



Pennsylvania
DEPARTMENT OF AGING
DEPARTMENT OF PUBLIC WELFARE

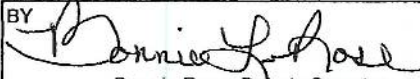
OFFICE OF LONG-TERM LIVING BULLETIN

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SUBJECT
**Critical Incident Management Policy for
Office of Long-Term Living Home and
Community-Based Services Programs**

BY 
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Office of Long-Term Living

PURPOSE:

To develop a comprehensive incident management policy as part of the quality management system for the services delivered through the Department of Aging and Department of Public Welfare's Office of Long-Term Living (OLTL) waivers.

SCOPE:

This Bulletin applies to all Office of Long-Term Living (OLTL) Home and Community-Based Services (HCBS) program providers (including service coordination agencies), Area Agency on Aging staff, and participants in OLTL programs.

BACKGROUND/DISCUSSION:

Presently, there is no uniform policy related to procedures for reporting critical incidents for OLTL Home and Community-Based Services Program participants. The lack of uniformity makes it difficult for each agency and OLTL to ensure that critical incident remediation is handled satisfactorily, to collect aggregate data for quality improvement of the programs, and to monitor for risk management. This has been raised as a major concern by the Centers for Medicare and Medicaid Services (CMS) and has been addressed in the work plans so that OLTL can receive approval for its waiver renewals.

This bulletin provides the general policy for a critical incident reporting system. This policy is a component of OLTL's comprehensive system of collecting, analyzing, aggregating and reporting data on incidents. This policy provides the participants with an unbiased, confidential review process by the OLTL.

This critical incident reporting process does not substitute for the obligation of AAAs to receive and investigate Reports of Need under the Older Adults Protective

Services Act (OAPSA), nor does it change the confidentiality requirements of OAPSA.

This Bulletin rescinds and replaces OLTL Bulletin number 05-10-01, 51-10-01, 52-10-01, 55-10-01, 59-10-01, issued April 9, 2010 entitled, "Incident Management Policy for PDA and OLTL HCBS Programs," APD 09-01-01, and CSPPPD Contractor Directive 1999-12.

DEFINITIONS:

It is important to differentiate between complaints, program fraud and financial abuse, and critical incidents as there will be separate protocols and actions taken, depending on this distinction.

Complaints: Dissatisfaction with any aspect of program operations, activities, or services received or not received involving Home and Community-Based Services are considered complaints. All complaints should be directed to a participant's Service Coordinator, Care Manager or the supervisor of this employee. When issues cannot be resolved or a participant is not comfortable discussing them with their Service Coordinator, Care Manager, or supervisor, the OLTL Quality Assurance Helpline is available at 1 (800) 757-5042. Concerns or complaints about services should not be reported as critical incidents.

Program fraud and financial abuse: Examples of program fraud and financial abuse include 1) claims submitted for services or supplies that were not provided and 2) excessive charges for services and supplies. Separate reporting requirements can be found in the OLTL Fraud & Financial Abuse bulletin (No. 05-11-04, 51-11-04, 52-11-04, 54-11-04, 55-11-04, 59-11-04, issued and effective on August 8, 2011). Program fraud and financial abuse should not be reported as critical incidents.

Critical Incidents: The occurrence of an event that **jeopardizes the participant's health and/or welfare** is a critical incident. This includes but is not limited to the following:

- 1) **Death (other than by natural causes), Serious Injury, or Hospitalization** (except in certain cases, e.g., a hospital stay that was planned in advance);
- 2) **Provider and Staff Misconduct** – deliberate, willful, unlawful or dishonest activities;
- 3) **Abuse** – the infliction of injury, unreasonable confinement, intimidation, punishment, mental anguish, sexual abuse or exploitation of a participant.

Types of abuse include (but are not necessarily limited to):

- (a) Physical abuse (a physical act by an individual that may cause physical injury to a participant);
- (b) Psychological abuse (an act, other than verbal, that may inflict emotional harm, invoke fear and/or humiliate, intimidate, degrade or demean a participant);
- (c) Sexual abuse (an act or attempted act such as rape, incest, sexual molestation, sexual exploitation or sexual harassment and/or inappropriate or unwanted touching of a participant); and,

(d) Verbal abuse (using words to threaten, coerce, intimidate, degrade, demean, harass or humiliate a participant).

4) **Neglect** – the failure to provide an individual the reasonable care that he or she requires, including but not limited to food, clothing, shelter, medical care, personal hygiene, and protection from harm.

5) **Exploitation** – an act of depriving, defrauding or otherwise obtaining the personal property of a participant in an unjust or cruel manner, against one's will, or without one's consent or knowledge for the benefit of self or others.

6) **Service interruption** – Any event that results in the participant's inability to receive services that places his or her health or safety at risk. This includes involuntary termination by the provider agency and failure of the participant's back up plan. In the occurrence of these events, the provider agency must have a plan for temporary stabilization.

7) Medication errors that require medical interventions (i.e. hospitalization or emergency room visits).

MANDATORY REPORTING

It is mandatory that administrators and employees of home health care agencies¹ and facilities report critical incidents related to individuals who receive home and community-based services and supports from or in the agency or facility. Administrators and employees of home health care agencies and facilities may have a local agreement that the service coordination agencies/area agencies on aging will report alleged critical incidents to OLTL. Duplicative reporting is not required.

In instances where the service coordination/case management (SC/CM) agency discovers or has independent knowledge of the critical incident, it is their responsibility to report to OLTL.

This applies to:

- 1) Critical incidents that occur during the time the agency or facility is providing services, **and**
- 2) Critical incidents that occur during the time the agency or facility is contracted to provide services but fails to do so, **and**

¹ **"Home health care agency."** Any of the following: (1) A home health care organization or agency licensed by the Department of Health. (2) A public or private agency or organization, or part of an agency or organization, which provides care to a care-dependent individual in the individual's place of residence. Section 103 of Act 169 of 1996, the Older Adult Protective Services Act (OAPSA).

3) Critical incidents that occur at times other than when the agency or facility is providing or is contracted to provide services (if administrators or employees become aware of such incidents).

Participants in any service model have the right to report alleged incidents at any time. Participants are encouraged to report critical incidents because failure to do so may put them at risk. In order to protect a participant's autonomy and possible safety from an alleged perpetrator, participants are not compelled to report and no adverse consequences from OLTL will result from a participant's decision not to report. Participants shall not be terminated or threatened with loss of services because they file complaints or critical incident reports of any kind.

Further guidance is provided below on the documentation and reporting of critical incidents to OLTL. Failure to comply with this directive will result in remediation activities by OLTL.

PROCESS:

It is the responsibility of the person that discovers the critical incident or has knowledge of the critical incident to investigate and report the alleged critical incident to OLTL. Administrators and employees of home health care agencies and facilities may have a local agreement that the service coordination agencies/Area Agencies on Aging will report alleged critical incidents to OLTL.

- 1) **Determine if the incident is reportable:** A "reportable critical incident" is defined above.
- 2) **Participant involvement:** In order to respect an individual's autonomy, a participant has the right to not report incidents and has the right to decline further interventions. Participants also have a right to refuse involvement in the critical incident investigation. The participant has the right to have an advocate present during any interviews and/or investigations resulting from a critical incident report.

3) Report incident:

Utilizing the electronic system prescribed by the OLTL all critical incidents must be documented and initial reports must include:

- Reporter information
- Participant demographics
- OLTL Program information
- Event details and type
- Description of the incident

Investigative action taken, resolution and measures implemented to prevent recurrence must be completed upon conclusion of investigations but no later than 30 business days from the time of discovery of the incident.

4) Reporting Timeframes:

Within 48 hours: Agency staff must notify OLTL, the SC/CM agency and appropriate agencies within 48 hours of discovery for **all critical incidents**.

Appropriate agencies include but are not limited to:

- Office of Long-Term Living (OLTL)
- Provider Agency and/or Subcontractor
- Service Coordination Agency/ Area Agency on Aging
- Older Adult Protective Services (OAPS) if the incident involves abuse, neglect or exploitation
- Disability Rights Network of PA (DRN) (the provider and OLTL will release information about the alleged incident to DRN only if a request is made by the participant)
- Law Enforcement, Fire Department or other authorities as needed

Within 30 business days: When a critical incident requires additional follow-up beyond what has been documented in the initial critical incident report, agency staff must provide additional information including investigative action taken, resolution and measures implemented to prevent recurrence of the critical incident within thirty business days to OLTL. The additional information should be added to the initial electronic Critical Incident Report.

5) Employee Removal or Suspension:

Cases involving an agency and/or participant-directed employee may require the employee to be removed from all OLTL HCBS programs. This may include requiring that the employee have no contact with the participant, or suspending the employee until the investigation is completed. If the employee works for an agency, suspension may be with or without pay based upon the circumstances, the alleged incident and the employment policies of that agency. If the employee works for a participant-directed employer, suspension should be at the discretion of the participant. If the participant suspends the employee, the suspension will be without pay regardless of the circumstances and the alleged offense.

6) Notice to Participant and Confidentiality:

The agency staff that discovered or is aware of the critical incident shall notify the participant that a critical incident report has been filed. This notice must be within 24 hours and in a cognitively and linguistically accessible format.

Within 48 hours of the conclusion of the critical incident investigation, agency staff must inform the participant of the resolution and measures implemented to prevent recurrence. The participant has the right to provide input into the resolution and measures implemented to prevent recurrence of the critical incident. Notice to participant (upon discovery and conclusion) must be documented in the Critical incident report. All information must be provided in a cognitively and linguistically accessible format.

All information gathered as a result of an investigation of an alleged incident involving a participant is confidential.

Guidance for critical incidents that are also the subject of an Older Adults Protective Services Report of Need

If a AAA receives an Older Adults Protective Services Report of Need about a participant currently receiving services under the Aging Waiver or Options program, the Older Adults Protective Services Supervisor should notify the participant's Care Manager at the AAA and provide enough information for the Care Manager to write a brief description of the allegations for the Critical Incident Report. The Care Manager submitting the Critical Incident Report should **not** provide the names of the OAPSA Reporter, cooperating witnesses, or any Alleged Perpetrator, or provide details of the Older Adult Protective Services investigation on the Incident Report. The Critical Incident Report should only communicate the general nature of the allegations, document that the case is being handled by the AAA's Protective Services staff, and note any changes to services, the participant's residence, caregivers, or other issues relevant to Care Management and services that occurred as a result of the Older Adults Protective Services case. If further information about the Older Adults Protective Services case is required for purposes of quality management, OLTL will consult with the Department of Aging's Division of Consumer Protection.

There is no obligation for AAA Older Adults Protective Services to complete the full investigation required by OAPSA and its regulations within the thirty business days stated above for reporting on the resolution of the critical incident.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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