HEALTH CARE AUTHORITY

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Letter of Direction #65

Date: **September 5, 2025**

To: **Turquoise Care Managed Care Organizations**

From: **Dana Flannery, Director, Medical Assistance Division**

Subject: **Critical Incident Reporting Requirements Updates**

Title: **CI Reporting Updates**

The New Mexico Health Care Authority, Medical Assistance Division (HCA/MAD) is issuing this Letter of Direction (LOD) to notify Managed Care Organizations (MCOs) regarding revisions to the New Mexico Administrative Code (NMAC), Turquoise Care Medicaid Managed Care Services Agreement (MSA), and the Managed Care Policy Manual (PM).

Based on HCA's analysis, eliminating the Emergency Services, Law Enforcement, and Environmental Hazard reporting categories, and revising the requirements for reporting insufficient staffing incidents, will reduce reportable incidents by more than 50%. These incidents will remain reportable if they involve abuse, neglect, exploitation, misuse or unauthorized use of restrictive interventions or seclusion, or a medication error by a provider resulting in contact with a poison control center, an emergency department visit, an urgent care visit, a hospitalization, or death.

This Letter of Direction is issued pursuant to HCA's authority under the Turquoise Care Managed Care Services Agreement and the Managed Care Policy Manual. This guidance shall be binding on all MCOs and shall remain in effect unless and until superseded by formal amendment to the NMAC, MSA, or Policy Manual.

This guidance shall apply prospectively and shall take effect for incidents occurring on or after 10/31/25. MCOs are not required to modify or withdraw incident reports submitted prior to that date but may choose to do so at their discretion.

Effective 10/31/25, MCOs are not required to submit CI reports to the MAD CI Portal for the Emergency Services, Law Enforcement, and Environmental Hazard incident categories. However, MCOs must continue to internally track these incidents and must make documentation available to HCA upon request. The MCO will establish their own internal processes for tracking. The process must be robust enough to provide information regarding the MCO's follow-up to HCA upon request. MCOs must also internally track insufficient staffing incidents that will no longer be reportable to

the MAD CI Portal under this LOD. This policy shall remain in effect until superseded by formal amendment to the NMAC, MSA, or Policy Manual.

NMAC revisions:

TITLE 8 SOCIAL SERVICES
CHAPTER 308 MANAGED CARE PROGRAM
PART 21 QUALITY MANAGEMENT

8.308.21.13 INCIDENT MANAGEMENT: Critical incident reporting and management is considered part of ongoing quality management. Critical incident reporting and analysis of critical incident data helps to identify causes of adverse events in critical care and areas of focus for implementation of preventative strategies.

A. MCO incident management principles: The implementation of incident management practices and effective incident reporting processes as described in the Medicaid managed care services agreement or the managed care policy manual are based on the following MAD MCO principles:

(1) a member is expected to receive home and community based services free of abuse, neglect, and exploitation;

(2) training addresses the response to and the report of to include the documentation of a critical incident;

(3) a member and their authorized representative will receive information on their MCO incident reporting process; and

(4) good faith incident reporting of or the allegation of abuse, neglect or exploitation is free from any form of retaliation.

B. Reportable incidents:

(1) The MCO shall ensure that any person having reasonable cause to believe an incapacitated adult member is being abused, neglected, or exploited must immediately report that information.

(2) The MCO shall develop and provide training covering the MCO's procedures for reporting a critical incident to all subcontracted individual providers, provider agencies, and its members who are receiving self-directed services, to include their employees.

(3) The MCO shall comply with all statewide reporting requirements for any incident involving a member receiving a MAD covered home and community based service.

(4) A community agency providing home and community based services is required to report critical incident involving a MCO member, including:

(a) the abuse of the member;

(b) the neglect of the member;

(c) the exploitation of the member;

(d) The misuse or unauthorized use of restrictive interventions or seclusion on a member;

(e) a medication error by a provider resulting in a telephone call to or consultation with a poison control center by or on behalf of the member, an emergency department visit, urgent care visit, a hospitalization, or death of the member; and

(f) the death of the member.

(5) The MCO shall provide, coordinate, or both, intervention and shall follow-up upon the receipt of an incident report that demonstrates the health and safety of its member is in jeopardy.

MSA revisions:

Update Critical Incident definition:

> **Critical Incident** means a reportable incident that may include but is not limited to abuse; neglect; exploitation; misuse or unauthorized use of restrictive interventions or seclusion; medication error by a provider; and death occurring during an episode of Member care.

New contract section:

4.12.9.11 Critical Incidents may include but are not limited to the incident types that are reportable in the HCA MAD Critical Incident Portal below.

4.12.9.11.1 **Abuse/Self-Abuse**

4.12.9.11.1.1 Knowingly, intentionally and without justifiable cause inflicting physical pain, injury or mental anguish;
4.12.9.11.1.2 Intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;
4.12.9.11.1.3 Sexual abuse, including criminal sexual contact, incest and criminal sexual penetration;
4.12.9.11.1.4 Verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish; and
4.12.9.11.1.5 Self-injury and/or attempted suicide.

4.12.9.11.2 **Neglect/Self-Neglect** causes or is likely to cause harm to a person and includes:

4.12.9.11.2.1 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, including when an agency is insufficiently staffed;
4.12.9.11.2.2 Refusing services and/or goods, including but not limited to food, prescribed medications, proper hygiene, plan of care;
4.12.9.11.2.3 Misuse of prescribed medications and/or engaging in substance abuse or dangerous behaviors;
4.12.9.11.4 Missing, wandering, and elopement.

4.12.9.11.3 **Exploitation**

4.12.9.11.3.1 Taking advantage of a member for personal gain through manipulation, intimidation, threats, or coercion;
4.12.9.11.3.2 The wrongful use of a member's belongings (including medications) or money without their consent.

4.12.9.11.4 **Misuse or unauthorized use of restrictive interventions or seclusion**

4.12.9.11.4.1 Physical, chemical, or mechanical restraints that immobilize or reduce the ability of a member to move their arms, legs, body, or head freely.

4.12.9.11.4.2 A chemical restraint is a drug or medication used as a restriction to manage a member's behavior or restrict their freedom of movement and is not a standard treatment or dosage for their condition.

4.12.9.11.5 **Medication error** by a provider resulting in a telephone call to, or a consultation with, a poison control center, an emergency department visit, an urgent care visit, a hospitalization, or death.

4.12.9.11.6 **Death** including but not limited to natural/expected, unexpected, suicide, homicide, and a death caused by abuse or neglect.

PM revisions (section 18.2):

All agencies in New Mexico providing HCBS and BH services are required to report Critical Incidents within 24 business hours of knowledge of the occurrence.

- HCBS critical incidents involving members with a qualifying COE must be reported on the HCA MAD CI Portal for the following reportable incidents: abuse; neglect; exploitation; misuse or unauthorized use of restrictive interventions or seclusion; medication error by a provider; and deaths.
- Qualifying COEs include: 001; 003; 004; 066; 086; 090; 091; 092; 093; 094; 100 and 200 with a NF LOC.

The following incident types and methodology shall be utilized when entering critical incident reports into the HCA MAD Critical Incident Portal:

- Abuse/Self-Abuse:
    - Attempted Suicide
    - Physical (consumer towards caregivers, family, or others)
    - Physical (directed at consumer)
    - Rape (of consumer)
    - Self Injury
    - Sexual (consumer towards caregivers, family, or others)
    - Sexual (directed at consumer)
    - Sexual Behavior Displayed (consumer towards caregivers, family, or others)
    - Sexual Behavior Displayed (directed at consumer)
    - Verbal/Psychological (consumer towards caregivers, family, or others)
    - Verbal/Psychological (directed at consumer)
    - Type Not Specified
- Neglect/Self-Neglect:
    - By Caregiver, Staff, or Others – including transportation providers if a lack of transportation results in an ED visit, hospitalization, or death
    - By Family Members
    - Insufficient Staffing – used in the absence of sufficient PCS caregiver staffing for Home and Community-Based Delegated and Agency Directed members; reportable only for members in Risk Level II or Risk Level III with no natural live-in supports and PCS have already begun (a CIR is only required to be filed if all three categories are met)

    - Issue with hiring/firing of caregivers – utilized when PCS have not begun; reportable only for members in Risk Level II or Risk Level III with no live-in natural supports (a CIR is only required to be filed if all three categories are met)
    - Self Neglect (refuses food, poor hygiene, refuses or abuses medications, substance abuse, dangerous behavior)
    - Self Neglect (refusing services) – includes Personal Care Services and other services that, if refused, would cause or would likely cause harm to a person
    - Missing, wandering, elopement
    - Type not specified
- Exploitation:
    - Consumer's Finances (bank, cards, etc.)
    - Theft of Consumer's Medications
    - Theft of Consumer's Personal Property
    - Type Not Specified
- Restrictive Interventions:
    - Misuse or unauthorized use of restrictive interventions or seclusion
    - Physical, chemical, or mechanical restraints that immobilize or reduce the ability of a member to move their arms, legs, body, or head freely
    - A chemical restraint is a drug or medication used as a restriction to manage a member's behavior or restrict their freedom of movement and is not a standard treatment or dosage for their condition
    - Physical restraints can include, but are not limited to straps, seclusion (locking member in room or house), bed rails, recliners, sheets tucked in to prevent movement, trays attached to a wheelchair, door alarms that alert staff when member leaves a room, withholding access to prescribed and needed Durable Medical Equipment (DME) including prosthetics, concave mattresses, and utilizing furniture to block a pathway or exit
- Medication Error:
    - Poison Control Call
    - Emergency Department
    - Urgent Care
    - Hospitalization
    - When reporting a medication error by a provider resulting in death, the primary incident type would be Death and the secondary incident type would be Medication Error
- Death:
    - Natural/expected
    - Unexpected
    - Suicide
    - Homicide

All fields highlighted in yellow in the HCA MAD CI Portal must be completed when entering a report, including:

- Demographic information
- Activities of Daily Living (ADLs)

- Diagnosis(es): include at least three pertinent diagnoses, regardless of whether they contributed to the incident
- List of Consumer's Current Medications
- Agency/Eligibility Information
- Incident Details including:
    - Incident Type/Subcategory
    - Whether the incident involves alleged Medicaid fraud such as timesheet fraud (checkbox)
    - Whether the incident occurred during authorized service hours (checkbox)
    - Risk Level:
        - Risk Level I - Low
            - Members receiving Personal Care Services (PCS): 10 hours or fewer allocated per week with natural support
            - Members who are not receiving PCS with low health risk factors
        - Risk Level II – Medium
            - Members receiving PCS: 11-25 hours allocated per week
            - Members who are not receiving PCS with moderate health risk factors
        - Risk Level III – High
            - Members receiving PCS: 26 or more hours allocated per week
            - Members who are not receiving PCS with high health risk factors
    - If the incident included an Emergency Department visit (ED visit checkbox): If an incident of abuse, neglect, exploitation, misuse or unauthorized use of restrictive interventions or seclusion, or a medication error by a provider (resulting in an emergency department visit, an urgent care visit, a hospitalization, or death) involves an Emergency Department (ED) visit, the 'ED Visit?' box in the Critical Incident Reporting Form must be checked
    - Whether anyone else was present at the time of the incident
    - Incident Date, such as the first date the member did not receive PCS, the date the member was transported to the Emergency Department due to a medication error by a provider, or the date of death
    - Incident Time
    - Date Reporting Agency first had knowledge of the incident, such as the date the PCS agency staff, caregiver, provider, or MCO first knew the incident occurred (whichever comes first)
    - Incident Location
    - Individualized narrative:
        - Before the incident, which should include:
            - The number of PCS hours allocated per week, including the days of the week and number of hours per day, if applicable
            - If PCS hours were missed, the number of missed visits and the last date services were provided
            - How the member's Risk Level was determined (PCS hours, high health risk factors, etc.)
            - Whether the member has live-in natural supports or not

        - Whether the member has, or is in need of, Durable Medical Equipment (DME)
        - Whether the member is delegated or directed
    - During the incident, which should include:
        - A detailed explanation of circumstances surrounding the incident being reported
        - A detailed explanation of actions taken by member or responsible caregivers to react to the incident
    - After the incident, which should include:
        - What happened as a result of the incident such as member being admitted to the hospital
        - Actions that will be taken in response to the incident such as provider referrals, efforts to find a member who is missing, wandering, or eloped (police report, Amber Alert, Silver Alert), referral to the Office of the Medical Investigator (OMI) for Death reports

Follow up

- Must be documented via diary entries in the original critical incident report in the HCA MAD CI Portal
- Documentation must include/address:
    - That the member's health and safety needs have been addressed
    - The status of a member who was missing, wandered, or eloped
    - The status of provider referrals or and/or if the member was sent for a mental health evaluation
    - Referrals to Special Investigations Units for incidents involving potential Medicaid fraud
    - The date member's PCS resumed or status of caregiver search
    - Status of a modified IPOC if there has been a request to change the number of authorized service hours
    - Clinical review or requests for medical documentation for Natural/Expected Deaths
    - The status of referral to OMI and/or medical records request for Unexpected Death reports
    - If Neglect or Abuse included an environmental hazard (e.g. pest infestation), documentation that the environmental hazard has been mitigated
    - The method of contact (telephonic, in-person, email, text, letter), with whom the contact was made (member, guardian, Power of Attorney/POA, family member and relationship), and dates of contact attempts
    - Directly address the incident reported and be individualized to the follow-up action, member, and incident
- Documentation and follow-up is ongoing until the initial reason for the incident report has been resolved and the health, safety, and welfare of the member has been established

This LOD will sunset upon inclusion into the NMAC, MSA, and PM.