



Division for Intellectual and Developmental Disabilities

Definitions for Mistreatment, Abuse, Neglect, or Exploitation (MANE) of at-risk adults with intellectual and developmental disabilities and related terms

Department responses to Public Comment

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Acknowledgement

The Department thanks the many people who took the time and made the effort to provide feedback regarding the definitions of Mistreatment, Abuse, Neglect, Exploitation (MANE), and related terms. Without such input, the Department cannot improve its services and supports to help children and adults live everyday lives in the community.

Background

The At-Risk Adults with Intellectual and Developmental Disabilities Mandatory Reporting Implementation Task Force (Task Force) was established by SB15-109 to study and prepare recommendations for the implementation of mandatory reporting of Mistreatment, Abuse, Neglect, or Exploitation (MANE) of at-risk adults with intellectual and developmental disabilities. These recommendations were later adopted with the passage of HB16-1394, An Act Concerning Clarifying Definitions Related to At-Risk Persons. Based upon the recommendations of this Task Force and the resultant statutory changes, the Department is proposing the adoption of new definitions to align with the criminal statutes and Adult Protective Services statutes.

Public Comment Approach

The Department accepted public comment on the proposed rule between July 27, 2017 and August 25, 2017. Comments were accepted through email, phone, and through the Department's website.

Public Comment: Summary

Comments were received through email from community members and advocacy organizations. In total, six comments were received by the Department.

Public Comment: Response

This document responds to all received public comment, grouping the received responses by theme as determined by the Department. Next to each theme is the number of comments received that touch on that theme.

Theme #1: Abuse
Comments Received: 2

I am strongly opposed to any change in MANE rules that would water down the definition of abuse committed against an individual with intellectual and developmental disabilities. Abuse is abuse; and all cases of abuse should be reported to law enforcement no matter how 'minor' the incident (I find it hard to even say that any abuse can ever be considered as minor).

"Abuse" the criminal statute does not include the phrase "nonconsensual." There should be an effort here to describe what specific sexual conduct or contact is classified as a crime under the Colorado Criminal Code because service providers, case managers and others who need to report in the intellectual and developmental disability service system overseen by HCPF will not necessarily know what is criminal. Adding the phrase "nonconsensual" may be helpful, but still may not be enough to fully describe what conduct is criminal. Criminal sexual conduct and contact includes sexual intrusion, penetration and contact, and includes when the actor knows the victim cannot appraise the victim's conduct and when the actor knows the victim is physically helpless, among other things. The goal should be to keep definitions simple for the service providers, case managers and others in the IDD system so they know when to report, and not have them looking up definitions of what qualifies as criminal sexual conduct or contact during times of potential crisis. If HCPF chooses not to include a more descriptive definition of what constitutes criminal sexual conduct or contact in the regulation, then perhaps HCPF should add a specific requirement that the CCBs train on what exactly constitutes criminal sexual conduct or contact.

Theme #1: Department Response

The Department agrees that any change to the MANE rules that appear to water down protections would place clients at risk. The proposed definitions align the regulatory definitions with statute and strengthen protections for individuals in services by providing definitions of the prohibited conduct.

Department has updated the regulation and removed "nonconsensual." Additionally, Department has added definitions for "sexual contact," "sexual intrusion," and "sexual penetration" consistent with the criminal statutes found at C.R.S. 18-3-402. By adding these additional definitions, case managers and others in the IDD system will better know when to report incidents of abuse.

Theme #2: Caretaker
Comments Received: 1

This section should include language from the protective services statute stating that a caretaker is someone who provides oversight of services.

Theme #2: Department Response

Regulation has been updated to include oversight of services.

Theme #3: Caretaker Neglect

Comments Received: 1

The phrase "for a person with an IDD" appearing after the word "secured" could be eliminated because it seems redundant. The phrase "any medication or medical procedure or device" on the fourth line down is duplicative and can be eliminated. The phrase "shall not" on the last line of this paragraph should be changed to "is not" to mirror the language in the criminal code and protective services code.

Theme #3: Department Response

C.R.S. 25.5-10-202(1.8) defines "Caretaker Neglect." Definition in the proposed rule is consistent with the HCPF statute. The extra phrase "any medication or medical procedure or device" has been removed for clarity. The phrase "shall not" is used in the HCPF statute at C.R.S. 25.5-10-202(1.8). The Department has decided to keep the definitions in HCPF rules consistent with the HCPF statute.

Theme #4: Guardian

Comments Received: 1

This definition is confusing and should be re-written. The definition makes it seem as if a guardian can be appointed by will for an incapacitated adult. A guardian of an incapacitated adult can only be appointed by court, not through testamentary appointment. C.R.S. 15-14-301. The citation to C.R.S. 15-14-312, the section on emergency appointment of a guardian, seems too limiting because the purpose is to capture the scope of guardianship's authority in all situations, even a non-emergency proceeding. Disability Law Colorado suggests the following:

"Guardian" means a person appointed by the court, or named in a will to be the guardian of a minor child, and charged with limited, temporary, or full guardian's power and duties.

Theme #4: Department Response

The Department has adopted the proposed language.

Theme #5: **Other**
Comments Received: 1

"Case Management Agency" (CMA) means a Community Centered Board within a designated service area where an applicant or client can obtain case management services.

This legislative session approved new law related to the Conflict-Free Case Management allowing for other businesses to be formed to conduct case management besides just CCB's. So this language needs to be updated as well.

Theme #5: Department Response

The Department is aware of the latest legislation and will be passing rules once it has gone into effect. At this time CCBs are still operating as Case Management Agencies. The proposed rule will be updated at a later time to come into compliance with Conflict Free Case Management. This rule is simply updating definitions as they currently stand to come into compliance with HB 16-1424.

Conclusion & Next Steps

The Department will proceed with initial presentation of this rule to the Medical Services Board on October 13, 2017. Additional public comment can be made at the Public Rule Review Meeting on September 18, 2017.

Appendices

Revised rule attached.