



Department  
of Health

# **NYS Department of Health Nursing Home Transition and Diversion (NHTD) Program**

## **Medicaid Waiver Orientation Training: Unit 7**

# Challenging Situations and Incident Reporting

Recommended Content

# Challenging Situations

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# Challenging Situations

Include, but not limited to:

- Severe Weather
- Fire
- Medical Emergency
- Natural Disasters
- Power Blackout
- Lack of Replacement Staffing
- Adverse action by waiver participant and/or support(s)

# Challenging Situations continued

## Plan in Place to Effectively Address Challenging Situations Should They Occur

- Know agency protocols and procedures on how to respond to the specific situations.
- Based on plan, know when and if to call supervisor, 911, medical and mental health professionals, relevant community and residential individuals, legal guardian, advocate, etc.
- For environmental emergencies and natural disasters, conduct drills and refreshers about emergency response.
- Be aware of any interventions or techniques identified in a specialized behavioral plan.

# Challenging Situations continued

Have an individualized, intervention plan in place related to issues, episodes and crises, which may be part of the Plan of Protective Oversight (PPO), Detailed Goal Plan and corresponding goals.

- Is developed jointly with Participant.
- Focus on safety, health and well-being.
- Know helpful resources, including having trained staff, to support positive resolution, including methods of de-escalation.
- Build strengths and abilities while understanding any limitations and conditions.
- Remain person -centered in approach and respect of privacy.

# Challenging Situations continued

## Plan of Protective Oversight

All Participants have a PPO that is reviewed and updated regularly. Providers and waiver staff must be familiar with the participant's Plan of Protective Oversight (PPO).

The PPO:

- Supports the participant's health and welfare;
- Identifies who to notify in an emergency; and
- Identifies medical needs and required supports.

# Incident Reporting

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# Incident Reporting Policy

- The purpose of reporting, investigating, correcting and/or monitoring certain events or situations is to enhance the quality of care provided to participants and to protect them (to the extent possible) from further harm.
- The process begins with the occurrence of an 'Event', which is defined as an occurrence with a negative impact to the participant, or actual harm to the participant that has come to the attention of a waiver service provider.
- Once a provider has become aware of an 'Event,' the waiver service provider must evaluate what has occurred to determine at what level an investigation must be conducted.
- The safety of the participant must be immediately assured upon discovering an event. The two categories of incidents are recordable and serious reportable incidents.

# Definitions of Incidents

- **Recordable Incident** – An event that does not pose an immediate threat to the participant and does not meet the level of severity of a Serious Reportable Incident but may compromise his/her safety and well-being if not noted, reported and addressed. These incidents warrant an internal investigation by the provider agency's quality assurance unit for trends and outcomes.
- **Serious Reportable Incident (SRI)** – A significant event or situation endangering a participant's well-being, and because of the severity or sensitivity of the situation, must be reported to the Regional Resource Development Center (RRDC) and/or NYSDOH.

# Serious Reportable Incidents

- The Regional Resource Development Center (RRDC) is the administrator of the SRI process within its region. The RRDCs assure that:
  - (a) the process is initiated, investigated and completed in a timely manner;
  - (b) outcomes are appropriate; and
  - (c) the waiver service provider investigating the SRI conducts follow-up timely and appropriately.
- Each waiver provider must determine ways to improve its own policies and procedures to prevent the reoccurrence of SRIs.

# SRI Classifications

- **Abuse** – The maltreatment or mishandling of a participant that would endanger their physical or emotional well-being through the action or inaction of anyone associated with the participant, whether or not the participant is or appears to be injured or harmed.

Subcategories include:

- Physical
- Sexual
- Psychological
- Seclusion
- Restraint
- Mistreatment
  - An allegation of financial or material exploitation that can compromise the safety and well-being of a participant should be filed as an Allegation of Abuse, subcategory mistreatment.
- Aversive conditioning

# SRI Classifications continued

- **Neglect** – A condition of deprivation in which the participant receives insufficient, inconsistent, or inappropriate services, treatment or care to meet their needs; failure to provide an appropriate and/or safe environment for receiving services; and/or failure to provide appropriate services, treatment or care by gross error in judgment, inattention or ignoring.
- **Violation of a participant's civil rights** – Any action or inaction that deprives a participant of the ability to exercise their legal rights, under state or federal law.
- **Missing person** – The unexpected or unauthorized absence of a participant, taking into consideration their habits, deficits, health problems and capabilities.

# SRI Classifications continued

- **Death of a waiver participant** – Death due to circumstances unrelated to the natural cause of illness or disease or proper treatment in accordance with accepted medical standards; an apparent homicide or suicide; or an unexplained or accidental death. The RRDC will determine if a death by natural causes will be categorized as an SRI.
  - All deaths should be reported to the RRDC.
- **Unplanned hospitalization** – Any injury or illness which results in a hospital admission of a participant for treatment or observation for greater than 24 hours due to the injury/illness.
  - This includes psychiatric facility admissions
  - Regardless if the person was a ‘full admit’ or on ‘observation status’, if the participant is in a hospital over 24 hours, then an SRI should be filed.

# SRI Classifications continued

- **Possible criminal action** – Actions by participants which are or appear to be a crime under New York State or Federal law.
  - Do not file an SRI under this category if a waiver staff person has committed a crime. There are possible other categories that situation may fall under; this category is used if the participant commits a crime.
- **Medication error/refusal** – A situation in which a participant displays marked adverse effects or their health or welfare is in jeopardy due to incorrect dosage, administration or refusal to take prescribed medication.
  - Note: the participant must have an adverse reaction or have their health/welfare jeopardized due to the error/refusal.

# Recordable Incidents

- Do not meet the level of severity of SRIs, but impact the participant's life in the community.
- Are reported annually to the Regional Resource Development Center (RRDC) and are subject to review upon site visits by the RRDC and /or NYSDOH Office of Primary Care and Health Systems Management (OPCHSM).
- Are not reported to NYSDOH; however, NYSDOH reserves the right to review these incidents at any time.



# Recordable Incidents continued

- Each waiver provider must include the following in its policies and procedures regarding Recordable Incidents:
  - The process for reporting, investigating and resolving Recordable Incidents within the agency; including the title and name of the individual responsible for the oversight of Recordable Incident reporting for the agency.
  - The process for identifying patterns of incidents involving a specific participant or staff within the agency that threaten the health and welfare of participants in general.
  - The system for tracking the reporting, investigation and outcome of all Recordable Incidents.
  - The criteria used to determine when a Recordable Incident should be upgraded to SRI.

# Recordable Incidents continued

- **Injury** – Any suspected or confirmed harm to a participant caused by an act or person, accidental in nature.
- **Natural Death of a waiver participant** – Due to natural causes when in a treatment facility or hospice environment. The RRDC will determine if a death by natural causes will be categorized as an SRI or a Recordable Incident. All deaths must be reported to the RRDC.
- **Sensitive Situation** – Any situation related to a participant that needs to be monitored for a potential adverse outcome. This includes events that attract media attention or inappropriate activity which could threaten the participant's ability to remain in the community.

# The Investigation Process

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# When an Incident is Discovered

- A participant's safety must always be the primary concern of the provider agency, SC and the RRDC. Whatever measures appear to be reasonable and prudent to ensure the protection of a person from further harm, injury, or abuse, and to provide prompt treatment or care are taken.
- When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused a person shall be removed from immediate proximity to, or responsibility for, the participant and may not work with other participants, until the investigation is completed.
- When appropriate, any waiver service provider or waiver entity may contact Adult Protective Services (APS) related to an 'Event' involving a waiver participant at any time during the SRI Reporting process.

# SRI Procedure

1. When a waiver provider discovers that an 'Event' has occurred, the agency has 24 hours to:
  - Determine if the 'Event' rises to the level of an SRI;
  - Complete the 24-Hour Provider Report and send it via encrypted email\* to the RRDC; and
  - Provide a copy via encrypted email\* of the 24-Hour Provider Report to the participant's SC (if the discovering waiver service provider is not the SC agency).

**NOTE:** If there is a question about whether the event meets the definition of an SRI, the provider must contact the RRDC to discuss the matter.

\*To ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA), all reports and communication containing Protected Health Information (PHI) must be sent via encrypted email.

# SRI Procedure continued

2. Within 24 hours of receiving the 24-Hour Provider Report, the SC must:
  - Notify the waiver participant and/or his/her legal guardian that an incident has been reported and is being investigated.
  - Notify other program or waiver providers of the incident when the evidence of the injury or incident may impact services or the waiver provider.
  - Complete and submit the Service Coordinator 24-Hour Notification Report form to the RRDC.

**NOTE:** If the SC is alleged to be involved in the incident, the Service Coordination Supervisor will assume responsibility for the case.

# SRI Procedure continued

3. Within 24 hours of receiving the 24-Hour Provider Report form, the RRDC will:
  - Review the form, complete the RRDC Initial Response form and assign an incident number. This number must be included in all future reports and correspondence relating to the incident.
  - Document on the RRDC Initial Response acceptance of the original classification or, if indicated, the re-classification of the incident.
  - Assign the investigation to a waiver provider responsible for conducting the investigation and provide the due dates of the expected 7 day and 30 day Follow-Up Reports.
  - Send the RRDC Initial Response to the investigating provider and SC.

**NOTE:** The RRDC will notify NYSDOH of any extraordinary events within 24 hours of receipt of the incident report.

# SRI Procedure – Investigator Designation

- The investigating waiver provider must designate at least 1 individual to be responsible for conducting a thorough and objective investigation.
- Those conducting the investigation must not be:
  - Directly involved in the incident;
  - An individual whose testimony is incorporated in the investigation; or
  - Individuals who are the supervisor, supervisee, spouse, significant other or immediate family member of anyone involved in the investigation.
- If there is concern regarding a potential conflict of interest or appearance of a conflict, the RRDC may assign another waiver provider who provides services to the individual to conduct the investigation.
- The RRDS and/or Nurse Evaluator will conduct the investigation if the scope of the incident goes beyond one service provider, there is an appearance of conflict of interest among the providers, the provider has demonstrated non-compliance with program manual standards or improper procedures on.
- The RRDC will request technical assistance from the NYSDOH at any time when necessary.



# SRI Procedure continued

4. Within 7 days from the date of the RRDC Initial Response, the investigating waiver provider must submit a Provider Follow-Up Report to the RRDCS. The RRDC forwards the RRDCS Status Report to the investigating provider and SC.
5. If the investigation remains open, the investigating provider must submit a Provider Follow-Up Report form to the RRDC within 30 days, as designated on the RRDC Initial Response. The RRDC forwards the RRDCS Status Report to the investigating provider and SC.
6. If open beyond the first 30 days, continued follow-up and investigation is required. For each 30 days that the case remains open, the investigating provider must submit a Provider Follow-Up Report to the RRDC staff each month, based on the date of the first 30 day Provider Follow-Up Report. The RRDC forwards the RRDCS Status Report to the investigating provider and SC.

# SRI Procedure continued

7. The RRDC will consider an investigation closed when:
  - The final investigation report has been submitted to the RRDC, along with the Provider Follow-Up Report.
  - The provider's Serious Incident Review Committee (SIRC) has met, reviewed the investigation and recommended that the incident be closed.
8. Upon review of the investigation, the RRDC will send the RRDC Status Report to the investigating provider and SC indicating the SRI is closed. If it is to remain open, the reasons for that decision must be identified by the RRDCS in the report, along with directions for further investigative action.
  - The investigation is not closed until the RRDC determines it is closed.

**No incident investigation may remain open for more than 90 days** from the date of the initial report without the approval of the SIRC, the RRDC and/or NYSDOH. This approval will occur in only the most atypical circumstances, e.g. criminal investigation, civil litigation.

# SRI Procedure – Final Investigation Report and Unplanned Hospitalizations

Final Investigation Report: A standard investigation format is used by all providers.

- The format contains a series of questions/issues that must be addressed in the report.
- The RRDC reviews the report and the supporting document to determine if the investigation process has been sufficient.
- If the RRDC has a question about the substance of the investigation it will refer the report to NYSDOH for review and guidance.
- The RRDC returns the investigation report to the provider, requesting additional clarification or information.

SRI investigations pertaining to unplanned hospitalizations must be closed **within the timeframe of ninety (90) days from the date of the 24-Hour Provider Report, not after discharge from the hospital.**

# SRI Procedure continued

9. Once the investigating provider receives the final RRDC Status Report, it must send written notice to the participant/legal guardian within 7 days that the investigation has completed, indicating the final outcome without disclosing the details of the investigation. A copy of the letter is sent to the RRDC and SC.
10. Upon closure of the SRI, the RRDC also sends the participant/legal guardian a close-out letter within 7 days, indicating that the investigation has been completed and the final outcome. Details of the investigation are not disclosed.
  - The RRDC also sends a copy of the close-out letter to the SC.
  - Any further contact with the participant will be made at the discretion of the RRDC, depending on the outcome of the investigation, consistent with the plan of corrective action or recommendations included in the final investigation report.

# Recordkeeping & Reporting Responsibilities

- SRIs are not maintained in the participant's file and are not considered to be part of the participant record. This includes the RRDC SRI close-out letter that is sent to the SC.
- Quarterly Reports must be submitted to the RRDC by the end of the month following the end of each quarter.
  - If a provider has not been involved in any SRI investigations during the quarter, it is still necessary to submit a quarterly report stating this.
- Annual reports must be submitted to the RRDC by January 31 of each year for the prior year.
- The RRDC reviews the quarterly and annual reports for regional trend analysis, makes recommendations for interventions and subsequently forwards the report with its analysis and outcomes to DOH waiver staff for further review.
- DOH waiver staff may also request investigation reports at any time.

# Serious Incident Review Committee (SIRC)

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# Serious Incident Review Committee (SIRC)

- Every approved waiver provider must have a Serious Incident Review Committee (SIRC) to provide oversight and review of the investigation process and outcomes.
  - Providers of Assistive Technology, Environmental Modifications, Congregate and Home Delivered Meals (NHTD) and Home Visits by Medical Personnel (NHTD) are not responsible for maintaining a SIRC **unless** they also provide any other type of waiver service.
  - Independent waiver providers must also form a SIRC, which can be accomplished by partnering with other independent providers or existing agencies.

# SIRC: Organization and Membership

- The SIRC must contain at least 5 individuals, and at least 5 members must be present any time the SIRC convenes.
  - A cross section of staff including professional staff, direct care staff, and at least one member of administrative staff is strongly recommended.
  - The Executive Director cannot serve as a member but may be consulted by the SIRC in its deliberations.
- Must meet at least quarterly and always within 30 days of a report of an SRI.
- May be organized on an agency-wide, multi-program or program-specific basis.
- The individual assigned to conduct investigations for the agency can be part of the Committee, but may not serve on the Committee at the same time he/she is involved in an active investigation for the agency.



# SIRC: Responsibilities

- The investigating waiver provider is responsible for notifying its SIRC that an investigation has been initiated and that committee involvement is required.
  - The incident must be reviewed by the SIRC within 30 days of the date of the 24-Hour Provider Report.
  - The incident must remain open until the RRDC receives confirmation that the SIRC met, reviewed the incident and has recommended that the incident be closed, while adhering to the 90 day deadline. The SIRC must also provide the RRDC with suggestions post review.

# SIRC: Responsibilities

- The SIRC is responsible for reviewing the investigation of every SRI and Recordable Incident to:
  - Evaluate whether it was thorough and objective, and if the conclusions and recommendations comply with standards and guidelines.
  - Determine if it was appropriately reported, investigated, and documented.
  - Ascertain that corrective, preventive, and/or disciplinary action has been taken in accordance with committee's recommendations.
  - Identify SRI trends (by type, client, site, employee, involvement, time, date, circumstance, etc.) and recommend appropriate corrective and preventative policies and procedures to the agency administration.

# SIRC: Responsibilities

- Must submit an annual report to the RRDC regarding Serious and Recordable Incidents. This report must:
  - Include all corrective, preventive and/or disciplinary actions taken pertaining to identified trends.
  - Reflect the activities of the SIRC in the investigation process, investigation outcomes, and remediation activities.
  - Include the name and position of each of the members of the SIRC, documentation of any changes in the membership during the reporting period and the dates of the SIRC meetings.
  - Be submitted to the RRDC in each waiver provider's region in which it is authorized to provide waiver services by January 31 of each year for the prior year.

# SIRC: Documentation of Activity

- The Chairperson must ensure minutes are kept for all meetings, maintained in one location and in a manner that ensures confidentiality.
- For each SRI reviewed, minutes must include:
  - The SRI number assigned by the RRDC
  - Waiver participant's name and CIN
  - A brief summary of the situation that caused the report (including date and type of incident)
  - Committee findings and recommendations
  - Actions taken on the part of the agency/program as a result of the recommendations

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