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DEPARTMENT OF HUMAN SERVICES

OFFICE OF LONG-TERM LIVING BULLETIN

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SUBJECT:

Critical Incident Management



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PURPOSE:

To provide clarification on the definition of critical incidents as found in 55 Pa. Code § 52.3 (relating to definitions) and clarification of service coordinator (SC) and provider responsibilities for critical incident and risk management provided under § 52.16 (relating to abuse), § 52.11 (relating to prerequisites for participation), § 52.17 (relating to critical incident and risk management) and § 52.21 (relating to staff training).

Additionally, this bulletin reminds SCs and providers of their responsibilities as mandatory reporters under the Adult Protective Services (APS) Act and the Older Adults Protective Services Act (OAPSA).

APS: Act 70 of 2010 requires that all OLTL SCs and providers are mandatory reporters under the law, which provides protections for adults between the ages of 18 and 59 who have disabilities. 35 P.S. § 10210.101 – 10210.704.

OAPSA: OAPSA requires that all SCs and providers report suspected abuse and neglect of adults over age 60 to Older Adults Protective Services. See 35 P.S. §§ 10225.101 – 10225.5102 and Title 6 Pa. Code, Chapter 15.

SCOPE:

This bulletin applies to Office of Long-Term Living (OLTL) Medical Assistance (MA) Home and Community-Based Services (HCBS) SCs and providers for the Aging, Attendant Care, COMMCARE, Independence and OBRA waivers and for the Act 150 Program.

BACKGROUND:

Under the HCBS waivers and Act 150 Program, OLTL is responsible for establishing a process that protects the health and welfare of waiver participants. The critical incident management system required by 55 Pa. Code Chapter 52 is a vital component of this process, which consists of SCs and providers responding to critical incidents, reporting them, SCs

investigating them and performing follow up as needed. The system also involves SC and provider development and maintenance of incident management policies and provision of staff training. To protect program participants, definitions must be clear and the process must be defined as to the required timeframes and the responsibilities of each party involved.

In addition to ensuring the immediate safety of program participants, the critical incident management system provides OLTL with data that is needed to assess the overall strengths and weaknesses of its SC and provider networks. Data is used to identify the types of incidents that are occurring, the ability and effectiveness of involved agencies to respond to them and what mitigation is occurring to avoid future incidents.

The critical incident reporting process covered in this bulletin does not substitute for the obligation of SCs and providers to report suspected abandonment, abuse, neglect and exploitation to the OAPSA Program or to the APS Program, nor does it change the confidentiality requirements of protective services laws.

The APS Act was implemented to provide for the protection of abused, neglected, exploited or abandoned adults. The APS Act protects residents of this Commonwealth between 18 and 59 years of age who have a physical or mental impairment that substantially limits one or more major life activities. Similarly, OAPSA was implemented to provide for the protection from abuse, neglect, exploitation or abandonment of those age 60 or older.

A. DEFINITIONS

For the purpose of reporting critical incidents to OLTL, the following definitions apply:

Abuse – An act or omission that willfully deprives a participant of rights or human dignity, or which may cause or causes actual physical injury or emotional harm to a participant including a critical incident and any of the following:

- (1) Sexual harassment of a participant.
- (2) Sexual contact between a staff member and a participant.
- (3) Using restraints on a participant.
- (4) Financial exploitation of a participant.
- (5) Humiliating a participant.
- (6) Withholding regularly scheduled meals from a participant.

Critical Incident - An occurrence of an event that jeopardizes the participant's health or welfare including:

- (1) Death, serious injury or hospitalization of a participant. Pre-planned hospitalizations are not critical incidents*.
- (2) Provider and staff member misconduct including deliberate, willful, unlawful or dishonest activities.
- (3) Abuse, including the infliction of injury, unreasonable confinement, intimidation, punishment or mental anguish, of the participant. Abuse includes the following:
 - (A) Physical abuse.
 - (B) Psychological abuse.
 - (C) Sexual abuse.
 - (D) Verbal abuse.

- (C) Sexual abuse.
- (D) Verbal abuse.
- (4) Neglect.
- (5) Exploitation.
- (6) Service interruption, which is an event that results in the participant's inability to receive services and that places the participant's health or welfare at risk.
- (7) Medication errors that result in hospitalization, an emergency room visit or other medical intervention.

*NOTE: Being admitted for a non-routine medical condition that was not scheduled or planned to occur is a critical incident; a routine hospital visit for lab work or routine treatment of illness of a participant is not a critical incident. A death that is suspicious or of unexplained causes is a critical incident. A death due to natural causes is not a critical incident.

NOTE: Critical incidents are NOT complaints, which are dissatisfaction with program operations, activities or services received, or not received, involving HCBS. Critical incidents are NOT 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 (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.

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.

Investigation - For the purpose of this bulletin, investigation means to take the steps necessary to determine if a critical incident has occurred, to determine if suspected abuse, neglect, abandonment or exploitation requiring the involvement of protective services is involved, what actions are needed to protect the health and welfare of participants and what actions are needed to mitigate future incidents.

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. Seclusion, which is the involuntary confinement of an individual alone in a room or an area from which the individual is physically prevented from having contact with others or leaving, is a form of neglect.

Restraint - Any physical, chemical or mechanical intervention that is used to control acute, episodic behavior that restricts the movement or function of the individual or a portion of the individual's body. Use of restraints and seclusion are both restrictive interventions, which are actions or procedures that limit an individual's movement, a person's access to other individuals, locations or activities, or restricts participant rights.

Service Interruption - Any event that results in the participant's inability to receive services that places his or her health, and or safety at risk. This includes involuntary termination by the

provider agency and failure of the participant's back-up plan. If these events occur, the provider agency must have a plan for temporary stabilization.

B. PROCEDURES:

I. Mandatory Reporting of Critical Incidents

It is mandatory that the SC or provider agency that discovers or has firsthand knowledge of the critical incident report it. This applies to incidents that happen AT ANY TIME, including:

- 1) Critical incidents that occur during the time a service is being provided, **and**
- 2) Critical incidents that occur during the time an agency is contracted to provide services but fails to do so, **and**
- 3) Critical incidents that occur at times other than when an agency is providing or is contracted to provide services (if the agency becomes aware of such incidents).

Participants in any service model have the right to report alleged incidents at any time. They should be encouraged to report an incident but are not required to do so. There are no adverse consequences for a participant who decides not to report an alleged incident. Participants can report alleged incidents by calling the Participant Helpline at 1-800-757-5042. Participants are not to be terminated or threatened with loss of services because they file complaints or critical incident reports of any kind. A participant's decision not to report an incident does not remove the responsibility of an SC or provider from reporting it.

II. Reporting

All SCs and providers are required to report critical incidents. Before reporting an incident, measures must be taken immediately to safeguard the participant. This may include calling 911, contacting APS (participants aged 18-59), Older Adults Protective Services (participants over age 60), law enforcement, the fire department or other authorities as appropriate.

Steps to be taken:

- 1) Safeguard the health and welfare of the participant.
- 2) Determine if the incident is reportable. A "critical incident" is defined above.
- 3) Within 48 hours, the SC or provider agency that discovers or has independent knowledge of the critical incident is to submit a critical incident report to OLTL. If the incident occurs over the weekend, a written report must be entered the first business day after the incident occurred. Incidents must be entered into Enterprise Incident Management (EIM) (if participant is age 18-59) or Social Assistance Management System (SAMS) (if participant is age 60 or older) or through the RA-Incident@pa.gov (if the participant is age 60 or older and the incident is being submitted by a provider).

No information should be entered into the EIM system for Aging waiver participants.

- 4) All critical incidents must be documented as specified above and initial reports must include:
 - Reporter information
 - Participant demographics
 - OLTL program information
 - Event details and type
 - Description of the incident
 - Actions taken to immediately secure the participant's well-being
- 5) All SCs and providers enrolled in the Attendant Care, COMMCARE, Independence and OBRA waivers and the Act 150 Program are required to report incidents using EIM (OLTL's incident management system) and must ensure they have staff trained and available to report incidents in the timeframes required below.
- 6) For critical incidents for the Aging waiver, providers must fill out the attached Critical Incident Reporting Form and submit it via email to RA-Incident@pa.gov. SCs should report these incidents using the SAMS system.
- 7) Providers must inform the participant's SC within 24 hours of an incident. If the participant is in need of immediate intervention, providers must immediately contact SCs if 911 is not called.
- 8) After OLTL has reviewed the incident, additional follow-up information may be required of the provider or SC.
- 9) Notice to Participant - The agency staff that discovered or first became aware of the critical incident is to notify the participant (and representative if requested by the participant) that a critical incident report has been filed. This notice must be provided to the participant within 24 hours and in a cognitively and linguistically accessible format. If the participant's representative is suspected to be involved in the critical incident, the representative should not be notified.

Within 48 hours of the conclusion of the critical incident investigation, the SC 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 the participant and representative (if the representative is not suspected to be involved in the critical incident) if requested by 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.

- 10) 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. If the participant decides to be involved in the investigation, the participant has the right to have an advocate present during any interviews and/or investigations resulting from a critical incident report.

In the event that a participant chooses not to report an incident or declines further intervention, the critical incident must still be reported and the SC must investigate the incident. Documentation is to be kept indicating that the participant did not wish to report the incident or declined interventions. If the incident involves potential danger to the participant, the SC needs to inform the participant that they are a mandated reporter and are required by law to report and submit the incident to protective services. The SC should also inform the participant that their services may be jeopardized if they are putting themselves or others at risk.

In addition to following the requirements of this bulletin and those in 55 Pa. Code, Chapter 52, the reporting requirements under 55 Pa. Code, Chapters 2380 and 2390 (relating to adult training facilities; and vocational facilities); 6 Pa. Code, Chapter 11 (relating to older adult daily living centers); and 28 Pa. Code, Chapters 601 and 611 (relating to home health care agencies; and home care agencies and home care registries) are to be followed if applicable.

III. Investigation of Critical Incidents

SCs are responsible for investigating reports of critical incidents that they discover or have independent knowledge of, as well as incidents submitted to them by providers. However, if a critical incident involves the SC or Service Coordination Entity (SCE), the SC/SCE should not investigate and should turn the investigation over to OLTL immediately.

The SC has 24 hours to begin investigation of a critical incident after its discovery by the SC or 24 hours after a provider informs the SC that it has submitted an incident.

SCs are to take the steps necessary to determine if a critical incident has occurred, whether it is a protective services case and what actions are needed to protect the health and welfare of participants. The following are general guidelines for investigations:

Onsite investigation – An onsite investigation is conducted for fact finding. The incident facts, sequence of events, interview of witnesses and observation of the participant and/or environment is required. If a participant is hospitalized, SCs are to meet with hospital social workers and the attending physician to ensure hospital staff are aware of the incident to ensure a safe disposition. If the incident is medically involved, it is recommended that a nurse or the nurse consultant accompany the SC.

Telephone investigation – When review of the incident report reveals facts are missing or additional information is required, the information can be obtained by conducting a telephone investigation.

No further action is required when the incident report meets all three of the following conditions:

- 1) The facts and sequences of events is outlined with sufficient detail; and
- 2) Preventative action through the service plan is either not required or is implemented and documented; and
- 3) The participant is not placed at any additional risk.

When the investigation is completed, the SC must enter the following information into EIM or SAMS within 30 calendar days of the discovery of the incident:

- Actions taken to secure the health and safety of the participant.
- Changes made to the Individual Service Plan as a result of the incident.
- Measures taken to prevent or mitigate recurrence of the critical incident.

When the SC is unable to conclude the initial investigation within 30 days, the SC is to request an extension from OLTL through EIM.

All information of an alleged incident involving a participant is confidential.

In the case of suspected abuse, neglect and exploitation, SCs are expected to ensure for the health and welfare of participants and to cooperate with protective services investigators.

C. EMPLOYEE REMOVAL OR SUSPENSION

Critical incident 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 of the alleged incident and the employment policies of that agency.

If the employee works for a participant-directed employer, the employee is required to be suspended without pay and the participant's back up plan should be put in place. This may include temporary transfer to the agency model of service delivery or placement of additional skilled services, such as nursing services, on the service plan until the investigation is completed.

D. SC AND PROVIDER CRITICAL INCIDENT POLICIES

All SCs and providers are required to develop and implement written policies and procedures relating to critical incident management. See § 52.17 (b) and (c) (relating to critical incident and risk management). These policies, which SCs and providers are required to meet, are in accordance with Chapter 52 and licensing requirements. The policies must include prevention, reporting, notification, investigation and management of critical incidents.

E. STAFF TRAINING

SCs and providers are to meet the training requirements necessary to maintain appropriate licensure or certification, or both, in addition to meeting all other training requirements in § 52.21 (relating to staff training), including but not limited to:

- SCs and providers are to implement standard annual training for staff members providing services which contains the following items related to critical incidents in addition:
 - Prevention of abuse and exploitation of participants.
 - Reporting critical incidents.
 - Participant complaint resolution.
 - Department-issued policies and procedures.
 - Provider's quality management plan.

F. RISK MITIGATION

SCs and providers are required to meet the risk management requirements as specified in the approved applicable waivers. See § 52.17(d) (relating to critical incident and risk management). OLTL waivers can be found at:

<http://www.dhs.state.pa.us/foradults/healthcaremedicalassistance/supportserviceswaivers/index.htm>.

SCs and providers are to analyze causes and trends related to critical incidents and reduce the number of preventable incidents. The methods used by SCs and providers to reduce the number of preventable incidents are to be documented on the provider's Quality Management Plan. See 55 Pa. Code § 52.17(f) (relating to critical incident and risk management).

G. PROTECTIVE SERVICES

As mentioned, SCs and providers are mandatory reporters under APS law and the OAPSA. Please note that the definitions and reporting requirements for both of these programs are different than those outlined in this bulletin. Also note that not all critical incidents meet protective services standards.

Further information on protective services and requirements for mandatory reporters can be found at:

APS:

<http://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2010&sessInd=0&smthLwInd=0&act=70>. **Suspected abuse, neglect and exploitation should be verbally reported by calling 1-800-490-8505. The attached Guidance contains further reporting requirements.**

OAPSA:

<http://www.aging.pa.gov/organization/advocacy-and-protection/Pages/Protective-Services.aspx#.VQbfG610z4Y>. **Suspected abuse, neglect and exploitation should be verbally reported by calling 1-800-490-8505.**

To assist SCs and providers, the Department is issuing the attached guidance, which outlines mandatory reporting requirements under the APS Act.

Also, attached is the Critical Incident form that is to be used by providers that provide services to participants in the Aging waiver. The form is to be e-mailed to OLTL at RA-Incident@pa.gov as specified in the Reporting section above.

ATTACHMENTS

- Incident Reporting Sheet to be used by Aging Waiver Direct Care Providers
- Department of Human Services Informational guidance on the Adult Protective Services law.
- Department of Human Services Mandatory Reporting Form (to be used if a copy of the Critical Incident report is not available to submit to APS)
- Department of Human Services Mandatory Reporting Form Instructions

This bulletin rescinds OLTL Bulletin number 05-11-06, 51-11-06, 52-11-06, 54-11-06, 55-11-06, 59-11-06 issued on October 14, 2011 and any other OLTL policy documents or parts of policy documents that are inconsistent with this bulletin's contents.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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