



# KDADS STANDARD POLICY

<b>Policy Name:</b> HCBS Adverse Incident Reporting & Management	<b>Policy Number:</b> E2024-052
<b>Commission:</b> Home and Community-Based Services (HCBS)	<b>Date Established:</b> 07/01/2024
<b>Applicability:</b> All HCBS 1915(c) Waivers	<b>Date Last Revised:</b> 05/24/2024
<b>Contact:</b> HCBS Program Integrity & Compliance Manager	<b>Date Effective:</b> 07/01/2024
<b>Policy Location:</b> KDADS Website	<b>Date Posted:</b> 08/15/2024
<b>Status/Date:</b> Final- 05/24/2024	<b>Number of Pages:</b> 1 of 10
<i>Revision History</i>	

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## Purpose

The purpose of this policy is to establish an adverse incident reporting and management system (AIRS) 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

The Kansas Department for 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 identify adverse incidents, reporting requirements, responsibilities, and data requirements.

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## Entities/Individuals Impacted

- 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 for Aging and Disability Services (KDADS)
- Managed Care Organizations (MCOs)
- Community Developmental Disability Organizations (CDDO)

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## I. Policy

### A. General

1. All HCBS providers shall make adverse incident reports in accordance with this policy as set forth herein. **This policy does not absolve HCBS providers of any other mandatory reporting requirements.**
2. All Adverse Incidents defined in this policy, to include those required to be reported to the DCF, shall be reported to KDADS by direct entry into the KDADS web-based AIR system no later than 24 hours after becoming aware of the Adverse Incident.
3. An Incident shall be classified as Adverse Incident when it brings harm or creates the potential for imminent serious harm to any individual eligible to receive HCBS waiver services at the time of the occurrence.

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4. A report shall be made into the AIR system for any Adverse Incident regardless of the location where it occurred. Location includes but is not limited to any premises owned or operated by a provider or facility licensed by KDADS; operating under the Older Americans Act or the Senior Care Act; or operating under the Money Follows the Person program or the Behavioral Health Services programs.
5. KDADS Program Integrity and Compliance (PIC) shall offer AIRS training to MCO staff, and all interested and involved parties.
6. Training materials shall be provided on site and on KDADS’s website at [www.kdads.gov](http://www.kdads.gov).

B. For purposes of this policy, each of the following defined occurrences is an “Adverse Incident:”

1. **Abuse:** Any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a participant, including:
  - a) The infliction of physical or mental injury.
  - b) 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.
  - c) Unreasonable use of physical restraint, isolation, or medication that harms or is likely to harm the participant.
  - d) Unreasonable use of 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.
  - e) A threat or menacing behavior directed toward the participant that results or might reasonably be expected to result in fear or emotional or mental distress to the participant.
  - f) Fiduciary abuse; or
  - g) Omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.
2. **Chemical Restraint:** Any medication used to control behavior or to restrict the participant's freedom of movement and is not a standard treatment for the participant's medical or psychiatric condition.
3. **Death:** Cessation of a participant’s life.
4. **Elopement:** The unplanned departure from a unit or facility where the participant leaves without prior notification or permission.

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5. **Emergency Medical Care:** Inpatient or outpatient hospital services that are necessary to ensure the health and welfare of the participant which require use of the most accessible hospital available and equipped to furnish those services.
6. **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 gain by the use of undue influence, coercion, harassment, duress, deception, false representation, or pretense by a caretaker or another person.
7. **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.
8. **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.
9. **Misuse of Medications:** The incorrect administration or mismanagement of medication, by someone providing HCBS, which results in or could result in severe injury or illness to a participant.
10. **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 each HCBS participants in the area who is impacted by the natural disaster.
11. **Neglect:** The failure or omission by a caretaker, or another person with a duty, to supply or to provide goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.
12. **Physical Restraint:** Any manual method or physical object or device attached or adjacent to a participant’s body that restricts the participant’s freedom of movement.
13. **Seclusion:** The involuntary confinement of a participant alone in a room or area from which the participant is physically prevented from leaving.
14. **Self-Neglect:** The failure or omission by oneself to supply or to provide goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.
15. **Serious Injury:** An unexpected occurrence involving the significant impairment of the physical condition of a participant. Serious injury includes loss of limb or function.
16. **Suicide:** A death caused by self-directed injurious behavior with an intent to die as a result of the behavior.
17. **Suicide Attempt:** A non-fatal self-directed potentially injurious behavior with an intent to die as a result of the behavior. A suicide attempt may or may not result in injury.

### C. Adverse Incident Reporting Requirements

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1. Reporting Abuse, Neglect, and Exploitation (ANE) and Fiduciary Abuse.

- a) ANE and Fiduciary Abuse shall be reported to DCF as required by K.S.A. 39-1431, K.S.A. 38-2223.
- b) ANE and Fiduciary Abuse reported to DCF shall also be reported to KDADS. When ANE and Fiduciary Abuse is reported to KDADS, the report shall identify the date of report to DCF and the intake number.
- c) ANE and Fiduciary Abuse reports shall be assigned as a Level 2 incident to the MCO in the AIR system.
- d) ANE and Fiduciary Abuse reports require KDADS confirmation before final resolution. KDADS shall verify the following:
  - i. A preventable cause was accurately identified; and
  - ii. The MCO observed appropriate follow-up measures.
- e) The MCO investigation shall verify the following:
  - i. That appropriate follow-up actions are taken against the alleged perpetrator to minimize the risk of reoccurrence; and
  - ii. That appropriate supports are in place to assist the alleged victim to address any concerns they may have as a result of the occurrence.

2. Reporting Seclusion, Physical Restraint, and Chemical Restraint

- a) Seclusion, Physical Restraint, and Chemical Restraint reports shall be assigned as a Level 2 incident to the MCO in the AIR system.
- b) Seclusion, Physical Restraint, and Chemical Restraint reports shall require KDADS confirmation before final resolution. KDADS confirmation process shall examine if:
  - i. The intervention was authorized or unauthorized; and
  - ii. Any unauthorized use of Seclusion, Physical Restraint, or Chemical Restraint, or other restrictive intervention method, was appropriately reported.
- c) The MCO investigation shall verify that:
  - i. The application of Seclusion, Physical Restraint, or Chemical Restraint, or other restrictive intervention method, complied with the procedures specified in the approved waiver; and
  - ii. Any unauthorized use of Seclusion, Physical Restraint, or Chemical Restraint, or other restrictive intervention method, was appropriately reported.
- d) Chemical restraint reporting: The requirement for reporting chemical restraints is to provide tracking and trending data to ensure the health and welfare of the participant.

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Follow-up measures shall verify that the necessary supports are in place for the participant.

- a. **Authorized Use of Chemical Restraint:** Authorized use of chemical restraint is defined as the administration of any medication which follows the participant’s current Person-Centered Service Plan (PCSP).
  - i. The medication must be prescribed and approved by a licensed healthcare provider.
  - ii. The approved use must comply with the policy established per the setting.
  - iii. Medication administration must follow the participant’s PCSP.
  - iv. Any prescribed medication with the intended purpose of altering a participant’s behavior as warranted by the current situation. A report is required when a prescribed medication is administered on an interval beyond or at a dosage above the routinely scheduled regimen as documented in the participant’s PCSP.
- b. **Unauthorized Use of Chemical Restraint:** Unauthorized use of chemical restraint is defined as the administration of any medication that is not authorized for use in the participant’s current PCSP.
  - i. A report must be filed whenever medication is administered as a chemical restraint, as defined above, regardless of whether it is prescribed or over the counter. No reporting is necessary if the medication is administered within the confines of its prescription and is not used as a chemical restraint.

### 3. Reporting Death

- a) Death reports shall be assigned as a Level 2 incident to the MCO in the AIR system.
- b) Death reports require KDADS confirmation before final resolution. KDADS shall verify the following:
  - i. The deceased’s expectancy of death was accurately reported.
  - ii. The deceased’s hospice status was accurately reported.
  - iii. Any preventable cause was accurately identified; and
  - iv. The MCO observed appropriate follow-up measures.
- c) The MCO investigation shall verify:
  - i. If the death was expected or unexpected.

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ii. If there was a preventable cause of death; and

iii. If the deceased was a recipient of hospice, then the MCO shall verify supporting documents in the form of a physician’s order or hospice admission documentation.

4. Reporting of All Other Adverse Incidents.

a) The reporting of all other Adverse Incidents, as defined in this policy, not identified in K.S.A. 39-1431, K.S.A.38-2223, shall be made via the AIR system.

D. Adverse Incident Data, Trending, and Remediation

1. Each MCO shall submit a monthly report to KDADS Program Integrity. The report shall present the following:

- a) Performance data on each health and welfare performance measure as identified in each HCBS waiver.
- b) HCBS waiver Health and Welfare Performance Measure trend analysis.
- c) Each MCO is required to analyze trends for all MCO assigned Adverse Incidents. The MCO shall communicate all Quality-of-Care Review outcomes to KDADS Program Integrity under the MCO follow-up within the AIR application.
- d) Remediation efforts based on health and welfare performance measures as identified in each HCBS waiver.
- e) Remediation efforts based on Adverse Incidents as identified and defined in this policy and procedures.

2. Corrective Action Plans are issued to resolve any issues of non-compliance with AIR requirements.

- a) Level 1 Corrective Action Plans are issued to address administrative issues or related to reporting no direct impact on service.
- b) Level 2 Corrective Action Plans are issued to address deficiencies that have the potential to impact the health, safety, or welfare of the member, or the ability to receive or retain services.
- c) Both Level 1 and Level 2 Corrective Action Plans necessitate that the MCO rectifies the highlighted issues and details sufficient follow-up measures before the official resolution of the reported Adverse Incident. KDADS, in collaboration with the MCOs, strives to resolve each Adverse Incident and amend any detected deficiencies individually or as identified through trend analysis.

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## II. Procedures

### A. Public Entry into AIRS

1. A report shall be entered into AIRS within twenty-four (24) hours after becoming aware of the Adverse Incident.
2. A report entered into the AIRS shall be routed to the applicable party for review within one (1) business day of notification of receipt of the report entered in AIRS.
3. A KDADS Program Integrity and Compliance Specialist shall determine if the report is screened in, is screened out, or requires additional follow-up within two (2) business days.

### B. DCF/KDADS Entry into AIRS

1. If ANE or Fiduciary Abuse is reported to DCF, then the process for review and follow-up for ANE and Fiduciary Abuse as required by K.S.A. 39-1431 and K.S.A 38-2223 shall be followed.
2. DCF is statutorily responsible for ANE and Fiduciary Abuse investigations and follow-up in accordance with K.S.A. 39-1431, K.S.A. 38-2223.
3. DCF Adult Protective Services (APS) and Child Protective Services (CPS) investigations will conclude with 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 towards a child or adult meet the K.S.A. definition of ANE or Fiduciary Abuse. A substantiated case finding results in the perpetrators name on the abuse, neglect, and exploitation on the Exploitation Central Registry.
  - b) **Unsubstantiated:** The facts or circumstances do not provide clear and convincing evidence to conclude the alleged perpetrator's actions or inactions towards a child or adult meet the K.S.A. definition of ANE or Fiduciary Abuse.
  - c) **Screened Out:** The facts and circumstances do not meet the definition of abuse, neglect, and exploitation or Fiduciary Abuse as defined by a K.S.A. The report was participant-to-participant and there is no evidence of ANE by staff; the incident was previously investigated; or DCF was unable to locate the family or does not have the statutory authority to investigate the incident.
  - d) **Affirmed:** The facts or circumstances of the CPS investigation do not provide clear and convincing evidence to conclude the alleged perpetrator's actions or inactions towards a child meet the K.S.A. definition of ANE.
4. When a report has been made to DCF, and the DCF investigation has concluded, DCF will provide the results of the investigation via a secured electronic communication to the AIRS.

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C. Review and follow-up for all other Adverse Incidents not covered via K.S.A. 39-1430, K.S.A. 39-1431, K.S.A. 38-2223.

1. The individual’s MCO must review and follow-up within thirty (30) days of the date the report is assigned to the MCO by KDADS.
  - a) If an MCO identifies an AIR report as being a Potential Quality of Care concern, MCO must provide their initial, follow up within 30-days of the report assignment, making the appropriate designation in AIRS; and
  - b) Each MCO shall follow their internal Quality of Care policies and procedures.
2. All screened out DCF reports shall be reviewed and followed up on by the individual’s MCO.
3. MCO investigations shall conclude with one of the following findings:
  - a) The report was reviewed and/or investigated by the MCO and does not meet the definition of an Adverse Incident.
  - b) Screened In – The report was reviewed and MCO action is required. Select all that apply:
    - i. Back-Up Plan
    - ii. Behavior Support Plan
    - iii. Behavioral Health Follow-up
    - iv. Community Resource Referral
    - v. Complex Case Round
    - vi. Corrective Action Plan
    - vii. DPOA/Guardian Contact
    - viii. Face-to-Face Visits
    - ix. Increase Participant Engagement
    - x. Performance Improvement Plan
    - xi. Integrated Person-Centered Service Plan Change
    - xii. Policy/Procedure Request
    - xiii. Potential Quality of Care Issue Identified
    - xiv. Removal of Self-Direction to Agency Directed Services



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- xv. Safeguard Planning
- xvi. TCM Contact
- xvii. Quality of Care Review

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

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### III. Definitions

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- A. **Potential Quality of Care Issue Identified** – Any alleged act or behavior that may be detrimental to the quality of safety of participant care that is not compliant with evidence-based standard practices of care, or that signals a potential sentinel event.
- B. **Business Day** – Any day that is not a Saturday, a Sunday, or a legal holiday. A legal holiday includes any day designated as a holiday by any statute or regulation of this state. In computing any period of time in this policy, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.
- C. **Sentinel Event** – An adverse event in health care delivery or other services which either leads to or has the potential to lead to catastrophic outcomes (near-miss) thereby often mandating initiation of emergency interventions or preventive measures.

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### Authority

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#### Approved 1915(c) HCBS Waivers

#### Approved MCO Contracts

#### Federal Authorities

- 42 U.S.C. § 1396n (HCBS Waiver)
- 42 C.F.R. § 405.400 (Definitions)
- 42 C.F.R. § 441.301 (Contents of Request for a Waiver)
- 42 C.F.R. § 441.302 (State Assurances)
- 42 C.F.R. § 441.303 (Supporting Documentation)
- 42 C.F.R. § 460.114 – (Restraints)

#### State Authorities

- K.S.A. 38-2202 (Definitions for Abuse or Neglect of Children)
- K.S.A. 38-2223 (Reporting Abuse or Neglect of Children)
- K.S.A. 39-1430 (Definitions for Abuse, Neglect, or Exploitation of Adults)
- K.S.A. 39-1431 (Reporting Abuse, Neglect, or Exploitation of Adults)

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K.A.R. 30-46-10 (Definitions for Abuse or Neglect of Children)  
K.A.R. 30-46-15 (Notice of Decision for Abuse or Neglect of Children)

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**Related Information**

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