragraph (G)(4)(a) of this rule.

(c) Report any incidents set forth in paragraphs (F)(6) to (F)(11) of this rule to the recovery manager within twenty-four hours unless bound by federal, state or local law or professional licensure or certification requirements to report sooner.

(d) Report all incidents to his or her supervisor when he or she has a supervisor.

(3) At a minimum, all incident reports shall include:

(a) The facts that are relevant to the incident;

(b) The incident type; and

(c) The names of all persons involved and corresponding contact information when available.

(4) The appropriate authority is dependent upon the nature of the incident. Examples of appropriate authorities include, but are not limited to:

(a) The following local agencies that hold investigative and/or protective

authority:

(i) Law enforcement when the incident involves conduct that constitutes a possible criminal act including, but not limited to, abuse, neglect, exploitation, misappropriation, or death of the individual;

(ii) Coroner's office;

(iii) County board of developmental disabilities;

(iv) Public children services agency; and

(v) Public adult protective services agency.

(b) The following regulatory, oversight and/or advocacy agencies:

(i) The Ohio long-term care ombudsman;

(ii) Any Ohio, national or federal licensure, certification or accreditation entity when the allegation involves a provider regulated by that entity;

(iii) The Ohio attorney general when the allegation is suspected to involve medicaid fraud by the provider; and

(iv) The local probate court when the allegation is suspected to involve the individual's legal guardian.

(H) Recovery management contractor responsibilities.

(1) The recovery management contractor shall do all of the following upon discovery of an incident:

(a) Ensure that immediate action was taken to protect the health and welfare of the individual and any other individual(s) who may be at-risk;

(b) Notify the appropriate agencies that hold investigative and/or protective authority as set forth in paragraph (G)(4)(a) of this rule if the incident was one of those set forth in paragraph (F)(1) to (F)(5) of this rule;

(c) Notify the appropriate regulatory, oversight and/or advocacy agencies set forth in paragraph (G)(4)(b) of this rule; and

(d) Notify the individual's primary care provider.

(2) The recovery management contractor shall complete an incident report in the ODM-approved system within twenty-four hours of discovery if the incident

was one of those set forth in paragraphs (F)(1) to (F)(11) of this rule.

- (3) The recovery management contractor shall notify ODM within twenty-four hours of any incident that meets the criteria of an alert as set forth in paragraph (J) of this rule.
- (4) The recovery management contractor shall notify the individual and/or individual's authorized representative or legal guardian of the incident as long as such notification will not jeopardize the incident investigation and/or place the health and welfare of the individual or reporter at risk.

(I) Provider oversight responsibilities.

(1) ODM or its designated provider oversight contractor must review all reported incidents within one business day of notification via the ODM-approved assessment and case management system, and shall do all of the following as part of its review:

(a) Verify that immediate action was taken to protect the health and welfare of the individual and any other individuals who may be at-risk. If such action was not taken, the provider oversight contractor must do so immediately.

(b) Verify that the county coroner was notified in the event of death of an individual when the individual died as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or died suddenly when in apparent good health or when the individual had a developmental disability, regardless of the circumstances, and in accordance with Section 313.12 of the Revised Code. If such action was not taken, the provider oversight contractor must do so immediately.

(c) Verify that the appropriate authorities have been notified as required by this rule. If such action was not taken, the provider oversight contractor must do so immediately.

(d) Verify that the incident was reported within the time frame required by this rule.

(e) Notify ODM of any incident that meets the criteria of an alert as set forth in paragraph (J) of this rule.

(f) Upon substantiating an incident that involves a program provider, the provider oversight contractor shall notify ODM.

(2) The provider oversight contractor shall initiate an investigation no later than two business days after having been notified of an incident. At a minimum,

the provider oversight contractor shall:

- (a) Contact and work cooperatively with protective agencies and any other entities to which the incident was reported and that may be conducting separate investigations.
 - (b) Conduct a review of all relevant documents including, but not limited to, assessments, clinical notes, person-centered plans of care, communication notes, coroner's reports, documentation available from other authorities, provider documentation, provider billing records, medical reports, police and fire department reports and emergency response system reports.
 - (c) Conduct and document interviews with anyone who may have information relevant to the investigation including, but not limited to, the reporter, individuals, authorized representatives and/or legal guardians and providers.
 - (d) Include the individual and the reporter in the incident investigation process, as long as such involvement is safe and appropriate.
 - (e) When applicable, make referrals to the appropriate licensure or certification boards, accreditation bodies, and/or other entities based on the information obtained during the investigation.
 - (f) Document all investigative activities.
 - (g) Document if and why any of the steps set forth in paragraph (I) of this rule were omitted from the incident investigation.
- (3) If, at any time the provider oversight contractor discovers an incident that meets the criteria for a suspicious death as described in paragraph (J)(2)(a) of this rule, the provider oversight contractor must notify ODM within twenty-four hours of the contractor's discovery. If ODM agrees the death is suspicious in nature ODM shall maintain lead responsibility for the investigation and follow all of the steps set forth in paragraph (I) of this rule and the ODM-approved death investigation protocol.
- (4) Incidents set forth in paragraph (F)(6) of this rule shall be investigated by the provider oversight contractor in accordance with the steps set forth in paragraph (I) of this rule and the ODM-approved death investigation protocol.
- (5) Conducting an incident investigation.
- (a) The provider oversight contractor must conclude its incident investigation no later than forty-five days after the provider oversight contractor's

initial receipt of the incident report. Extension of this deadline is only permissible upon prior approval by ODM.

(b) At the conclusion of the investigation, and excluding the incidents set forth in paragraph (F)(6) of this rule, the provider oversight contractor shall:

(i) Submit to ODM and the individual, authorized representative and/or legal guardian a written report that:

(a) Summarizes the investigation,

(b) Identifies if the incident was substantiated and if it was preventable; and

(c) Includes a prevention plan for the individual that identifies steps necessary to mitigate the effects of a substantiated incident, eliminates the causes that resulted in risk to the health and welfare of the individual and helps to prevent future incidents.

(ii) Notify program service providers who are subject to the incident investigation in writing upon substantiation of an incident. The notification shall specify:

(a) The findings of the investigation that substantiate the occurrence of the incident;

(b) The Administrative Code rule(s) that support(s) the finding(s) of the investigation;

(c) What steps the provider must take to mitigate against the causes of and factors contributing to the incident; and

(d) The time frame within which the provider must submit a plan of correction to the provider oversight contractor in accordance with rule 5160-43-07 of the Administrative Code, not to exceed fifteen calendar days after the date the letter was mailed.

(iii) Provide a written summary of the investigative findings to the reporter of the incident unless such action could jeopardize the health and welfare of the individual.

(iv) Ensure that all such reports issued comply with all applicable state and federal confidentiality and information disclosure laws.

(J) Alerts.

- (1) The provider oversight contractor shall ensure that incidents that rise to the level of an alert are reported to ODM within twenty-four hours of identification and report submission.
- (2) The following incidents are cause for an alert:
 - (a) A suspicious death that could not reasonably have been expected, and in which at least one of the following circumstances exists:
 - (i) The circumstances and/or the cause of death are not related to any known medical condition of the individual; or
 - (ii) Someone's action or inaction may have caused or contributed to the individual's death, including inadequate oversight of medication or misuse of medication.
 - (b) Abuse or neglect that required the individual's removal from his or her place of residence;
 - (c) Hospitalization or emergency department visit (including observation) as a result of:
 - (i) Abuse or neglect;
 - (ii) Accident, injury or fall when someone's action or inaction may have caused or contributed to the occurrence, including inadequate oversight of medication or misuse of medication;
 - (iii) Injury or illness of an unknown cause or origin; and
 - (iv) Reoccurrence within seven calendar days of the individual's discharge from a hospital.
 - (d) Harm to multiple people as a result of an incident;
 - (e) Injury resulting from the authorized or unauthorized use of a restraint, seclusion or restrictive intervention;
 - (f) Incidents involving an employee of the recovery management contractor or provider oversight contractor;
 - (g) Misappropriation that is valued at five hundred dollars or more;
 - (h) Incidents generated from correspondence received from the Ohio attorney

general, office of the governor, the centers for medicare and medicaid services or the federal office of civil rights; and

(i) Incidents identified by a public media source.

(K) At its discretion, ODM may request further review of any incident under investigation, and/or conduct a separate, independent review or investigation of any incident.

(L) ODM shall determine when to close incident investigations, and shall be responsible for ensuring that all cases are properly closed.

(M) If, at any time during the discovery or investigation of an incident, it is determined that an employee of the recovery management contractor is or may be responsible for, or contributed to, the abuse, neglect, exploitation or death of an individual, the recovery management contractor or provider oversight contractor shall immediately notify ODM. ODM shall assume responsibility for the investigation in accordance with the procedures set forth in this rule.

(N) ODM may impose sanctions upon the provider in accordance with rule 5160-43-07 of the Administrative Code based upon the substantiation of an incident, failure to comply with any of the requirements set forth in this rule, failure to ensure the health and welfare of the individual and/or failure to comply with all applicable federal, state and local laws and regulations.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5164.02
Rule Amplifies: 5164.02, 5162.03