

# KDADS STANDARD POLICY

<b>Policy Name:</b> HCBS Adverse Incident Reporting and Management <b>Commission:</b> Community Services and Programs Commission <b>Applicability:</b> All HCBS 1915 (c) Waivers <b>Contact:</b> HCBS- Program Integrity Manager <b>Policy Location:</b> <a href="https://www.kdads.ks.gov/commissions/home-community-based-services-(hcbs)/hcbs-policies">https://www.kdads.ks.gov/commissions/home-community-based-services-(hcbs)/hcbs-policies</a> <b>Status/Date:</b> Final 08/14/2017	<b>Policy Number:</b> 2017-110 <b>Date Established:</b> 08/14/2017 <b>Date Last Revised:</b> N/A <b>Date Effective:</b> 09/01/2017 <b>Date Posted:</b> 08/15/2017 <b>Number of Pages:</b> 8
<i>Revision History</i>	

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## Purpose

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The purpose of this policy is to establish an adverse incident reporting and management system in accordance with the statutory requirements under §1915 (c) of the Social Security Act and the health and welfare waiver assurance and associated sub-assurances.

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## Summary

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The Kansas Department of Aging and Disability Services (KDADS) has identified and defined adverse incidents for Home and Community Based Services (HCBS) waiver programs. KDADS has a responsibility to provide appropriate oversight to such incidents and promulgates this policy to clearly identify adverse incidents, reporting requirements, responsibilities and data requirements.

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## Entities/Individuals Impacted

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- All HCBS 1915 (c) waiver service providers
- All HCBS functional eligibility assessment entities
- All HCBS 1915 (c) waiver participants
- Department of Children and Families (DCF)
- Kansas Department of Aging and Disability Services (KDADS)
- Managed Care Organizations (MCOs)

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## Policy

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### I. General

- A. All HCBS providers shall make adverse incident reports in accordance with this policy as set forth herein.
- B. All adverse incidents, except those required to be reported to the Department of Children and Families (DCF) indicated below in General. III. A. 1., shall be reported no later than 24 hours of becoming aware of the adverse incident by direct entry into the KDADS web based Adverse Incident Reporting (AIR) system.
- C. Incidents shall be classified as adverse incidents when the event or incident brings harm, or creates the potential for harm to any individual being served by a KDADS HCBS waiver program, the Older Americans Act, the Senior Care Act, the Money Follows the Person program, Behavioral Health Services programs.

### II. Adverse Incident Definitions

- A. **Abuse:** Any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a participant, including:
  - 1) Infliction of physical or mental injury;
  - 2) Any sexual act with a participant that does not consent or when the other person knows or should know that the participant is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;
  - 3) Unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm the participant;
  - 4) Unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the participant or another individual;
  - 5) A threat or menacing conduct directed toward the participant that results or might reasonably be expected to result in fear or emotional or mental distress to the participant;
  - 6) Fiduciary abuse; or
  - 7) Omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

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- B. **Death:** Cessation of a participant’s life
- C. **Elopement:** The unplanned departure from a unit or facility where the participant leaves without prior notification or permission or staff escort.
- D. **Emergency Medical Care:** The provision of unplanned medical services to a recipient in an emergency room or emergency department. The unplanned medical care may or may not result in hospitalization.
- E. **Exploitation:** Misappropriation of the participant’s property or intentionally taking unfair advantage of a participant’s physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.
- F. **Fiduciary Abuse:** A situation in which any person who is the caretaker of, or who stands in a position of trust to, a participant, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust or benefit.
- G. **Law Enforcement Involvement:** Any communication or contact with a public office that is vested by law with the duty to maintain public order, make arrests for crimes and investigate criminal acts, whether that duty extends to all crimes or is limited to specific crimes.
- H. **Misuse of Medications:** The incorrect administration or mismanagement of medication, by someone providing a KDADS Community Services and Programs service which results in or could result in serious injury or illness to a participant.
- I. **Natural Disaster:** A natural event such as a flood, earthquake, or tornado that causes great damage or loss of life. Approved emergency management protocols are to be followed, documented and reported as required by the policy in the AIR system. A separate AIR report shall be made for all HCBS participants in the area who are impacted by the natural disaster.
- J. **Neglect:** The failure or omission by one's self, caretaker or another person with a duty to supply or to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.
- K. **Seclusion:** The involuntary confinement of a participant alone in a room or area from which the participant is physically prevented from leaving.
- L. **Restraint:** Any bodily force, device/object, or chemical used to substantially limit a person’s movement.
- M. **Serious Injury:** An unexpected occurrence involving the significant impairment of the physical condition of a participant. Serious injury specifically includes loss of limb or function.

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- N. **Suicide:** Death caused by self-directed injurious behavior with any intent to die as a result of the behavior.
- O. **Suicide Attempt:** A non-fatal self-directed potentially injurious behavior with any intent to die as a result of the behavior. A suicide attempt may or may not result in injury.

### III. Adverse Incident Reporting Requirements

- A. Reporting abuse, neglect, exploitation, and fiduciary abuse as required by K.S.A. 39-1433, K.S.A. 38-2223,
  - 1) All reports regarding abuse, neglect, exploitation, and fiduciary abuse shall be to the Department of Children and Families (DCF) as required by K.S.A. 39-1433, K.S.A. 38-2223.
  - 2) Once the DCF reports are automatically uploaded in the AIR System, duplicate reports to the KDADS Adverse Incident Reporting (AIR) System shall not be required. Duplicate reports will therefore be required until KDADS provides notice that the DCF upload process is functional.
- B. Reporting of all other adverse incidents not covered via K.S.A. 39-1433, K.S.A. 38-2223
  - 1) The reporting of all other adverse incidents, as defined in this policy, not required via K.S.A. 39- 1433, K.S.A.38-2223, shall be made via the Adverse Incident Reporting (AIR) system.

### IV. Adverse Incident Data, Trending, and Remediation

- A. Each MCO shall submit a monthly report to KDADS Program Integrity which captures the following:
  - 1) Performance data on each health and welfare performance measure as identified in each HCBS waiver.
  - 2) Trend analysis by each HCBS waiver health and welfare performance measure.
  - 3) Trend analysis on each adverse incident as defined in this policy.
  - 4) Remediation efforts by health and welfare performance measure as identified in each HCBS waiver.
  - 5) Remediation efforts by each adverse incident as defined in Procedures. I. 3.

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## II. Procedures

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### I. Adverse Incident Investigation and Follow-up

- A. Review and Follow-up for abuse, neglect, exploitation, and fiduciary abuse as required by K.S.A. 39-1433, K.S.A. 38-2223
1. DCF is statutory responsible for all abuse, neglect, exploitation, and fiduciary abuse investigation and follow-up in accordance with K.S.A. 39-1433, K.S.A. 38-2223
  2. DCF Adult Protective Services (APS) investigation will conclude in one of the following findings:
    - a. Substantiated: The facts and circumstances provide clear and convincing evidence to conclude the alleged perpetrator's actions or inactions meet the KSA definition of abuse, neglect, exploitation, or fiduciary abuse.
    - b. Unsubstantiated: The facts or circumstances do not provide clear and convincing evidence to meet the KSA definition of abuse, neglect, exploitation, or fiduciary abuse.
    - c. Screened Out: The participant does not meet the definition of KSA 39-1430 (a) or the allegations do not meet the definition for ANE in KSA 39-1430 (b-e); the report is participant to participant and no indication of neglect by staff; the incident has previously been investigated; or DCF does not have the statutory authority to investigate the incident.
  3. The report will not be assigned for further assessment or may be screened out after acceptance if the following apply:
    - a. The report on a child does not meet the criteria for further assessment per K.S.A. 38-2223;
    - b. The incident has previously been investigated;
    - c. DCF does not have the statutory authority to investigate;
    - d. Unable to locate family;
    - e. DCF does not have statutory authority to investigate.
  4. Not all adverse incident reports require remediation.
    - a. The MCO shall determine which adverse events will result in remediation;

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- b. In the event that an adverse event does not require remediation, it shall be reported as 0.
5. DCF investigation involving Child Protective Services (CPS) will conclude with one of the following findings:
    - a. Unsubstantiated: A reasonable person weighing the facts or circumstances would conclude it is more likely than not (preponderance of the evidence) the alleged perpetrator's actions or inactions do not meet the abuse and/or neglect definitions per applicable Kansas Statutes Annotated (K.S.A.) and Kansas Administrative Regulations (K.A.R.).
    - b. Affirmed: A reasonable person weighing the facts and circumstances would conclude it is more likely than not (preponderance of the evidence) the alleged perpetrator's actions or inactions meet the abuse and/or neglect definition per applicable Kansas Statutes Annotated (K.S.A.) and Kansas Administrative Regulations (K.A.R.).
    - c. Substantiated: When abuse and/or neglect of a child meets criteria to affirm, the CPS specialist in consultation with his/her supervisor shall evaluate the facts and circumstances of the alleged incidents to determine whether criterion for a substantiated case finding is met. When criterion is met, a substantiated case finding shall be considered. A substantiated case finding results in the perpetrator's name being placed on the Kansas Child Abuse/Neglect Central Registry. Per Kansas statutes and regulations, the perpetrator is not permitted to reside, work, or regularly volunteer in a Kansas Department of Health and Environment (KDHE) or Department for Children and Families (DCF) Foster Care and Residential Facility Licensing regulated child care or residential facility.
  6. When a report has been made to DCF and the DCF investigation has concluded, DCF will provide the results of the investigation via a daily feed to the Adverse Incident Reporting (AIR) System.
- B. Review and follow-up for all other adverse incidents not covered via K.S.A. 39-1433, K.S.A. 38- 2223
1. The individual's MCO for which an adverse incident is reported shall be responsible for review and follow-up within 30 days of the date the report is assigned to the MCO by KDADS.
    - a. Once an AIR report is identified by the MCO as being a Potential Quality of Care concern, the MCO will make the appropriate designation in the system. The 30-day follow up timeframe will be measured from the date the report is assigned to the MCO by KDADS and the MCO makes the Potential Quality of Care Concern designation in the system.
    - b. Each MCO shall follow their internal Quality of Care policies and procedures for

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identification and follow up.

2. All screened out DCF reports shall be reviewed and followed up on by the individual's MCO.
3. MCO investigations shall be concluded in one of the following three findings:

Finding #1 - Doesn't meet adverse incident definition – report reviewed by MCO and does not meet the Adverse Incident definitions as defined.

Finding #2 - MCO action required - Report was reviewed and MCO action is required.  
(Select all that apply)

1. Back-up Plan
2. Behavior Support Plan
3. Behavioral Health Follow-up
4. Community Resource Referral
5. Complex Case Round
6. Corrective Action Plan
7. DPOA/Guardian Contact
8. Face-to-face visits
9. Increase Participant Engagement
10. Performance Improvement Plan
11. Integrated Person Centered Service Plan Change
12. Policy/Procedure Request
13. Potential Quality of care issue identified
14. Removal of Self-direction to Agency Directed Services
15. Safeguard Planning
16. TCM Contact

Finding #3 - No MCO action required – Report was reviewed and no MCO action is required (e.g. death by natural causes, law enforcement/emergency medical involvement where no suspected ANE documented, etc.).

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4. KDADS and the MCOs shall meet on a monthly basis to address any extraordinary issues or trends in critical incident reporting.

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## Definitions

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**Potential Quality of care issue identified** – Any alleged act or behavior that may be detrimental to the quality of safety of patient care, is not compliant with evidence based standard practices of care, or that signals a potential sentinel event.

**Sentinel event** - an adverse event in health care delivery or other service, which either leads to or has potential to lead to catastrophic outcomes (near miss), thereby often mandating initiation of emergency intervention or of preventive measures.

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## Authority

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### 1915(c) HCBS Waiver

KS.0224.R05.01 (IDD) – effective March 1, 2016

### Federal Authority

42 CFR 431,206 Informing applicants and beneficiaries

42 CFR 441.720 Independent Assessment

### State Authority

K.A.R. 30-5-305 Assessment requirements

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## Contact Information

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## Related Information

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### PUBLIC COMMENT PERIOD:

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Posted Online: June 30, 2017

Comment Period Ends: July 14, 2017

Questions & Comments submitted to [KDADS.HCBS-KS@ks.gov](mailto:KDADS.HCBS-KS@ks.gov)