



## **Office of Community Living**

# **Home and Community Based Services-for Persons with Developmental Disabilities (HCBS-DD) Waiver Amendment**

Submitted for public comment July 13, 2017 through August 11, 2017

## **Department responses to Public Comment**

*December 11, 2017*

*Michele Craig*

## **Acknowledgement**

The Department thanks the many people who took the time and made the effort to provide feedback regarding the HCBS-DD waiver amendment. Without such input, the Department cannot improve its services and supports to help children and adults live everyday lives in the community.

## **Background**

Per the Department of Health Care Policy and Financing's (the Department) agreement with the Centers for Medicare and Medicaid Services (CMS), if there are necessary changes to a federally approved Home and Community Based Services waiver, then the Department must submit a waiver amendment.

The Department proposed amending the following sections of the HCBS-DD waiver:

Appendix A-3: revision to add DentaQuest as a contracted entity to perform services as an Administrative Services Organization for the management of waiver dental services and to add performance measures relative to DentaQuest's functions as a contracted entity.

Appendix B-3: revision to increase the unduplicated count for waiver years 4 and 5 to reflect actual enrollment trends.

Appendix C-1-a: revision to remove outdated rule citations.

Appendix D-1, 1-c, 1-d, 2-a and 2-b: revision of regulatory citations to reflect current citations in the rules at 10 CCR 2505-8.6.

Appendix F-1, 2-b and 3-b: revision of regulatory citations to reflect current citations in the rules at 10 CCR 2505-8.6.

Appendix G-1-b, 1-d, 2-a-i, 2-a-ii, 3-b-i and 3-c-ii: revision of regulatory citations to reflect current citations in the rules at 10 CCR 2505-8.6.

Appendix G-1-b: revision to the timeline for reporting requirement for critical incident reports by Community Centered Boards (CCB) to the Department to within 24 hours and that the definitions of critical incident categories are available in the May 2017 Critical Incident Reporting Requirements training PowerPoint.

Appendix G-1-e: revision to require the Department to review and evaluate each reported critical incident within 24 hours upon receipt.

Appendix G-Quality Improvement: revision to include performance measures in a.-i.a that demonstrate that on an on-going basis it identifies, addresses and seeks to prevent instances of abuse neglect, exploitation and unexplained death.

Appendix G- Quality Improvement: revision to include a performance measures in a-i-b that demonstrate than an incident management system is in place that effectively resolves those incidents and prevents further similar incidents.

Appendix I-2-a: revision to the rate methodology for Non-Medical Transportation to reflect the 7.01% targeted rate increase approved by the Colorado General Assembly July 1, 2017.

Appendix I- Quality Improvement: revision to add a performance measure that to address the number and percent of paid claims within a representative sample with adequate documentation that services were rendered.

Appendix J-1 and 2: revision to incorporate a 1.4% across the board rate increase approved by the Colorado General Assembly effective July 1, 2017. Revision also reflects the targeted rate increase for Non-Medical Transportation.

## **Public Comment Approach**

Public comment was sought via five methods:

- Division for Intellectual and Developmental Disabilities Communication Briefs
- State Registry public notice
- Tribal Consultation
- Newspaper public notices in the Denver Post, Boulder Daily Camera, Longmont Daily Times, Colorado Springs Gazette, Fort Collins Coloradoan, Loveland Reporter Herald, Grand Junction Daily Sentinel, Pueblo Chieftain and the Greeley Tribune
- The Colorado State Medical Assistance and Services Advisory Council

Options provided for submitting public comment:

Website: [www.colorado.gov/hcpf/hcbs-waiver-transition](http://www.colorado.gov/hcpf/hcbs-waiver-transition)

Email: [didd.publiccomment@state.co.us](mailto:didd.publiccomment@state.co.us)

Phone: 303-866-4738

US Mail: 1570 Grant Street, Denver CO 80203

Fax: 303-866-2573

## **Public Comment: Summary**

One response to the Department's request for public comment was received via email and included 8 comments all in reference to Appendix G-1: Response to Critical Events or incidents.

## **Public Comment: Response**

This document responds to all received public comment, grouping the received responses by theme as determined by the Department. The comments provided are listed below verbatim as provided to the Department.

1. A PowerPoint presentation only serves as an outline for a more extensive webinar. The May 2017 version was accompanied by a 2-hour webinar which contained far more clarification than is referenced in the PowerPoint.
2. Without the accompanying information provided in the webinar, the PowerPoint presentation does not provide substantial enough information, nor does it provide 'definitions' per se. It only identifies categories, without criteria.
3. The structure of the paragraph above, highlighted in blue, is not sufficiently parsed out to separate what is an allegation of abuse vs. what is reportable as a crime. They should not be grouped together. An allegation of abuse is very different from identifying a crime committed against or by a participant. There is nothing in the PowerPoint that clarifies the differences. In addition, the PowerPoint identifies a crime committed by a person in services as an unusual incident, in addition to categorizing it under mistreatment, with no discussion of how or why they may differ.
4. The PowerPoint is not specific to Critical Incident Reporting and interjects Mandatory Reporting laws, however, DIDD has stated they are not in a position to interpret the Mandatory Reporting law. The PowerPoint does not discuss how Mandatory Reporting and Critical Incident Reporting intersect.
5. As the PowerPoint does not provide clarification or definitions, we object to it being referenced in the waiver and recommend the 2007 Quick Guide and Criteria documents continue to be utilized until such time that the referenced information may be clearly updated.
6. The May 2017 PowerPoint is incomplete and did not, at the time, include "Serious Crime Against a Person", which would coincide with mandatory reporting and allow for reporting of incidents that do not meet the criteria for mistreatment.
7. The May 2017 PowerPoint presents information that is not consistent with the waiver and the requirements for investigations. The waiver references the Investigations Manual, which has the 2006 Quick Guide to Critical Incidents as well as providing guidance, in more concrete terms, for how investigations may be conducted.
8. The PowerPoint does not help differentiate what is to be reported to DIDD, APS, and Law Enforcement, nor does it help to define any overlap.

## **Department Response:**

The Department revised the HCBS-DD waiver amendment to remove reference to the 2006 Quick Guide to Critical Incidents and the May 2017 Power Point and added definitions of critical incidents as follows:

### **"Death**

- Unexpected or expected

### **Abuse/Neglect/Exploitation**

#### **Abuse means:**

- The non-accidental infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;
- Confinement or restraint that is unreasonable under generally accepted caretaking standards; or
- Subjection to sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.

#### **Neglect means:**

- Neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or other treatment necessary for the health and safety of a person is not secured for or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise, or a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for waiver participant.

#### **Exploitation means:**

- An act or omission committed by a person who:
  - Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive a person of the use, benefit, or possession of anything of value;
  - Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the person receiving services;
  - Forces, compels, coerces, or entices a person to perform services for the profit or advantage of the person or another person against the will of the person receiving services; or
  - Misuses the property of a person receiving services in a manner that adversely affects the person to receive health care or health care benefits or to pay bills for basic needs or obligations.

### **Injury/Illness to Client**

- An injury or illness that requires treatment beyond first aid which includes lacerations requiring stitches or staples, fractures, dislocations, loss of limb, serious burns, skin wounds, etc.
- An injury or illness requiring immediate emergency medical treatment to preserve life or limb.
- An emergency medical treatment that results in admission to the hospital.
- A psychiatric crisis resulting in unplanned hospitalization

### **Damage to Consumer's Property/Theft**

- Deliberate damage, destruction, theft or use of a waiver recipient's belongings or money.
- If incident is mistreatment by a care giver that results in damage to consumer's property or theft the incident shall be listed as mistreatment

### **Medication Management Issues**

- Issues with medication dosage, scheduling, timing, set-up, compliance and administration or monitoring which results in harm or an adverse effect which necessitates medical care.

### **Missing Person**

- Person is not immediately found, their safety is at serious risk or there a risk to public safety.

### **Criminal Activity**

- A criminal offense that is committed by a person.
- A violation of parole or probation that potentially will result in the revocation of parole/probation.
- Any criminal offense that is committed by a person receiving services that results in immediate incarceration.

### **Unsafe Housing/Displacement**

- Individual is residing in an unsafe living conditions due to a natural event (such a fire or flood) or environmental hazard (such as infestation), and is at risk of eviction or homelessness."

### **Conclusion & Next Steps**

The Department believes the removal of the references to the 2006 Quick Guide to Critical Incidents and the May 2017 Power Point and the addition of specific definitions of reportable critical incidents adequately addresses the public comment submitted. The Department will continue to provide on-going statewide training and technical assistance on critical incidents to Case Management Agencies and service provider agencies.