



# OFFICE OF LONG-TERM LIVING BULLETIN

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**NUMBER**5-23-02; 51-23-02; 54-23-02; 55-23-02;  
59-23-02**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 Community HealthChoices (CHC)-Managed Care Organizations (MCO), SCs, and providers of their responsibilities as mandatory reporters under the Adult Protective Services (APS) Act and the Older Adults Protective Services Act (OAPSA). CHC-MCOs must ensure that Network Providers comply with the reporting requirements established in the APS Act and OAPSA. In addition, CHC-MCOs must ensure that Network Providers comply with the critical incident and adverse event reporting requirements outlined in the CHC Agreement.

APS: Act 70 of 2010 requires that all OLTL SCs and providers are mandatory reporters under the law, and 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 (OAPS). 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 CHC Waiver, the OBRA Waiver, and 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 MCOs, SCs, and providers responding to critical incidents, reporting them, MCOs and SCs investigating them, and performing follow up as needed. The system also involves MCO, SC, and provider development and maintenance of critical incident management policies and provision of staff training. To protect program participants, we must ensure terms and the process regarding required timeframes as well as the responsibilities for each party involved are clearly defined.

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

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

The APS Act was implemented to provide for the protection of adults against abuse, neglect, exploitation, or abandonment. 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 protection from abuse, neglect, exploitation, or abandonment of adults ages 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 one or more of the following:

- 1) Sexual harassment of a participant
- 2) Sexual contact between a staff member and a participant
- 3) Restraining a participant.
- 4) Financial exploitation of a participant
- 5) Humiliating a participant
- 6) Withholding regularly scheduled meals from a participant
- 7) Any other act or omission identified in applicable law as abuse

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

- 1) Death (other than natural causes) \*
- 2) Serious injury
- 3) Hospitalization of a participant. Pre-planned hospitalizations are not critical incidents \*\*.

- 4) Provider and staff member misconduct including deliberate, willful, unlawful, or dishonest activities
- 5) 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
- 6) Neglect
- 7) Exploitation
- 8) 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.
- 9) Medication errors that result in hospitalization, an emergency room visit, or other medical intervention.

\*NOTE: A death that is suspicious or unexplained is a critical incident. A death that is due to natural causes is not a critical incident.

\*\*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.

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.**

**Emergency Room Visit** – For the purposes of Critical Incident reporting, an emergency room visit is defined as the use of a hospital emergency room. This includes situations that are clearly emergencies, such as a serious injury, life-threatening medical conditions, medication errors, as well as those when an individual is directed to an emergency room in lieu of a visit to the PCP or as the result of a visit to the PCP. The use of an emergency room by an individual, in place of the physician's office, is not reportable.

**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, if there is suspected abuse, neglect, exploitation, or abandonment requiring the involvement of protective services, what actions are needed to protect the health and welfare of participants, and what actions are needed to mitigate future critical 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 and that places the participant's 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.

**Serious Injury** – an injury that:

- 1) causes a person severe pain; or
- 2) significantly impairs a person's physical or mental functioning, either temporarily or permanently

## **B. PROCEDURES**

### **I. Mandatory Reporting of Critical Incidents**

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

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

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

### **II. Reporting**

All MCOs, SCs, and providers are required to report critical incidents. Before reporting a critical incident, measures must be taken immediately to safeguard the participant. This may include calling 911, contacting APS (participants ages 18-59), OAPS (participants ages 60 or older), 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 an incident is reportable. A “critical incident” is defined above.

Within 48 hours, the MCO, SC, or provider agency that discovers or has independent knowledge of the critical incident is to submit the First Section of the critical incident report to OLTL using OLTL’s critical incident management system. If the critical incident was discovered on a weekend or holiday, the 48 hours begin at 12:00 AM on the first business day after discovery of the critical incident.

- 3) All critical incidents must be documented as specified above and initial reports must include:
  - A. Reporter information
  - B. Participant demographics
  - C. OLTL program information
  - D. Event details and type
  - E. Description of the critical incident
  - F. Actions taken to immediately secure the participant’s well-being
- 4) All MCOs, SCs, and providers enrolled in the CHC Waiver, OBRA Waiver, or Act 150 Program are required to report critical incidents using OLTL’s critical incident management system and must ensure they have staff trained and available to report critical incidents in the timeframes required below.
- 5) Providers must inform the participant’s SC within 24 hours of discovering or first learning of a critical incident. If the participant needs immediate intervention, providers must immediately contact SCs. If immediate medical attention is needed, the person who discovers the critical incident must call 911 immediately.
- 6) For critical incidents related to OBRA Waiver or Act 150 Program participants, after OLTL has reviewed the critical incident, additional follow-up information may be required of the provider or SC. The feedback will be provided via OLTL’s critical incident management system, in the State Management Review section of the critical incident report. For critical incidents related to CHC Waiver participants, the respective MCO will provide feedback to the SC via OLTL’s critical incident management system by completing the MCO Management Review section of the critical incident report.
- 7) 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.

- 8) Participant involvement - In order to respect an individual's autonomy, a participant has the right to not report critical incidents and has the right to decline further interventions. A participant also has the 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 a critical incident, or declines further intervention, the critical incident must still be reported, and the MCO or SC must investigate the critical incident. Documentation is to be kept indicating that the participant did not wish to report the critical incident or declined interventions. If the critical incident involves potential danger to the participant, the MCO or SC needs to inform the participant that they are a mandated reporter and are required by law to report the critical incident to protective services and to submit a critical incident report to OLTL. The MCO or 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

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

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

For critical incidents reportable under APS and OAPSA, including those involving suspected abuse, neglect, exploitation or abandonment, the CHC-MCO or SC is responsible to report the critical incident to APS or OAPSA but not to investigate. CHC-MCO staff and SCs are required to provide information to and cooperate with APS and OAPSA staff who are conducting the investigation. In addition, the CHC-MCO or SC shall fully cooperate with APS and OAPSA staff in the coordination of any services provided by the CHC-MCO or SCE. Upon being notified by APS and OAPSA staff that a case has been closed, or upon being notified by OLTL, the CHC-MCO or SC will resume full responsibility for subsequent critical incident reporting and investigation for that Participant.

MCOs and 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 critical incident facts, sequence of events, interview of witnesses, and observation of the participant and/or environment is required. If a participant is hospitalized, SCs or MCO staff are to meet with hospital social workers and the attending physician to ensure hospital staff are aware of the critical incident to ensure a safe disposition. If the critical incident is medically involved, it is recommended that a nurse or the nurse consultant accompany the SC or MCO staff.

Telephone investigation – When review of the critical 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 critical incident report meets all three of the following conditions:

- 1) The facts and sequences of events are 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 MCO or SC must enter the following information into OLTL's critical incident management system within 30 calendar days of the discovery of the critical incident:

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

When the MCO or SC is unable to conclude the initial investigation within 30 days, the MCO or SC is to request an extension through OLTL's critical incident management system or from OLTL, when applicable. Each critical incident report extension must be requested for 30 days.

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

In the case of suspected abuse, neglect, exploitation, or abandonment, MCOs and 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 critical 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. MCO, SC, AND PROVIDER CRITICAL INCIDENT POLICIES**

All MCOs, 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 MCOs, 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**

MCOs, 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:

- MCOs, 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**

MCOs, SCs, and providers are required to meet the risk management requirements as specified in the approved applicable waivers. See 55 Pa. Code § 52.17(d) (relating to critical incident and risk management). OLTL waivers can be found at the [Alternatives to Nursing Homes website](https://www.dhs.pa.gov/Services/Disabilities-Aging/Pages/Alternatives-to-Nursing-Homes.aspx): <https://www.dhs.pa.gov/Services/Disabilities-Aging/Pages/Alternatives-to-Nursing-Homes.aspx>.

MCOs, SCs, and providers are to analyze causes and trends related to critical incidents and reduce the number of preventable critical incidents. The methods used by MCOs, SCs, and providers to reduce the number of preventable critical 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, MCOs, SCs, and providers are mandatory reporters under APS and OAPSA laws. 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: [Act 70 of 2010](#)

<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: [OAPSA](#)

<https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=1987&sessInd=0&smthLwInd=0&act=0079>

Suspected abuse, neglect and exploitation should be verbally reported by calling **1-800-490-8505**.

To assist MCOs, SCs, and providers, the Department is issuing the attached guidance, which outlines mandatory reporting requirements under Act 70 of 2010.

## ATTACHMENTS

- [Department of Human Services Informational Guidance on the Adult Protective Services Law](#)
- [Department of Human Services Mandatory Reporting Form](#)
- [Department of Human Services Mandatory Reporting Form Instructions](#)

This bulletin rescinds OLTL Bulletin number 05-15-02, 51-15-02, 54-15-02, 55-15-02, 59-15-02 issued on April 16, 2015, 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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